

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

BETWEEN

MOSES E. REEVES,  
Complainant-Respondent,

and

SELENA A. McCracken,  
Defendant-Appellant.

*On Appeal from  
Decree in  
Chancery.*

**Supplemental Brief for Respondent.**

At the argument of this cause on December 2nd, 1907, before this Court, permission was given to me to hand up a supplemental brief within fifteen days. I will confine myself to the points made by Mr. McCarter in his brief, which are not mentioned in my original brief.

The first point that he makes is:—The burden of proof in this case is upon the complaint to show the falsity of the plea of bona fide purchaser for value without notice. He cites four cases in New Jersey:

- Holmes vs. Stout, 2 Stock. 419.
- Coleman vs. Barklew, 3 Dutch. 357.
- Role vs. Rea, 21 Vr. 264.
- Paul vs. Kerswell, 31 Vr. 273.

All of the cases so cited were actions involving the statute, which protects a purchaser of land, who receives a conveyance and records his deed without notice of a prior deed. When such a purchaser is attacked the presumption is that his conveyance is good and it is incumbent upon the party attacking to prove that he had notice of the prior conveyance. This may appear to be a requirement that a negative shall be proved; but the general rule is stated by Justice Dixon in *Turner vs. Wells*, in this Court, 35 Vr. at page 273, as follows:—"Whoever asserts a right dependent for its existence upon a negative, must establish the truth of the negative by preponderance of the evidence."

It is by the application of this rule that the burden of proof is put upon the party who asserts that a purchaser who has a deed of conveyance which is the first on record, is a purchaser with notice of a prior unrecorded deed of conveyance.

But on the other hand, it has been held that where a fraud has been proven, the party whose title is derived through such a transaction, must prove his own good faith and want of notice.

Amer. & Eng. Enc. of Law, Vol. 16, 1st Ed. p. 842; citing *Sillyman vs. King*, 36 Iowa 207.  
*Davis vs. Nolan*, 49 Iowa, 683.  
*Throckmorton vs. Ryder*, 32 Iowa, 84.  
*Light vs. West*, 42 Iowa, 138.  
*Berry vs. Whitney*, 40 Mich., 65.  
*Letson vs. Reed*, 45 Mich., 27.  
*Bolton vs. Jackes*, 6 Rob. (N. Y.) 166.  
*Mann vs. Falcon*, 25 Tex. 271.

It seems to me that in this case, when the complainant has established a prima facie case against John H. McCracken showing the existence of a constructive trust,

the burden of proof is then upon the purchaser to establish the several particulars, which are necessary to constitute a bona fide purchase.

The second point made by Mr. McCarter is that the existence of the trust must be proved by clear, unequivocal evidence.

I agree with him that the proof of the facts from which the fraud will be presumed and thereby raise the implied trust must be clear and convincing; but the court ought not to forget that in cases of this kind a court of equity goes much farther in the presumption of fraud than a court of law would.

The next point made by Mr. McCarter is, that the Vice-Chancellor erred both as to law and fact in his conclusion that Mrs. McCracken was not a bona fide purchaser for value.

Criticism is made of the statement by the Vice-Chancellor in his opinion that as the defendant did not specifically deny the allegation in the bill, that the complainant caused sufficient money to be placed in McCracken's hands to pay the judgments, and that instead of paying them he purchased them and took an assignment of them in his own name and caused the Sheriff to sell the complainant's properties thereunder, she thereby admitted those allegations to be true.

The cases in this State relating to implied admissions when there is no denial in the answer of facts stated in the bill, are the following:-

*Merwin vs. Smith*, 1st Gr. Eq. 182, at p. 192, where the Court says:—"The practice of this Court is in conformity with the rule adopted in the Supreme Court of the United States, viz.—that the allegations of the bill will be taken as true where they are not met and denied by the answer."

Hyde vs. Ehlers, 2 Stock. 283, in which Chancellor Williamson said:—"That as the defendant had the opportunity of stating in his answer when and where and how he paid any part of the purchase money, that the answer amounted pretty much to a confession of the case made by the bill."

Knight vs. Packer, 1 Beasley, 214, in which the bill alleged that the debtor had assigned his property with the purpose of delaying and defrauding his creditors; the answer denied that there was any fraud in fact, admitted the assignment, and averred that if the property could be sold at a fair price, it would be sufficient to meet the demands of the creditors.

This answer was held to be an acknowledgement that the deed was executed to prevent the property being sacrificed, and to place it beyond the reach of the ordinary process of law, and was, therefore, void as against creditors.

Walker vs. Hills, Executors, 6 C. E. Gr. 191, which holds that if the answer admits a contract without stating that it was in writing and setting up the statute of frauds, the statute cannot be used as a defence.

This case is also an authority in favor of the respondent on the merits of the case and on the amount of proof, that the bad faith must be clearly and fully shown, and that if it is shown, the trust will arise.

Butterfield vs. The Third Avenue Savings Bank, 10 C. E. Gr. 533, at page 536, in which this Court holds that an answer admitting the making of a mortgage to a corporation, necessarily admits the legal existence of the corporation. The admission is implied.

Sanborn vs. Adair, 2 Stew. 338, in which this Court held that where there is an allegation in a bill of complaint, that the grantee in a deed second in date, took his conveyance with an express agreement to assume the payment

of a judgment in question, and that allegation is not denied in the defendant's answer, it must be taken as admitted.

In that case the answer was sworn to and was evidence in behalf of the defendant.

Van Syckle, Justice, speaks of the allegation as a controlling fact, but no point is made that it is a fact within the knowledge of the defendant. It is only held, that being a controlling fact alleged in the bill and not denied in the answer, it must be taken as confessed.

Wills vs. McKinney, 3 Stew. 465, in which the complainant derived title to mortgage under a will and alleged his title and the answer of the mortgagor did not deny the title, but did not expressly admit it; and the Court held that proof of the complainant's title was unnecessary.

Lee vs. Stiger, 3 Stew. 610, in which Vice-Chancellor Van Fleet laid down the rule that:—A material and controlling fact which is clearly and fully averred in the bill and not denied or alluded to in the answer, must be taken as confessed. He cites Sanborn vs. Adair.

Jones vs. Knauss, 4 Stew. 609, in which the same Vice-Chancellor adopts the same rule.

Pinnell vs. Boyd, 6 Stew. 190, in which the same Vice-Chancellor follows the same rule.

Halsey vs. Ball, 9 Stew. 161, in which Chancellor Runyon held that averments in the stating part of a bill evidently intended as statements of fact, must be answered by the defendant, if he intends to deny them, although the complainant "charges" the facts instead of "shows" or "alleges" them.

Reed vs. Cumberland Insurance Company, 9 Stew. 146, in which the same Chancellor held that where a bill calls for an answer to several distinct averments according to

defendant's knowledge, information, remembrance and belief an answer merely denying knowledge, is defective. It ought also, to include the defendant's information.

The last two cases came up on objections to the answer, but they are authorities to show what an answer should contain and what admissions will be implied if the answer does not deny allegations of fact.

Mr. McCarter contends that the rule in *Sanborn vs. Adair* only applies to allegations of matters within the knowledge of the defendant.

The Court does not say so in that case, and Vice-Chancellor Van Fleet does not say so in subsequent cases.

The elementary rule is that the defendant must answer as to his knowledge, remembrance, information or belief.

Daniell's Chancery Practice, star page 722.

As to facts which have not happened within his own knowledge, the defendant must answer as to his information and belief, and not as to his information merely, without stating any belief either the one way or the other.

Daniell's Chancery Practice, star page 723.

Where defendants have in their power the means of acquiring the information necessary to enable them to give the discovery called for, they are bound to make use of such means whatever pains or trouble it may cost them.

Daniell's Chancery Practice, star page 724.

In this case, Mrs. McCracken was bound to disclose the information and belief that she had relating to the facts

alleged at the time she took the deed of conveyance and paid the purchase money in each transaction.

If particular instances of notice and circumstances of fraud are charged, they must be denied especially and particularly as charged in the bill.

Mitford & Tyler's Equity Pleading 363.

It would seem, therefore, that the Vice-Chancellor did not go beyond the rule in the decided cases, when he said that material allegations had not been denied, and, therefore, must be taken as confessed.

The controlling fact in the case is that McCracken was supplied with money to pay the judgments, and instead of paying them, he bought them and used them for the purpose of defrauding the complainant out of his property. There is no denial of the fact. There is no denial of information concerning the fact. There is no denial of notice of the relations that existed at the time between McCracken and Reeves.

The defendant contents herself with saying that she is a stranger to the transactions, and leaves the complainant to make proof.

There is even no denial or any reference to the allegation in paragraph 3 of the amended bill, that John H. McCracken actually collects the rents and has retained the moneys in his possession.

There is no denial that the Pennington Street property was of the value of Five Thousand Dollars, and that the rents amounted to Fifty-two dollars per month.

There is no denial of the allegation in paragraph 6, that the complainant permitted McCracken to retain the sum of Fifty-two hundred and fifty dollars, which was to be applied to pay money which had been borrowed

theretofore for the purpose of satisfying the judgments; and the defendant does not even allude to that allegation, which is an allegation of a controlling fact.

The Vice-Chancellor might have very properly referred to many other allegations of controlling facts, which are not denied or alluded to except by a general denial of any knowledge.

I desire also, to call the Court's attention to the fact that the defendant does not claim to be a bona fide purchaser for value without notice, of either the Pennington Street property, or of the Ferry Street property, and she does not in either of those cases set up the technical defence of bona fide purchaser. She claims that she bought Pennington Street at a sale under execution at law, and that the complainant recognized her title and executed a quite claim deed to her afterwards.

She claims also, that she bought Ferry Street at a foreclosure sale and paid her own money for the same.

In respect to both these properties the evidence has been discussed and the Vice-Chancellor found as a fact in which he is fully supported by the evidence, that Mrs. McCracken did not in fact buy either of the properties at the sale, but that they were bought by McCracken, and that he afterwards caused the deed of conveyance by the Sheriff, to be made to her.

In regard to the Mitchell Place property in East Orange, she does technically claim that she is a bona fide purchaser for value without notice. See page 45 of the case.

But the Vice-Chancellor has not decided that she holds the Mitchell Place property in trust for the complainant, absolutely. The decree only permits the complainant to prove that his money, that is the proceeds of sale of the

Peshine Avenue property, went into the Mitchell Place property. In that respect I think the decree is right.

If the defendant had intended to make the defence that she was a bona fide purchaser for value without notice as to Pennington Street and Ferry Street properties, it was incumbent upon her to do so, either by plea or answer, and having neglected to plead or to make that defence by answer she cannot raise it, or avail herself of it now.

Pomeroy Equity Jurisprudence, par 784.

The allegations in the answer are not sufficient to constitute such a defence. In pleading this defence, it is essential to state briefly the instrument of purchase, the date and the parties; to show the consideration and to allege the bona fide payment thereof; and to deny notice. This denial is necessary, even though notice is not charged in the bill.

Enc. of Pleading and Practice, Vol. 1, p. 881, citing among other cases *Wilson vs. Hillyer*, Saxton 63, in which it was held:—It is not sufficient for a defendant, claiming to be a bona fide purchaser for a valuable consideration without notice, to deny personal knowledge of the matters charged, without denying notice before his contract. He must deny notice, even though it be not charged; and he must deny it positively and not evasively. He must even deny fully and in the most precise terms, every circumstance from which notice could be inferred.

It will hardly be claimed that the defendant has complied with the rule laid down, in *Wilson vs. Hillyer*.

If Mrs. McCracken had admitted expressly that she knew that her husband and Reeves were transacting business together, or that he was Reeves' attorney, such admission would have led at once to the duty on her part to make inquiry of Reeves, which would have led to a discovery of the fraud. She does not deny the relationship

between those parties, neither does she allude to it. Under the authorities cited, she must be held as confessing that controlling fact.

It seems to me that as to Pennington Street and Ferry Street, Mrs. McCracken is chargeable with such information as she could have obtained by reasonable diligence in making inquiry, and that she has not shown herself to be an innocent purchaser, notwithstanding her failure to make such a defence.

The rule is that whatever puts a party upon inquiry, amounts in judgment of law to notice; provided, the inquiry became a duty as in the case of purchasers and creditors, and which would have led to the knowledge of the requisite fact, by the exercise of ordinary diligence and understanding.

Hoy vs. Bramhall, 4 C. E. Gr. 563.

See also, Wahl vs. Stoy, 66 At. Rep. 176, at p. 179.

Notice is information concerning a fact and is equivalent in legal effect to full knowledge.

Pomeroy Equity Jurisprudence, par. 594.

I contend that apart from the effect of the pleadings, the complainant Reeves proved clearly and convincingly by competent evidence that McCracken was his attorney and defrauded him, and that the judgments which form the basis of the legal title to the properties which was afterwards vested in Mrs McCracken were paid before the execution sales thereunder.

The fact that the judgments had been paid might not entitle Reeves to any relief at law, but that fact can be shown in equity, either for the purpose of invalidating the sales, or to hold the purchaser at the sales responsible as a trustee.

The purchaser at the execution sales at law was John H. McCracken.

Simmons vs. Vandergrift, Sax. 136.

Mrs. McCracken has not testified and she relies entirely upon the testimony of her husband.

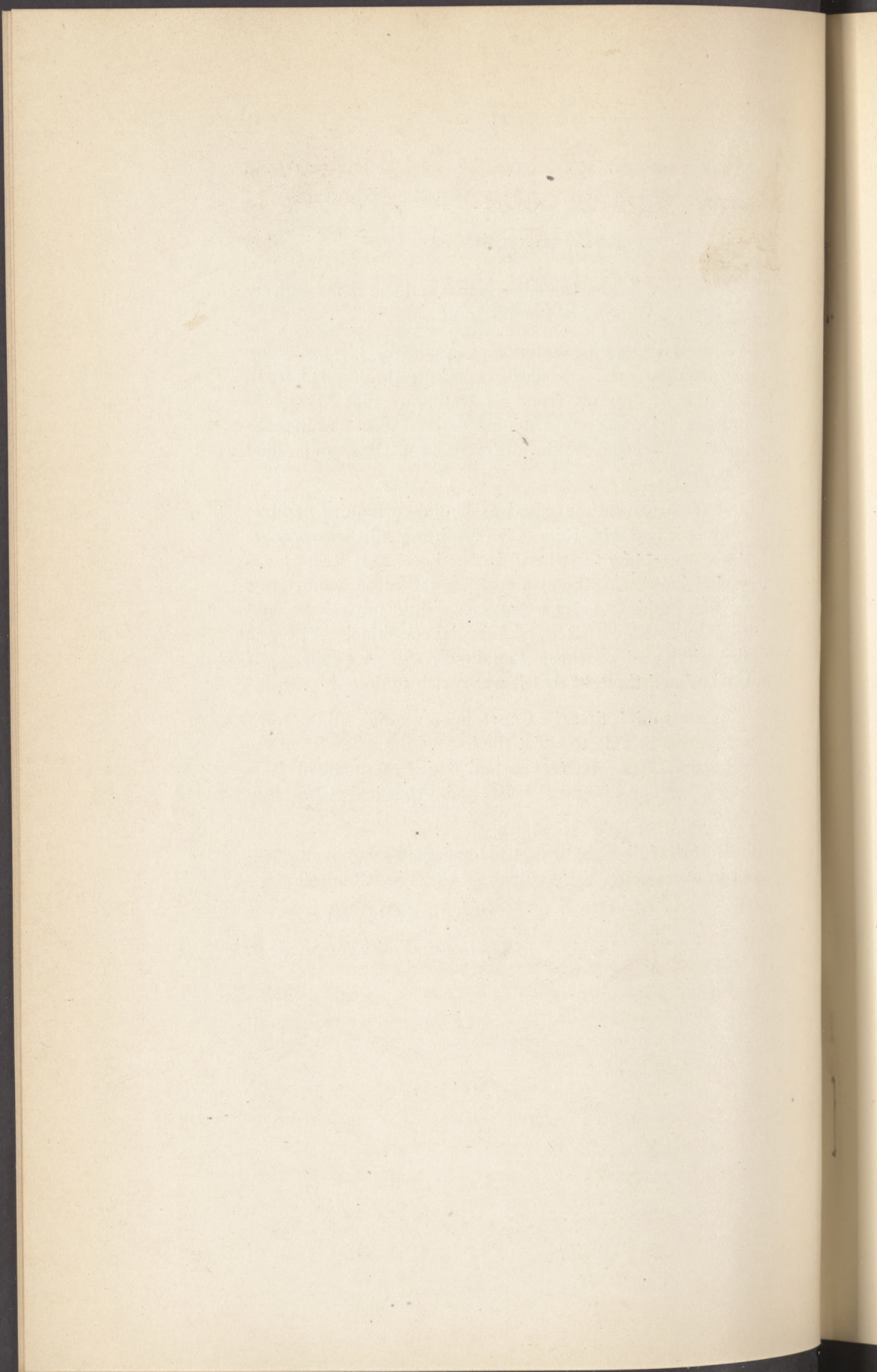
I contend that he has not overcome by his testimony the proof of the facts which constitute the implied trust, and that it appears from his testimony that Mrs. McCracken acted upon information derived from him in making the purchases of the different properties, and relied upon him.

It seems to me that she was bound to inquire of him: Why is it that Mr. Reeves is permitting all these properties to be sold by the Sheriff? She knew that Reeves was paying interest to the estate of her father on a mortgage on the Peshine Avenue property. She must have had some knowledge of Reeves' financial condition. Why was she willing to purchase Pennington Street property, if her husband thought that it was a risk to do so?

I do not think that the Court, upon reading all the testimony, will be able to resist the impression made upon the mind that Mrs. McCracken had notice of sufficient facts to put her upon inquiry; and I claim that it was her duty to inquire.

I respectfully submit that the appellant has not succeeded in overcoming the findings of the Vice-Chancellor.

FRANK E. BRADNER,  
*Of Counsel with Respondent.*



## New Jersey Court of Errors and Appeals

*Between*

MOSES E. REEVES,

*Complainant-Respondent,*

and

SELENA A. MCCRACKEN,

*Defendant-Appellant.*

*On Appeal  
from Decree  
in Chancery.*

### *BRIEF FOR SELENA A. McCRACKEN.*

The original bill in this case (case p. 1) was filed September 4, 1901, and set up that on or about the third of January, 1896, Moses E. Reeves, the complainant, was the owner of several tracts of land in Essex County, N. J., that judgments were about to be entered up against him in the courts of this state, in favor of the Export Lumber Company and others, and that on that day complainant and his wife had joined in a deed of four of these tracts in the city of Newark, being a part only of his property, located on Clinton avenue, Belmont avenue, Astor street and Boyd street, in the city of Newark, to John H. McCracken, husband of the appellant herein, alleging that the conveyance was made at the advice of Mr. McCracken, in order to protect the property from the creditors of Reeves.

The bill further claims that Mr. McCracken, instead of holding the property thus conveyed to him in trust for the complainant, had disposed of most of it and applied the proceeds to his own use, instead of for the

complainant's benefit. The bill further alleged that Mr. McCracken became possessed, with money supplied by Reeves, of some of those judgments, and had sold out other tracts of land under executions thereunder, two of which, known as the Pennington and Ferry street properties, he had purchased in the name of his wife, the appellant, and the Peshine avenue property had been purchased by him and subsequently transferred to his wife. This bill made grantees of other tracts of property, a Mrs. Miller and Mrs. Hochheimer, parties, upon the ground that they purchased still other tracts with notice of the equity which the complainant asserted as a right to pursue the land, because of an alleged breach of trust on the part of Mr. McCracken in its handling.

All the defendants answered this bill separately, denying the equity of the bill *in toto*, the three defendants, Mrs. McCracken, Mrs. Hochheimer and Mrs. Miller, setting up that they were *bona fide* purchasers of their respective properties, without notice of the complainant's claim.

The case came on for hearing on the 30th of October, 1902 (case p. 61). The hearing appears (p. 98) to have been then adjourned until the 25th of November, 1902, but for some reason was not resumed (*idem.*) until the 14th of January, 1903, and was continued the next day (p. 194). The witnesses who had thus far testified were the complainant, his wife Mary, his son Charles E. Reeves, and Mr. McCracken.

During the direct examination of the latter, the liability on his part to account for the four pieces of property included in the deed of January 2, 1896, (*supra*) was frankly conceded, whereupon the court (p. 217), after directing the attention of complainant's counsel thereto, suggested that he confine his cross examination to the disposition that had been

made of the properties other than those included in the said deed; whereupon Mr. Bradner called the court's attention to the fact, that Mr. McCracken had in the meantime been adjudged a bankrupt, and the significant inquiry of the court, whether the title, if any, had not been passed to the trustee in bankruptcy, led Mr. McCracken to file, with the court's permission, a plea setting up his discharge in bankruptcy. Considerable time elapsed before this plea was heard, and after it was argued, it was not decided until March 18, 1905, when Vice Chancellor Stevens filed an opinion (60 Atl. Rep. 332) both justifying the filing of the plea, and sustaining the claim that the discharge of Mr. McCracken operated as a bar to the claim against him in this suit.

This opinion, which undertakes to paraphrase the original bill, gives a very good idea of the complicated and unsatisfactory character of the allegations it contained.

Pursuant to this decision, on the 6th of July, 1905, the bill of complaint (p. 31) was dismissed as against Mr. McCracken.

The cause continued to sleep until December 2, 1905, when complainant filed an amended and supplemental bill (p. 32) directed solely against Mrs. McCracken. Although Mr. McCracken appears as a party in the prayer for subpoena, the complainant at the further hearing conceded that he was improperly joined, and the suit thereafter continued against Mrs. McCracken alone, she filing a new answer to this amended and supplemental bill (p. 41), the terms of which will be shortly discussed.

The amended and supplemental bill set up that on the 2nd of January, 1896, the complainant had been the owner of the PENNINGTON street property; that on the next day judgments had been entered against

him for about \$3,000, on claims of the Export Lumber Company, Mary A. McDermott and others; and that on the 13th of April John H. McCracken had purchased the judgment of the Export Lumber Company and Mary A. McDermott; that prior however, to that date, the complainant had put McCracken in possession of funds sufficient to pay said two judgments and had directed him, as his attorney, to pay the same, and that instead of so doing he had subsequently caused a levy to be made upon the property, and the same to be sold by the sheriff and purchased in the name of the defendant Selena McCracken. The bill charged that the said property was purchased with money belonging to the complainant, and the judgments were kept alive with the money belonging to him, and that the property in fact belonged to him, although the legal title thereto was held by Mrs. McCracken. That on or about the 19th of May, 1897, Mr. McCracken had sold the Clinton avenue property (one of the four tracts conveyed to him by the deed of January 3, 1896), and the complainant had permitted him "to retain the sum of \$5,250 to be applied to pay money which had been borrowed therefor for the purpose of satisfying the judgments; that the money had been borrowed from the Merchants National Bank of Newark, and Mr. McCracken undertook to use the said proceeds and other moneys in his hands, to protect the complainant's interests in other properties hereinafter stated."

That the complainant had been also the owner of the FERRY street property, upon which there was a mortgage held by the Firemen's Insurance Company, which being in arrear, was foreclosed, and at the sheriff sale was bought in by Mrs. McCracken "with money belonging to" the complainant. That Mrs. McCracken had notice that the property was pur-

chased in trust for the complainant, and the bill charged that she held the title in trust for him. The bill further shows by way of supplement that the house upon this Ferry street property had since the commencement of the suit been burned, and insurance money had been collected, which it was designed to recover.

The bill further referred to property on PESHINE avenue which was mortgaged to the estate of Dowden and sold by sheriff sale, in foreclosure proceedings under said mortgage and purchased by Mr. McCracken "with money belonging to your orator," which money "was obtained by the said McCracken partly from rents of the properties last mentioned and partly from rents of other properties belonging to your orator, and partly from proceeds of sale of said land No. 580 Clinton avenue."

The bill further averred that a portion of this Peshine avenue property had been sold by Mr. and Mrs. McCracken to Mrs. Hochheimer who had exchanged therefor property in East Orange in the name of Mrs. McCracken, which property the bill averred "was purchased with money belonging to your orator," and the claim was that Mrs. McCracken held the same in trust for him.

The bill further averred that all of these properties had been conveyed to Mrs. McCracken with notice that they had been purchased with money belonging to the complainant and were in fact purchased by the said John H. McCracken and held in trust for the complainant. The bill contained the following important clause (p. 39, line 3, etc.) :

"That all other matters and things set forth in the original bill of complaint filed in this cause have been omitted from this amended bill for the reason that said matters and things have

been eliminated from the case by the several orders of this honorable court dismissing the bill of complaint as to the said John H. McCracken, Christina Hochheimer, Adelaide R. Bird and Ida B. Miller; and that the said John H. McCracken is made a party to this amended bill merely for the purpose of requiring him to execute such deeds of conveyance as the court may order to be made of the said several properties."

Mrs. McCracken answered this bill, stating that she was an entire stranger to each and all of the transactions therein contained, except as thereafter mentioned, and that she neither admitted nor denied the same, and called upon the complainant to prove said allegations. She then claimed that she was unaware of any relationship such as was claimed by the complainant to have existed between himself and her husband, or of the fact that her husband had been supplied by the complainant with any funds for any purpose whatever, and alleged that whatever was the fact in reference thereto, she was utterly unacquainted therewith and had bought each of the said three tracts of land for value and without notice and claimed the advantage of a bona fide purchaser for value.

She further set up the fact of the laches of the complainant, and also claimed that inasmuch as her husband had been discharged in bankruptcy since the happening of all the events setup in the amended and supplemental bill, and a trustee, Mr. Wismer, had been duly appointed trustee in bankruptcy of her husband, all right, title and interest of every kind of the said McCracken in and to the premises in said amended and supplemental bill had passed to such trustee, and she claimed that the complainant could assert no equity as against her without the presence in the suit of the said trustee in bankruptcy.

This answer appears to have been filed on the fifth of April, 1906, when the hearing which had in the meantime been interrupted in the manner above indicated, seems to have been resumed, (Addendum to the case, p. 9), on which date Mr. McCracken resumed the stand and testified as appears in the case p. 250.

The confusion resulting from the use of the two books (case and addendum) arises from the fact that during the long time that elapsed while this case was in progress, the testimony of some of the witnesses (particularly that of Cyrus H. Benedict) became lost, all the exhibits were mislaid, and we have been compelled to make up a state of the case in this manner.

It should, however, be remembered that no testimony was taken in the cause after the filing by Mrs. McCracken of her answer to the amended bill, except such as appears on page 520 *et seq.* of the Case, and on page 9 *et seq.* of the Addendum thereto.

A further important fact should not be overlooked, viz., Mr. John Whitehead, whose failure to testify is commented upon at least twice by the vice chancellor in his opinion, had died on February 14, 1905, or more than a month before the decision by the vice chancellor of the question raised by the plea of bankruptcy and fourteen months before the hearing was resumed.

Mr. Whitehead was a most important witness in the case for the defendants. He was in attendance during the giving of testimony by the complainant, and it was only because of the interruption of the case before the closing of the testimony of Mr. McCracken by the plea, and the delay in its prosecution, that he had not been called before his death.

It thus appears that the suit had become by process of elimination, confined entirely to an effort on the part of Mr. Reeves to recover from Mrs. Mc-

Cracken property which she claimed to own, and none of which properties were included in the deed of January 2, 1896, or had any connection therewith.

There can be no doubt of the correctness of the claim that if Mr. Reeves had put Mr. McCracken in possession of funds to buy up the judgments against him and preserve his title to properties in the City of Newark (he being Reeve's counsel,) and that instead of so doing he had deliberately permitted the properties to be sold, either under the judgments or under executions in foreclosure, and had purchased them in the name of his wife, who was fully aware of the entire transaction, and who paid nothing therefor from her own estate, the property thus situated would be in a court of equity charged with such claim.

The vice chancellor concluded that just such a situation here existed, and hence advised a decree in favor of the complainant. It is from this decree that Mrs. McCracken has appealed.

Before proceedings to analyze the facts, it may be well to direct the court's attention to the rule that in cases of this character, where the complainant is met with the plea of *bona fide* purchaser for value without notice, the burden is upon him to show the falsity of such plea.

*Bartlett vs. Varner*, 56 Ala., 58;

*Sheldon vs. Holmes*, 58 Mich., 145;

*Newton vs. McLean*, 41 Barb., 285;

*Giles vs. Hunt*, 103 N. C., 194;

*LaMar vs. Hale*, 79 Virginia, 147;

*Holmes vs. Stout*, 2 Stock., 419;

*Coleman vs. Barklew*, 3 Dutch., 357;

*Role vs. Rea* (Dixon, J.), 21 Vr., 264.

*Paul vs. Kerswell*, 31 Vr., 273.

A second principle, equally well settled, is that the evidence adduced to support a claim of this kind, which of course is based upon a constructive or implied trust in the purchaser and present holder, must be clear and unequivocal.

In 3 *Pom. Eq. Juris*. 3d. Ed. sec. 1058, it is stated: "The existence of a constructive trust, as of a resulting one, must be proved by clear unequivocal evidence," and reference is made in the notes to many cases, in the opinions of which this language was quoted.

See also *Ferris vs. Van Vechten*, 73 N. Y., 113;

*Whitley vs. Ogle*, 2 Dick., 67.

*Parker vs. Snyder*, 4 Stew., 164—5 Stew., 827.

*Krauth vs. Thiele*, 18 Stew., 407.

*Frelinghuysen vs. Nugent*, 36 Fed., 229-237.

*Cort vs. Skillin*, 2 Stew., 70.

*Cutler vs. Tuttle*, 4 C. E. Gr., 549, 560.

*Cavin vs. Gleason*, 105 N. Y., 256.

The contention being that complainant's money was paid Mr. McCracken for the purpose of protecting this property, and that in fact it was so applied, but the property instead of being preserved for his benefit, was put in the name of Mr. McCracken's wife let us now turn to the pleadings and proofs and ascertain therefrom how far the complainant has established his case.

An examination of the vice chancellor's opinion shows that he relied largely in reaching the conclusion that Mrs. McCracken was not a bona fide purchaser for value, upon her alleged failure to answer, and therefore, as he concludes, "her admission of the truth of important allegations of the bill."

The opinion states:

"The bill alleges that complainant caused to be placed in McCracken's hands sufficient money to pay these judgments; and that instead of paying them McCracken purchased them and took an assignment of them in his own name, and caused the sheriff to sell the complainant's Newark properties thereunder. The answer of Mrs. McCracken merely avers that she believes it to be true that John H. McCracken purchased said judgments and procured assignments thereof to him and that such properties were purchased under and by virtue of the executions issuing thereunder. The material part of the allegations of the bill is that the money by which the purchase was made was complainant's money. The defendant does not specifically deny this and the well settled rule of equity pleading is that what is not denied is admitted. *Sanborn vs. Adair*, 2 *Stew.*, 338; *Morris vs. Kettle*, 11 *Dick.* 826-828."

The court thus construes an admission on the part of Mrs. McCracken of the statements in the bill, (which, however, total failed of proof) that Mr. Reeves had put in Mr. McCracken's hands sufficient money to pay these judgments, and that instead of paying them he purchased them and took an assignment thereof in his own name.

It is respectfully contended that the learned vice chancellor here fell into a combined and serious error of both law and fact.

It is not true that Mrs. McCracken ignored the allegations of the amended bill touching this important question; nor is it true, if she had done so, that such omission would have been tantamount to the admission of the truth of the averment.

The allegation that the complainant had furnished the funds to Mr. McCracken to pay the two judg-

ments, is found in the third paragraph of the amended bill, p. 33, line 26.

The answer (p. 41), beside the general statement (line 8) already quoted, to the effect that she was an entire stranger to, and therefore neither admitted nor denied any of the matters and things alleged in the bill not thereafter specifically referred to, at line 35, page 41, "denies that she had any knowledge whatever of the matters or things in the first, second or third paragraphs of said bill of complaint."

The general trend authority is to the effect that the mere failure of a defendant to deny by his answer admission of such allegations as are not denied and all the allegations of the bill will not operate as an admission of such allegations as are not denied, and that complainant is nevertheless bound to prove them. In some jurisdictions, however, including New Jersey, this general rule is modified so far as matters which are within the knowledge of the answering defendant are concurred.

In 1 *Enc. of Pl. and Pr.* 931, after stating the general rule that mere silence does not amount to an admission it is said.

"But in some jurisdictions a well established qualification obtains namely that if material facts are stated in the bill which are necessarily within defendant's knowledge he must explicitly deny or admit them and if he fails to do so they will be taken as admitted. Even in these jurisdictions if such facts are not within defendant's knowledge or cannot fairly be presumed to be within his knowledge, complainant will not be justified in treating them as admitted."

In *Moore vs. Lockett*, 4 Am. Dec. (Ky.) 683 the rule is thus stated,

“If an answer is silent as to a matter charged in the bill to be within the defendant’s knowledge, or which may be fairly presumed so to be, the matter ought to be considered as admitted; but ought not, where the matter is not so charged or cannot reasonably be presumed to be within his knowledge. This appears to us the most equitable rule upon the subject; for if the defendant files an insufficient answer, the complainant can except; and compel a better one. But were he permitted to consider as admitted every fact not particularly denied by the answer, it would frequently produce surprise on the defendant; and moreover, oftentimes occasion decrees contrary to the real justice of the cause, upon implied admissions, false in fact.”

In accordance with this rule in *Ball vs. Townsend* 16 Ky. 325 (Cent. Dig, Eq. Section 445) it was held that allegations of payments made to an intestate in his life time cannot be taken as admitted because not answered by the administrator—when such payments are not presumed to be within the knowledge of the administrator and are not supported by proof.

To the same effect in *Buchanan vs. Noel*, 35 Leg. Int. (Pa.) 490 (Cent. Dig. Eq. section 445) the court held that when the fact of forgery charged in a bill is not within the knowledge of respondent his failure to deny the forgery is not to be considered an admission of its truth.

See also.

*Bonnell vs. Roane*, 20 Ark. 114.

It is believed that the same rule obtained in New Jersey.

Vice Chancellor Emery in *Cogswell and Boulter Co. vs. Cogswell*, 40 Atl. 213, said,

“*Sanborn vs. Adair*, (Errors and Appeals 878) 29 N. J. Eq. 338, 345 and *Jones vs. Knauss*, (1879) 31 N. J. Eq. 609 Van Fleet, V. C.) estab-

lish that if the fact charged is within the knowledge of the defendant and there is neither answer nor evidence, the fact charged must be taken as admitted."

In the recent case of *Beling vs. American Tobacco Co.*, 65 Atl. 725 Vice Chancellor Pitney said in referring to a certain allegation in the complainant's bill.

"This allegation it will be observed is of a fact or series of facts not within the knowledge of the defendants and therefore not admitted by a failure to deny. The complainant in his argument makes the cardinal mistake of presuming that because these allegations are not specifically denied by the answer they must be taken to be admitted but this is not the rule. \* \* \* \* Counsel for the complainant made the mistake in his argument of supposing that the positive allegation in the bill of non-notice to Potter unless explicitly denied stood as if proven, but as before observed this is incorrect. That rule applies only to allegations of matters within the knowledge of the defendants."

It is believed that cases where the rule was applied will be found to be where the averment of the bill in question was of a fact within the knowledge of the defendant.

See

*Lee vs. Stiger*, 3 Stew. 610.

*Morris vs. Kettle*, 11 Dick. 826.

It is to be remembered that this question does not arise upon exceptions to an answer where perhaps it might be argued that the defendant should have answered the averment of the bill as to information and belief, but the question is simply whether the complainant having made no objection to the answer the defendant is thereafter to be held to have admitted averments therein of facts which were not within her knowledge.

The exception to the rule which is outlined in the quotation above from the Enc. of Pleading and Practice is analogous to the rule of pleading to the effect that a defendant with regard to transactions that are not his own is not bound to find out information for the purpose of communicating it to the complainant.

Thus in *Christian vs. Taylor*, 11 Simons 401, Vice Chancellor Shadwell said,

“I have always understood the rule to be that a defendant with regard to transactions that are not his own is not bound to find out information for the purpose of communicating it to plaintiff.

And as Chancellor Kent said in *Morris vs. Parker*, 3 Johns Ch. 300,

“A defendant ought not to be required to obtain information so as to meet the plaintiff’s wishes and thereby become his agent to procure testimony.”

So much for the pleadings. If we turn now to the evidence, the proof is equally unsatisfactory.

It is uncontradicted in the case that Mr. McCracken bought up the Export Lumber Company and McDermott judgments with the proceeds of a note that he himself gave and had discounted in the Merchants’ National Bank in Newark, taking an assignment of the judgments on the 13th of April, 1896.

See pages 77, 96 and 138.

All that is claimed the complainant had to do with the discounting of this note is, the use of his good offices with one of the directors of the bank to induce it to make the discount.

We can readily imagine why Mr. Reeves should have made that effort. He had property worth \$10,000 in Arlington (pages 117, 147, 148, 183, 189) and several other tracts in Newark, including all those in ques-

tion in this suit (pp. 149, 152) that had not been included in the deed of January 3, 1896. He was in desperate circumstances. He thought that possibly by transferring the four tracts, including the Clinton avenue tract, to Mr. McCracken, he might save something from the wreck, and he doubtless felt more secure as to the rest of his property, with the judgment controlled by Mr. McCracken than in the hands of strangers. At any rate, he did not raise the money nor become responsible for it; but it is claimed that the evidence shows that his money ultimately paid for and took up the note.

Is that so?

In support of this contention, the vice chancellor adverts to the fact (page 49, line 28) that McCracken concedes he sold on the 20th of May, 1897, the Clinton avenue tract included in the deed of January 2, 1896, for \$11,250. The opinion then continues:

“McCracken’s answer to the fourth interrogatory in the original bill is that from this sum was deducted mortgages, taxes and liens to the amount of \$6,869.35, leaving a net balance in his (McCracken’s) hands of \$4,380.65. This he admits he did not pay to Reeves. Reeves says that McCracken told him that the note with whose proceeds the Lumber Company’s judgment was purchased was paid out of the proceeds of this sale. McCracken does not controvert this statement and I do not think that any one reading all the evidence can have any doubt about its substantial accuracy.”

The answer to the fourth interrogatory referred to was not in evidence in the cause, and if it had been, would not have been competent as against Mrs. McCracken.

The complainant in his original bill appended (case, p. 23) several interrogatories which he prayed “that

the said John H. McCracken may answer upon oath." These of course were designed to require the defendant McCracken to discover certain facts deemed important.

Appended to his answer were certain replies to these specific interrogatories, printed on page 5 of the Addendum. Neither the interrogatories nor the answers were offered in evidence in the cause, and of course, if they had been, they would have been incompetent as against Mrs. McCracken, for she had had no right to cross examine upon them, and when the bill was dismissed as to Mr. McCracken, they lost their significance, and were totally ignored until they were revived by the vice chancellor in his opinion.

We contend that they were in no way before the court nor competent as against the sole defendant in the suit.

The answers are only printed in the Addendum to save a controversy before this court as to the correctness of the state of the case, so as to terminate this protracted litigation without the delay occasioned thereby, and, as before stated, they were never offered in evidence. There is therefore absolutely no proof before this court upon this point, except that found on pages 228 and 229, where McCracken does admit that he received \$11,250 for the property, but the evidence fails to disclose how much net proceeds were received from the sale of the Clinton avenue property. It is also true that Mr. Reeves did, in the original case, when Mr. McCracken was still a party, and long before the present claim was crystallized in the amended bill, interject a remark in his testimony (p. 78, line 19) to the effect that Mr. McCracken had told him that he had used the proceeds of the sale of the Clinton avenue property to take up the note. Such a hearsay statement, though competent as against Mc-

Cracken, then a party to the suit, proved nothing as against Mrs. McCracken.

The foundation of the whole case is the fact that moneys of the complaint were given to Mr. McCracken and applied by him in the purchase of this property. The sole proof of this lies in McCracken's answer to an interrogatory and Reeves' statement of what McCracken said, by neither of which can the defendant be bound.

Has, therefore, the complainant adduced such clear, unmistakable and unequivocal proof as is required in cases of this kind, to support his claim against a *bona fide* purchaser for value?

In this connection, the case of *Ferris vs. Van Vechten*, (*supra*), 73 N. Y., is worthy of consideration.

There an effort was made to follow trust funds which had been misappropriated by trustees into the lands, to the purchase of which they had been applied.

It appeared that executors acting under a power of sale contained in a will, had sold sufficient of the testatrix's real estate to pay her debts. Pursuant to that power, sales were made by the executors of more land than sufficient to pay all of the testator's debts; that the executors had in their accounts shown such sales and the amounts realized therefrom, as well as the fact that all the proceeds had been used and applied in keeping the homestead farm in repair, and in paying the taxes and the mortgage on said farm. The surrogate upon an accounting by the executors had disallowed these payments upon the farm as against the creditors, and adjudged that there was then in the hands of the executors a sum of money properly applicable to the payment of the plaintiff's judgment. The executors becoming insolvent) the complainant then sought to hold the farm property with the testator's

debt to him, upon the ground that moneys applicable to the payment of the debts had been devoted to charges upon the farm, invoking the principle that trust moneys may be followed wherever they can be identified.

The opinion continues:

“To follow money into lands, and impress the latter with the trust, the money must be distinctly traced and clearly proved to have been invested in the lands. While money, as such, has no earmark by which, when once mingled in mass, it can be traced, it is, nevertheless, capable under some circumstances of being followed to, and identified with, the property into which it has been converted; but the conversion of the trust money specifically, as distinguished from other money of the trustee into the property sought to be subjected to the trust, must be clearly shown. It does not suffice to show the possession of the trust funds by the trustee, and the purchase by him of property—that is, payment for property generally by the trustee does not authorize the presumption that the purchase was made with trust funds. The product of, or substitute for, the original trust fund follows the nature of the fund as long as it can be ascertained to be such; and if a trustee purchase lands with trust money, a court of equity will charge them with a resulting trust for the person beneficially interested. But it must be clear that the lands have been paid for out of the trust money. This is illustrated by *Perry vs. Phelps* (4 Vesey, 108). There a trustee for the purchase of land died without personal assets, but having purchased lands, the estates purchased were held not liable to the trust, the circumstances affording no presumption that they were purchased in execution of the trust.

“If the purchase of land with the trust moneys could not be presumed when such purchase would be in execution of the trust, *a fortiori* it should not be presumed when it would be a violation of

the trust. The right of following the trust property, in the new form which has been given to it, or in the property substituted for it, ceases only when the means of ascertainment fail, "which, of course, is the case when the subject-matter is turned into money and mixed and confounded in a general mass of property of the same description." (2 Story's Eq. Jur., sec. 1259, and note 4.) When the purchase money, paid by a trustee for lands purchased, corresponds very nearly with that of the trust fund to be invested, that, with other circumstances, as the coincidence of the time of the receipt and disbursement, may suffice to show that the property was actually purchased with trust funds. (*Lowden vs. Lowden*, 2 Bro. Ch. C., 583; *Price vs. Blakemore*, 6 Beav., 507.) The money paid by the trustee for lands or other property, or for choses in action sought to be subjected to the original trust, must be identified as trust moneys; and this is clearly recognized in all the cases, and in very many of them this has been the difficult question of fact upon which they have hinged, and the principle to be deduced from them is, that when the trust fund has consisted of money, and been mingled with other moneys of the trustee in one mass, undivided and indistinguishable, and the trustee has made investments generally from moneys in his possession, the *cestui que* trust cannot claim a specified lien upon the property or funds constituting the investments. (Hill on Trustees, m., p. 522.) This is consistent with the cases cited and relied upon by the counsel for the plaintiff, and the doctrine is recognized and applied in each case, and as the facts were proved to exist in them respectively. In *Moses vs. Murgatroyd* (1 J. Ch. R., 119), the property held in trust was readily and certainly traced. In *Kip vs. Bank of New York* (10 J. R., 63), the money, the subject matter of the trust, was kept separate and distinct, and deposited as such. The court say the only check to the operation of the rule now under consideration is when

the property is converted into cash, and has been absorbed in the general mass of the estate so that it cannot be followed or distinguished. It is the difficulty of tracing the trust money, which has no ear-mark, that prevents the application of the rule. (See, also, *Hutchinson vs. Reed*, Hoff. Ch. R., 316, and cases by Asst. V. Ch., 2 Kent's Com., 623, 624; *Trecothick vs. Austin*, 4 Mason, 29.)

“There can be no presumption as against the defendants whose property is sought to be affected by the trust, which attached to the moneys realized by Van Vechten from the sale of lands under the power. So far as appears they are innocent of all wrong doing, and have not colluded or combined with the executors to violate the trust, and it is not found that they assented to or had any knowledge of any misappropriation of the fund, and if made trustees in virtue of their ownership of the lands they are made so, not by reason of any act of theirs, but as the legal result of the fact that trust moneys have been misapplied by a trustee of the fund to relieve of a burden their lands, held in trust for another purpose by the same trustee. The fact should be clearly, at least satisfactorily, proved. The principal fact, upon which the right of the plaintiff to any relief in this action depends, is only alleged argumentatively in the complaint by the statement that it appeared in the account of the executors filed with the surrogate; that large sales of real estate of the testator had been made by the executors, on account of which they had realized large sums of money, and that it also appeared that large amounts of money arising therefrom were issued and applied to keeping the homestead farm in repair, and large sums were paid out for interest and taxes on said farm. There was no proof that one dollar of the moneys received for lands, and which constituted the trust fund, was paid or applied to any of the purposes mentioned; nor is the fact of such misappropriation of the trust moneys found; nor was any fact proved or found

from which such diversion and misappropriation of specific trust moneys can be legitimately inferred. The only proof given upon this branch of the case consisted of the proceedings before, and the decree of, the surrogate upon the settlement of the accounts of the executor. If these proceedings were competent evidence for any purpose, or to establish any fact as against the defendants, the present appellants, they were only competent in respect of the matters then in issue, and which were determined by the surrogate. The questions before that tribunal related solely to the accounts of the executors, and their liability to the creditors, and those entitled under the will of the testator. The executors were charged with the amount of the inventory of the personal estate of the deceased, together with the amounts received upon the sale of real estate. The money realized from the sale of lands were the primary fund for the payment of debts, and creditors had the first claim to be paid from those moneys, and the first liability of the executors in respect of such moneys was to creditors. Such liability was discharged by proof of payment to creditors, whether made from the identical moneys received by the executors, or from other moneys of their own, or subject to their control. The moneys realized from lands sold in excess of the debts of the testator belonged to the present appellants, as devisees of the land subject to the power of sale, and the liability of the executors to them was discharged by like proof of payment to them or for their use, from any moneys of the executors, whether received for lands sold under the power or from other sources."

The court, after concluding that the accounts of the executors indicating the application by them of the trust moneys to the payments upon the farm, were utterly incompetent as against the owners of the farm, sought to be charged with the equity of the plaintiff therein, said:

“The equities are clearly with the plaintiff, but they cannot override the legal rules of evidence, or be enforced by an unauthorized enlargement and extension of the equitable doctrine which lies at the foundation of the action. There is in truth no competent proof as against the appellants other than Van Vechten, that the payments claimed to have been made by him, in relief of the homestead, were ever made. The proof consists of the accounts unverified filed with the surrogate by the executors, in which they credit themselves with these payments, and the decree of the surrogate disallowing them, and adjudging an amount stated to be due the estate from the said executors, and in their hands properly applicable to the payment of the plaintiff’s claim, which was less than one-half in amount of the sum decreed to be in the hands of the executors. The surrogate merely held and decided that if the payments had been made as claimed, they could not be allowed to the executors upon that accounting. This is the extent of the decree.”

This case is authority for the claim that any hearsay statements of Mr. McCracken indicating an application by him of the proceeds of the Clinton avenue property to the Merchants’ Bank note, are irrelevant as against the defendant, and of no probative force whatever in the case.

Yet it is from this kind of evidence that the vice chancellor says in his opinion (p. 50): “The conclusion seems inevitable \* \* \* that this note was ultimately paid with the proceeds of property that in equity belonged to Reeves.”

The fact is that the evidence given by Mr. McCracken (p. 166, *et seq.*) supports the averments of his original answer to the effect that the net proceeds derived from the sale of the Clinton avenue property were applicable, and were in fact applied by him to reimbursing him for the thirty-five hundred dollars

of notes then outstanding in the bank, endorsed by him for the benefit of the complainant, and which he subsequently paid.

These notes, aggregating thirty-five hundred dollars were collaterally secured by the chattel mortgage referred to on page 171. They were subsequently taken up by McCracken (p. 226) and surrendered by him to Reeves in connection with the settlement of some other litigation, having been partially paid by the proceeds of the Clinton Hill property.

Let us now turn to the three specific pieces of property, and first the PENNINGTON street land.

This property, Reeves says, was worth about \$5,000 and was mortgaged to the Howard Savings Institution for \$2500. Taxes were in arrears on it to the extent of several hundred dollars (pages 99, 127, 186). In addition there was an \$1800 mortgage on it, held by a bank in Orange, which Mr. McCracken says (p. 186) has not been paid, but which the Reeves claim (pages 100, 103 and 122) had been partially paid. It was occupied by colored tenants, located east of the railroad, on a non-paved street, in the City of Newark. It was included in the levy made by the owners of the Export Lumber Company, the McDermott and the German Bank judgments, and Mr. McCracken says (page 208) that the Howard Savings Institution was threatening foreclosure. He called his wife's attention to the property and she determined to buy it in as a speculation. Mr. John Whitehead represented her in the transaction, attended on her behalf at the sale, buying it in for her, her own money \$45 being paid by him for whatever equity there was in it, and a deed being taken by her therefor from the sheriff. This is borne out by the memorandum on the sheriff's books, (Addendum, page 15,

line 33) : "Recd. of John Whitehead Nov. 9, 1896, forty-six (\$46.00) dollars for deed of Selena A. McCracken for sale of third tract (Pennington street) sold June 2nd, 1896."

No denial whatever exists of any of the foregoing.

McCracken further swears (page 230, line 30) that he told Mr. Reeves that his wife had bought the property, and (page 231, line 21) that the rents that he collected therefrom were all paid over by him to his wife. That while it is true (page 229, 230) Reeves continued to collect the rents for some time (not a year) from the tenants of this property after the sale, it was only because he was constantly postponing the turning of the rents over, and because he claimed he had to live therefrom. Mrs. McCracken's charity to this poor sick man in this regard is used against her.

The vice chancellor adverts to the facts that at the time Mr. Whitehead acted for Mrs. McCracken he was one of Reeves' counsel. There is no evidence whatever of this; Reeves swearing (page 90, line 24) that he did "once in a while" employ Mr. Whitehead. There is nothing, however, to show that at this juncture Mr. Whitehead was so retained. On the contrary, he had a judgment of his own by assignment from the German Bank, which he was pushing against Reeves, and which was included in the levies and sales.

The sale took place June 2, 1896 (Addendum page 16, line 27).

On page 97, the complainant in his testimony in this cause stated unequivocally that McCracken or his wife had no other interest whatever in the Pennington street property than such as he claimed had been improperly derived in the manner above stated. He was then shown a quit-claim deed (one of the lost exhibits), offered in evidence (p. 111), dated

August 10, 1898, made by himself and wife to Mrs. McCracken, releasing the Pennington street property, from which it appears that in August, 1898, two years after Mrs. McCracken's purchase of this property, the complainant and his wife quit-claimed their interest therein to the defendant. It is worthy of note that when this paper was presented to Reeves' attention, he could give no explanation whatever of it (p. 97), nor did he undertake subsequently to do so. His wife, however, had time to consult with her son while her husband was on the stand, and so was prepared when she subsequently testified with a story in reference to it (found on page 110), when in reply to the question.

"What did McCracken say to you?" she said: "He said it was to see that I was willing that he should borrow more money on that property, as it wasn't a large mortgage, and he would get it straightened up, and wanted to deed it back because it was too much of a burden for him to carry, and he couldn't sleep nights, but he wanted us to take it back, and if he could raise a little more money he would do that; pay it up and deed it back."

"I didn't know it was a deed at all; I didn't know it was any form of a deed; I know just what he told me that it was simply to show that I was willing that he should raise more money on that Pennington street house, as there wasn't but very little mortgage, and settle things up; he was always going to settle things up."

Mr. McCracken, on the other hand, on pages 188 and 233, states that this quit-claim was part of the transaction by which Mrs. McCracken's title to the Pennington street property was completed, and he desired to make the title clear. Up to that time Mrs. McCracken simply had a deed under a common law execution against Mr. Reeves, and Mrs. Reeves' dower was outstanding.

McCracken had bought in some Belmont avenue property, which it is conceded by both Mr. and Mrs. Reeves (pages 85, 91, 111, 119 and 122) McCracken desired to convey back to them, and the latter swears (pages 181 and 182) that as a consideration of the transfer which was made, the Reeves joined in a quit-claim of the Pennington street property.

Again, as further indicating a realization by the complainant that Mrs. McCracken owned this property, it is undisputed that for repairs which Reeves, who was a carpenter, made upon this property in October, 1898, he rendered a bill to Mr. McCracken, claiming that he was entitled to be paid therefor (p. 97).

Mrs. McCracken remained in the undisputed possession of this property, without a suggestion from the complainant or anyone on his behalf, that she was not the full and complete owner thereof, until the filing of the original bill in this cause on the 4th of September, 1901—a period of nearly, if not quite, six years.

It is most extraordinary that if the complainant's story be true he had permitted Mrs. McCracken during all this time to enjoy this property, to repair it, to receive its rents, and otherwise care for it, without one suggestion that he had an interest therein.

Next, the FERRY street property. This tract was worth somewhere in the neighborhood of \$5,000 and was mortgaged to the Firemen's Insurance Company for \$2,000 (pages 74 and 99). A large amount of taxes were in arrears upon it (pages 193 and 241).

Apparently on January 3, 1896, when the protective deed to McCracken was made, the Reeves placed little value upon the equity, for they did not include it in that deed, and permitted it to be sold

under the common law execution on the 2nd of June, 1896, being bought in by Mr. McCracken (pages 195, 197 and 201).

In the following January, Mr. Reeves (Exhibit C 4, page 199) directed the real estate agent who was collecting the rents, to thereafter pay them to Mr. McCracken, thereby apparently recognizing his interest in the land.

While Mr. McCracken and his wife were in Europe in the summer of 1897, the mortgagee commenced foreclosure proceedings on the mortgage upon this land, which resulted in a decree for \$2,197.33, beside costs.

Mr. Reeves (page 81, line 11) says that the Insurance Company "got out of patience and commenced to foreclose;" and that upon Mr. McCracken's return from Europe, the latter said the foreclosure "had gone so far that he would buy it in, and I wanted to know distinctly who was going to take title, and he said his wife would for my wife, and that it will be just the same as if he took title."

Charlie Reeves (page 137) swears that the arrangement originally made with McCracken in reference to the deed of the other properties, included the idea that he was to keep the Ferry street property intact for them.

On page 195 Mr. McCracken denies specifically the making of any such arrangement.

The fact is, the property was bought in by Mrs. McCracken, the money with which to make the necessary payment of \$2,600, having been raised by Mrs. McCracken giving a bond and mortgage to a building and loan association and depositing her own stock therein as security therefor.

It is true that her husband was the solicitor of this association and negotiated her loan and acted for her in the transaction, but she became personally responsible for the debt to the building and loan association, and her stock was pledged as additional collateral. The money thus raised was therefore her money, and not one suggestion is found in the evidence to show that she was not entirely innocent of every fact or theory relied on in the bill or offered in the proofs to support the complainant's contention that Mrs. McCracken holds this property in trust for him.

Where is the slightest proof of any of complainant's money being used upon the acquisition of this property? Yet that is the theory, and the only theory, upon which the complainant can recover it.

Mere verbal statements by Mr. McCracken that if he bought property he would hold it for the complainant, do not constitute legal evidence, under the statute of frauds, sufficient to create a trust.

The vice chancellor in his opinion on the plea, (60 Atl., p. 332) *supra*, in referring to this subject, says: "In addition to the lands conveyed, certain other lands were sold by the sheriff under execution and bought in by McCracken. I do not find in the bill any allegation of any express trust in reference to those lands. If there was any, it was not declared in writing."

And where is the proof of notice in Mrs. McCracken? All that can be contended is, that she had constructive notice through her husband, who, in her purchase, acted as her agent.

The sheriff's deed of this property was dated August 9, 1898 (Addendum, page 16, line 12).

The effort is to fasten upon Mrs. McCracken, by reason of the fact that her husband acted for her in her purchase under that sale, knowledge that her husband had two years before made a verbal arrangement with Reeves that he would some how or other protect their interest in that property.

The vice chancellor simply states: "I don't think that under these circumstances Mrs. McCracken became a bona fide purchaser for value without notice."

In this I contend he was under all the circumstances, plainly in error.

The Peshine avenue property.

This land consisted of two tracts, one of which on the day of the deed of January 2, 1896, was conveyed by the complainant to his son, with the express object of avoiding the payment of his debts. (pages 151 and 175). Having thus essayed to put that valuable tract beyond the reach of his creditors, the complainant and his son, who were partners in the building trade, at once commenced the erection thereon of a building. Upon the remaining tract, the Dowden estate of which Mrs. McCracken is an heir, had two mortgages which were in arrears for interest, and taxes were also unpaid and behind.

Mr. Reeves claims (pages 79 and 84) "to have had some kind of a verbal understanding with Mr. McCracken that he would keep everything right and straight concerning this property also, and that he (Reeves) should not lose a penny and that every dollar that was coming to him he should have."

Of course, there was no writing to this effect. Charles Reeves (page 136) states it was desired to dispose of the property and in order to straighten

out the tangle, a friendly foreclosure was designed. While his father is stated to have been present at this interview, he fails to corroborate the son upon the point.

Mr. McCracken denies this absolutely (page 211) and says that he was instructed by the executors of Dowden to foreclose the mortgages, and the Reeves, who had apparently given up all hope of using this tract, accelerated the foreclosure in any way they could.

This property was bought in by McCracken at the sheriff's sale on November 30, 1897 (Addendum, page 15, line 39), and subsequently sold to Mrs. Hochheimer, formerly one of the defendants, who, for this property and a thousand dollars in cash, boot money, given by Mrs. McCracken (p. 251, line 37), beside some property that she also owned in Woodside worth \$4,500 (p. 251), conveyed to Mrs. McCracken a property in Vailsburg, New Jersey, which was subsequently exchanged by Mrs. McCracken for the East Orange tract now belonging to the latter, and by the decree herein charged with the complainant's alleged rights. Here, as in the other cases, is no proof of notice, no proof of the complainant's money going into the property; all that is relied on is the alleged verbal statement, denied by Mr. McCracken, that the complainant's interest in this property was to be protected by him.

For the reasons adduced in the case of the Pennington street and Ferry street properties, the decree is similarly erroneous in reference to the East Orange property.

On the whole case, therefore, it is contended that the decree below is erroneous, and should be reversed,

and an order entered, directing the dismissal of the bill as against Mrs. McCracken.

Respectfully submitted,

ROBERT H. McCARTER,  
*Counsel for Selena A. McCracken.*

Dated Nov. 8th, 1907.



## NEW JERSEY COURT OF ERRORS AND APPEALS

Between

MOSES E. REEVES,  
Respondent,

and

SELENA A. McCracken,  
Appellant.

*An Appeal from  
Court of Chancery*

### *Brief for Respondent,*

The facts in this case are fully stated in the opinion of Vice-Chancellor Stevens, which is found on page 46 of the printed case; and I will, therefore, not repeat them, except insofar as may be necessary to make plain the points on behalf of the respondent.

Any question as to the right of the respondent to recover from John H. McCracken upon the theory that the conveyance made by him to McCracken, was made with the intent to defraud the creditors, has been eliminated from the case; not only because the bill has been dismissed as to John H. McCracken upon his pleading, his discharge in bankruptcy, but because none of the properties involved in the decree eventually made were included in the conveyance made by the respondent to said McCracken.

The properties covered by the decree are known as Pennington Street, Ferry Street and Peshine Avenue.

The theory of the respondent in relation to each of those properties and the substance of the evidence to sustain his claim, will now be stated.

First.—PENNINGTON STREET PROPERTY.

It is alleged in the amended and supplemental bill, p. 32, that this property was worth on January 3d, 1896, \$5,000.00, and was then mortgaged for \$2,500.00, and that the rents issuing out of said property amounted at that time to the sum of \$52.00 per month.

This allegation is not denied by the answer to the amended bill, on page 41.

It is also alleged in the bill that Export Lumber Company recovered a judgment on January 4th, 1896, against Reeves and Mary A. McDermott recovered a judgment on February 8th, 1896, against Reeves, and that on April 13th, 1896, both of said judgments were assigned to John H. McCracken.

The bill alleges that sufficient money was placed in the hands of McCracken by the respondent to pay those judgments, and that instead of paying them he bought them and caused a levy to be made upon this property. This allegation is not denied by the answer. The Vice-Chancellor reviews the evidence on this point and reaches the conclusion that the judgments were paid for with money raised by Reeves, and that McCracken subsequently received sufficient money out of the sale of Reeves' property to pay off the note that was used to raise the money to pay the judgments.

At the Sheriff's Sale on June 2d, 1896, four tracts of land including this property were sold, and the conditions of sale were signed by Colie & Swayze, attorneys. See p. 15 of "Addendum to Case." They

were attorneys for John H. McCracken, the assignee of the judgments, and inferentially the four tracts were sold to McCracken. Afterwards on November 9th, 1896, \$45.00 was paid by John Whitehead to the Sheriff, and a deed for the third tract, Pennington Street property, was made to Salena A. McCracken.

It will be seen that the purchaser at the sale was John H. McCracken, and that he five months afterwards made some arrangement with his wife to have the conveyance made by the Sheriff directly to her. She must claim through him.

The evidence shows clearly that he was violating the confidence of Reeves and was in the position of a trustee when he took the assignments of the judgments and purchased at the Sheriff's sales. Mrs. McCracken has not even made an effort to sustain her defence that she is a bona fide purchaser for value.

The inadequacy of the consideration, \$45.00, paid for the property alleged to be worth over the incumbrance \$2500.00, which allegation is not denied, is so gross that to use the language of the cases, it shocks the conscience.

It was suggested at the argument before the Vice-chancellor that Reeves had delayed in proceeding in his case until after the death of Mr. John Whitehead, who was a member of the bar of this State, and well known to this court, and who died in February 1905.

The court will perceive that the respondent's testimony was closed on January 14th, 1903, see pp. 98 and 166. McCracken was examined, and his examination was concluded on January 15th, 1903, pp. 194 and 250. No further testimony was taken until April 5th, 1906, when McCracken was recalled for a further examination. During that interval Mr. Whitehead could have been called as a witness. On April 5th, 1906, it was agreed that the evidence given on the original bill could be used on the

hearing on the amended bill; addendum p. 9. Consequently, there is nothing in the objection that Reeves delayed proceedings, and is, therefore, in laches.

Special attention is directed to the testimony of McCracken on pp. 219 and 220 relating to his charge against Reeves for legal services of \$100.00 on January 22nd, 1906. He says that Reeves asked him to go with him to Colie & Swayze, and that he cannot answer the question exactly whether he was trying to get the judgment settled up. But he says that he was trying to raise money for Reeves on the Arlington property.

I think the inference is clear that McCracken and Reeves were trying to raise money to pay the judgments.

## 2. FERRY STREET PROPERTY.

This property was proved to be worth \$5000.00, and encumbered by a mortgage of \$2000.00, and rented for \$40.00 per month. It was purchased by McCracken at the sale on June 2nd, 1896, at the same time Pennington Street property was sold. His bid was \$45.00. For the same reasons urged in relation to Pennington Street property, McCracken purchased this property and held it in trust for Reeves.

On January 1st, 1897, he induced Reeves to permit him to collect the rents of this property.

On August 14th, 1897, Firemen's Insurance Company filed a bill to foreclose, and McCracken and his wife were made defendants, and so was John Whitehead, who acknowledged service of subpoenas, as solicitor for McCracken and his wife, and for himself. See addendum p. 12.

The property was sold on August 9th, 1898, by the Sheriff and the conditions of sale were signed by John H. McCracken, and the under-sheriff testified that the money was paid by the checks of John H. McCracken, and

that the surplus money was paid to John H. McCracken; addendum p. 16. The Sheriff's deed was made to Selena A. McCracken. Application was made by John H. McCracken for surplus money, and he acknowledged service of the Master's summons for his wife and for himself, and John Whitehead acknowledged service for Reeves and his wife. Either Reeves was silent in the foreclosure suit and particularly in the application for the surplus money, because he was trusting in McCracken to protect his interests, or there was collusion between McCracken and Whitehead to prevent Reeves from getting the surplus money.

The record in the foreclosure suit (addendum p. 13) shows the facts above stated. The charge in the amended bill, p. 35, is that McCracken had charge of this property as attorney for Reeves, and had been collecting the rents and attended the foreclosure sale as attorney for Reeves, and purchased the property with money belonging to Reeves. Every one of these allegations was proved. Every dollar of the money that was paid at the Sheriff's sale came out of the property which McCracken held in trust for Reeves. He was the actual purchaser at the foreclosure sale and afterwards directed the deed to be made to his wife. He purchased then as agent for Reeves.

Mrs. McCracken has not proved that she was a bona fide purchaser for value without notice.

### 3. PESHINE AVENUE PROPERTY.

The bill alleges, pp. 36 and 37, that Reeves was the owner of certain properties on Peshine Avenue, on which there were three mortgages held by the estate of Charles Dowden. The allegation in the original bill, p. 2, is that the equity in these properties, 226, 224, 220 and 220½ Peshine Avenue, was \$7500.00.

On April 14th, 1896, McCracken purchased a tract on Peshine Avenue at Sheriff's sale on the judgments which had been assigned to him, for \$25.00; addendum p. 15. On June 2nd, 1896, he purchased another tract on Peshine Avenue for \$50.00 p. 15.

The evidence was that one of the tracts had been conveyed by Reeves to his son, but that Reeves was the real owner. This conveyance was made at the instigation of McCracken, so that a loan could be obtained from a building and loan association, and a new house erected on the lot.

The new house was erected and the mortgage was made for \$3000.00, which was a subsequent incumbrance to the Dowden mortgage on the three lots. When the Dowden mortgage was foreclosed, McCracken acting as solicitor for the Dowden estate, did not make the building and loan association a party to the suit. He had bought in two tracts and for the same reasons given in the previous cases, he held those two tracts in trust for Reeves.

The bill alleges, p. 37, that Reeves authorized McCracken as his attorney, to protect his interest in said properties, and that McCracken undertook to do so and attended the sale, meaning the foreclosure sale, and purchased the properties with money belonging to Reeves.

The record in the foreclosure suit shows (addendum p. 11) that the bill was filed June 5th, 1897, and that service of a subpoena was acknowledged for Moses E. Reeves by John Whitehead, solicitor, on June 9th, 1897. Mr. Whitehead was acting as solicitor for Reeves, and according to McCracken, as solicitor for Mrs. McCracken, on different occasions.

I think that the inference from the testimony in the case and from the record in the foreclosure suit, is clear

that the foreclosure suit was a friendly suit brought for the purpose of straightening out the title.

At the sale the conditions were signed (addendum p. 16) John H. McCracken, per J. H. McCracken, solicitor. McCracken purchased this property and either held it in trust for the complainant in the foreclosure suit, or in trust for Reeves. He made a settlement with the complainant in the foreclosure suit with money that came out of the property; he having given a mortgage to another party. He afterwards sold all of the Peshine Avenue properties, and made various deals which eventually resulted in the proceeds of sale of the Peshine Avenue properties being invested in property on Mitchell Place in East Orange.

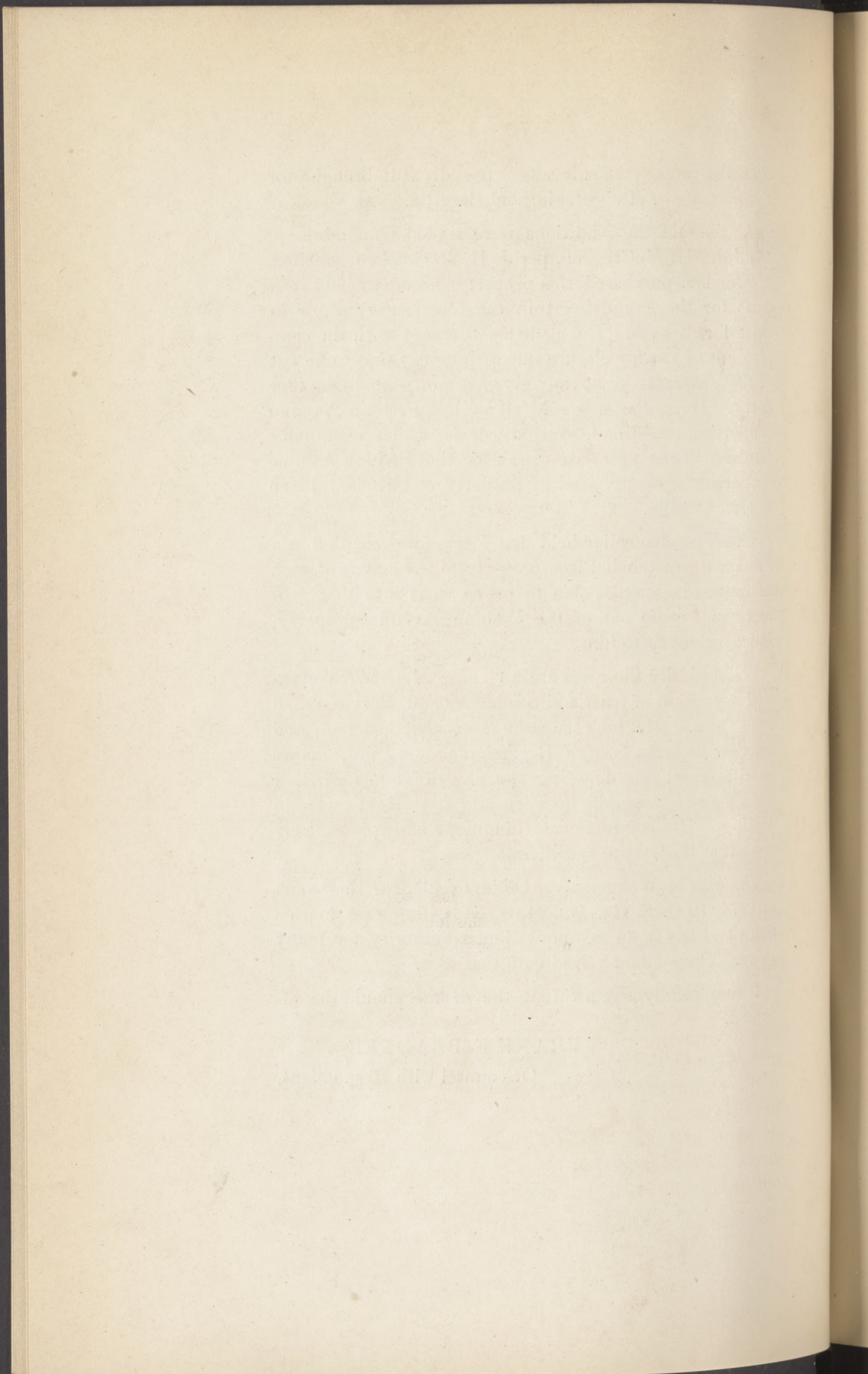
The Vice-chancellor held that Reeves was entitled to a lien on the Mitchell Place property to the extent of such amount as he may be able to prove went into that property and came out of the Peshine Avenue property, which belonged to him.

Theoretically the cases are all alike; McCracken occupied a position of trust and confidence and Reeves relied upon him. He took advantage of that position, and whether he actually used Reeves' money or not, makes no difference; nor does it make any difference whether the alleged agreements between him and Reeves were in writing. His conduct was fraudulent and it is entirely upon that theory the respondent relies.

The case of Wakeman vs. Dodd, decided in this court in 1876, 12 C. E. Gr., p. 564, is the leading case in this State and has stood as unquestioned authority for many years. Respondent relies upon that case.

I respectfully submit that the decree should be affirmed.

FRANK E. BRADNER,  
Of counsel with Respondent.



## In Chancery of New Jersey.

*Between*

MOSES E. REEVES,

*Complainant,*

*and*

JOHN H. McCracken, *et al.,*

*Defendants.*

*On Bill, etc.*

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### INTERLOCUTORY DECREE.

This cause coming on to be heard before the court in the presence of Frank E. Bradner, of counsel with the complainant, and Robert H. McCarter, of counsel with the defendant, Selena A. McCracken, and the pleadings and proofs having been read, and the arguments of counsel heard and considered, and it appearing that the complainant was the owner of the property mentioned and described in the bill of complaint as Numbers 102 and 102½ Pennington street in the City of Newark, and that said property was sold at sheriff's sale and purchased by John H. McCracken, and that the deed of conveyance from the sheriff of the County of Essex was made to Selena A. McCracken, and that said purchase was made for the use and benefit of said complainant, and that she holds the title to said property in trust for the said complainant; and it further appearing that the complainant was also the owner of the property mentioned and described in the said bill of complaint as Numbers 305, 307 and 309 Ferry street in the City of Newark, and that the said property was sold by the sheriff of the County of Essex and purchased by John H. McCracken for the use and benefit of the said complainant and that the convenience from the said sheriff was made to the said Selena A. McCracken and that she holds the title to said last men-

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tioned property in trust for the said complainant; and it further appearing that the said complainant was also the owner of certain properties known as Numbers 220, 220½, 224 and 226 Peshine avenue in the City of Newark, or of some portion of the same, and that John H. McCracken held the title of that portion of said properties which belonged to said complainant, in trust for said complainant and that the said John H. McCracken has disposed of said property, and that with the proceeds he has invested in certain property mentioned and described in the bill of complainant as situate, lying and being in the Town of East Orange in the County of Essex and State of New Jersey on the easterly side of Mitchell place, and that the legal title to said last mentioned property is in the name of said defendant Selena A. McCracken, and that the complainant is entitled to be paid out of said last mentioned property situated in the Town of East Orange, the net profit arising from the sale of his interest in the property on Peshine avenue as aforesaid:—

It is, therefore, on this fourteenth day of July, in the year nineteen hundred and six, by his honor, William J. Magie, chancellor of the State of New Jersey,

ORDERED, ADJUDGED AND DECREED and the said chancellor does by virtue of the power and authority of this court order, adjudge and decree that the defendant, Selena A. McCracken, holds the legal title to the following described lot or tract of land and premises situate, lying and being in the City of Newark: BEGINNING in the northerly line of Pennington street at a point four hundred and eighty-five feet easterly from New Jersey Railroad avenue; thence running along Pennington street south sixty degrees east thirty-five feet; thence north thirty degrees east ninety-three feet two inches; thence north sixty-three degrees forty minutes west thirty-five feet more or less to land now or late of Thomas Gallan; thence along same south thirty degrees west ninety feet ten inches to the place of beginning; and known as Numbers 102 and 102½ Pennington street; in trust for

the use and benefit of the said complainant Moses E. Reeves, and his heirs and assigns; and that the said defendant Selena A. McCracken shall account for and pay over to the said Moses E. Reeves the rents, issues and profits that have issued out of said land and premises since the title thereof was conveyed to her; but that she shall be allowed for all moneys necessarily paid out by her for the benefit of said property.

And it is further ordered, adjudged and decreed that the said Selena A. McCracken holds the legal title to the properties known as 305, 307 and 309 Ferry street in the City of Newark in the County of Essex, and more particularly described as follows: All that certain lot of land and premises situate, lying and being in the City of Newark in the County of Essex and State of New Jersey—Beginning in the southerly line of Ferry street at the northeasterly corner of property of Van Buskirk, Heath and Company; thence southerly along said property one hundred and forty-six feet and eight inches to rear of lot one block A of Smith and Alling map; thence easterly along the rear line of said lot five feet, nine inches; thence northerly on a line between lots numbers one and two block A on said map and in a continuation thereof to said southerly line of Ferry street one hundred and thirty-seven feet and nine inches; thence along Ferry street westerly seventy-three feet more or less to the place of beginning; in trust for the use and benefit of the said complainant Moses E. Reeves, his heirs and assigns; and that the said Selena A. McCracken shall account for and pay over to the said Moses E. Reeves, the rents, issues and profits that have arisen out of said lands and premises, but she shall be allowed for all moneys necessarily paid out by her for the benefit of said property.

And it is further ordered, adjudged and decreed that the said complainant has a lien on the following described land and premises; all that certain tract or parcel of land and premises situate, lying and being in the Town of East Orange in the County of Essex

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and State of New Jersey:—Beginning at a point in the easterly line of Mitchell place three hundred fifty-five and  $46/100$  feet southerly from the intersection of the said easterly line of Mitchell place with the southerly line of Main street; thence running southerly sixty-six degrees thirty-one minutes east eighty and  $77/100$  feet; thence south twenty-two degrees and fifty-two minutes west thirty feet; thence north sixty-six degrees thirty-one minutes west parallel with the

10 first course eighty-one and  $8/100$  feet to said easterly line of Mitchell place; and thence along the same north twenty-three degrees twenty-nine minutes east thirty feet to the place of beginning; for so much of the proceeds of the sale of the property on Peshine avenue in the City of Newark mentioned and described in the bill of complaint which belonged to the said complainant and as may appear upon an accounting to be taken for that purpose to have been

20 used in the purchase of said property on Mitchell place in East Orange; and the complainant is entitled to have the amount of the lien ascertained and when ascertained the property aforesaid shall be sold under the order and direction of this court for the purpose of paying and satisfying such lien, if necessary so to do.

And it is further ordered and decreed that it be referred to Francis Child, Esq., one of the special masters of this court, to ascertain the amount of rents, issues and profits received by the said Selena A. McCracken out of the aforementioned properties situated on Pennington street and Ferry street respectively in the City of Newark, and also to ascertain the amount to which she is entitled for disbursements necessarily or properly made for the benefit of said property respectively; and to state the accounts separately in relation to said Pennington street and Ferry street properties; and also to ascertain the amount realized by John H. McCracken from the sale of the property on Peshine avenue which belonged to the complainant and how much of the proceeds of the

30 sale of said property on Peshine avenue was subse-

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quently invested by him in the purchase of the property on Mitchell place in East Orange, and to ascertain and fix the amount of the complainant's lien on said property in East Orange in accordance with this decree; and that the said master shall have power to compel the said John H. McCracken and the said Selena A. McCracken, and such other persons as may be necessary, to produce all books, documents and papers relating to the several properties aforesaid, and to examine witnesses touching the matters aforesaid; and that said master shall report his findings in the several matters aforesaid with all convenient speed. 01 10

And it is further ordered, adjudged and decreed that the complainant do recover from the said defendant Selena A. McCracken, his costs of this suit to be taxed, including transcript of testimony.

And all further equity is reserved until the coming in of the said master's report and until the further order of this court. 20

Respectfully advised,

W. J. MAGIE,

FREDERIC W. STEVENS,

C.

V. C.

ANSWERS TO INTERROGATORIES CONTAINED IN THE FOREGOING BILL OF COMPLAINT.

1. To the First Interrogatory this defendant answers yes.

2. To the Second Interrogatory this defendant answers nothing. No money was paid, the transfer was made to secure me for an indebtedness of a large amount due me from the complainant, as in the foregoing answer shown. 30

3. To the Third Interrogatory defendant answers, yes.

4. To the Fourth Interrogatory this defendant answers, and says that on or about the twentieth day of May, eighteen hundred and ninety-seven, he sold the Clinton avenue tract, so-called, being the homestead of the complainant, to William Scheerer, for a considera- 40

tion of eleven thousand two hundred and fifty dollars, from which, however, was deducted, mortgage, taxes, liens, and other encumbrances thereon, amounting to six thousand eight hundred and sixty-nine dollars and thirty-five cents, leaving the net proceeds derived by this defendant from said sale, of four thousand three hundred and eighty dollars and sixty-five cents; the two Astor street tracts in said bill of complaint particularly described as having been sold to Bird and  
 10 Miller were sold by this defendant on or about the month of April, nineteen hundred, for a consideration of five thousand two hundred and fifty dollars, from which, however, were and had to be deducted for commissions, mortgages and other encumbrances, three thousand eight hundred and one dollars and thirty-nine cents, making a net sum realized by this defendant of one thousand four hundred and forty-eight dollars and sixty-one cents; the Belmont avenue property was conveyed by this defendant to the complainant for  
 20 no consideration. The Boyd street property was foreclosed by the Howard Savings Institution, and my rights therein thereby cut out.

5. To the Fifth Interrogatory this defendant answers that on the third day of January, eighteen hundred and ninety-six, Moses E. Reeves was indebted to this defendant in a large sum of money, and being the sum of three thousand two hundred and eighty-five dollars, the aggregate of certain promissory notes hereinafter specified, and a book account aggregating seven hundred and twenty dollars. The notes referred to  
 30 are as follows, being all made by the firm of Moses E. Reeves & Son, of which the said Moses E. Reeves was a member, and all payable to the order of this defendant:

1. Dated December 11th, 1893, at four months for five hundred dollars, upon which two hundred dollars had then been paid.
2. One dated October 9th, 1895, at three months, for one hundred and fifty dollars.
3. One dated October 26th, 1895 at three months,  
 40 for two hundred and twenty-five dollars.

4. One dated October 18th, 1895, for two thousand four hundred and fifty dollars.

5. One dated December 13th, 1895, for one hundred and sixty dollars.

None of said notes were paid by the said firm of Moses E. Reeves & Son, or the complainant, and deponent was required to, and did, pay all of them.

6. To the Sixth Interrogatory this defendant answers and says: None, as he has paid none. 10

7. To the Seventh Interrogatory this defendant answers and says none.

8. To the Eighth Interrogatory this defendant answers, no.

9. To the Ninth Interrogatory this defendant states the following account:

To Jan. 3, 1896.

MOSES E. REEVES,

To

J. H. McCracken, Dr. 20

To services and disbursements as follows:

1892.			
June 6,	To Taxed Costs, Collins suit.....	\$32.62	
	Legal services .....	38.00	
			\$70.62
	To search on farm, dw. deed rec. Sup. Ct. Clerk....	38.00	
	To drawing 2 deeds.....	6.00	
Sept. 10,	Searches on Ferry St, Irvington, Chestnut St and dwg. deed .....	98.00	
1893.			
Sept. 6,	To search Polhemus property and Sup. Ct. search..	34.60	
Oct. 10,	To Landlord and Tenant case.....	4.00	
	To 3 shares stock in Con. U. L. Ins. Co.....	300.00	
1894.			
May 4,	To District Court Case (tenancy).....	4.00	30
	To search on Mill property and tax search.....	71.95	
1895.			
Nov. 11,	To Dwg. 3 deeds and recording.....	13.55	
1896.			
Jan. 3,	To Dwg. 4 deeds recording, legal services.....	44.20	
			\$684.92
	To aggregate of notes of Moses Reeves & Son, en- dorsed by this accountant and since paid by him, for the accommodation of the complainant.....	3,285.00	
			\$3,969.92

After Jan. 3, 1896.

MOSES E. REEVES,

To

John H. McCracken, Dr.

	1896.		
	Jan. 22,	To legal services, six interviews with J. Whitehead, Colie & Swayze .....	\$100.00
		To dwg. bond & mort .....	4.00
	Feb. 18,	To legal services 6½ days with J. Whitehead.....	25.00
	Mar. 5,	To dwg. 3 deeds (Hatt <i>et al.</i> ) .....	9.00
	Dec. 31,	To search (Murphy property) .....	24.75
10	1897.		
	Sept. 25,	To loan .....	32.00
	1898.		
	Apr. 11,	To loan .....	25.00
	1897.		
	June 4,	To int. paid on 223 Belmont ave.....	87.50
	Nov. 8,	To int. paid on 223 Belmont ave.....	87.50
	1898.		
	Apr. 11,	To int. paid on 223 Belmont ave.....	87.50
			\$482.20
		Lease at \$30.00 per mo. from May 1, 1896, to July 1, 1897, 14 mos.....	420.00
			\$902.20
20		Interest on the same to date.....	
		Interest on notes paid as hereinabove shown, to date .....	

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

John H. McCracken being duly sworn on his oath says, that the answers made by him to the foregoing Interrogatories are true.

J. H. McCracken.

Sworn to and subscribed before me,  
 this 17th day of October, 1907.

30 NELLIE B. CRAWFORD,  
*Notary Public,*  
 [L. s.] of New Jersey.

IN CHANCERY OF NEW JERSEY.

*Between*

MOSES E. REEVES, *et al.*,

*Complainants,*

*and*

JOHN H. MCCRACKEN, *et al.*,

*Defendants.*

April 5, 1906.

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Before his honor Vice Chancellor Stevens.

Appearances as before.

It is agreed between counsel that the evidence heretofore given in the original suit may be used on this hearing.

*Mr. McCarter.* I haven't yet filed it, your honor, but I now hand you the answer to the supplemental bill. Mr. Bradner has had a copy of it for some time.

*Mr. Bradner.* I want to put in some original records and I think the best way would be to read into the record here what we are going to use. The first one is a bill of complaint filed by the Export Lumber Company against Moses E. Reeves, Mary T. Reeves and John H. McCracken, which was filed on February 1, 1896, and relates to the four properties described in the deed of conveyance made by Reeves and wife to John H. McCracken, dated January 2, 1896. I want to show the date of the filing of the bill in connection with some other bills that were filed at the same time, and in contradiction also of Mr. McCracken's testimony as to when the bill was dismissed. The bill was dismissed on May 26, 1897, and a formal order was made dismissing without costs and without prejudice.

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*Mr. McCarter.* I object to it as not material.

*Mr. Bradner.* Also a bill filed by the Export Lumber Company against Moses E. Reeves and wife and Charles E. Reeves, relating to a lot on Peshine avenue beginning at a point on the easterly side of Peshine avenue distant 433 feet and 7 inches from the south easterly corner of Peshine avenue and Clinton ave-

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nue; thence running easterly 105 feet northerly and parallel with Peshine avenue 72 feet; thence westerly parallel with the first mentioned course 105 feet to Peshine avenue, thence southerly along the easterly line of Peshine avenue 72 feet to the place of beginning, being part of this property in dispute here.

*Mr. McCarter.* Do you claim that a *lispendens* was filed there?

10 *Mr. Bradner.* A *lispendens* was filed in each suit.

*Mr. McCarter.* What is the object of it?

*Mr. Bradner.* To show in contradiction of Mr. McCracken as to what disposition he made of the money which they raised for him to settle these cases. We say we raised money for him to settle the case, and he went and bought the judgment and had an execution issued and bought in these several properties at the execution sale and these suits were not dismissed until a year afterwards.

20 *The Court.* You simply want to contradict his evidence upon the question of dates?

*Mr. Bradner.* Question of dates, yes, sir. This suit was also dismissed the 26th day of May, 1897.

*Mr. McCarter.* That is objected to as immaterial and irrelevant.

*Mr. Bradner.* Another case against Moses E. Reeves and wife relates to the property on Chestnut street. The bill was filed the same date and dismissed May 26, 1897.

30 *Mr. McCarter.* Objected to as immaterial, irrelevant and having nothing to do with the case.

*The Court.* Are these creditors bills?

*Mr. Bradner.* Each one of these bills was filed by the Export Lumber Company, which recovered judgments shortly after the property was conveyed to Mr. McCracken by Reeves.

*The Court.* Who are the solicitors?

40 *Mr. Bradner.* Colie & Swayze and Mr. Swayze had the actual charge of the case.

*Mr. McCarter.* There don't appear to be any subpoena issued, simply bills and orders of dismissal and taxed costs.

*The Court.* I understand they are only offered with a view to contradict Mr. McCracken on the question of when they were filed, and when they were dismissed. Their contents, of course, is not evidence against Mr. McCracken.

*Mr. Bradner.* Oh no, of course I understand that. Now I have the original papers in the foreclosure suit of George W. Dowden and William H. Burnett, executors, against Moses E. Reeves and others, relating to Peshine avenue; the bill was filed June 5, 1897, John H. McCracken, solicitor. I have also the original subpoenas and I wish to offer the subpoena for the purpose of showing that the service was acknowledged on that subpoena for John H. McCracken and Selena McCracken his wife. The Merchants' National Bank, the State Banking Company and John Whitehead, defendants by J. Whitehead, solicitor, on June 8, 1897. Also the service was acknowledged of the subpoena and tickets for the defendant Moses E. Reeves, Mary L. Reeves his wife, Charles L. Reeves and wife, June 9, 1897, by J. Whitehead, solicitor.

*Mr. Carter.* That is objected to as immaterial, irrelevant and as having nothing to do with this case.

*Mr. Bradner.* It is in contradiction of Mr. McCracken's testimony. The original execution in that foreclosure suit is also here with the sheriff's return. I think it is already proved in the case, but I will make this statement from the sheriff's return, if there is no objection—that there was a deficiency on the sale of \$447.86. The decree for the complainant with interests and costs is \$2,372.76; the property sold for \$2,000. The actual proceeds of sale were \$1,975, which left a deficiency of \$487.86, and the property was sold to John H. McCracken.

*Mr. McCarter.* Same objection.

*Mr. Bradner.* You don't object to the manner of proof, do you?

*Mr. McCarter.* No, sir, I object to the proof itself as irrelevant.

*Mr. Bradner.* Also the original papers in the foreclosure suit of the Firemen's Insurance Company against Moses Reeves on the Ferry street property. Bill filed August 14, 1897 by Frederic Adams, solicitor. I wish to offer the original subpoena to answer, which shows that the service was acknowledged for John H. McCracken and Selena, his wife, and John  
10 Whitehead by J. Whitehead, solicitor, August 18, 1897.

*Mr. McCarter.* Same objection.

*Mr. Bradner.* In that case the subpoena was served on Moses E. Reeves and Mary T. Reeves by the sheriff of the county of Hudson on August 22nd, 1897.

*Mr. McCarter.* Same objection.

*Mr. Bradner.* I also offer so much of the master's report in said case as is necessary to show all the payments of interest which had been made; it shows  
20 that interest was paid on that mortgage June 6, 1896, \$60; next payment \$120 April 1, 1897; \$20 June 24, 1897, \$20.

*Mr. McCarter.* Same objection.

*Mr. Bradner.* Mr. McCracken's testimony was that there was no interest paid at all after he bought the property, and that is the reason he foreclosed it.

*Mr. McCarter.* I object to it for the same reason.

*Mr. Bradner.* I want to show that Mr. McCracken  
30 bought in that Ferry street property under common law execution sale, when the interest on the mortgage was paid right along from time to time—payments were made on account by Mr. Reeves, and Mr. Paul his agent who collected the rents. In that same foreclosure there was an exception which shows that the property was sold to Selena A. McCracken and that there was a surplus of \$146 and some cents. I might remind your honor that Mr. Benedict's testimony shows—taken from the sheriff's books, the property was actually bought in by John H. McCracken who  
40 first signed the conditions of sale.

*Mr. McCarter.* I don't remember that.

*Mr. Bradner.* Yes, sir, I think that is so. The record shows that John H. McCracken applied for that surplus money by petition filed by him and an order of reference was made to Mr. Williamson and I have his report here. Selena McCracken was served with a copy of the master's summons and service acknowledged by J. H. McCracken as her solicitor, September 23, 1898. The master's summons on the petition for surplus money was also acknowledged for J. H. McCracken by J. H. McCracken, solicitor, and for Moses E. Reeves on September 23, 1898 by J. Whitehead, solicitor, and for Mary T. Reeves, wife of Moses E. Reeves on the same date by J. Whitehead, solicitor, and an order was made directing payment of certain money to John H. McCracken.

10

*Mr. McCarter.* Objected to as immaterial and irrelevant.

*Mr. Bradner.* He filed proof with the master that he was the owner of the property.

20

*Mr. McCarter.* Objected to for the same reason.

*Mr. Bradner.* When the case was on before I wanted to say that Mr. McCracken had filed a plea of set-off in this suit brought—really brought by Moses E. Reeves in the Circuit Court—filed a plea of set-off by which he set up that there had been a settlement of accounts between himself and Moses E. Reeves on January 2nd, 1896; at that time the offer was objected to unless I produced the whole record of the proceedings. When Mr. McCracken was on the witness stand he denied that he had any settlement of accounts with Mr. Reeves at that time, and said the original deed was given to him mainly as security. I would like to offer this paper—it may be necessary for the purpose of contradicting Mr. McCracken. I haven't got the original papers, but I have here a copy of the plea of set-off. I don't want to go to the expense of having a certified copy made, I would like to have this go in simply in contradiction of Mr. McCracken.

30

40

*Mr. McCarter.* I cannot understand, sir, exactly what Mr. Bradner is driving at. As I understand it we must confine our issues right down to the questions raised by the pleadings, and I therefore object to this as immaterial and irrelevant. I do not object to it as not being the original paper. If Mr. Bradner says it is a copy I will accept his statement, but I object to its materiality and relevancy.

10 *Mr. Bradner.* I offer it to effect his credibility. I now offer the answers to the interrogatories in evidence; they are the interrogatories annexed to the original bill and the answers to them in this same suit here pending.

*Mr. McCarter.* Same objection.

*Mr. Bradner.* You don't object to the fact that it is not a certified copy, do you?

20 *Mr. McCarter.* I don't object to the fact that it is not a certified copy, I object to its materiality and relevancy.

*The Court.* It may go in, and I will reserve the question as to its relevancy and competency for the argument.

COMPLAINANT RESTS.

*Here follows testimony of Mr. J. H. McCracken.*

30 MEMORANDUM OF TESTIMONY OF CYRUS H. BENEDICT GIVEN IN THE ABOVE STATED CAUSE BEFORE VICE CHANCELLOR STEVENS, on October 30th, 1902, which has been omitted from the printed case on the appeal.

The complainant will be satisfied if this memorandum is printed instead of the transcript of the stenographer's notes.

40 1st. Cyrus H. Benedict testified that he was then and had been for several years an under sheriff of the County of Essex, and was under-sheriff during the administration of Herman Lehlbach and Henry M. Doremus as sheriff of the County of Essex; and he produced certain sales books of said sheriffs.

2nd. The witnesses testified that he made the sale of certain properties recorded in sales book B on page 27 of Sheriff Lehlbach, as a sale of property on April 14, 1896, by virtue of executions issued on a judgment in favor of Export Lumber Company vs. Moses E. Reeves, et al. and Mary McDermott vs. Moses E. Reeves, et al., of all the right, title and interest of the defendant in five tracts of land, as follows:—

1st tract, Clinton ave. and also Astor st. prop.	\$50.00	
2nd tract, Hume street property . . . . .	50.00	10
3rd tract, Belmont avenue property . . . . .	50.00	
4th tract, Chestnut street property . . . . .	30.00	
5th tract, Peshine avenue property . . . . .	25.00	
<hr/>		
Total . . . . .	\$205.00	

The witness testified that the sale was made to John H. McCracken, and that the conditions of sale were signed "John H. McCracken, by Colie & Swayze, attorneys" which so appeared on the sales book.

3rd. The witness also produced sales book B page 50, showing a sale on June 2, 1896, under executions issued on the same judgments of four tracts of land, as follows:

1st tract, Peshine avenue property . . . . .	\$50.00	
2nd tract, Ferry street property . . . . .	45.00	
3rd tract, Pennington street property . . . . .	45.00	
4th tract, Chestnut street property . . . . .	30.00	

and it appeared that the conditions of sale were signed by Colie & Swayze, attorneys; and the witness testified that the deed of Pennington street property was made to Mrs. McCracken. And on salesbook C, page 10, a receipt was given therefor as follows:—

"Recd. of John Whitehead Nov. 9, 1896 forty-six (\$46.00) dollars for deed of Selena A. McCracken for sale of third tract sold June 2nd, 1896."

4th. The witness also produced sales book of Sheriff Doremus, Docket A of Court of Chancery, page 262, which showed a sale on a decree in the case of Dowden vs. Moses E. Reeves, on November 30th, 1897, to John H. McCracken, of two tracts of land on Peshine ave-

nue, the first tract for \$1000.00 and the second tract for \$1000.00, and that the receipt for the money due the complainant on the sale, was signed "John H. McCracken, by Walter McCracken," and that the conditions of sale were signed on sales book A page 143, John H. McCracken, per J. H. McCracken, solicitor.

10 5th. The witness also produced Chancery docket A page 489, of Sheriff Doremus, which showed a sale under a decree of the Court of Chancery in the case of Firemen's Insurance Co. vs. Moses E. Reeves, et als., of the property on Ferry street, on August 9th, 1898, for \$2600.00, to Selena A. McCracken; and the conditions of sale signed on sales book A page 261 by John H. McCracken; and the witness testified that the money was paid by the checks of John H. McCracken, and that the surplus money was paid to John H. McCracken.

20 6th. The witness also identified the deed of conveyance made by the Sheriff of the County of Essex to John H. McCracken dated April 15th, 1896, recorded in Book W 29 page 338, and conveying the five tracts of land above referred to, for \$205.00; which deed was produced by the defendants and put in evidence by the complainant.

30 7th. The witness also identified a deed of conveyance made by the Sheriff of the County of Essex to Selena A. McCracken, dated June 2nd, 1896, and recorded in Book G 30 page 358, which conveys for \$45.00 the property described as Pennington street, and as the third tract above stated; and the deed was produced by the defendant and put in evidence by the complainant.

40 8th. The witness also identified a deed of conveyance made by the Sheriff of the County of Essex to Selena A. McCracken, dated August 22nd, 1898, and recorded in Book X 31 page 107, which conveys the property on Ferry street for \$2600.00; and the said deed was produced by the defendant and put in evidence by the complainant.

9th. The witness also identified a deed of conveyance made by the Sheriff of the County of Essex to John H. McCracken, dated December 13th, 1897, and recorded in Book E 31 page 476, which conveys the two tracts of land on Peshine avenue for a consideration of \$1000.00 each; said deed was produced by the defendant and put in evidence by the complainant.

Dated March 8, 1907.

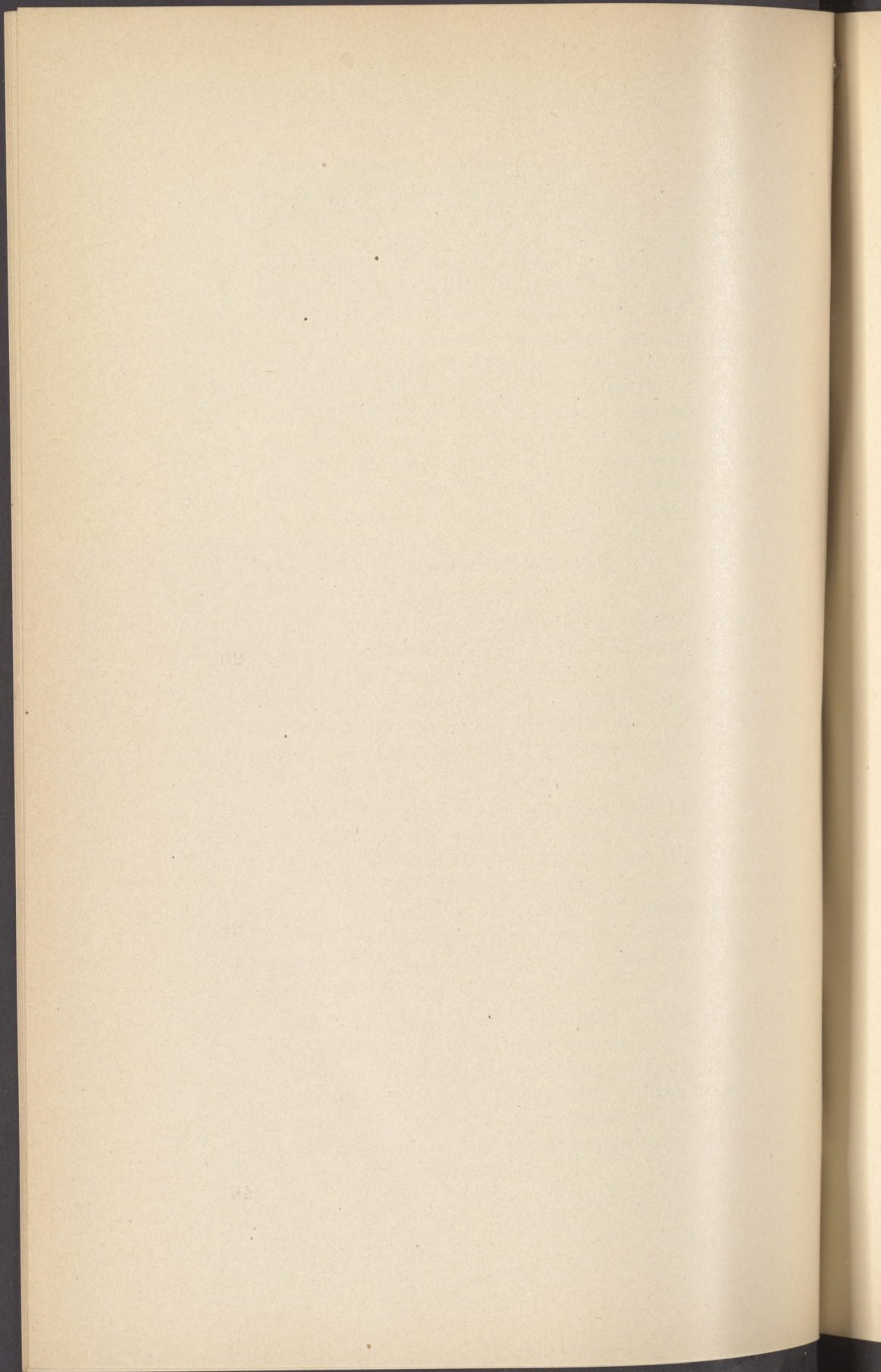
FRANK E. BRADNER,  
*Solicitor of Complainant.*

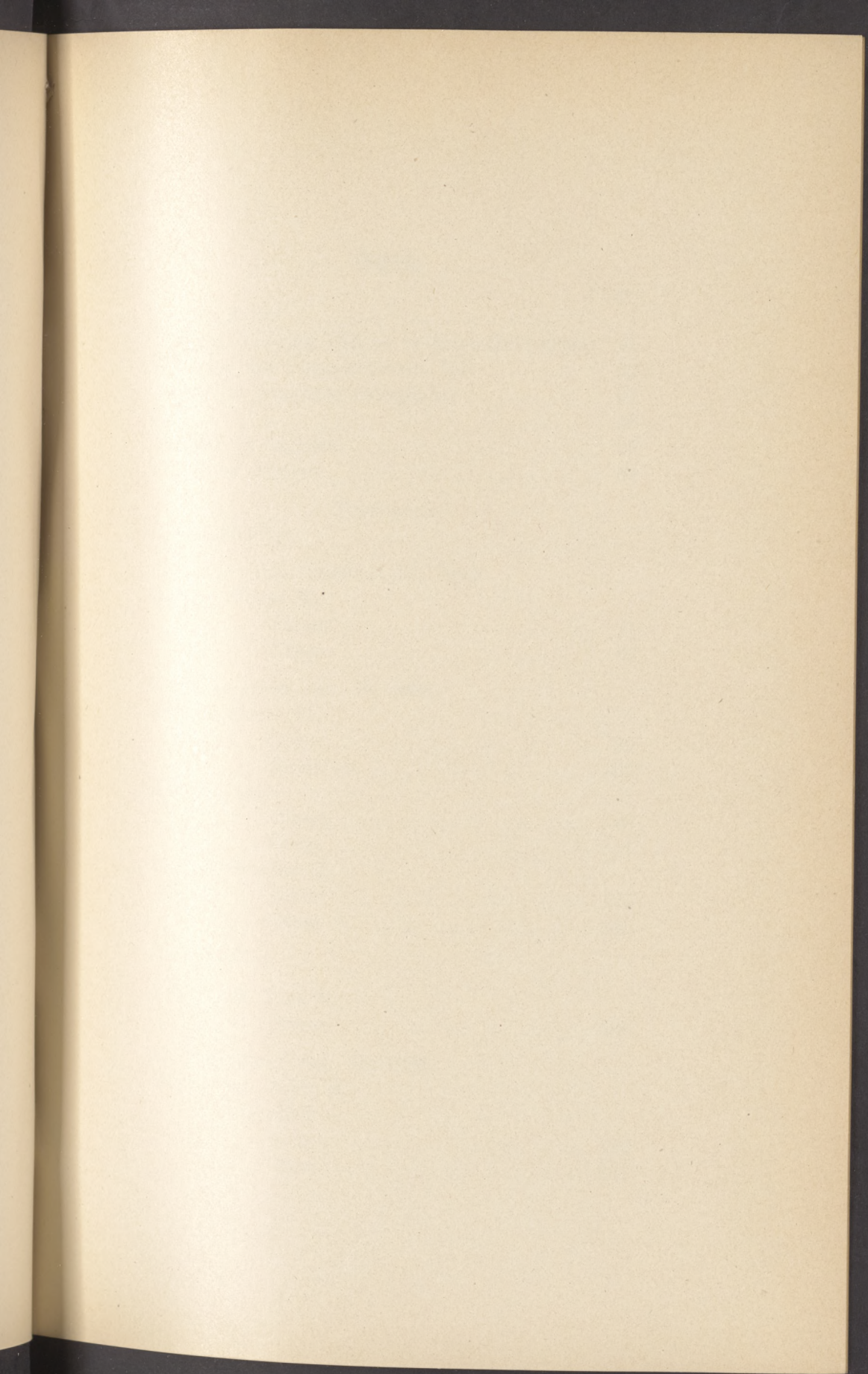
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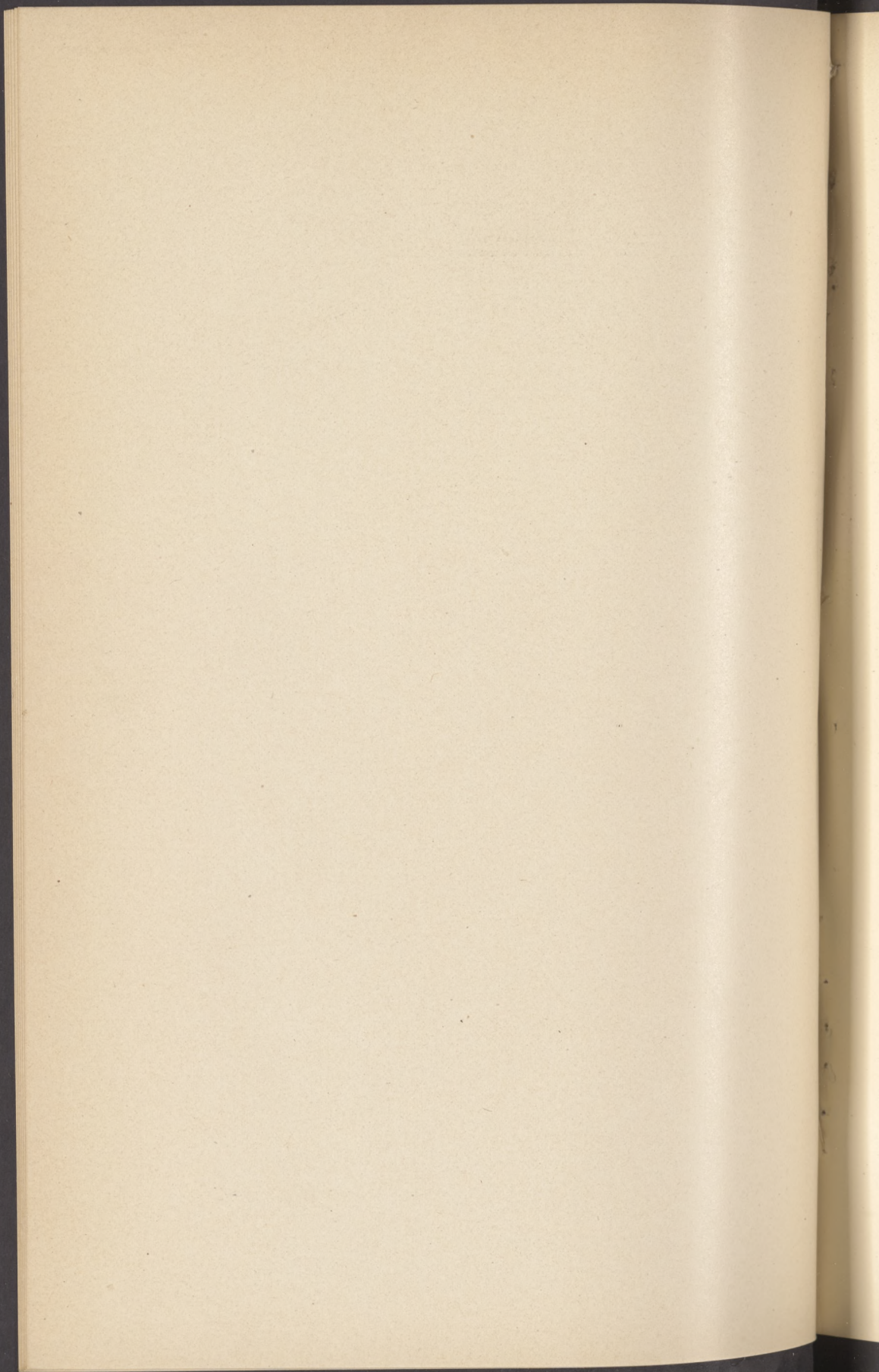
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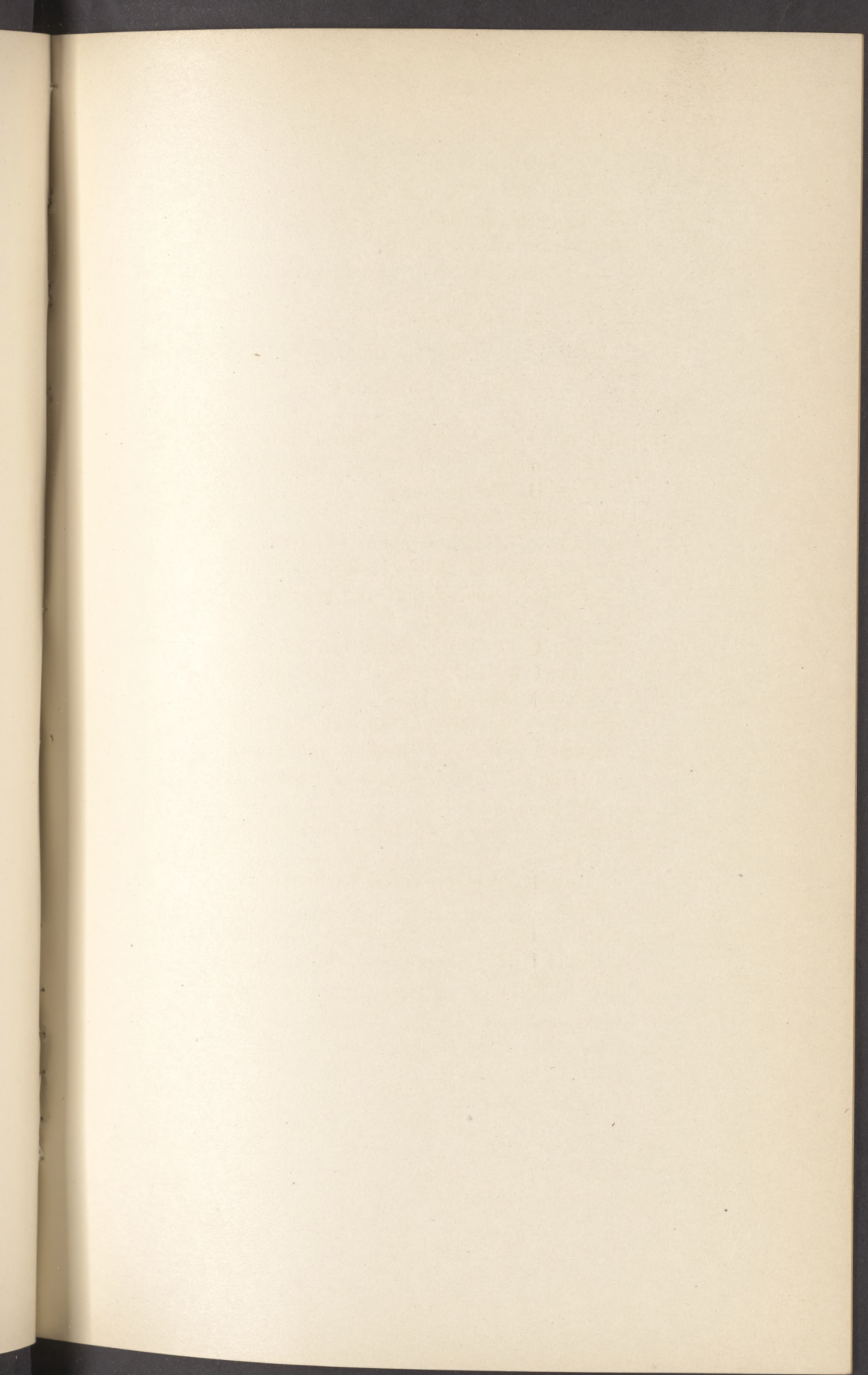
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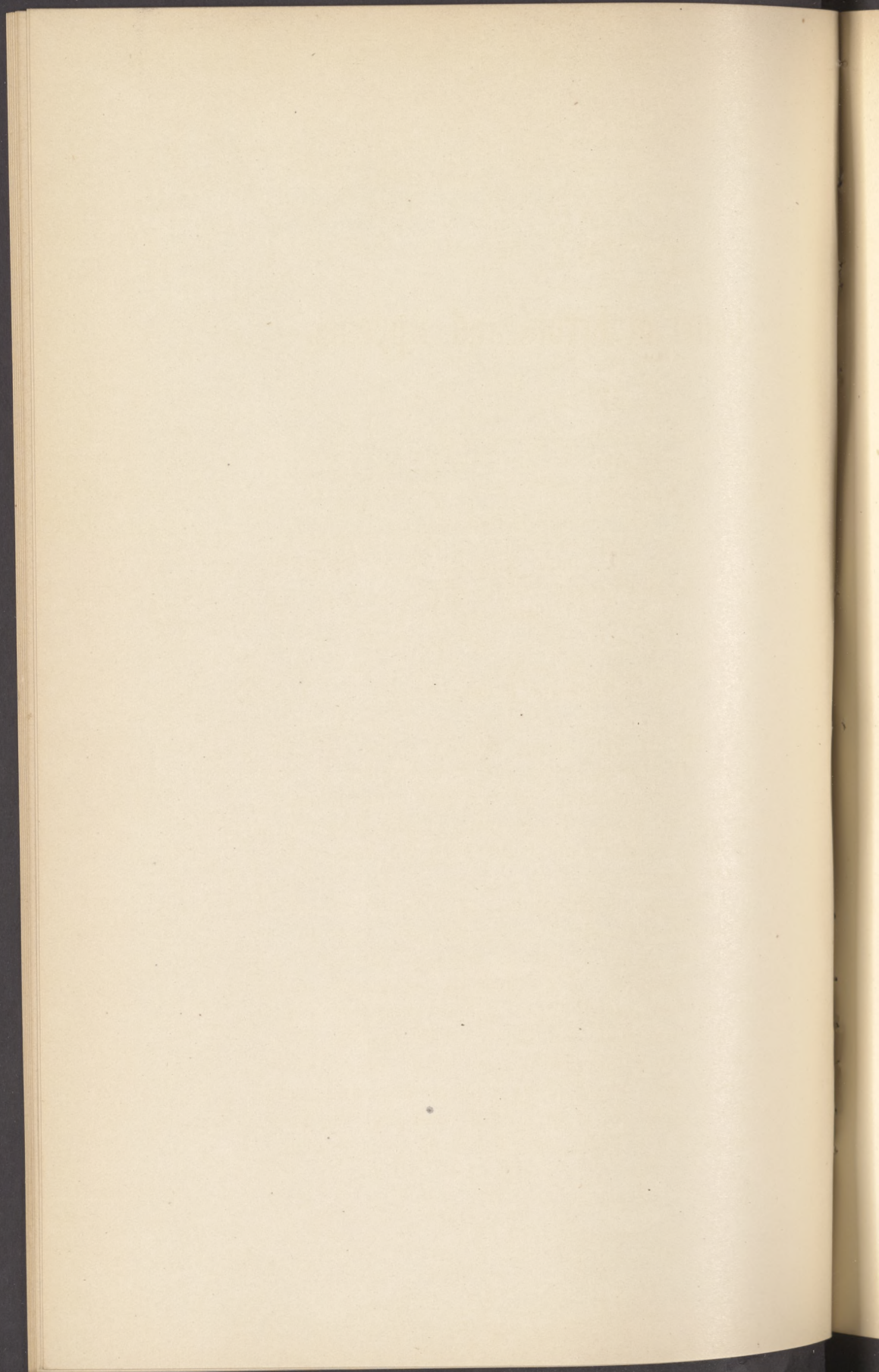
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New Jersey  
Court of Errors and Appeals.

Between,  
MOSES E. REEVES,  
Complainant,  
and  
SELENA A. MCCrackEN, *et al.*,  
Defendants.

Bill for Relief.

30

To His Honor, William J. Magie,  
Chancellor of the State of New Jersey:

Humbly complaining, shows unto your Honor,  
your orator Moses E. Reeves, of the Town of  
Arlington, in the County of Hudson, and State  
of New Jersey.

I. That on the third day of January, in the  
year eighteen hundred and ninety-six, your ora-  
tor was the owner of several tracts of land in the  
City of Newark, in the County of Essex and  
State of New Jersey, upon which there were cer-  
tain buildings used and occupied by tenants who  
paid rent to your orator, and that one of said  
buildings was occupied by your orator, and had  
been his home for many years; and that the fol-  
lowing is a list of the several houses and lots own-  
40

10 ed by your orator on the date aforesaid:—together with a statement of the value of the same and of the mortgages thereon and of the rents issuing out of the same.

- No. 226 Peshine Ave. One 2½-story frame house, lot 35x105. Rental, \$16 per month. Value \$3500. Mtge. \$1500 at 5½%. Equity \$2000.
- 20 No. 224 Peshine Ave. One 2½-story frame house, lot 35x105. Rental \$16 per month. Value \$3500. Mtge. \$2000 at 5½%. Equity 1500.
- Nos. 220 & 220½ Peshine Ave. Two 3-story Flats, lot 36x105. Rental \$54 per month. Value \$7000. Mtge. \$3000 at 6%. Equity 4000.
- 30 Nos. 157, 157½ & 159 Boyd St. Three 3-story flats, lot 50x100. Rental \$72 per month. Value \$10,000. Mtge. \$5000 at 5%. Equity \$5000.
- No. 223 Belmont Ave. One 3-story double flats, lot 25x100. Rental \$46 per month. Value \$6000. Mtge. \$3500 at 5%. Equity 2500.
- Nos. 67 & 69 Astor St. Two 3-story dwellings, each lot about 16 ft. front. Rental \$50 per month. Value \$7000. Mtge. \$3000 at 5%. Equity 4000.
- 40 No. 580 Clunton Ave. Homestead with 4 acres ground. Sold for \$11250. Mtge. \$6000 at 5%. Equity 5250.
- One vacant lot, lower part of Chestnut St. No Mtge. Value 500.
- Nos. 102 & 102½ Pennington St. Two 3-story Flats. Lot 35x105. Rental \$52 per month. Value \$5000. Mtge. \$2500 at 5%. Equity 2500.

Nos. 305, 307 & 309 Ferry St. Three	10
houses. Lot 72x150 ft. deep. Rental \$40	
per month. Value \$5000. Mtge. \$2000	
at 5%. Equity	3000.
	<hr/>
	\$30,250.

2. That some time prior to the said third day of January, your orator had endorsed certain promissory notes for the benefit of the firm of Faitoute & Co., and had also made himself liable 20 for the payment of the rent of certain premises occupied by said firm, and said promissory notes had matured and a suit had been brought against your orator in The Circuit Court of the County of Essex, aforesaid, by the Export Lumber Company, limited, and a judgment was about to be entered against your orator; and a suit had also been brought in the same court against your orator by Mary A. McDermott, to recover unpaid rent due from said firm of Faitoute & Company; 30 and your orator called upon John H. McCracken, who is an attorney and counsellor-at-law, practicing in the City of Newark, aforesaid, for the purpose of consulting him and to obtain his advice as to the liability of your orator to pay the demands that had been made upon him in the two suits aforesaid and also to advise him what course he should pursue to relieve himself of liability, if any, or to obtain time to raise the money to satisfy the several claims, and your 40 orator made a full disclosure to the said McCracken of his relations with the said firm of Faitoute & Company, and of his financial condition and what property he then owned and what his resources were for raising the money; and that, in fact, the said McCracken was quite familiar with your orator's financial condition, and had been your orator's confidential legal

10 adviser for some years; and that the said McCracken advised your orator to convey to him a considerable portion of your orator's property, and told your orator that such a conveyance would be legal and proper, and that your orator's creditors would not make any valid objection thereto, and that he would not make any valid objection thereto, and that he would make arrangements for an extension of time to pay the claims aforesaid and would raise the money to  
 20 pay the same; and thereupon your orator having confidence in the said McCracken and relying upon the advice that he had given, agreed to convey certain properties to the said McCracken and directed him to prepare a deed of conveyance.

3. That on the third day of January, aforesaid, your orator and his wife, Mary T. Reeves, executed and delivered to the said John H. McCracken a deed of conveyance of four tracts of land in the City of Newark, aforesaid; namely,  
 30 Nos. 157, 157½ and 159 Boyd street, aforesaid; and No. 223 Belmont avenue aforesaid, and Nos. 67 and 69 Astor street, aforesaid, and also No. 580 Clinton avenue, aforesaid; and that the said deed of conveyance was recorded on the said third day of January, in the register's office of the County of Essex, aforesaid, in Book 0,29 of Deeds on p. 279.

4. That a consideration of thirty-five hundred dollars is mentioned in said deed of conveyance,  
 40 but your orator charges that the said McCracken did not pay any consideration to your orator, and that your orator was not indebted to the said McCracken in any sum of money whatever, although the said McCracken on the date last mentioned induced your orator to sign some paper which your orator has since learned was a due bill, whereby your orator acknowledged himself to be indebted to the said McCracken in the sum of

three thousand four hundred and ninety-seven 10  
dollars.

5. That on the fourth day of January, eighteen hundred and ninety-six, the Export Lumber Company, aforesaid, recovered a judgment against your orator in the Essex County Circuit Court, aforesaid, for the sum of two thousand, one hundred and seventy-five dollars and five cents, damages, and thirty-five dollars and ninety-three cents, cost of suit, and that on the thirteenth day of April, in the same year, the said judgment 20  
was assigned to the said McCracken; and that on the eighth day of February in the same year, the said Mary A. McDermott recovered her judgment in the said Circuit Court against your orator for the sum of four hundred and sixty-three dollars and fifty cents, damages, and forty-four dollars and fifty-nine cents, costs of suit, and that on the thirteenth day of April, in the same year, the said last mentioned judgment was also assigned to the said McCracken. 30

6. That executions were issued out of said Circuit Court on the said judgments, and a levy was made thereunder by the sheriff of the County of Essex, aforesaid, on all the lands and premises described in the said deed of conveyance made by your orator to said McCracken, and also, on the said land situated on Chestnut street, in the City of Newark, and on a part of the land on Peshine avenue, aforesaid, and that the said sheriff caused said land and premises to be sold, 40  
and they were sold to the said John H. McCracken at a total bid of two hundred and five dollars for all the said land and premises except the property on Boyd street, and that the said sheriff also levied upon certain other tracts of land under said executions or alias executions issued on said judgments and sold the same and executed a deed of conveyance for the same to Selena A. Mc-

10 Cracken, who is the wife of said John H. McCracken, and that the land conveyed to the said Selena A. McCracken is that described above as No. 102 and 102½ Pennington street, and that the deed of conveyance to her is recorded in Book G 30, of Deeds in said County of Essex, on p. 358; and that the said property above described as No. 305, 307 and 309 Ferry street in the City of Newark, and a part of said land on Peshine avenue are also described in the said deed of  
 20 conveyance from said sheriff, but it does not appear that any bid was made for the last two tracts of land and your orator is unable to say whether they were actually sold to the said Selena A. McCracken, but he charges that afterwards the said John H. McCracken claimed to be the owner of the said property on Ferry street and also the said property on Peshine street.

7. That shortly after the said McCracken and his wife had purchased the said several properties  
 30 at sheriff's sale, as aforesaid, the said McCracken came to your orator and without disclosing to him the facts that said sheriff's sales had taken place, represented to your orator that it would be to your orator's advantage to permit him, the said McCracken, to collect the rents of all your orator's property; and your orator at first objected to turning over the rents to said McCracken, but was finally induced to consent by reason of the  
 40 statement made by McCracken, that the said creditors of your orator, and other creditors could cause your orator a great deal of trouble unless he, the said McCracken, should have possession of all the properties and should actually receive the rents; and thereupon your orator authorized the said McCracken to collect the rents of all the properties mentioned in the list hereinabove set forth and the said McCracken agreed with your orator to apply the said rents in pay-

ment of the interest on the several mortgages 10  
and of the taxes; and that as near as your orator  
can now fix the time, the said authority was  
given to and the said agreement was made by the  
said McCracken on the first day of November in  
the year eighteen hundred and ninety-seven.

8. That ever since the said McCracken was  
authorized by your orator as aforesaid, to collect  
the said rents, he has actually received all the  
rents issuing out of the said properties, except  
the house at No. 580 Clinton avenue, where your 20  
orator resided, and that the said McCracken has  
intentionally failed to pay the interest as it be-  
came due upon the said several mortgages on the  
said properties and some of said mortgages have  
been foreclosed as will hereinafter more fully  
appear.

9. That on or about the nineteenth day of May,  
eighteen hundred and ninety-seven, the said Mc-  
Cracken sold the property known as No. 580  
Clinton avenue, aforesaid, and realized for the 30  
same, above the amount of the mortgage thereon,  
the sum of five thousand, two hundred and fifty  
dollars and has not paid any part thereof to your  
orator and refuses to pay the same to your orator,  
and claims that your orator is indebted to him in  
an amount in excess of the said sum of five thou-  
sand, two hundred and fifty dollars; but your  
orator expressly charges that he is not now and  
never was indebted to the said John H. Mc-  
Cracken in any sum of money whatever, and that 40  
in fact on the third day of January, eighteen hun-  
dred and ninety-six, the said McCracken was in-  
debted to your orator in the sum of over eight  
hundred dollars for money theretofore loaned to  
him by your orator; and your orator further says  
that he was obliged to move out of his home under  
threats of being turned out by proceedings at  
law.

10 10. That the said McCracken intentionally failed to pay the interest due to the Firemen's Insurance Company on the mortgage held by that company on said property hereinabove mentioned as Nos. 305, 307 and 309 Ferry street in the City of Newark, and the said company filed its bill in this honorable court to foreclose its said mortgage and obtained a decree and said property was sold and was bought in at the sheriff's sale thereof by the said McCracken who had the deed  
20 of conveyance made by the sheriff, to his said wife, Senela A. McCracken, and that the said deed of conveyance was recorded in the register's office aforesaid, on the fourteenth day of September, eighteen hundred and ninety-eight, in Book X, 31 of Deeds on p. 107; and that the said McCracken purchased said property at the sheriff's sale thereof made by virtue of an execution issued out of this court in the said suit, brought by the said Firemen's Insurance Com-  
30 pany, with money belonging to your orator, and had the title put in the name of the said Selena McCracken for the purpose of defrauding your orator out of said property and that the said Selena A. McCracken acted in collusion with her said husband and had notice of his said fraudulent intent and of your orator's rights in said property, when she took the title to the same; and that the said Selena A. McCracken still holds the title to said property and the said John H.  
40 McCracken collects the rents issuing out of the same and refuses to pay the said rents to your orator and the said McCracken and his said wife refused to convey the said property to your orator; and that the lands and premises referred to in this paragraph are more particularly described as follows: All that certain lot of land and premises situate, lying and being in the City of Newark in the County of Essex and State of

New Jersey: beginning in the southerly line of 10  
 Ferry street at the northeasterly corner of prop-  
 erty of VanBuskirk, Heath & Company; thence  
 southerly along said property one hundred and  
 forty-six feet, eight inches to rear of Lot I, Block  
 A, of Smith & Alling map; thence easterly along  
 the rear line of said lot five feet, nine inches;  
 thence northerly on a line between lots Nos. 1  
 and 2 Block A on said map and in a continuation  
 thereof to said southerly line of Ferry street, one  
 hundred and thirty-seven feet, nine inches; 20  
 thence along Ferry street westerly seventy-three  
 feet more or less to the place of bginning. And  
 your orator expressly charges that the said Se-  
 lena A. McCracken holds the title to said last  
 mentioned tract of land and premises in trust for  
 your orator.

II. That the said McCracken also failed inten-  
 tionally to pay the interest to the Howard Sav-  
 ings Institution on the mortgage held by it which 30  
 was a lien on the said property known as No. 223  
 Belmont avenue in the City of Newark, afore-  
 said, and the said institution foreclosed its said  
 mortgage in this honorable court and caused the  
 said property to be sold and your orator has  
 wholly lost the same; and that the said McCracken  
 collected the rent issuing out of said property as  
 your orator is informed and believes to be true  
 up to the first day of June, eighteen hundred and  
 ninety-nine.

12. That the said McCracken also, intentionally 40  
 failed to pay to the said Howard Savings Insti-  
 tution the interest due to it on a mortgage held  
 by it which was a lien on the said property  
 known as Nos. 157, 157½ and 159 Boyd street in  
 the City of Newark, aforesaid, and the said in-  
 stitution foreclosed its said mortgage in this  
 honorable court and obtained a decree of sale and  
 caused the said property to be sold by the sheriff

10 of the County of Essex and your orator has wholly lost the same, and your orator is informed and believes it to be true that the said McCracken actually received the rents issuing out of said last mentioned property up to the first day of August, eighteen hundred and ninety-nine.

12A. That the properties hereinabove described as Nos. 220, 220½, 224 and 226 Peshine avenue, were encumbered by three mortgages held by the estate of Charles Dowden and that the said John  
 20 H. McCracken was the attorney for said estate and that his wife is a party interested in said estate, and is entitled to a distributive share of the same; and that the said McCracken has collected the rents issuing out of all of said properties referred to in this paragraph and acting in collusion with his said wife and with the executors of the last will of said Charles Dowden has not paid the interest due on said mortgages, and has, as the solicitor of said executors foreclosed  
 30 the said several mortgages in this honorable court and has obtained decrees of sale; and that as hereinbefore alleged, a part of said property was levied upon and sold by virtue of certain executions at law against your orator and as near as your orator can ascertain, a part of said property was brought in at a sale under said executions at law by the said McCracken, but the record is in a confused condition which your orator and his counsel are unable to unravel and  
 40 understand, but your orator charges that all of said properties mentioned in this paragraph were afterwards sold by virtue of the decrees obtained in this honorable court and that at one of such sales the said John H. McCracken was the purchaser of two of the tracts of land on Peshine avenue aforesaid, and obtained a deed of conveyance for the same from the sheriff of the County of Essex which said deed is recorded in

the register's office aforesaid in Book E 31 of 10  
deeds on p. 476; and your orator charges that the  
said McCracken purchased the said last men-  
tioned land with money belonging to your ora-  
tor and held the title to said land in trust for  
your orator.

And your orator further shows that the said  
McCracken has never accounted to your orator  
for the rents collected and received by him from  
the said properties on Peshine avenue and has  
refused to account for the same, and has refused 20  
to convey the said properties to your orator.

13. That on or about the fifteenth day of June,  
in the year nineteen hundred, the said McCracken  
and his wife executed a deed of conveyance of  
the said land and premises on Peshine avenue  
in the City of Newark to one Christina Hoch-  
heimer for a nominal consideration of one dol-  
lar and that said deed is recorded in said regis-  
ter's office in Book K, 33 on p. 500; and your  
orator charges that the said deed of conveyance 30  
was made by the said McCracken and his wife  
with the intent to defraud your orator out of the  
said properties and the said Christina Hoch-  
heimer had notice before she took said deed of  
conveyance of such fraudulent intent on the part  
of said McCracken and his wife, and knew at  
that time, that the said properties, in fact, be-  
longed to your orator, and that the said Mc-  
Cracken and his wife had no right to sell the  
same or to convey the same to any person. That 40  
the said properties so conveyed to the said  
Christina Hochheimer are more particularly de-  
scribed as follows: All those tracts of land and  
premises situate lying and being in the City of  
Newark, in the County of Essex, and State of  
New Jersey:

1st Tract. Beginning on the easterly side of  
Peshine avenue at a point distant two hundred

10 and fifty feet northerly from the north-east corner of Bigelow street and Peshine avenue which beginning point is the north-west corner of lot No. 10 in said block on said map: thence running north-easterly along said avenue thirty-six feet; thence southeasterly at right angles to said avenue one hundred and five feet thence south-westerly and in a line parallel with said Peshine avenue thirty-six feet to the northerly line of lot No. 10; thence northwesterly along said line one  
 20 hundred and five feet to the place of beginning; being lot No. 11 and part of lot No. 12 in Block J on a map of 500 building lots in the 14th ward of Newark.

2d Tract. Beginning at a point in the easterly side of Peshine avenue distant four hundred and thirty-three feet seven inches from the south-easterly corner of Peshine avenue and Clinton avenue; thence running easterly one hundred and five feet, thence northerly parallel with Peshine  
 30 avenue seventy-two feet; thence westerly parallel with first course one hundred and five feet to Peshine avenue; and thence southerly along the easterly line of Peshine avenue seventy-two feet to the place of beginning.

And your orator expressly charges that the said Christina Hochheimer now holds the title to said last described lands and premises in trust for your orator.

14. That as hereinbefore stated the said prop-  
 40 erty known as No. 102 and 102½ Pennington street was sold by the sheriff of the County of Essex by virtue of the said executions issued out of the said Circuit Court and was conveyed by said sheriff to the said Selena A. McCracken; and your orator charges that the said property was purchased at said sale with money belonging to your orator and in trust for your orator, and that the said Selena held the title to said property in

trust for your orator; and that the said Mc- 10  
 Cracken received the rents issuing out of said  
 property and still continues to receive the same;  
 and that the said property is more particularly  
 described as follows: All that tract of land and  
 premises situate, lying and being in the City of  
 Newark in the County of Essex and State of  
 New Jersey: Beginning in the northerly line of  
 Pennington street at a point four hundred and  
 eighty-five feet easterly from New Jersey Rail-  
 road avenue; thence running along Pennington 20  
 street south sixty degrees, east thirty-five feet;  
 thence north thirty degrees, east ninety-three feet,  
 two inches; thence north sixty-three degrees,  
 forty minutes, west thirty-five feet more or less  
 to land now or late of Thomas Gallan; thence  
 along same south thirty degrees, west ninety feet,  
 ten inches to the place of beginning. And your  
 orator expressly charges that the said Selena A.  
 McCracken now holds the title to said last men-  
 tioned land and premises in trust for your orator. 30

15. That on or about the ninth day of July,  
 in the year nineteen hundred, the said McCracken  
 and his wife executed a deed of conveyance of the  
 said property known as No. 67 Astor street, in  
 the City of Newark, to one Ida B. Miller for a  
 nominal consideration of one dollar, and that  
 said deed is recorded in said register's office in  
 Book P 33, on p. 135, and purports to convey all  
 that tract of land and premises situate, lying and  
 being in the City of Newark, in the County of 40  
 Essex and State of New Jersey more particularly  
 described as follows: Beginning in the northerly  
 line of Astor street at a point therein distant  
 westerly one hundred and forty-six feet and  
 twenty-one one-hundredths from the northwest-  
 erly corner of the same and Pennsylvania avenue,  
 said point being in line with the center of the  
 partition wall between the house on the lot hereby

10 conveyed and the house on the lot adjoining on  
 the east; thence running along the line running  
 through the center of said partition wall north  
 thirty-five degrees, fifty-nine minutes east one hun-  
 dred feet and twenty-one one-hundredths; thence  
 north fifty-seven degrees and forty-eight minutes  
 west, nine feet and ninety-four one-hundredths;  
 thence on a line running through the center of  
 the partition wall between the house on the lot  
 thereby conveyed and the house on the lot ad-  
 20 joining on the west, south thirty-eight degrees  
 fifty-two minutes west, one hundred feet and  
 sixty-eight one-hundredths to Astor street;  
 thence along Astor street easterly fifteen feet and  
 eleven one-hundredths to point of beginning; ac-  
 cording to a survey made by VanDuyne & Young.

30 And your orator expressly charges that the  
 said last mentioned deed of conveyance of the  
 said land and premises last above described was  
 made by the said McCracken and his wife with in-  
 tent to defraud your orator out of the said land  
 and premises and that the said Ida B. Miller  
 at the time she received the said deed of con-  
 veyance had notice of such fraudulent intent on  
 the part of said McCracken and knew that the  
 said land and premises, in fact, belonged to your  
 orator.

And your orator also expressly charges that the  
 said Ida B. Miller now holds the title to said  
 land and premises in trust for your orator.

40 16. That on or about the thirteenth day of  
 April in the year nineteen hundred, the said Mc-  
 Cracken and his wife made a deed of conveyance  
 to Adelaide R. Bird for a nominal consideration  
 of the sum of one dollar, of the property herein-  
 above referred to as No. 69 Astor street, in the  
 City of Newark; and that the said deed is re-  
 corded in the said register's office in Book I, 33,  
 on p. 45 and purports to convey all that tract

of land and premises situate, lying and being in 10  
the City of Newark, in the County of Essex, and  
State of New Jersey: Beginning in the northerly  
line of Astor street at a point therein distant  
west one hundred and thirty feet from the north-  
westerly corner of the same and Pennsylvania  
avenue; thence running westerly along Astor  
street sixteen feet and twenty-one hundredths to  
a point in line with the center of the partition wall  
between the house on the lot hereby conveyed and  
the house on the lot adjoining on the west; thence 20  
along the line running through the center of said  
partition wall north thirty-five degrees, fifty-five  
minutes east, one hundred feet, and twenty-one  
one-hundredths; thence south fifty-seven degrees,  
forty-eight minutes, east, nine feet and ninety-  
five one-hundredths to the easterly line of land  
of the party of the first part; thence along that  
line south thirty-two degrees, twenty-one minutes  
west one hundred feet to Astor street and place  
of beginning; according to a survey made by 30  
VanDuyne & Young.

And your orator expressly charges that the  
said last mentioned deed of conveyance of the  
said land and premises last above described was  
made by the said McCracken and his wife with  
intent to defraud your orator out of the said land  
and premises and that the said Adelaide R. Bird  
at the time she received the said deed of convey-  
ance had notice of such fraudulent intent on the  
part of said McCracken and knew that the said 40  
land and premises, in fact, belonged to your ora-  
tor. And your orator also expressly charges that  
the said Adelaide R. Bird now holds the title to  
said land and premises in trust for your orator.

17. That the said vacant lot situated on Chest-  
nut street in the City of Newark, has been dis-  
posed of by the said McCracken with the consent  
of your orator, but your orator has not received

10 from the said McCracken the consideration received by him for the said lot; and that said consideration consisted of certain obligations of your orator to one George Hatt which were placed in the hands of the said McCracken, who still holds them; and your orator has not received from the said Hatt, or from the said McCracken any release of his liability on said obligations.

And your orator expressly charges that whatever promissory notes or other obligations of  
 20 your orator received by the said McCracken in consideration for a deed of conveyance of said vacant lot on Chestnut-street, aforesaid, belonged to your orator and are held in trust for him by said McCracken.

18. That on the said third day of January, eighteen hundred and ninety-six the said McCracken also advised your orator to execute and deliver to him a mortgage on the household goods and chattel belonging to your orator in his dwelling  
 30 house and also, on certain wagons and lumber which belonged to the firm of M. E. Reeves & Son, composed of your orator and his son, Charles E. Reeves; and that such a mortgage was executed by your orator on said day and was placed on record in the register's office of the County of Essex aforesaid, on the same day by the said McCracken; and that said mortgage purports to have been made to secure the payment of several  
 40 promissory notes made by the said firm of M. E. Reeves & Son and amounting in the aggregate to the sum of three thousand, two hundred and eighty-five dollars.

And your orator expressly charges that the promissory notes referred to in the said mortgage have since been paid and satisfied by the said firm of M. E. Reeves & Son, and that the said McCracken still holds the said mortgage and refuses to cancel the same of record and refuses

to deliver the same to your orator, and claims that 10  
 he has the right to hold said mortgage to secure  
 the payment of other pretended obligations of  
 your orator.

19. That in the month of March, eighteen hun-  
 dred and ninety-nine, your orator having become  
 very much dissatisfied with the conduct of the  
 said McCracken, consulted other counsel, and was  
 advised to bring an action at law against the said  
 McCracken to recover the sum of eight hundred  
 dollars, which your orator had loaned to said Mc- 20  
 Cracken some years before; and your orator  
 fearing that by reason of his poor health at that  
 time he might not survive until a judgment could  
 be obtained, assigned his claim to his son, Charles  
 E. Reeves, who brought a suit in the Circuit  
 Court of Essex county, aforesaid, against the  
 said McCracken to recover the said sum of eight  
 hundred dollars together with lawful interest  
 thereon; and the said McCracken filed in said suit  
 several pleas, and among them, a plea of set-off, 30  
 and in the bill of particulars filed with his said  
 plea to set-off, he claimed that your orator was  
 indebted to him at that time, to-wit, on the twenty-  
 fifth day of May, eighteen hundred and ninety-  
 nine, in the full amount of said judgment recov-  
 ered by the said Export Lumber Company against  
 your orator, and also in the full amount of said  
 judgment recovered by the said Mary A. Mc-  
 Dermott against your orator, and that said judg-  
 ments were wholly unpaid and unsatisfied; and 40  
 that your orator was also indebted to the said  
 McCracken in other respects.

And your orator further shows that the said  
 action to recover the said eight hundred dollars  
 was tried in the said Circuit Court and resulted  
 in a verdict in favor of the said Charles E. Reeves.  
 for the full amount of his claim and interest,  
 together with costs of suit, to-wit, the sum of

10 eleven hundred and forty dollars and forty-four cents.

And your orator further shows that after judgment had been entered in said cause, the said McCracken solicited your orator to effect some settlement of said judgment, and your orator and his son after some negotiations agreed that said judgment should be cancelled provided the said McCracken would agree to credit the amount of the same upon any and all claims or accounts  
20 that he then had against your orator; and the said McCracken thereupon made and entered into such an agreement in writing, which your orator will produce, if necessary, so to do; and it was further agreed that the said McCracken should pay to the counsel of said Charles E. Reeves, his fee for his services rendered in the said action at law, which fee was agreed upon at the sum of one hundred dollars and was paid by the said McCracken; and the said judgment was duly  
30 cancelled of record.

20. That on or about the said third day of January, eighteen hundred and ninety-six, the said McCracken also advised your orator to execute a lease of his homestead property at No. 580 Clinton avenue, in the City of Newark, aforesaid, for a term of years, and stated to your orator that it would look better for him to hold a lease which he could show to your orator's creditors; and thereupon your orator executed a  
40 lease made to him by said McCracken wherein and whereby your orator agreed to pay a certain rent for said premises to the said McCracken; but your orator expressly charges that it was understood and agreed between him and the said McCracken that your orator should not actually pay any rent. And your orator further shows that the said McCracken now claims that your orator is indebted to him for the rent reserved by

the said lease and refuses to cancel the said lease 10  
 or to surrender the same to your orator or to re-  
 lease your orator from any liability by reason of  
 the execution of said agreement of lease.

21. That the said John H. McCracken was ex-  
 amined as a witness recently in the trial of an  
 action brought in the said Circuit Court of Essex  
 county by the said firm of M. E. Reeves & Son  
 against the executors of the last will and testa-  
 ment of Charles Dowden, deceased, and the said  
 McCracken testified that he had taken the prop- 20  
 erty of your orator to hold as security for money  
 due to him and that your orator was then in-  
 debted to him in a large sum of money, and that  
 he had sold and disposed of all the property for  
 the purpose of realizing the money due to him,  
 and that he had not at any time given to your ora-  
 tor any statement or account of the moneys due  
 to him and your orator, or of the moneys received  
 by him for rents of said properties or for pro-  
 ceeds of sale of any of said properties. 30

And your orator expressly charges that the  
 said McCracken has never given to your orator  
 any statement of the rents collected by him out  
 of any of said properties or any statement of  
 the proceeds of sale of any of said properties or  
 any statement of his claims against your orator  
 except a bill for his services rendered to your  
 orator, which bill was received by your orator on  
 or about the twenty-first day of March, eighteen  
 hundred and ninety-eight, and your orator has 40  
 annexed hereunto a copy of the said bill, which he  
 prays may be read as a part of this bill of com-  
 plaint.

22. That your orator has also annexed here-  
 unto a copy of the bill of particulars and notice  
 annexed to the plea filed by the said McCracken  
 in the said action at law brought by the said  
 Charles E. Reeves against the said McCracken  
 in so far as the said notice and bill of particulars

10 relate to claims made by the said McCracken, at  
the time he filed said plea, against your orator;  
and your orator prays that the said notice and  
bill of particulars may be read as a part of this  
bill of complaint.

23. That your orator has frequently and in a  
friendly manner applied to the said McCracken  
to make out a statement of all his claims against  
your orator and to permit your orator to have  
such a statement, and to reconvey to your orator  
20 his several properties and that your orator would  
enter into any proper agreement to pay to the  
said McCracken any sum of money lawfully due  
to him, but the said McCracken absolutely refuses  
to make out any statement or account of his  
claims against your orator, and refuses to sur-  
render or to reconvey any of the said property  
to your orator; and your orator after fruitless  
efforts extending over a period of the last two  
years finally resolved to apply to this honorable  
30 court for relief, but has been somewhat delayed  
by reason in his inability to supply the funds  
necessary to procure an abstract of the various  
records relating to the said several properties.

24. That shortly after the said Export Lumber  
Company recovered said judgment against your  
orator, the said McCracken came to your orator  
and stated that the said judgment would have  
to be paid, and subsequently also stated to your  
orator that the judgment recovered by the said  
40 Mary A. McDermott would have to be paid; and  
thereupon your orator authorized the said Mc-  
Cracken to pay the said judgments, but did not  
authorize the said McCracken to take assign-  
ments of said judgments, and your orator does  
not know what amount of money was actually  
paid by the said McCracken for the said judg-  
ments but he believes that it was less than the  
face of the judgments, and your orator is will-  
ing to allow the said McCracken to charge him

for the actual amount paid for said judgments 10  
in an accounting between your orator and the  
said McCracken.

25. That the promissory note mentioned and  
referred to in the notice and bill of particulars  
annexed to the plea filed by the said McCracken  
in the said action brought against him by the  
said Charles E. Reeves (a copy of which said no-  
tice and bill of particulars is hereunto annexed  
as aforesaid), and which said note is in the sum  
of two thousand four hundred and fifty dollars 20  
and is dated September 23, 1897, has been satis-  
fied in a settlement of accounts between the said  
McCracken and the said firm of M. E. Reeves &  
Son, and the said promissory note has been sur-  
rendered to your orator.

26. That your orator is willing to allow the said  
McCracken to be credited with the amount of his  
bills rendered for legal services performed at  
the request of your orator; but your orator al-  
leges that there are two items in the bill bearing 30  
date March twenty-first, which are not charges  
for services rendered and which your orator is  
not willing to allow, namely, the item of October  
10, 1893, payment on Oraton street, contract,  
\$100, which your orator alleges has been allowed  
to the said McCracken in a recent settlement of  
accounts between him and the said firm of M. E.  
Reeves & Son; and your orator also alleges that  
the item of October 10 1893, three shares, stock,  
commercial U. L. Ins. Co., \$300 is not for services 40  
rendered and is not a proper charge against your  
orator, and your orator is not indebted to the said  
McCracken for any such stock, but on the con-  
trary, your orator furnished the funds necessary  
to purchase said stock and gave the money to said  
McCracken and has never received the stock; and  
your orator also says that the two items of Sep-  
tember 25, 1897, loan \$32, and March 16, 1888, loan  
\$25, have been paid in the said recent settlement

10 of accounts between the said McCracken and the said firm of M. E. Reeves & Son; and your orator further says that the said firm of M. E. Reeves & Son had dealings with the said McCracken and that he has confused the accounts in making up the said bill of March 21, 1898, against your orator.

27. That in the said bill of particulars, a copy of which is hereunto annexed, as aforesaid, the said McCracken claims that there was a settle-  
20 ment of all accounts between your orator and the said McCracken on the second day of January, eighteen hundred and ninety-six, and that your orator on that day was indebted to the said McCracken in the sum of three thousand, four hundred and ninety-seven dollars; but your orator expressly charges that he was not on the date aforesaid, indebted to the said McCracken individually in any sum of money whatever, and that  
30 there was not on that date or at any other time a settlement of accounts between your orator and the said McCracken, and that the only claim that the said McCracken had against your orator was his account for legal services rendered to your orator, which was more than offset by your orator's claim against the said McCracken for money loaned to him by your orator as hereinabove set forth; and your orator further says that in the action brought to recover the said money loaned the said McCracken, did not make any proof of  
40 the account for legal services, and did not make any proof of said promissory note of two thousand, four hundred and fifty dollars and that the remaining part of his plea of set-off was overruled by the court of law in which the action was tried.

28. That your orator is informed and believes it to be true that the said John H. McCracken and his wife, Selena A. McCracken and the said Christina Hochheimer, Adelaide R. Bird and Ida

B. Miller are acting in collusion to prevent your orator from recovering his said properties from the said John H. McCracken; and your orator is advised that he is entitled to the aid of this honorable court to establish his right to the said respective properties which have been conveyed to the said several parties with notice of the fact that they were held in trust by the said John H. McCracken for he benefit of your orator, and to establish such trust by the decree of this honorable court. 20

All which actings and doings of the said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises. In consideration whereof and forasmuch as your orator has no adequate remedy at law and can only have relief in this honorable court wherein matters of this sort are properly cognizable and relievable.

To the end therefore, that the defendants, John H. McCracken, Selena A. McCracken, his wife, Christina Hochheimer Adelaide R. Bird and Ida B. Miller, may, without oath, the oath of said defendants being hereby expressly waived, full, true and perfect answer and discovery make to all and singular the premises and that as fully as though the same were herein again repeated and they particularly interrogated therunto paragraph by paragraph. 30

And your orator prays that the said John H. McCracken may answer upon oath the following specific interrogatories: 40

First Interrogatory: Did Moses E. Reeves execute and deliver to you on January third, eighteen hundred and ninety-six, a deed of conveyance of several tracts of land situated in the County of Essex?

Second Interrogatory: If your answer to the first interrogatory is yes, then state the consid-

10 eration that you actually paid, or agreed to pay to the said Moses E. Reeves, for the said deed of conveyance.

Third Interrogatory: Have you conveyed to any person any part of the several tracts of land, mentioned and described in the deed of conveyance referred to in the first interrogatory?

20 Fourth Interrogatory: If your answer to the third interrogatory is yes, then state and set forth in detail a recital of each and every deed of conveyance, made by you of any part of the said tracts of land, giving the name of each and every grantee, and the amount of the actual consideration paid to you by each grantee, and a short description of the property conveyed.

Fifth Interrogatory: State whether, on the third day of January, eighteen hundred and ninety-six, Moses E. Reeves was personally indebted to you, and if so, in what sum of money, and what evidence of such indebtedness did you  
30 hold on that date?

Sixth Interrogatory: State whether the said Moses E. Reeves has been credited by you with any money received by you since the third day of January, eighteen hundred and ninety-six, and if so, in what amount?

Seventh Interrogatory: State whether you have paid to the said Moses E. Reeves, any portion of the proceeds of sale, of the lands and premises referred to in the first interrogatory,  
40 and if so, how much?

Eighth Interrogatory: Have you ever rendered to the said Moses E. Reeves, any account of the moneys, received by you from sales of any of the properties referred to in the first interrogatory, or of your disbursements in connection with said properties?

Ninth Interrogatory: If your answer to the eighth interrogatory is no, then set forth in detail, a statement of your account with Moses E.

Reeves, showing the amount of his indebtedness 10  
to you, if any on the third day of January, eight-  
teen hundred and ninety-six, and the charges  
against him since that date, and the credits, to  
which he is entitled since that date.

And your orator prays that he may have special  
relief from the said defendant as follows:

First: That an account may be taken and stated  
under the direction of this honorable court be-  
tween your orator and the said defendant, John  
H. McCracken. 20

Second: That the said deed of conveyance bear-  
ing date the third day of January, eighteen hun-  
dred and ninety-six, made by your orator to the  
said John H. McCracken may be adjudged to have  
been made by your orator to the said John H.  
McCracken to hold the land and premises therein  
described in trust for your orator.

Third: That the said John H. McCracken may  
be ordered by the decree of this honorable court  
to cancel the said mortgage on certain goods and 30  
chattels, which mortgage bears date the third day  
of January, eighteen hundred and ninety-six, and  
was executed by your orator and made to the  
said John H. McCracken, and to surrender the  
said mortgage to your orator.

Fourth: That a decree may be made in this  
cause adjudging that the land and premises the  
title to which is now in the name of Selena A.  
McCracken as set forth in this bill of complaint,  
are the property of your orator and that the said 40  
Selena A. McCracken holds the title to the same  
in trust for your orator.

Fifth: That a decree may be made in this  
cause adjudging that the said Christina Hoch-  
heimer holds the title to the said lands and prem-  
ises on Peshine avenue in the City of Newark,  
hereinabove fully described, in trust for your  
orator.

Sixth: That a decree may be made in this cause

10 adjudging that the said Adelaide R. Bird holds the title to said lands and premises on Astor street, in the City of Newark, as hereinabove fully described in trust for your orator.

Seventh: That a decree may be made in this cause adjudging that the said Ida B. Miller holds the title to said land and premises on Astor street in the City of Newark, as hereinabove fully described in trust for your orator.

20 Eighth: That the said John H. McCracken may be ordered to assign to your orator the said judgment recovered by the Export Lumber Company against your orator, and also, the said judgment recovered by Mary A. McDermott against your orator.

And that your orator may have such other and further relief in the premises as shall be agreeable to equity; and that he may also recover from the said defendants his costs of this suit to be taxed.

30 May it please Your Honor, the premises considered, to grant unto your orator a writ subpoena to be issued out of and under the seal of this honorable court and to be directed to the said defendants, John H. McCracken and Selena A. McCracken, his wife, Christina Hochheimer, Adelaide R. Bird and Ida B. Miller, and commanding them and each of them under a certain penalty and on a certain day therein to be expressed, to be and appear before Your Honor in  
40 this honorable court then and there to answer all and singular the premises and to stand to, abide by and perform such order and decree as shall be agreeable to equity and shall seem meet to Your Honor.

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

FRANK E. BRADNER,  
Solicitor for and  
Counsel with Complainant.

Newark, N. J., Mar. 21, 1898. 10

Moses E. Reeves

To J. H. McCracken,

Dr.

June 6, 1892.	To taxed costs. \$32.62. John Collins suit and legal services,		
		\$30.00.	\$62.68
" 6, "	" search on farm, \$29.90; dwg. deed, \$3.00, Rec., \$2.10, Sup. ct. Sch. \$3.00.		38.00
" 6, "	" Dwg. two deeds (Collins)		6.00
Sept. 10, "	" Making searches, Ferry, Irvington and Chestnut Sts. Dwg. deed		20 98.00
" 6, 1893	" (Polhemus) Search Sup. Ct. & Bond		34.60
Oct. 10, "	" Affidavit Landlord case and Dwg. deed.		4.00
Oct. 10, "	" Payment on Oraton St. contract, 50.00	50.00	\$100.00
" 10, "	" Three shares stock, Commercial U. L. Ins. Co.		300.00 30
May 4, 1894	" District Court (Tenascy, &c.)		4.00
" 4, "	" Search, Sup. St. Tax search Mill property Riparian		71.95
Nov. 11, 1895	" Dwg. 3 deeds, recording same		13.55
Jan. 3, 1896,	" Dwg. 4 deeds, \$12.00, Recording, \$7.20, Legal services, \$25.00		44.20
Jan. 22, 1896,	To legal services and with Whitehead & Colie & Swayze		\$100.00
Feb. 18, 1896,	" legal services rendered (Whitehead)		25.00 40
Mar. 5, "	" Dwg. 3 deeds (Hatt C. E. R. & Mrs )		9.00
Dec. 31, 1896	To Search (Murphy property) Ferry St.		24.75
Sept. 25, 1897	" loan-ch (es Co) 32.00		<hr/> 32.00
			\$935.73
Mar. 16, 1898,	" loan ch (es co) 25.00		

10 Notice is hereby given that the defendant, under and in pursuance of the pleas above pleaded, will on the trial of this cause, give in evidence and insist that the said Moses E. Reeves, before and at the time of the assignment by him to the said Charles E. Reeves, the plaintiff of the pretended claim set up in the declaration filed in said suit, was indebted to this defendant upon and for the following account and demands and amounts.

20 First: The amount of principal and interest and cost due on a certain judgment recovered by the Export Lumber Company, Limited, on the fourth day of January, eighteen hundred and ninety-six, in the Essex County Circuit Court, against the said Moses E. Reeves and one George W. Reeve for the sum of two thousand, one hundred and seventy-five dollars and five cents, damages and thirty-five dollars and ninety-three cents, costs of suit, and which judgment was assigned  
30 and transferred by the said Export Lumber Company, limited, to this defendant on the thirteenth day of April, eighteen hundred and ninety-six, and still remains in full force and virtue and unpaid and unsatisfied.

Second: The amount of principal and interest and costs due on a certain judgment recovered by Mary A. McDermott in the Circuit Court in and for the County of Essex, against the said Moses E. Reeves and George W. Reeve on the  
40 eighth day of February, eighteen hundred and ninety-six, for four hundred and sixty-three dollars and fifty cents damages, and forty-four dollars and fifty-nine cents, costs of suit, and which last mentioned judgment was assigned and transferred to said defendant on the thirteenth day of April, eighteen hundred and ninety-six, and still remains in full force and virtue and unpaid and unsatisfied.

Third: The amount of principal and interest 10  
 due on a certain note made by the said Moses  
 E. Reeves, dated the twenty-third day of Sep-  
 tember, eighteen hundred and ninety-seven, of  
 which the following is a true copy.

\$2450.00

Newark, N. J. Sept. 23, 1897.

Two months after date we promise to pay to  
 the order of J. H. McCracken, twenty-four hun-  
 dred and fifty dollars, payable at the Merchants  
 National Bank of Newark, for value received. 20  
 "M. E. REEVES."

Which note still remains due and unpaid.

Fourth: The sum of three thousand, four hun-  
 dred and ninety-seven dollars found due from  
 said Moses E. Reeves to the defendant, on the  
 second day of January, eighteen hundred and  
 ninety-six, upon a *settlement of all accounts*, be-  
 tween the said Moses E. Reeves and this defend-  
 ant, made on that last named date, and up to 30  
 that date and which sum of three thousand, four  
 hundred and ninety-seven dollars, still remains  
 due and owing, unpaid and unsatisfied.

Fifth: The sum of four hundred and twenty  
 dollars due from said Moses E. Reeves to this  
 defendant for the use and occupation by said  
 Moses E. Reeves of certain land and premises  
 belonging to said defendant, being the dwelling  
 house, barns and grounds known as No. 580  
 Clinton avenue and situated in the township of 40  
 Clinton, County of Essex and State of New Jer-  
 sey for the term of one year and two months,  
 from the first day of May, eighteen hundred and  
 ninety-six, until the fifth day of July, eighteen  
 hundred and ninety-seven, at the yearly rent of  
 three hundred and sixty dollars, which sum of  
 four hundred and twenty dollars is now due and  
 owing from the said Moses E. Reeves to this  
 defendant.

10 Sixth: For the amount of rents collected by the said Moses E. Reeves, at various times from the fourteenth day of April, eighteen hundred and ninety-six until the first day of May, eighteen hundred and ninety-nine of and from the tenants of certain houses and dwellings belonging to the said defendant at the times the said Moses E. Reeves so collected the said rent, to-wit: From the two houses, situate in the City of Newark, known as Nos. 67 & 69 Astor street, the sum  
 20 of four hundred and eighty dollars: From the house known as No. 223 Belmont avenue situate in the said City of Newark, the sum of ten hundred and eighty dollars: From the two houses known as Nos. 222 and 224 Peshine avenue, and situate in Newark, aforesaid, the sum of six hundred and twelve dollars. Which several sums of money above stated to have been collected by said Moses E. Reeves for said rents were collected for the use of said defendant by the said  
 30 Moses E. Reeves, but have never been paid over by him to the said defendant, and have been retained by him for his own use and benefit.

Seventh: For the amount due from the said Moses E. Reeves to the said defendant, on the following account.

Moses E. Reeves,				Dr.
		To John H. McCracken.		
Jan.	3, 1896.	To drawing and acknowledging		
40		4 deeds.		\$12.00
"	3, "	" Cash paid recording same		7.20
"	3, "	" Legal services rendered		25.00
"	22, "	" Legal services, six interviews,		
		consulting with John Whitehead,		
		Colie & Swayze & Sheriff.		100.00
"	22, "	" Draw 2 bonds & Mortgages,		
		Orange National Bank.		4.00
Feb.	18, "	" Legal services, six and a		
		half days.		25.00

Mar.	5, 1896	” Drawing 3 deeds, Hatt & al,	9.00	10
Dec.	5, “	“ Searching title, Campbell Property,	24.75	
Dec.	5, 1896	To Legal services rendered to suit by Orange Nat’l. Bank on Mortgage.	50.00	

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\$256.95

A true copy  
E. C. STOKES  
Clerk. 20

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### Order Dismissing Bill as to John H. McCracken.

The complainant having filed his bill of complaint seeking, among other things, an accounting for certain moneys alleged to be due from the defendant John H. McCracken to the complainant, and the said defendant having duly answered said bill and subsequently, by leave of the court, having filed a plea to said bill of complaint setting up that since the commencement of said suit, he had been, by the decree of the United States District Court for the District of New Jersey, duly discharged as a bankrupt, pursuant to the provisions of the Act of Congress entitled “An Act to establish a uniform system of bankruptcy throughout the United States” approved July first, eighteen hundred and ninety-eight, and its supplements and amendments, and the said cause having been set down for hearing on said bill and plea, and the arguments of Frank E. Bradner in opposition to said plea, and of Conover English and Robert H. McCarter in support thereof, having been heard and considered, and the court being of opinion that said plea is a complete bar to the further prosecution of this suit as against the said John H. McCracken.

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40

10 It is thereupon, on this sixth day of July, A. D. Nineteen hundred and five, on motion of McCarter, Williamson & McCarter, Solicitors of said John H. McCracken, ORDERED that said plea be sustained, and the bill of complaint herein be and the same hereby is dismissed as against the said John H. McCracken.

(Signed) Respectfully advised,  
 FREDERIC W. STEVENS,  
 V. C.

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### Amended and Supplemental Bill.

To his HONOR, WILLIAM J. MAGIE, Chancellor of the State of New Jersey.

The amended and supplemental bill of Moses E. Reeves, of the Town of Arlington in the County of Hudson and State of New Jersey, respectfully shows as follows:

30 1. That on the third day of January in the year Eighteen hundred and ninety-six, your orator was the owner of a certain lot or tract of land and premises in the City of Newark, more particularly described as follows: BEGINNING in the northerly line of Pennington street at a point four hundred and eighty-five feet easterly from New Jersey Railroad avenue; thence running along Pennington street south sixty degrees east thirty-five feet;

40 thence north thirty degrees east ninety-three feet two inches; thence north sixty-three degrees forty minutes west thirty-five feet more or less to land now or late of Thomas Gallan; thence along same south thirty degrees west ninety feet ten inches to the place of beginning; and known as numbers 102 and 102 1/2 Pennington street; and that said property was then of the value of five thousand dollars and was mortgaged for the

sum of twenty-five hundred dollars, which said 10  
mortgage carried interest at the rate of five per  
cent per annum; and the rents issuing out of said  
property amounted to the sum of fifty-two dollars  
per month.

2. That on the fourth day of January Eighteen  
hundred and ninety-six, the Export Lumber Com-  
pany recovered a judgment against your orator  
in the Essex County Circuit Court for the sum of  
twenty-one hundred seventy-five and .05/100 dol-  
lars damages and thirty-five and 93/100 dollars, 20  
costs of suit, and that on the eighth day of Feb-  
ruary in the same year Mary A. McDermott re-  
covered a judgment in the same court against your  
orator for the sum of four hundred sixty-three  
and 50/100 dollars damages and forty-four and  
59/100 dollars costs of suit; and that on the thir-  
teenth day of April in the same year, both of  
said judgments were assigned to John H. Mc-  
Cracken.

3. That shortly prior to the thirteenth day of 30  
April aforesaid your orator had caused to be  
placed in the hands of the said John H. McCrack-  
en, who was then an attorney at law practicing in  
the City of Newark, and who was then the attor-  
ney of your orator, sufficient money to pay said  
two judgments, and had directed the said Mc-  
Cracken, as your orator's attorney, to pay the  
said judgments and have them cancelled of re-  
cord; and that instead of paying the said judg-  
ments and having them cancelled, the said Mc- 40  
Cracken purchased the said judgments and took  
an assignment of each of them in his own name,  
and that afterwards the said McCracken caused  
a levy to be made upon the above described prop-  
erty located on Pennington street in the City of  
Newark by virtue of executions issued on said  
judgments, and caused the said property to be  
sold by the Sheriff of the County of Essex, and

10 purchased the same at the Sheriff's sale and caused the deed of conveyance to be made to his wife, Selena A. McCracken; and that the said John H. McCracken actually collects the rents issuing out of said property.

4. That the said property on Pennington street was purchased at Sheriff's sale for a small amount of money, there being a total bid of two hundred and five dollars for the said land and premises and other lands and premises; and your  
20 orator charges expressly that the said property was purchased with money belonging to your orator, and that the said judgments were kept alive with money belonging to your orator, and that the said property in fact belongs to your orator now and that the legal title thereto is held by the said Selena A. McCracken in trust for your orator; and that your orator is entitled to the rents, issues and profits issuing out of said property and is entitled to have a deed of con-  
30 veyance made to him by the said Selena A. McCracken and her said husband John H. McCracken of said property.

5. That shortly after the sale of said property on Pennington street as aforesaid, the said John H. McCracken induced your orator to permit him to collect the rents of all your orator's property including the said property on Pennington street, and did not disclose to your orator that said Sheriff's sale had taken place and your orator  
40 did not know of such sale at that time; and your orator did authorize the said McCracken to collect the rents of all his properties, and your orator was the owner of several houses at the same time and the total rents issuing out of the same was nearly three hundred and fifty dollars per month; and that since about the first day of November Eighteen hundred and ninety-seven, the said John H. McCracken has collected the rents

of your orator's property and has retained the 10  
moneys in his possession.

6. That on or about the nineteenth day of May, eighteen hundred and ninety-seven, the said McCracken sold the property known as Number 580 Clinton avenue in the City of Newark, which belonged to your orator, and out of the proceeds of sale your orator permitted the said John H. McCracken to retain the sum of five thousand two hundred and fifty dollars, which was to be applied to pay money which had been borrowed thereto- 20  
fore for the purpose of satisfying the aforesaid judgments, and that the money had been borrowed from the Merchants National Bank in the City of Newark; and that the said John H. McCracken undertook also to use the said proceeds of sale and other moneys in his hands to protect your orator's interests in certain other properties as hereinafter stated.

7. That your orator was the owner of certain properties known as Numbers 305, 307 and 309 30  
Ferry street in the City of Newark, and there was a mortgage on said property held by the Firemen's Insurance Company, and the said McCracken had charge of said properties as your orator's attorney, and had been for some time collecting the rents issuing out of the same; and that the Firemen's Insurance Company foreclosed the mortgage and the property was sold at Sheriff's sale and the said John McCracken attended the 40  
sale as the attorney of your orator and purchased the property at said sale with money belonging to your orator and caused the deed of conveyance to be made by the Sheriff to his said wife, Selena A. McCracken; and your orator charges that the said Selena A. McCracken had notice that the property was purchased in trust for your orator; and he further charges that she holds the title to the same in trust for your orator; and that the said

10 John H. McCracken still continues to collect the rents issuing out of the said property; and that the lands and premises referred to in this paragraph are more particularly described as follows: ALL that certain lot of land and premises situate, lying and being in the City of Newark in the County of Essex in the State of New Jersey: BEGINNING in the southerly line of Ferry street at the north-easterly corner of property of Van-Buskirk, Heath & Company; thence southerly

20 along said property one hundred forty-six feet and eight inches to rear of lot one block A of Smith & Alling map; thence easterly along the rear line of said lot five feet nine inches; thence northerly on a line between lots numbers one and two Block A on said map and in a continuation thereof to said southerly line of Ferry street one hundred thirty-seven feet and nine inches; thence along Ferry street westerly seventy-three feet more or less to the place of beginning; and your

30 orator expressly charges that the said Selena A. McCracken holds the title to said last mentioned tract of land and premises in trust for your orator and that he is entitled to a deed of conveyance from her and her husband of said land and premises.

8. By way of supplemental bill your orator shows that since the filing of his original bill of complaint the houses erected on the premises above described as Numbers 305, 307 and 309

40 Ferry street in the City of Newark, have been destroyed by fire, and that the insurance money has been collected by the said Selena A. McCracken, or by the said John H. McCracken in her name, and that the said Selena A. McCracken holds the said money in trust for your orator; and that your orator does not know the amount of money so collected by her.

9. That your orator was also the owner of cer-

tain properties known as numbers 220, 220 1/2, 10  
 224, and 226 Peshine avenue in the City of New-  
 ark, which properties were encumbered by three  
 mortgages held by the estate of Charles Dowden;  
 and that the said mortgages were foreclosed and  
 your orator authorized the said John H. Mc-  
 Cracken, as his attorney, to protect his interests  
 in said properties and the said John H. Mc-  
 Cracken undertook to do so; and the said John  
 H. McCracken attended the sale of the said prop-  
 erty made by the Sheriff of the County of Essex 20  
 and purchased the said lands and premises at such  
 sale with money belonging to your orator; and  
 that the money was obtained by the said Mc-  
 Cracken partly from rents of the properties last  
 mentioned and partly from rents of other prop-  
 erties belonging to your orator, and partly from  
 proceeds of sale of said land Number 580 Clinton  
 avenue; and that on or about the fifteenth day of  
 June in the year nineteen hundred the said Mc-  
 Cracken and his wife made a conveyance of said 30  
 lands and premises on Peshine avenue to one  
 Christiana Hochheimer, and that the said Chris-  
 tina Hochheimer conveyed to said John H. Mc-  
 Cracken in exchange for the said Pashine avenue  
 property, certain lands and premises at South  
 Orange in the County of Essex; and that the deed  
 of conveyance from said Christina Hochheimer  
 was made to the said Selena A. McCracken; and  
 that afterwards the said Selena A. McCracken  
 conveyed the South Orange property to Franklin 40  
 F. Mayo in exchange for certain properties sit-  
 uated at East Orange in this state; and your ora-  
 tor charges that the title to the last mentioned  
 property is in the name of Selena A. McCracken,  
 and that the said property was purchased with  
 money or property belonging to your orator; and  
 that she holds the said property in trust for your  
 orator with notice of his equitable rights and

10 claims; and that the said last mentioned property is more particularly described as follows: ALL that certain tract or parcel of land and premises situate, lying and being in the Town of East Orange in the County of Essex and State of New Jersey; BEGINNING at a point in the easterly line of Mitchell place three hundred fifty-five and 46/100 feet southerly from the intersection of the said easterly line of Mitchell place with the southerly line of Main street; thence running southerly sixty-six degrees thirty-one minutes east 20 eighty and 77/100 feet; thence south twenty-two degrees fifty-two minutes west thirty feet; thence north sixty-six degrees thirty-one minutes west parallel with the first course eighty-one and 8/100 feet to said easterly line of Mitchell place, and thence along the same north twenty-three degrees and twenty-nine minutes east thirty feet to the place of beginning.

10. That your orator is informed and believes it to be true that the said John H. McCracken and his wife, Selena A. McCracken, are acting in collusion to prevent your orator from recovering his said properties; and your orator charges that the said John H. McCracken is in actual possession of all the said properties and has been and is collecting the rents, issues and profits arising therefrom, and is applying the money to his own uses and purposes, and that he refuses to pay over the same or any part thereof to your orator; and your orator further charges that all of said 40 properties have been conveyed to the said Selena A. McCracken with notice of the fact that they were purchased with money belonging to your orator and were purchased at the different sales by the said John H. McCracken in trust for your orator, and your orator charges that she holds the title to the several properties aforesaid, in trust for your orator; and that he is entitled to

the aid of this honorable court to establish his 10  
right to the said respective properties, and to es-  
tablish such trust.

11. That all other matters and things set forth  
in the original bill of complaint filed in this cause  
have been omitted from this amended bill for the  
reason that said matters and things have been  
eliminated from the case by the several orders of  
this honorable court dismissing the bill of com-  
plaint as to the said John H. McCracken, Chris-  
tina Hochheimer, Adelaide R. Bird and Ida B. 20  
Miller; and that the said John H. McCracken is  
made a party to this amended bill merely for the  
purpose of requiring him to execute such deeds  
of conveyance as the court may order to be made  
of the said several properties.

All which actings and doings of the said de-  
fendants are contrary to equity and good con-  
science and tend to the manifest wrong, injury and  
oppression of your orator in the premises.

In consideration whereof and for as much as 30  
your orator has no adequate remedy at law and  
can only have relief in this honorable court where-  
in matters of this sort are properly cognizable and  
relievable.

To the end, therefore, that the said Selena A.  
McCracken may without oath, the oath of the said  
defendant being hereby expressly waived, full,  
true and perfect answer and discovery make to all  
and singular the premises, and that as fully as 40  
though the same were herein again repeated and  
she particularly interrogated thereunto para-  
graph by paragraph; except as to such matters  
which the said defendant has heretofore made  
answer unto.

And your orator prays that he may have spec-  
ial relief in this cause as follows:

1st. That a decree may be made in this cause  
adjudging that the lands and premises herein

10 described, the title to which is now in the name of Selena A. McCracken as set forth in this amended and supplemental bill of complaint, are the property of your orator, and that the said Selena A. McCracken holds the title to the same in trust for your orator.

20 2nd. That the said Selena A. McCracken may be compelled to account to your orator for all the rents, issues and profits of the said several above described lands and premises since the title to the same respectively was put in her name; and that she may be compelled by the order of this court to pay over to your orator all said rents, issues and profits arising out of said lands and premises over and above such sums as she may have necessarily paid to keep down the taxes on said property and to make repairs and to pay any lawful encumbrances.

30 And that your orator may have such other and further relief in the premises as shall be agreeable to equity, that he may also recover his costs of this suit to be taxed.

40 May it please your Honor the premises considered, to grant unto your orator a writ of subpoena to be issued out of and under the seal of this honorable court and to be directed to the said defendants John H. McCracken and Selena A. McCracken, his wife, and commanding them and each of them under a certain penalty and on a certain day therein to be expressed, to be and appear before your Honor in this honorable court then and there to answer all and singular the premises and to stand to, abide by and perform such order and decree as shall be agreeable to equity and to your Honor shall seem meet, etc.

And your orator as in duty bound will ever pray, etc.

Solicitor for and of counsel with complainant.

### Answer to Amended Complaint.

The answer of Selena McCracken, defendant, to the amended and supplemental bill of complaint of Moses E. Reeves, complainant.

This defendant, to so much of said amended and supplemental bill as she is advised is material for her to make answer unto, answering says, that she is an entire stranger to each and all of the transactions in said amended and supplemental bill stated, except as hereinafter mentioned, and she neither admits nor denies the same, but relies upon the complainant to prove each and all of the allegations of said bill. She believes it to be true that at or about the time in the bill of complaint stated, the title to property upon Pennington street, in the first paragraph of the bill of complaint described, stood in the name of the complainant, and that on or about the fourth of January, Eighteen hundred and ninety-six, a judgment was obtained against the complainant in the Essex County Circuit Court, by the Export Lumber Company, and that shortly thereafter another judgment was recovered in the same court against the said complainant for a large sum of money. 20 30

She also believes it to be true that the said John H. McCracken subsequently purchased said judgments and procured assignments thereof to him, and that under and by virtue of the executions issuing out of said courts pursuant to said judgments, the said property was advertised for sale by the Sheriff of the County of Essex, and purchased by this defendant for a large sum of money. She denies that they were purchased by the said John M. McCracken, and denies that she had any knowledge whatever of the matters or things in the first, second or third paragraphs of 40

10 said bill of complaint, and shows that since her  
said purchase she has paid a large arrearage of  
taxes due upon said property, a large amount of  
interest that has accrued upon a mortgage there-  
on, and that by reason of her said ownership said  
complainant claims to own said property free of  
any claim that the complainant may have as an  
equity against said property, by reason of any  
alleged relationship between the said complain-  
ant and said John H. McCracken, whether that of  
20 attorney and client, or otherwise, and she shows  
that the complainant and his wife, Mary T.  
Reeves, with full knowledge of the fact that this  
deponent had purchased said property under said  
judgments, subsequently, and on the tenth of Aug-  
ust, in the year Eighteen hundred and ninety-  
eight, under their hands and seals executed a quit-  
claim deed to this defendant of all right, title and  
interest that they, or either of them, had in said  
premises, which said deed, having been first duly  
30 acknowledged by the grantors therein on the sev-  
enteenth of August, before George M. Titus, a  
Master in Chancery of New Jersey, was duly de-  
livered to, and is now in the possession of this de-  
fendant, and ready to be produced, and this de-  
fendant shows that even if the said complainant  
or his said wife, had any interest whatever in  
the said premises by virtue of the facts set up in  
this cause, they discharged and released the said  
premises and this defendant from any such claim  
40 by virtue of said conveyance just referred to.

This defendant denies that the said property  
was purchased by this defendant under said ex-  
ecutions, with the money of the said complainant.

This defendant denies the allegations of the  
sixth and seventh paragraphs of said amended  
bill of complaint, and says she is in entire igno-  
rance thereof, except that she states that she is  
the owner of said property, having purchased and

paid for the same with her own funds, in entire 10  
 ignorance of any right or claim that the said com-  
 plainant might have, or pretend to have therein.  
 She admits that the houses erected on said prem-  
 ises, Numbers 305, 307, and 309 Ferry street, or  
 some of them, have been destroyed by fire and that  
 the insurance money has been collected by her,  
 but she denies that said money is held by her in  
 trust for the complainant, or that the complainant,  
 or the said John H. McCracken, or either of them,  
 has any interest whatever therein. She denies 20  
 that the complainant was the owner of certain  
 properties known as 220, 220 1/2, 224 and 226 Pe-  
 shine avenue, in the City of Newark, or that the  
 complainant authorized the said John H. Mc-  
 Cracken, as his said alleged attorney, to protect  
 the said property from foreclosure that was pend-  
 ing of a mortgage upon said premises, held by the  
 estate of Charles Dowden. She shows however,  
 that at the time of the foreclosure and sale of  
 said premises, the said Moses E. Reeves was only 30  
 the owner of a small part of said premises, and  
 that previous to such sale, he, together with his  
 wife, had conveyed to one Charles E. Reeves, by  
 deed dated January second, eighteen hundred and  
 ninety-six, and recorded in Book O 29 of Deeds  
 for Essex county at page 291, a large part of said  
 premises, and that both the said complainant and  
 the said Charles E. Reeves having defaulted in  
 their interest upon a large mortgage held by the  
 estate of Charles Dowden, the same was in due 40  
 course foreclosed and the property sold out by the  
 Sheriff, and purchased in by the said John H. Mc-  
 Cracken, but this defendant denies that the said  
 John H. McCracken held any moneys belonging  
 to the complainant at that time, or was under any  
 obligation to the complainant, by which said pur-  
 chase was made for the benefit of the said com-  
 plainant, or under or by virtue of which the said

10 complainant derived or continues to have any interest whatever in said property, or the interest of this defendant in said property, or that the money which the said John H. McCracken paid therefor was in any way acquired from rents of the property of the said complainant, or in any way belonged to the said complainant. She admits that on or about the fifteenth day of June, the said John H. McCracken and this defendant

20 said conveyed said lands and premises so as aforesaid acquired by the said John H. McCracken, to one Christina Hocheimer, the said Christina Hocheimer, to whom as aforesaid said premises were conveyed, also receiving at the same time, and as part of the same transfer, the title to property known as 407 Washington avenue in the City of Newark, with a large house erected thereon, worth several thousand dollars, which belonged to this defendant, and had been acquired by her with

30 her own funds, together with one thousand dollars in cash paid by this defendant from her own funds to the said Christina Hocheimer, in return for which, and as a consideration for such transfer the said Christina Hocheimer conveyed to this defendant certain lands and premises referred to in said amended and supplemental bill of complaint, consisting of a plot of ground in the Borough of Vailsburg, now the City of Newark, about one hundred feet front by one hundred and fifty

40 feet deep, with a house thereon, and this defendant, who thereby became the owner of said Vailsburg property, without notice of any claim or demand of any kind or character of the said complainant thereto, and for full value paid by her with her own funds therefor, sold, on or about the twenty-first day of June, Eighteen hundred and ninety-three, the same to F. F. Mayo, receiving as a consideration therefor the property in said bill of complaint referred to, and known as

number 24 Mitchell Place, in the City of East 10  
 Orange, which this defendant still continues to  
 own, and she denies that the complainant has any  
 interest whatever in said property, or any right  
 thereto, and says that she is a *bona fide* purchaser  
 for value thereof, without notice of any alleged  
 claim of the complainant, and further claims that  
 the complainant has slept on his rights, and that  
 it is now too late to undertake, in this honorable  
 Court or elsewhere, to assert his alleged claim  
 after the lapse of thirteen years, and more, 20  
 against this defendant, and she prays the same  
 advantage as if she had pleaded the same.

This defendant further answering shows that  
 subsequent to the happening of all the events set  
 up and relied on by the said complainant in his  
 said amended and supplemental bill as a basis for  
 equitable relief herein, and on the thirteenth day  
 of October, Nineteen hundred and two, in certain  
 proceedings then duly had in the District Court of  
 the United States for the District of New Jersey, 30  
 pursuant to the provisions of an Act of Congress  
 entitled "An Act to establish a uniform system of  
 Bankruptcy throughout the United States" ap-  
 proved July first, Eighteen hundred and ninety-  
 eight, the said John H. McCracken was dis-  
 charged in bankruptcy, and that previous thereto,  
 by an order in said proceedings dated the eight-  
 eenth day of August, Nineteen hundred and two,  
 one Ferdinand H. Wismer was duly appointed  
 the Trustee in Bankruptcy of said John H. Mc- 40  
 Cracken, to whom, by virtue of said Act of Con-  
 gress as aforesaid, all right, title and interest of  
 every kind of the said John H. McCracken in and  
 to the said premises in said amended and sup-  
 plemental bill, passed, and this defendant relies  
 upon said bankruptcy, and says that the said  
 complainant can assert no equity as against her,  
 without the presence of the said Trustee in Bank-  
 ruptcy in this suit, and she alleges that such pro-

10 ceedings in bankruptcy are a complete bar to the further prosecution hereof.

And this defendant further denies each and all of the other allegations in said amended bill of complaint, and prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

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Opinion.

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STEVENS, V. C.

The original bill was filed on September 4, 1901. Its object was to secure an accounting against John H. McCracken and Selena, his wife, in respect of a number of lots of land in Newark, to which they had acquired the legal title and which, or the proceeds of which, were claimed to be the property of complainant. While the suit was progressing Mr. McCracken was adjudged bankrupt. 30 After the adjudication, and after the evidence had been taken, he came in and pleaded his bankruptcy and the plea was allowed (60 Atl. Rep., 332). Thereupon, complainant filed an amended and supplemental bill in which he charges that Selena, the wife of John H. McCracken holds lots designated as Nos. 102 and 102 1/2 Pennington street, and 305, 307 and 309 Ferry street, Newark, in trust for him, and that she is accountable to him for the proceeds of 220, 220 1/2, 224 and 246 40 Peshine avenue, Newark, these last named lots having been exchanged for other property taken in her name.

The answer denies the trust.

The evidence is confused on both sides. Mr. McCracken's evidence is often contradictory in the most important particulars and neither Mrs.

McCracken or Mr. Whitehead were called to cor- 10  
 roborate him. The evidence relates to a number  
 of other lots besides those above mentioned and  
 it covers a considerable period of time. I shall  
 not attempt to do more than refer to those trans-  
 actions which relate to the pith of the matter now  
 before me.

The relations of the parties to each other must  
 first be adverted to. Reeves was a builder. He  
 seems to have had a fondness for speculating in  
 real estate. He would buy lots and build small 20  
 houses upon them. John H. McCracken was a  
 lawyer. He would search the title to these lots,  
 endorse commercial paper for Reeves, which  
 paper would be discounted and the proceeds used  
 in the building operations. After the buildings  
 were erected McCracken would assist Reeve in  
 obtaining mortgages upon the property built  
 upon, and the money raised by mortgage would  
 be used to pay off the notes. Occasionally,  
 Reeves would, in turn, endorse for McCracken's 30  
 accommodation. McCracken's wife was one of  
 two beneficiaries of the estate of her father,  
 Charles Dowden which estate owned consider-  
 able realty. Its legal business was attended to  
 by McCracken and necessary repairs to the realty  
 were done by Reeves. McCracken had, moreover,  
 on previous occasions, attended to some other  
 legal matters for Reeves, although he was not  
 Reeves' sole legal adviser.

Such were the relations of the parties on Jan- 40  
 uary 3, 1896. Prior thereto a suit had been com-  
 menced against Reeves by the Export Lumber Co.  
 It was defended by Mr. Bradner but a *relicta*  
 being given, judgment was inevitable and  
 was, in fact, entered on January 4th. On Jan-  
 uary 3rd, Reeves made a deed to McCracken of  
 four distinct parcels of land, among these the  
 Clinton avenue property on which he lived.

10 Reeves says the conveyance was made on McCracken's recommendation to enable him (McCracken) to dispose of the property and pay the judgment. McCracken says it was made to secure him on his endorsements. I am inclined to think the latter was the primary object. It is conceded that the conveyance was not intended to be absolute. As soon as the Lumber Company had recovered judgment, it filed a bill to set aside this conveyance as fraudulent. This led to negotia-  
 20 tion with the result that on April 13, 1896, the Export Lumber Company received the amount due to it and assigned to John H. McCracken its own judgment for \$2,175 and costs and also another judgment recovered by one Mary McDermit of which it had taken an assignment.

As the status of McCracken in relation to this judgment is a matter of much importance, it is necessary carefully to consider it. The bill alleges that complainant caused to be placed in McCracken's hands sufficient money to pay these  
 30 judgments; and that instead of paying them McCracken purchased them and took an assignment of them in his own name, and caused the sheriff to sell the complainant's Newark properties thereunder. The answer of Mrs. McCracken merely avers that she believes it to be true that John H. McCracken purchased said judgments and procured assignments thereof to him and that such properties were purchased under and by virtue  
 40 of the executions issuing thereunder. The material part of the allegations of the bill is that the money by which the purchase was made was complainant's money. The defendant does not specifically deny this and the well settled rule of equity pleading is that what is not denied is admitted. *Sanborn v. Adair*, 2 Stew., 338; *Morris v. Kettle*, 11 Dick., 826-828.

The evidence on this head is as follows: It is

admitted that the money used to pay for the assignment of the judgments was obtained by the discount of a note. Reeves says, and McCracken does not deny his statement, that after the judgment had been entered he and McCracken together went to Mr. Kanouse, the cashier of the Merchants Bank, where, as I understand, both McCracken and Reeves had their bank account, and asked him to discount a note. Kanouse declined to do anything until he had seen Mr. Ripley. Reeves says he went to Ripley's house and to use his own words, "negotiated with him to discount this note for Mr. McCracken and he helped me." He testified further "Mr. McCracken raised it with my notes." In answer to the question "Did you endorse the note?" he replied "No, sir, he (McCracken) didn't want me to, but of course he had an object in that." Now this somewhat confused testimony certainly called for a specific statement on McCracken's part as to how the money was procured. He limits himself in his evidence to the vague assertion that he paid the full amount of the judgment to Messrs. Colie & Swayze, without telling us how or by what means he obtained the money. The question is not whose hand paid out the money, but for whose benefit or accommodation the loan was made.

There is another pertinent fact. One of the properties admittedly taken in the first instance by McCracken as security for his endorsements was the homestead property on Clinton avenue. This was sold on May 20, 1897, for \$11,250. McCracken's answer to the fourth interrogatory in the original bill is that from this sum was deducted mortgages, taxes and liens to the amount of \$6,869.35, leaving a net balance in his (McCracken's) hands of \$4,380.65. This he admits he did not pay to Reeves. Reeves says that McCracken told him that the note with whose pro-

10 ceeds the Lumber Company's judgment was purchased was paid out of the proceeds of this sale. McCracken does not controvert this statement and I do not think that any one reading all the evidence can have any doubt about its substantial accuracy.

The conclusion seems inevitable that McCracken holding as he did a position of trust and confidence toward Reeves—for he was very far, indeed, from being a mere mortgagee—got  
 20 money to buy the judgments through Reeves' exertions, for the purpose of preventing a sale of Reeves' property to strangers, and that this note was ultimately paid with the proceeds of property that in equity belonged to Reeves.

I shall now consider the use to which McCracken put these judgments. His conduct was ambiguous. Indeed, it would seem as if he had no clear appreciation of just what his and Reeves' respective rights or relations were. He says that  
 30 after he sold under the judgments, he regarded what he and his wife bought in as his own property, but his actions do not bear him out in this statement for he allowed Reeves to collect the rents and pay the interest and taxes. Reeves owed him scarcely anything. He did, indeed, have a bill against him, largely for legal services, amounting, up to January 13, 1896 to \$732, but Reeves had counterclaims against him and against the Dowden estate for repairs. Mr. McCracken's liability on the notes discounted for  
 40 Reeves' accommodation, as shown by the chattel mortgage, was \$3,285 but even this contingent liability was offset by Reeves' contingent liability for McCracken. Now although Reeves' property was heavily encumbered, the equities were of considerable value and it is little short of ridiculous to suppose that Reeves would have knowingly permitted McCracken, for a merely nominal consid

eration, to buy it all in for the sole benefit of McCracken and his wife. All the bids at the two sheriff's sales were trifling in amount—little more than enough to pay the sheriff's fees. It would seem from the evidence that McCracken thought himself, so far master of the situation, that he could do very much as he pleased, but I cannot believe that in the spring and summer of 1896 he had conceived and was carrying out a plan to strip his client of everything. 10

I may notice in this connection one other matter. The sheriff's deeds show a third judgment of the State Banking Company for a small amount. It was, after some hesitation, admitted by McCracken that this judgment was controlled by John Whitehead, who was likewise acting for Reeves. It can, therefore, have no effect in the case. 20

The first thing that McCracken did with these judgments assigned to him on April 13, 1896, was immediately to direct the sheriff to sell the very properties that had been conveyed to him on January 3rd, no one of which is now the subject of controversy. McCracken bid them in, in his own name, and his discharge in bankruptcy bars any proceeding against him in respect of them. The total amount of his bids was \$170. 30

The next thing that he did was to direct a second sale on June 2, 1896, of the rest of Reeves' Newark property to satisfy the residue of the amount due on the judgments. The two lots on Pennington street were bid in for Selena McCracken for \$45. The equity in this property probably exceeded \$2,000 for the Orange Bank mortgage given to secure a debt, since wholly or partially adjusted by Reeves, would have been cut out by the sale if it had been made to a stranger. At the same sale McCracken bid for the Peshine avenue property \$50; for the Ferry street property 40

10 \$45, and for a third parcel, not in controversy, \$30. The Peshine avenue property was, as I understand the evidence, then encumbered with mortgages amounting to \$3600. The Ferry street property was mortgaged for \$2000. The equity in the latter was, according to Reeves, \$3,000.

I have been at some loss to understand why after the judgment creditors had been satisfied and the control of the judgments secured, it was thought necessary to sell at all. Reeves, so far  
 20 as the evidence shows, was not being pressed by his creditors. True, his real estate, as I have said, was heavily encumbered; taxes and assessments were unpaid and, possibly, interest on some of the mortgages; but this was all. I can conceive of but two reasons for selling. One was the better to secure McCracken on his endorsements, and the other was that it may have been deemed advisable, by judgment sales, to get rid of certain liens like that of the second mortgage held by the  
 30 Orange Bank.

If the case rested here there would not be the least difficulty in decreeing an account. It is complicated, however, by what took place afterwards. Each of the three properties which it is sought to follow in this suit has a distinct history and must be dealt with separately.

(1) First, the Pennington street property. This, as I have said, was sold by the sheriff to Mrs. McCracken for \$45. It is hardly necessary  
 40 to say that the conveyance to the wife is as open to criticism as if it had been made to the husband. The consideration was grossly inadequate. The sale was made under judgments, which, if not paid, could only have been used by McCracken in the interest of Reeve. Mrs. McCracken was represented at the sale by Mr. John Whitehead who, at that time, was also acting for Reeves. I may add that neither Mrs. McCracken nor Mr.

Whitehead were called to testify as to this or any 10  
other of the transactions.

It is said, however, that Mrs. McCracken's title  
was afterwards confirmed by a quitclaim deed  
from Mr. and Mrs. Reeves. This deed is pro-  
duced. It is dated August 10, 1898, and acknowl-  
edged seven days thereafter. It has never been  
recorded. Mr. McCracken gives this explanation  
of how the deed came to be made. "Mr. Reeves  
seemed to have a good opinion of the Belmont  
avenue property (one of the properties Mc- 20  
Cracken had bought in on April 14th) and said  
he could get good equity out of it if he could con-  
trol it and trade it off, and I told him that I would  
deed it to him, and my wife had a dower interest  
in that, and his wife had a dower interest in the  
place on Pennington street where my wife had  
bought at sheriff's sale, and so I agreed to give  
him a deed of myself and wife, for the Belmont  
Avenue property and he would release the dower  
on the Pennington street property which my wife 30  
held."

According to Mr. McCracken's idea then, the  
Pennington street property belonged absolutely  
to his wife, subject only to Mrs. Reeves' inchoate  
right of dower, which, of course, the sale under  
execution against Reeves had not transferred;  
and the Belmont avenue property also belonged  
absolutely to Mr. McCracken, for as he says, his  
wife had a dower interest in it. As he states it,  
the conveyance was *not* intended to transfer 40  
Reeves' interest as equitable owner to McCrack-  
en as holder of the legal title, but to offset dower  
rights. Now in point of fact, Mrs. McCracken had  
no dower right to convey. She had no beneficial  
right whatever in the Belmont avenue property.  
If McCracken's version of the affair is correct,  
the quitclaim deed was given without valuable  
consideration under a misapprehension, created  
by himself.

10 On the other hand, Reeves, his wife and his son  
 all testify that the deed was made with a view to  
 a contemplated loan on that particular piece of  
 property, for the benefit of Reeves. This appears  
 to be the more probable reason for making it, not  
 only by reason of the fact that the deeds were  
 not contemporaneous, but also by reason of the  
 fact that the quitclaim was never recorded and  
 that only two days after the deed was acknowl-  
 20 "Pennington Street loan was denied."

If McCracken is to be believed, the deed was  
 made on a consideration which did not, in fact,  
 exist; if Reeves is, it was made for a purpose  
 which failed. In either case the legal and equit-  
 able rights of the parties underwent no change.

(2) The Ferry street property. This, as I have  
 said, was bought in for \$45 by Mr. McCracken  
 at a sheriff's foreclosure sale which took place  
 on June 2, 1896. The land was subject to a mort-  
 30 gage of \$2,000 held by the Firemen's Insurance  
 Company. The company commenced its fore-  
 closure while Mr. McCracken was in Europe. He  
 says that he went abroad on July 10th and re-  
 turned September 1st, 1897. The suit does not  
 seem to have been pressed very much for the sale  
 did not take place until August 22, 1898. There  
 was decreed to be due \$2197.33 with costs (\$154.-  
 28). It was bid in for Mrs. McCracken by Mr.  
 McCracken for \$2600. He says that his wife paid  
 40 for the property with her own money. When,  
 however, he was cross-examined as to the details  
 of the transaction, the following facts appeared:  
 Reeves, on January 27, 1897, authorized Mc-  
 Cracken to collect the rents which amounted to  
 \$20 a month. Out of them McCracken paid the  
 interest on the Insurance Company's mortgage.  
 After a while he sent the company a check for in-  
 terest but they refused to take it, because he had

not paid the taxes and assessments amounting to 10  
 between \$400 and \$500. He was secretary of the  
 New Jersey Building and Loan Association and  
 at the time of the foreclosure sale, he obtained  
 from that company, for Mrs. McCracken, on the  
 security of this very property a loan of \$2800.  
 With the money thus obtained he paid the price  
 bid and after satisfying the decree had enough  
 left to pay off all the taxes. He says that the loan  
 of the Building Association was further secured  
 by a pledge of some of that company's stock held 20  
 by Mrs. McCracken.

Now this is certainly a singular transaction.  
 McCracken stood in the position of Reeves' trustee.  
 As such he was bound to guard his interests.  
 Instead of doing so he, by means of a building  
 loan mortgage—without the expenditure of a  
 single dollar of his own or of his wife's money—  
 under the cover of a judicial sale, which it is  
 difficult to believe he could not have prevented,  
 transferred the title from himself to his wife 30  
 and now claims that she has thereby become absolute  
 owner. I do not think that under these circumstances  
 Mrs. McCracken became a *bona fide* purchaser  
 for value without notice.

(3) Peshine avenue property. Part of this had  
 been conveyed by complainant to his son Charles  
 on January 3, 1896. The part which complainant  
 retained was a lot 36 feet by 105 feet. The whole  
 tract was encumbered by mortgages held by the  
 Dowden estate, amounting to \$3600 and that part 40  
 of it held by Charles Reeves was further encumbered  
 by a subsequent building association mortgage.  
 The property was bid in by Mr. McCracken  
 under the Lumber Company's judgment for \$50.  
 He took title in his own name. The Building  
 Association mortgage, originally intended as a  
 first lien, created a complication, brought about,  
 in part at least, by McCracken

10 himself, for he says he had in his hands sufficient money to procure a release of the Charles Reeves part from the lien of the Dowden mortgages, and to make the mortgage of the Building Loan Association, of which he was counsel, a first lien on that part. At Reeves' solicitation, he says, he parted with the money. To get himself out of the difficulty he foreclosed one of the Dowden mortgages but in order not "to stir things up," as he expresses it, he did not make the Building  
 20 Loan association a party. At the foreclosure sale he again bid in the property himself. He bid \$2000 but paid to the Dowden estate not only the amount bid, but also a part or the whole of what remained due the estate. Why this foreclosure was undertaken does not very clearly appear.

Perhaps it was to clear the property of liens other than the building association's lien. How it altered McCracken's status with respect to Reeves I do not understand. If he was trustee  
 30 before the foreclosure, he remained trustee after. He subsequently exchanged the property—both that belonging to Moses and that belonging to Charles Reeves—for other property taken in his wife's name.

The transaction is complicated and I have merely outlined it. Of course the complainant is only entitled to the net profit (if any) of so much of the entire tract as belonged to him. With Charles' part this suit has no concern. If any  
 40 profit at all can be traced into the property which Mrs. McCracken now holds she stands as to it, as a volunteer—not as a *bona fide* purchaser for value.

The complainant is entitled to a declaration that Mrs. McCracken holds the Pennington and Ferry street properties in trust for him and is accountable for the rents and profits subject, however, to such proper allowances as an accounting may show her to be entitled to.

## Petition of Appeal.

NEW JERSEY COURT OF ERRORS &amp; APPEALS.

Between, MOSES E. REEVES, Complainant-Respondent, and SELENA A. McCracken, <i>et al.</i> , Defendants-Appellants.	}	On Appeal from Final Decree of the Court of Chancery. Petition of Ap- peal.	20 20
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The petition of Selena A. McCracken, the appellant in the above stated cause respectfully shows, that your petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his Honor, William J. Magie, Chancellor of New Jersey, bearing date the fourteenth day of 30  
July, in the year nineteen hundred and six, wherein your petitioner and others were defendants, and the said respondent was complainant, in the following respects, to-wit:

(1) That the said decree orders and adjudges that your petitioner holds the legal title to certain lands and premises in the City of Newark, described in the said decree, and known and designated as #102 and #102-1/2 Pennington street, in trust for the use and benefit of the said complainant, and his heirs and assigns, and that your petitioner shall account for and pay over to the 40  
said complainant, the rents, issues and profits that have issued out of said lands and premises since the title thereof was conveyed to your petitioner, less all monies necessarily paid out by your petitioner for the benefit of said property.

(2) That the said decree orders and adjudges

10 that your petitioner holds the legal title to certain lands and premises in the City of Newark, described in the said decree, and known and designated as Nos. 305, 307 and 309 Ferry street, in trust, for the use and benefit of the said complainant, his heirs and assigns, and that your petitioner shall account for and pay over to the said complainant, the rents, issues and profits that have arisen out of said lands and premises, less all monies necessarily paid out by your petitioner  
 20 for the benefit of said property.

(3) That the said decree orders and adjudges that the said complainant has a lien on said premises described in the decree, and situated on Mitchell Place, in the Town of East Orange, County of Essex, and State of New Jersey, for so much of the proceeds of the sale of the said property on Pershine avenue in the City of Newark, mentioned and described in the bill of complaint filed herein, which belonged to the said complainant,  
 30 as may appear upon an accounting to be taken for that purpose, to have been used in the purchase of said property on Mitchell Place, in East Orange, and that the said complainant is entitled to have the amount of the lien ascertained, and when ascertained, the property aforesaid shall be sold under the order and direction of the said Court of Chancery, for the paying and satisfying of said lien, if necessary so to do.

(4) That the said decree orders and adjudges  
 40 that the matters and things in the said decree mentioned, be referred to Francis Child, Esquire, one of the Special Masters of the said Court of Chancery, to ascertain the amount of rents, issues and profits received by your petitioner out of the aforementioned properties, situate on Pennington street and Ferry street respectively, in the City of Newark, and also to ascertain the amount to which your petitioner is entitled for disburse-

ments necessarily or properly made for the bene- 10  
 fit of said properties respectively, and also to  
 state the account separately in reference to said  
 Ferry street and Pennington street properties,  
 and also to ascertain and fix the amount of the  
 complainant's lien on the said property on  
 Mitchell Place in East Orange, and to ascertain  
 how much of the proceeds of the sale of the said  
 property on Pershine avenue, in the City of New-  
 ark, was subsequently invested by John H. Mc-  
 Cracken in the purchase of the said property on 20  
 Mitchell Place, in East Orange

(5) That the said decree orders and adjudges  
 that the said complainant do recover from your  
 petitioner his costs of suit to be taxed, including  
 transcript of testimony.

And your petitioner humbly appeals from the  
 whole and every part of said final decree afore-  
 said, upon the ground that the same is erroneous,  
 for that your said petitioner should not have been  
 decreed to hold the said properties, situated on 30  
 Pennington street and Ferry street respectively,  
 in the City of Newark, in trust, for the use and  
 benefit of the said complainant, his heirs and as-  
 signs, and the said complainant should not have  
 been decreed to have a lien upon the said prop-  
 erty situated on Mitchell Place, in East Orange,  
 for so much of the proceeds of the sale of the  
 property on Pershine avenue, in the City of New-  
 ark, as should appear upon an accounting here-  
 after to have been used in the purchase of the 40  
 said property on Mitchell Place, in East Orange,  
 and the said matters herein should not have been  
 referred to Francis Child, Esquire, one of the  
 Special Masters of this Court, or to any other  
 Special Master or Master thereof, and the said  
 complainant should not have been decreed to re-  
 cover from your petitioner his costs of suit to be  
 taxed, including transcript of testimony.

10 Your petitioner therefore prays that the final decree of the said Chancellor may in all things be 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.

McCARTER & ENGLISH,  
Solicitors for and of counsel with  
defendant, Selena A. McCracken.  
Robert H. McCarter,  
20 Of counsel with defendant.

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Notice of Appeal.

IN CHANCERY OF NEW JERSEY.

30	Between, MOSES E. REEVES,  and  SELENA A. MCCRACKEN, <i>et al.</i> , Defendants.	}	On Bill, etc Notice of Appeal.
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40 Selena A. McCracken, the above named defendant, hereby appeals from the whole and every part of the final decree entered in the above entitled cause on the fourteenth day of July, Nineteen hundred and six, to the Court of Errors and Appeals in the last resort in all causes.

McCARTER & ENGLISH,  
Solicitors of Defendant.  
Robert H. McCarter,  
Of Counsel.

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

ROBERT H. McCARTER.

## Testimony.

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## IN CHANCERY OF NEW JERSEY.

Between

MOSES E. REEVES,

Complainant,

and

JOHN H. McCracken, *et als.*,

Defendants.

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Before: HON. FREDERICK W. STEVENS, V. C.

Examination of witnesses, etc., at the Chancery Chambers, Newark, N. J., on Thursday, October 30, 1902.

For complainant appears Frank E. Bradner.

For defendants appears Robert H. McCarter.

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Mr. McCarter: Before we proceed I would like to state that one of the defendants whom I represent, Mrs. Christina Hochheimer, who is alleged to have bought one of these pieces of property with notice, and who denies that allegation and says she is a purchaser without notice, is unable today to be here, as she is undergoing an operation. I desire to reserve the right to represent her particular case on whatever day she will be able to come here. I do not think, however, that 40 it will interfere with the progress of the case at all.

MOSES E. REEVES, complainant, sworn in his own behalf:

Direct-examination by Mr. Bradner:

Q. Where do you live now, Mr. Reeves? A. I live in Arlington.

10 Q. How long have you lived there? A. About, a little over four years.

Q. Before that time where did you live? A. I lived on Clinton avenue.

Q. In Newark? A. Yes, sir. I lived there ten years.

Q. How long had you lived in Newark? A. Why, fifty or sixty years; ever since I was a boy.

Q. How old are you now? A. Seventy-five years on the nineteenth day of August last.

20 Q. Did you know Mr. McCracken? A. Yes, sir.

Q. How long have you known him? A. Thirty-five years.

Q. Have you had any business dealings with him during that time? A. Yes, sir.

Q. What? A. Well, for more than twenty-five years he was my counsel.

30 Q. Did you have any lawsuits in which he appeared for you? A. Yes, sir. About twenty-five years ago I went through bankruptcy, and Mr. McCracken put me through bankruptcy, had suits all the way down.

Q. Did you in the first part of January, 1896, convey any properties to Mr. McCracken? A. Yes, sir.

Mr. Bradner: I ask the other side to produce that conveyance.

Q. Why did you make a conveyance to him at that time?

Objected to.

40 The Court: What are the conveyances? You will have to produce the conveyances in order that the Court may rule intelligently on the question.

Mr. McCarter: The second of January, 1895, that seems to be the deed.

Mr. Bradner: I offer in evidence the deed of conveyance made by Moses E. Reeves and Mary T. Reeves, his wife, to

John H. McCracken, dated January 2, 10 1896, acknowledged January 3, 1896, and recorded January 3, 1896, in book 029 of deeds, on page 279. It purports to convey the property set out in the bill. I think there were five tracts in it—four tracts of land set out in the bill. The consideration mentioned in the deed is thirty-five hundred dollars.

Q. You made that deed and gave it to Mr. McCracken, did you not? A. Yes, sir. 20

Q. And what did you receive from him—anything? A. No, sir.

Q. State the circumstances under which you made that deed of conveyance to Mr. McCracken?

Objected to as incompetent.

The Court: On what grounds do you object?

Mr. McCarter: Why, I do not understand that it is sought to set aside the deed because there was no consideration; and it occurs to me that the sole ground, even taking the complainant's story as true, as alleged in the bill, that the conveyance was made, being, on their own story, a scheme between the complainant and the defendant to avoid the just payment of the complainant's debts, it won't lie in his mouth to now undertake to upset the position he has put the defendant in; that it would be against public policy to permit it. Of course we deny that that is the situation; but we do not think that, on his own story, the complainant can now undertake to exploit that scheme by parol evidence. 30 40

The Court: You don't demur to the bill?

Mr. McCarter: No, sir.

The Court: If the fact be as they allege it in their bill, and if the fact be, further,

10 that this was a conveyance in fraud of creditors, why then the legal conclusion will follow, that he cannot get this property back. But as I understand it, both sides admit that the real consideration was not the consideration expressed in the deed, and I understand the object of the inquiry to be to find out what the consideration was. I will admit the evidence.

By Mr. Bradner: Q. Go on Mr. Reeves. I want you to state why you made that deed to Mr. McCracken and what you got for it? A. Yes, sir.

Q. Just tell all about it. A. Yes, sir. Well, the Export Lumber Company, in New York, had a claim against me of about twenty-one hundred dollars and they sued me; I thought I had a defense, and I employed Mr. Bradner in the case. They were about to get judgment against me, and Mr. Bradner notified me that—

Objected to.

30 Witness: —I must do something, so I consulted Mr. McCracken, as he was my counsel so long, and he recommended me to transfer the property to him. Mr. Bradner told me to make an assignment for the benefit of my creditors.

Mr. McCarter (Interrupting): I do not think that is proper.

Witness: For the benefit of my creditors. Mr. McCracken told me he would help me to dispose of the property or sell it, or try to, so that I could pay the judgment that was then against me, so that I could get out in that way; so then I transferred the property on his recommendation, his pledges and promises.

40 Q. Well, did he give you any paper? A. No, but he promised to, and when we went to go over before Mr. Whitehead, he acknowledged the papers of his own accord. "Mr. McCracken must give you a little writing back," that is what Mr. Whitehead said.

Q. Was Mr. McCracken there? A. Certainly 10  
he was there and promised to do it, but he said  
it would interfere; he might be brought up on  
supplementary proceedings and he would not do  
it.

Q. Has he ever given you anything at all— A.  
(Interrupting) No, sir.

Q. —to show any of your rights in this prop-  
erty? A. No, sir, or any other property he ever  
handled.

Q. When you made that deed, what properties 20  
did you convey to him? A. Well, the homestead  
where I lived.

Q. (Interrupting) Where was that? A. That  
is in Clinton avenue—Perry street, Pennington  
street and I think Boyd street. I wouldn't be  
positive about all of these properties.

Q. Did it include your home on Clinton avenue?  
A. Yes, sir.

Q. Was the Clinton avenue property subse-  
quently sold? A. Yes, sir. 30

Q. To whom? A. Mr. Scheuer, in the state  
bank, for half what it was worth.

Q. How much was given for it? A. Well, Mr.  
McCracken—

Mr. McCarter (interrupting): If you  
know.

Witness: How do I know? Why, because I was  
present at that time.

Q. Who told you? A. Why, I helped to make  
the bargain; I made the bargain on conditions 40  
I would have so much money out of it, but Mr.  
McCracken and Mr. Whitehead done it their own  
way and kept the proceeds.

Q. How much was given for that property?

Mr. McCarter: How do you know it?

Witness: Because I went to Mr. Scheuer, and  
I know all about it.

The Court: Then you will have to call

10 Mr. Scheuer. This is rather a matter of accounting anyhow. The only question now, so far as this conveyance is concerned, is on what terms it was made. If it was made so as to indicate a trust, then the Court will so declare, and the consequence will follow that there must be an accounting.

Q. What was the value of your home at that time? A. It was sold for eleven thousand dollars.  
20

Mr. McCarter: That's not right.

The Court: No, that won't do.

Q. What was the value of it? A. The value was then at least twenty thousand dollars.

Q. What mortgage was there on it? A. There was a six thousand dollar mortgage.

Q. What was the value of the other properties that you transferred? Do you know yourself? A. Yes, sir.

30 Q. Well, what was the value of the property on Astor street? A. Why, at the very lowest estimate they were worth three thousand dollars apiece—at the very lowest estimate; but they were put at four thousand at that time.

Q. How many houses were on the Astor street property, if you know? A. Two houses.

Q. How much mortgage on the two? A. Fifteen hundred dollars each.

40 Q. When you say three thousand dollars, do you mean the equity or the whole value? A. The whole value ought to be worth four thousand dollars; but put it at something less.

Q. Do you mean four thousand dollars for the two? A. No, I mean four thousand dollars apiece.

Q. What was the value of the property on Boyd street? A. The fire insurance company valued it at twelve thousand dollars; yes, a little above that.

Q. What was the mortgage on it? A. A loan of 10 five thousand dollars, but it's worth ten thousand dollars at any time.

Q. What was the mortgage on it? A. Five thousand dollars.

Q. Who held the mortgage? A. The Howard Savings Institution.

Q. What was the value of the property on Belmont avenue? A. Well, about six thousand dollars.

Q. What mortgage was on that? A. Why, four 20 thousand dollars.

Q. Who held that? A. Howard Savings Institution.

Q. How much did you owe Mr. McCracken at the time you made this transfer? A. Not a cent. But he owed me eight hundred dollars he borrowed.

Mr. Bradner: I offer in evidence a mortgage dated January 2, 1896, made by Moses E. Reeves to John H. McCracken, acknowledged 30 January 3, 1896, and recorded January 3, 1896. It purports to be given to secure thirty-two hundred and eighty-five dollars, it says here, but I think there has been an alteration made in it, "according to the tenor and effect of five separate promissory notes," etc.

Q. You gave this chattel mortgage also, did you not? A. Yes, sir.

The last paper referred to is marked 40 "P-2."

Q. That covered your household furniture, wagons and horses? A. Yes, sir.

Q. When did you give that? A. Well, I done that by Mr. McCracken's recommendation, for my benefit, not for his.

Q. The mortgage refers to a number of promissory notes made by Mr. Reeves and son. Do

10 you know anything about that? A. Well, I know the son had nothing to do with these transactions, but Moses E. Reeves, some of them.

Q. What were those notes? A. Well, they were notes that were given when Mr. McCracken borrowed the eight hundred dollars. He had got a note discounted in the bank and of course we had not money enough to pay the bank, and McCracken borrowed it on my note. We had to give a note to the Merchants Bank, where Mr. Mc-

20 Cracken's account was.

Q. Do you mean that's the way those notes started? A. No; there may have been some notes before.

Q. What kind of business did you do with Mr. McCracken by notes, getting money out of the bank?

Witness: Do you want me to tell the whole of it?

Mr. Bradner: We want to know what it was.

30 A. Several years ago Mr. McCracken—we made an arrangement with the Merchants Bank to borrow three thousand dollars, and Mr. McCracken would put his name on it, and it worked very nicely for me to build houses, and I thought McCracken was helping me terribly. Once again we borrowed three thousand dollars the same way, and the notes was paid. And another time we borrowed three thousand dollars in the same way to build the house on Boyd street, but hard times

40 began to come and McCracken asked me if I would loan him eight hundred dollars, and I couldn't refuse him when he had been so kind, as I thought to endorse those notes, so I loaned him the eight hundred dollars, and I had to have a lawsuit with him to get it, and haven't got it yet.

Q. What has become of those different notes? A. Why, we had to make one note for the deficiency that we didn't have enough out of this

three thousand dollar note; and then there was 10  
 some other things besides this. Mr. McCracken  
 was sometimes in the habit of getting notes dis-  
 counted for me, and I thought he was my best  
 friend, but I found it out on one occasion.

Q. (Interrupting) I want to ask you; when you  
 made this chattel mortgage and conveyed your  
 home to Mr. McCracken were these notes out-  
 standing then? A. Yes, sir.

Q. How many of them? A. I cannot say posi-  
 tively now, but there must have been somewheres 20  
 in the neighborhood of four thousand dollars, I  
 think, but I wouldn't be positive.

Q. Have you had any money on them?

Witness: Had the money?

Mr. Bradner: Did you get the money for those  
 notes?

The Court: As I understand they were dis-  
 counted by the bank, weren't they?

Witness: Yes, sir, that was the fact.

By the Court: Q. And you got all but eight 30  
 hundred dollars?

Mr. McCarter: He got the whole thing,  
 and then, he claims, Mr. McCracken bor-  
 rowed eight hundred dollars.

The Court: The claim is that out of the  
 moneys paid by the bank on these notes he  
 took eight hundred dollars.

Witness: I mean that Mr. McCracken borrowed  
 eight hundred dollars, and therefore we owed the  
 bank all the three thousand dollars note; some- 40  
 thing that way.

By the Court: Q. How did McCracken borrow  
 the money? Did you hand it to him? A. He  
 had a check and he took it out and he promised  
 to give me a check showing the transaction, but  
 he would never do it, but made a bogus check, but  
 it didn't work when in court, so I got judgment  
 against him.

10 By Mr. Bradner: Q. At the time you made this deed was anything said about these notes? A. There was a regular settlement by the—

The Court (Interrupting): One moment You say "this deed." What deed do you refer to?

Mr. Bradner: I mean the deed conveying your homestead to him.

A. Why, before we made that deed, Mr. McCracken owed us somewheres in the neighborhood  
20 of three or four hundred dollars, and he got my son in my presence to receipt this bill that we had rendered and make a separate charge with the promise that he would pay them hereafter; then there was a sort of settlement there at that time when we gave the chattel mortgage and the deeds and the due bill, that perhaps will be shown. They were all given at one time, as Mr. McCracken recommended.

Q. Where did this transaction take place? A.  
30 In Mr. McCracken's office.

Q. That was the date the deed was given or before? A. It was all given him at the same time.

Q. Who was there at that time? A. My wife, my son, and a young man that was then clerk for Mr. McCracken, that has since died; I don't know his name.

Q. What bills do you refer to that your son receipted? A. Bills of Mr. McCracken's bills of  
40 the Dowden estate. We were doing quite some work for Mr. McCracken then.

Q. Who do you mean by "we?" A. My son and I.

Q. What was your business then? A. We were carpenters in business together.

Q. And you had some bills against McCracken?  
A. Yes, sir.

Q. And your son— A. (Interrupting) Receipted the bills.

Q. Why was that done? A. So if Mr. Mc- 10  
Cracken was brought up on supplementary pro-  
ceedings he could have a voucher to show.

Objected to.

Q. Were you paid anything for the receipted  
bills? A. Not a cent.

Q. Were you credited anything? A. No, but  
we sued the Dowden estate since and got it.

Q. What was paid about these notes at that  
time when they were in the bank? A. I don't  
recollect anything that was said, not a word, but 20  
I renewed them notes from time to time myself  
and paid the interest.

Q. Have the notes since been paid off in a set-  
tlement? A. Yes, sir.

Q. What was said about securing Mr. Mc-  
Cracken, or anything of that kind?

Witness: About securing Mr. McCracken?

Mr. Bradner: Yes.

A. There was nothing said that I know of about  
securing Mr. McCracken. 30

Q. I am talking about this time when you were  
all together in his office; I want you to tell every-  
thing that was said. Didn't the subject of these  
notes come up, and wasn't there something said  
about securing Mr. McCracken so he wouldn't  
lose anything? A. Well, yes, there was one con-  
sideration that Mr. McCracken said if I had not  
done it it would have almost ruined him.

Q. When did he say that? A. Why, he said  
that afterwards. 40

Q. He said that afterwards? A. Yes, sir.

Q. I want to call your attention to the time you  
made the deed. Was there anything said about  
securing him for the notes that were not? A.  
No, sir.

Q. Nothing at that time? A. No, nothing at  
that time.

Q. I mean securing him for the endorsements?

10 A. I attended to these notes; I collected the rent of the houses and reduced the notes when I could, and when I couldn't I paid the interest.

Q. I think that Mr. Whitehead took the acknowledgment of that deed on the chattel mortgage? A. Yes, sir.

Q. Did you go to his office at that time? A. Yes, sir.

Q. Where was his office? A. Why, in this building.

20 Q. Where was McCracken's office at that time? A. It was down in the Globe building.

Q. And did you and your wife go to his office with Mr. McCracken? A. Yes, sir.

Q. That was the next day after the deed was signed? A. No, sir, the same day.

Q. That was the next day after the deed was signed? A. No, sir, the same day.

Q. Did you sign any other paper at that time? A. Yes, I gave him a due bill, according to his  
30 direction.

Mr. Bradner: I call for the due bill.

Mr. McCarter: I think you are mistaken about having given me notice to produce.

Mr. Bradner: Here is your own acknowledgment of the notice.

Mr. McCarter: I see you are right. I don't find it among my papers.

Q. Do you remember signing any other paper at that time? A. I gave Mr. McCracken a due  
40 bill according to his direction.

Q. What did that due bill represent? A. Why, it meant to represent what I owed him.

Q. Do you remember the amount of that due bill? A. I do not exactly.

Q. Do you remember whether you said anything about the notes that were in the bank? A. I couldn't say. I was in the habit of signing anything that Mr. McCracken told me to sign. There's where I made my mistake.

Q. Did you and Mr. McCracken at that time 10  
have any account between you and ascertain how  
much you owed him and how much he owed you  
at that time? Do you understand the question?

A. Yes.

Q. On that day when you signed the deed, and  
when you signed the due bill, did you go over  
your different accounts— A. (Interrupting) No,  
sir.

Q. And find out how much he owed you, and  
you owed him? A. No, sir, we did not. 20

Q. You owned other properties besides those  
you conveyed to him at that time, didn't you? A.  
Yes, sir.

Q. State generally what other property you did  
own then? A. There was property that I owned  
in Oliver street, that was worth at least \$10,000  
and mortgage for \$4,000; and I was taken sick  
and Mr. McCracken agreed to take care of that.

Q. I didn't ask you that. But what other pro-  
perties? A. Different properties; that was one 30  
of the properties that I had, and one over in Hud-  
son county, and several others with vacant lots.

Q. Who owned the properties on Peshine ave-  
nue? A. My son held the title to part of it, and  
I held the title to one.

Q. When did you transfer any part of it to him,  
if you did? A. Why before the transfer was  
made or about the time that the transfer was  
made to Mr. McCracken.

Q. Was that done on anyone's advice? A. Yes, 40  
Mr. McCracken advised that as there were coming  
judgments against me and to come against my  
son that he could handle the vacant lots.

Q. How much was the property worth that you  
transferred to your son? A. Well, one had a  
mortgage on it, and I can only kind of guess at  
it.

Q. Don't guess at if you cannot tell. You kept

10 some of that Peshine avenue property yourself, in your name? A. One house.

Q. How much was that house worth? A. I think it was worth \$4,000.

Q. How much mortgage was on it? A. Why there was either \$1500 or \$2,000.

Q. Who held that mortgage? A. The Dowden estate.

Q. Who is Dowden? A. Mr. McCracken's representative.

20 By the Court: Q. Charles or George Dowden? A. Charles Dowden.

#### FURTHER DIRECT:

Q. George Dowden is one of the executors? A. Yes, sir.

Q. Is he any relation to Mr. McCracken? A. Mr. McCracken's wife is a sister of George Dowden.

30 Q. Did you own at that time any property on Pennington street? A. Yes, sir.

Q. How much was that worth? A. Well, that was worth at least \$5,000.

Q. What was the mortgage on it? A. \$2500.

Q. Did you own any property on Ferry street? A. Quite valuable, yes, sir.

Q. What was that worth? A. Well, it was very rightly worth \$5,000.

Q. What mortgage? A. \$2,000.

40 Q. Who held it? A. Firemen's Insurance Company; Mr. McCracken allowed that to be foreclosed.

Q. I didn't ask you that, sir? A. And bought it in for his wife.

Q. Now, how much was this claim of the Export Lumber Company? A. About \$2100 as near as I can recollect.

Mr. McCarter: I think that the judgment would be the best evidence of that.

Q. Wasn't there some other claim against you 10  
growing out of the same transaction? A. Yes,  
sir.

Q. How did you become liable?

Objected to.

By the Court: What do you mean?

Mr. Bradner: I don't know as it is very  
important, it is only to get his mind work-  
ing in that direction again, he is evidently  
now thinking about something else.

Q. What was this claim for? A. I bought out 20  
a mill and it grew out of that, and saved a few  
hundred dollars.

Q. You and George W. Reeves were interested  
together? A. Yes, sir.

Q. There was a claim also for rent of this  
mill—Mrs. McDermott had a claim? A. Yes, sir.

Q. How much did the two claims amount to at  
that time that you were being sued for? A. I  
was sued by the bank for \$200, and Mrs. McDer-  
mott, I can't say positively.

30

Q. About? A. As much more.

Q. How much was the Lumber Company's  
claim? A. \$2100, somewheres about.

Q. And at that time, Mr. Reeves, how much did  
you consider the equity in your property to be  
worth? A. At the very lowest estimate, when I  
conveyed that to Mr. McCracken my equity should  
have been \$50,000, at the very lowest estimate, it  
would figure up more than that.

Q. Why didn't you raise the money and pay 40  
these debts? A. I done that all on Mr. McCrack-  
en's advice, if he told me to run my head in the  
fire, I suppose I would have done it. I had the  
utmost confidence in him.

Q. Well, afterwards do you know whether these  
claims went into judgment against you? A.  
Whether what?

Q. Whether the people got judgment against  
you? A. Yes, different ones sued me.

10 Q. How do you know they got judgment? A. I know it when I was sued.

Q. I mean after this deed had been made to Mr. McCracken, how did you know it then? A. Why they sued me and the constable served summons on me.

Q. Yes, I know that, but after you had made this deed of conveyance to Mr. McCracken, did you learn anything from him about these judgments? A. No, the first information I got of  
20 that was by Mr. Bradner. Mr. McCracken kept telling me all the while that I must not say one word, and Mr. Whitehead told me he wouldn't have nothing to do with it if I was going to talk about this thing that had been done—this transfer, so I dasen't open my mouth, I was in the dark; but I was in Mr. Bradner's office one time, and Mr. Bradner told me he would sue Mr. McCracken if—

Mr. McCarter: I don't think that is competent.  
30

Q. I want to ask you whether, after this deed of conveyance had been made, you learned that judgment had been entered up against you? A. Yes, Mr.—yourself told me that, and that is the first I knew of it.

Q. Did you then make any effort to pay those judgments? A. Any efforts?

Q. Yes. A. Why no, I couldn't—how could I?

Q. Do you know whether they were paid? A. Oh, I made efforts to pay the Export Lumber  
40 Company by going to Mr. Kanouse, and laying pipes to get a note discounted.

Q. Who went with you? A. Mr. McCracken went with me, but Mr. Kanouse said he couldn't discount that note unless his main man, which was William Ripley was in town, he was the one that would decide, so I went to see William A. Ripley and he told me he would help.

Q. Never mind. Was the money raised in the 10 Merchants Bank? A. Yes, sir.

Q. Who got that money? A. Mr. McCracken.

Q. What was to be done with it? A. Why I demanded \$2500 of it.

Q. I mean the money that was raised in the Merchants Bank, when you went to Mr. Ripley?

A. Oh, excuse me, I made a mistake, I was thinking of my homestead, that was to pay the Export Lumber Company.

Q. And anybody else? A. No, sir, not a soul 20 else.

Q. How about Mrs. McDermott's claim for the rent? A. Why that, I most forget how that got paid, some of it didn't get paid—all of it, but some of it did get paid, but I most forget.

Q. How much money was raised at that time in the Merchants Bank? A. Why enough to pay this Export Lumber Company about \$2100.

Q. Do you know whether at that time the Ex- 30 port Lumber Company had brought a suit in the Court of Chancery to set aside this deed of conveyance that you had made to Mr. McCracken?

A. Yes, sir, I know they advertised all the properties, every one of them.

Q. Do you know whether such a suit had been brought? A. Yes, sir.

Q. Who told you that? A. I can't tell you just who told me that, but I knew it.

Q. Were you served with any papers in it? A. Well, I can't answer that question.

Q. Do you know whether Mr. McCracken knew 40 about it? A. I know Mr. McCracken knew all about it.

Q. What did he say? A. I can't say positively what was said then.

Q. Why did you go off and raise that money to pay that judgment? A. That was Mr. McCracken's plan to raise that money to pay that judgment.

10 Q. Why should you pay that judgment just at that time? A. Well, I think we were on the eve of selling, or we did, right away, my homestead.

Q. Do you know whether the judgment was paid off? A. No, I only know it by hearsay.

Q. Well, what did Mr. McCracken tell you about it, if anything? A. Yes, he told me it was paid.

Q. He told you that the Export Lumber Company judgment had been paid? A. Certainly, and also the note that he got discounted out of  
20 the proceeds of my homestead.

Q. Now, afterwards when the homestead was sold, did you get any of the money? A. No, sir.

Q. How long did you continue to live in your home after the transfer to Mr. McCracken?

The Court: What is the object of this, I don't quite understand it.

(Then followed argument between counsel.)

Q. After you made the conveyance of your  
30 home to Mr. McCracken how long did you continue to live there? A. Well, from six weeks to two months, I don't know exactly.

Q. Did you live there up to the time the property was sold to Mr. Sherrer? A. I lived about six weeks or two months after it was sold to Mr. Sherrer there.

Mr. Bradner: Have you got the lease Mr. Reeves made? I call for that.

(Same handed to counsel.)

Q. Did you sign that paper. Can you see it?  
40 A. Oh, that is a lease. Yes, sir, I signed that.

Mr. Bradner: That purports to be a lease made by John H. McCracken to Moses E. Reeves, of the dwelling house, barns and grounds known as 580 Clinton avenue, Newark, N. J., for one year from the first day of May, 1896; it bears date the first day of May, 1896, at the rent of \$360 per year,

payable monthly in advance. I will now 10  
offer that in evidence.

Marked Exhibit C 3.

Recess.

Q. Did you say why you signed the lease that I handed to you and showed you? A. No, sir, I didn't say.

Q. Why did you do it? A. Why I signed the lease because that was Mr. McCracken's word— 20  
what I should do.

Q. Did he tell you why you should do it? A. Yes, sir.

Q. What did he say? A. Why he said that he wanted that in case he was brought up on supplementary proceedings.

Q. Did you ever pay any rent to him? A. No, sir, not a cent.

Q. Were you ever asked to pay any? A. Not a—never. 30

Q. What became of the Peshine avenue property, do you know? A. Yes, sir, it eventually was traded away.

Q. I don't mean that? A. You mean the one that I held title to?

Q. Yes. A. Why, the mortgage was foreclosed.

Q. Who foreclosed it? A. Mr. McCracken.

Q. Did you have any agreement with him about that? A. Yes, sir.

Q. What was it? A. It was that he was to foreclose it, and buy it in for my benefit. 40

Q. Who held the mortgage? A. The Dowden estate and there was no interest due either.

Q. Had you been asked to pay the mortgage— had anyone asked you to pay off the mortgage debt? A. No, sir, not at all.

Q. What were your relations with Mr. Dowden, the executor, at that time? A. I didn't have any dealings with him.

10 Q. You didn't? A. No, sir, we were very friendly, on friendly terms.

Q. Did Mr. Dowden ask you to pay the mortgage off? A. Never.

Q. Were you present in Court a few months ago in the Circuit Court in a suit against the Dowden estate? A. I was present, yes, sir.

Q. Did you hear Mr. Dowden's testimony on that occasion? A. I did.

Q. Do you know whether Mr. McCracken was there at the same time? A. Yes, sir.

Q. When he testified? A. Yes, sir.

Q. Did you hear Mr. Dowden—

Objected to.

Mr. Bradner: I am going to ask him whether he heard him testify about giving any authority to foreclose this mortgage; the statement was made in the presence of Mr. McCracken.

Overruled.

30 Q. But you hadn't been asked, you say, to pay the debt? A. No.

Q. What was the bargain with Mr. McCracken about that foreclosure? A. That he was to foreclose it for me and buy it in.

Q. Did he make any other bargain of that kind with you about foreclosing any mortgages? A. Yes, sir.

Q. What other property? A. Well, the Plain street property.

40 Q. What became of that?

Mr. McCarter: Is that involved in this suit?

Mr. Bradner: I guess not.

Objected to.

Overruled.

Q. Did you know anything about the foreclosure of a mortgage on the Ferry street property?

A. Yes, sir, I know all about it.

Q. I have to ask some question in anticipation 10  
of what I expect to prove hereafter; I expect to  
prove that these properties were sold under fore-  
closure and bid in by Mr. McCracken. Now, you  
say you know all about it? A. Yes, sir.

Q. Have you told us what you know about it?  
A. Why there was a mortgage upon it of \$2,000  
held by the Firemen's Insurance Company, and  
they wanted their interest. Mr. McCracken went  
to Europe about that time, I forget how long he  
stayed, but they commenced—they got out of pa- 20  
tience and commenced to foreclose, and I went in  
to see them and they were very kind to me—

Q. Never mind that; did you have any conver-  
sation with Mr. McCracken about it when he  
came back? A. Yes, Mr. McCracken said that it  
had gone so far that he would buy it in, and I  
wanted to know distinctly who was going to take  
title, and he said his wife would for my wife, and  
that it would be just the same as if he took the  
title. 30

Q. Who collected the rents of the four proper-  
ties that you conveyed directly to Mr. McCracken  
after you had made the deeds? A. I collected the  
rents of every house.

Q. For how long after that? A. Well, I can't  
say positively, but a good while, it must have been  
a year or two, and I also paid the interest on them  
and reduced the notes in the bank that he talks  
about—with the proceeds.

Q. Who collected the rents of the Peshine ave- 40  
nue property? A. Well, Mr. Ball did once.

Q. Well, I mean afterwards? A. I collected  
part of them myself.

Q. In fact all of your properties, you collected  
the rents, didn't you, after this deed had been  
made? A. Yes, sir.

Q. For some time? A. Yes, sir, I collected  
them myself or else my agent did.

10 Q. Who was he? A. Mr. Balls.

Q. Sherred Ball? A. Yes, sir.

Q. Did you at any time after that, give him any authority—authority to Mr. McCracken to collect the rents of any of these properties? A. I gave him an order to—

Mr. McCarter: Well, that is in writing, here it is.

Mr. Bradner: I call for it.

(Same produced.)

20 Mr. Bradner: Well, I admit this is his signature and I will offer it in evidence. It is

“Newark, N. J. January 28, 1897, Mr. S. C. Ball, Sir: Please make arrangements with J. H. McCracken as he may direct about the collection and payment of the rents you may receive on the Ferry street property and the two Astor street houses, and oblige. Yours respectfully. Moses E. Reeves.”

30 Q. That order you gave him—did you hear me read it? A. Yes, sir.

Q. You heard me read it? A. Yes, sir, I gave it to him.

Q. That only relates to the Ferry street property and the two Astor street houses? A. Yes, sir.

Q. Did you give him any order for any of the other properties, to collect the rents? A. No, I don't think I ever gave him any order.

40 Q. Do you know whether he got the rents from the other properties? A. Why he tried to make me believe that he—

Objected to.

The Witness: Well, he did collect the rents of the other properties.

Q. How did he get them? A. Why, by my consent.

Q. Why did you give your consent? A. Be- 10  
cause he influenced me that that was best for me  
to do, and Mr. Whitehead did the same.

Q. What did he say to you? A. Why he said  
that it would be better for him to collect the rent,  
and it would look better in case he was brought  
upon supplementary proceedings.

Q. Did he commence to collect the rents of the  
other properties before or after you gave him this  
written order? A. I think afterwards.

The Court: You say other properties. 20

What other properties—all the properties  
involved in this case?

Mr. Bradner: Yes, sir.

#### FURTHER DIRECT:

Q. I think I did ask you whether Mr. McCrack-  
en ever collected the rents from all these proper-  
ties? A. Yes, sir.

Q. All the properties that you transferred to  
him and all the other properties? A. Yes, sir. 30

Q. That you had at that time? A. Yes, sir, he  
did collect them.

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

Q. Why and under what circumstances and how  
did you give that consent? A. Why because he  
influenced me and Mr. Whitehead did the same.

Q. What did he say to you? A. Why he told  
me on several occasions that Mr. Ball wasn't a  
good agent, and he told me that he could collect  
them, and in one case he told me he would col- 40  
lect them for nothing, and Mr. Whitehead advised  
me to do that.

Q. Was Mr. McCracken present when Mr.  
Whitehead gave you that advise? A. I don't  
know that he was.

Q. You ought not to tell anything Mr. White-  
head said unless Mr. McCracken was there? A.  
Well, I didn't know that.

10 Q. Can you say now whether he collected the rents from any other houses besides the Ferry street and the Astor houses? A. Yes, sir.

Q. Before you gave that written order? A. No, not before that.

By the Court: Q. What is the date of that order?

Mr. Bradner: January 27, 1897.

Q. After the mortgage had been foreclosed upon the Peshine street property, did you have any  
20 conversation with Mr. McCracken? A. Any conversation?

Q. Yes, about the Peshine street property, that is what I want to direct your attention to? A. Yes, sir.

Q. After the mortgage had been foreclosed did Mr. McCracken report to you whether it had been sold or not and what had been done with it? A. No, sir, I don't know that he did.

Q. Did you have any further conversation with  
30 him about it, after that? A. Yes.

Q. What was it? A. Why that he would keep everything right and straight, and I should not lose a penny, that every dollar that was coming to me I should have.

Q. Well now, do you know—you say you do know about the foreclosure of the Ferry street property? A. Yes, sir.

Q. Do you know whether that was sold to—  
40 who bought it in? A. I do, because I made the bargain with him.

Q. Will you tell us about that. How about the Boyd street property, what became of that? A. Why the Boyd street property he allowed to be foreclosed.

Q. What do you mean by that? A. Why he didn't pay the interest and they commenced to foreclose, and it was foreclosed.

Q. What did he have to do with the paying of 10  
the interest? A. On Boyd street?

Q. Yes. A. Why he bought them in.

Q. What do you mean by bought them in? A.  
He bought them in at this sale where they were  
generally advertised.

Q. Why did you expect him to pay the interest.  
You say he didn't pay the interest; why did you  
expect him to pay the interest? A. Because he  
was to keep everything right.

Q. What do you mean by that? A. He was to 20  
take care of everything.

Q. When did he make that bargain with you?  
A. Why, in the beginning and afterwards.

Q. Well, if he was to take care of everything  
when he started why didn't you let him take your  
rents right from the start? A. Because we made  
that bargain, that I should collect the rents and  
pay the interest and pay the interest on the notes  
and what I could on the principal.

Q. When did you change that? A. When did 30  
we change it?

Q. Yes. A. Why when he collected all the  
rent, why then I didn't pay any more.

Q. When he collected all the rent did you have  
any bargain with him about mortgages, interest  
and taxes or anything else? A. Certainly, he  
was to take care of everything.

Q. What became of the Belmont avenue prop-  
erty? A. Well, he deeded that to my wife be-  
cause I told him that I must have that to live on— 40  
because he didn't get the proceeds of that and the  
rent, why he deeded it to my wife in spite of all  
we could do. I told him not to deed it, but to  
keep it together, but instead of that he deeded  
it to my wife and that was foreclosed.

Q. Where is the deed, did you ever see it? A.  
The old deed?

Q. No, the deed to your wife of the Belmont  
avenue property? A. I have it, I think.

10 Q. You say you didn't want him to do that? A. No, sir, I told him he ought not, and my wife told him he should not, in my presence.

Q. Look at that paper, if you can see it—recognize it; can you read what it is? A. Yes, sir. You may read some of it to me.

Q. "Newark, N. J." I will read part of it. "Moses E. Reeves, to J. H. McCracken." It purports to be a bill from Mr. McCracken, do you remember about that? A. Yes, sir.

20 Q. Did you get it from him? A. Yes, sir.

Mr. Bradner: I offer it in evidence.

Marked Exhibit C 5.

Dated March 21, 1898, Moses E. Reeves to J. H. McCracken, debtor, the account begins June 6, 1892, and goes up to December 31, 1896, and the item of January 3, 1896, is drawing four deeds \$12. Recording the same \$7.20 legal services \$25. I offer the bill in evidence.

30 Q. Have any of these properties been transferred back to you Mr. Reeves? A. No, sir.

Q. Now, that Belmont avenue property that went to your wife? A. That was all.

Q. Have you ever received any accounting from Mr. McCracken of the rents? A. No, sir.

Q. Have you ever received any money from him from any of these properties? A. No, sir.

40 (At this point the witness stood aside to permit of the examination of Cyrus Benedict, the Under Sheriff, and after Mr. Benedict's examination was concluded Mr. Reeves was cross-examined by Mr. McCarter.)

CROSS-EXAMINATION by Mr. McCarter:

Q. Mr. Reeves just before you made your deeds on January 3, 1896, to Mr. McCracken, you knew, didn't you, that the Export Lumber Company was

about entering judgment against you for \$2100? 10

A. Yes, sir, I knew that.

Q. You knew that Mary A. McDermott was about to enter judgment against you for about \$500? A. No, I didn't know that.

Q. Didn't you know that you had been sued by her? A. I did.

Q. Who was your attorney in both of those suits? A. Both of those suits?

Q. Yes. A. Let us see, which suit was that?

Q. The Export Lumber Company, and Mary A. McDermott? A. Mr. Bradner was, of the Export Lumber Company, and of Mary A. McDermott, I haven't any recollection about that. 20

Q. Well, you said on the stand this morning that Mr. McCracken had been your confidential counsellor and lawyer for twenty-five years. How did you happen to have Mr. Bradner for your attorney then? A. Because I had a partner.

Q. How did you happen to have Mr. Bradner for your attorney then if Mr. McCracken was your confidential attorney? A. Do you want me to tell you? 30

Q. Yes. A. Well, because I had a partner in the mill I bought out, by the name of George W. Reeves and he went to Mr. Bardner, and I let him do the whole business.

Q. Now, how long was that suit pending? A. How long was what suit pending?

Q. The Export Lumber suit, how long was that pending? A. Well, I could not say positively, but it was some time, because I think I had a defense and we was trying— 40

Q. Yes; did you ever advise with Mr. McCracken in regard to it? A. Advise with him?

Q. Yes. A. No, not that I know of, yet I might.

Q. Now you have stated that for a period of twenty-five years Mr. McCracken was your attorney and confidential adviser? A. Yes, sir.

10 Q. You refer now to law matters? A. Yes, sir, every case too.

Q. Did you ever receive bills from him for legal services? A. I never received no bills until, we fell out, and got at lager heads and then he went on and made a bill.

Q. Then he performed these legal services for nothing, did he? A. No, sir, we may have adjusted them in some way, I can't tell exactly how.

Q. Well, did you think he was working for love  
20 for you? A. No, sir.

Q. Well, did you pay him without any bills? A. I paid him often times if you want to know how, I will tell you.

Q. You paid him then without any bills? A. I put things in his hands to collect and when he had the money, he and Mr. Whitehead, he took out of it what he had a mind to. He took \$75 out of one thing that you would have done for \$25.

Q. I guess you don't know my price? A. Well,  
30 I know you would not extort so much as to take \$75.

Q. Now, Mr. Reeves you claim that Mr. McCracken was doing law business for you for a quarter of a century, and never made any bill against you except after you fell out, and then he looked up a bill? A. I paid him as he went along; do you want me to tell you how?

Q. I want you to tell me first what law business it was he did, state anything that he did? A.  
40 Well now, just let me tell you, I put a claim in his hands against a certain man, I can't just speak his name, of \$56 and he never gave me one red cent, but he collected it; the man's name was Jacobs.

Q. When was that? A. That was the time that he went to the other country, because I went to Mr. Jacobs and he said he had just paid Mr. McCracken \$30.

Q. That was when he went to Europe? A. 10  
That was after the deeds were made.

Q. Well now, that is after the deed was made, now what other thing did he do for you during those twenty-five years? A. I had a claim against a man by the name of Shoddywine of \$190, and I put that in his hands to collect, and he and Mr. Whitehead took \$75 out of it, and it was only worth \$25.

Q. When was that? A. That was after the deeds. 20

Q. After the deeds? A. Yes, sir.

Q. Well now, what other thing did he do as counsel, I mean legal services? A. What other things?

Q. Yes. A. Why he got \$1300, he coaxed me to buy some stock and said he would give me the certificate of stock, and he never gave me one red cent, and I lost the \$1300 cash I paid him.

Q. Why, was that service as a lawyer, do you understand that to be lawyer's services? A. 30  
Well, that was your business, wasn't it?

Q. Is it not true that for a number of years Mr. McCracken had been endorsing your notes over here in the Merchants Bank to enable you and your son to build buildings? A. Yes, sir, and he got big pay out of it.

Q. Yes. A. Yes, I can show you the figures where he stole it.

Q. Now, don't do anything more than answer my question? A. All right. 40

Q. He acted as your financial backer to a certain extent, didn't he? A. He did then but I didn't know what it was for until I found out afterwards.

Q. Now, please answer my questions and don't put in anything more than your answer? A. I will.

Q. Now, what else besides acting as your finan-

10 cial backer did he do that you would call legal services, that is what I want to know? A. Well, I can't tell you exactly, but small things that he took his pay out of as he went along, like I told you about three of them in which he never gave me a cent.

Q. Now, you remember no other one at all, no other legal services that he performed for you, do you? A. Yes, sir, quite a number.

20 Q. Well, what were they during those twenty-five years? A. Well, he undertook to do something with a man who had got into me, named Isaac N. Townley, and I never got anything out of it. If I had time I could tell you of a good many things.

Q. Did you never consult any other attorney? A. I might consult other attorneys.

30 Q. You had other attorneys, you had attorneys other than Mr. McCracken, didn't you? A. Yes, sir, but I always went to Mr. McCracken, and if he didn't know enough about the case he would go to Mr. Whitehead, which was often the case.

Q. You did subsequently employ Mr. Whitehead didn't you? A. Once in a while.

Q. Now, you have stated than when this deed was made that you were afraid that this property would be wiped out to this Export Lumber Company, therefore you made this deed to Mr. McCracken; that claim didn't exceed \$2100, did it? A. What claim?

40 Q. Of the Export Lumber Co.? A. That was about the sum.

Q. And you have stated that the equity in this property you had was \$50,000? A. Not less than that, any of the property I had.

Q. Now, Mr. Reeves, how is it possible that you were willing to surrender all this property worth \$50,000, so as to avoid the payment of a \$2100 claim? A. Because I was advised that way, and

I had confidence in Mr. McCracken. He told me 10  
he would work the thing through a sale and try  
to help me to pay these debts.

Q. Well, you had a head upon your shoulders,  
you were pretty shrewd? A. I put too much  
confidence in Mr. McCracken.

Q. And you thought that you would deprive  
yourself of an equity of \$50,000 in property to  
avoid payment of \$2100? A. I didn't know any-  
thing different from what I was advised.

Q. You didn't know anything about paying 20  
debts with property that you had—well, you had  
the property to pay them with? A. Yes, I know  
something about business.

Q. Well, how do you account for the fact that  
you were willing to hide or secrete or put into  
Mr. McCracken's hands \$50,000 worth of proper-  
ty if you only owed \$2100? A. Because I think  
that was the best. Mr. Bradner advised me to  
make an assignment and said that then I could  
raise the money to pay my debts; but Mr. Mc- 30  
Cracken advised me another way and I took his  
advice, and there is where I made a mistake.

Q. Now, you have stated that Mr. McCracken  
agreed if you would make this transfer to him  
January 3rd, he would do exactly what—what was  
his agreement? A. His agreement was to sell or  
try to sell the property and pay these debts—  
everything that I owed. I didn't do this to beat  
anybody out of anything, I am not that kind of a  
person.

Q. Then the agreement was to take the proper- 40  
ty and sell it to pay everybody that you owed?  
A. Yes, sir, to work with me and we would sell it  
together.

Q. Where and when did you make that agree-  
ment, and in whose presence? A. In his own of-  
fice and afterwards on the sidewalk.

Q. Well, one at a time. You were in his own

10 office. Now, how long before the making of the deed? A. Not long.

Q. How long? A. Not twenty-four hours, it was all done in a hurry.

Q. Who was present? A. When?

Q. When he said that? A. Why I think my son was present and my wife.

Q. Was that before the deed was prepared? A. No—yes—the bargain was made before the deed was made.

20 Q. I want to know if this conversation you have referred to was before the deed was prepared? A. Yes, sir.

Q. Now, Mr. Reeves how did your wife and son and you happen to be in Mr. McCracken's office?

A. Happen to be? I went there to sign the deeds. I went there for that purpose, by appointment.

Q. You had an appointment, so that there must have been some talk about it before? A. Yes, sir.

30 Q. Hadn't you talked with Mr. Whitehead about it before? A. No, sir, I don't recollect saying a word to Mr. Whitehead until I went up to get the deeds acknowledged.

Q. Who was present at the earliest conversation before this day when your wife and son were present; where was that earlier conversation? A. The conversation was always in Mr. McCracken's office.

40 Q. How long a time elapsed between the first and second conversations? A. Not long, I can't say positively how long.

Q. Who first suggested the making of this deed? A. Why I told Mr. McCracken the situation of things, as they were, and that was when the conversation began.

Q. Well you went to his office and first brought to his attention the facts? A. I think so.

Q. The fact that the Export Lumber people were about to get judgment against you? A. Yes, sir.

Q. Can you tell when that was? A. 1896, about 10  
the second or third of January, right after the  
holidays.

Q. You said to Mr. McCracken this judgment is  
coming, what shall I do? A. Yes, sir.

Q. Now, what did he say? A. He advised me,  
as I did, to transfer it to him, and he would help  
me to negotiate and pay off my debts.

Q. Did he call to your attention the fact at that  
time that he was the endorser on your paper in the  
Merchants Bank? A. No, sir. 20

Q. For the sum of \$3500? A. No, sir, he never  
said a word about it.

Q. He never did? A. No, sir.

Q. That didn't enter into it? A. No, sir, be-  
cause I was to collect the rent.

Q. Well, you say that wasn't mentioned at all?  
A. No, sir.

Q. Did you go over to Mr. Whitehead's office  
at the time when the deed was executed? A.  
After it was executed I went over there to get it 30  
acknowledged—to get the acknowledgment taken  
by Mr. Whitehead.

Q. You went to have the acknowledgment taken  
there? A. Yes, sir.

Q. Was anything said then with regard to these  
notes over in the Merchants Bank? A. Nothing;  
Mr. Whitehead said of his own free will and  
choice that Mr. McCracken must give me a little  
writing back.

Q. You are not answering my question. I 40  
want to know whether anything was said at that  
time in Mr. Whitehead's office in regard to notes?  
A. Not a word about the notes.

Q. As far as you know, Mr. Whitehead knew  
nothing about them? A. I don't know as he did.

Q. Well, nothing was said at all between you  
and Mr. Whitehead about those notes? A. I am  
quite sure there was not.

10 Q. Then the notes didn't enter into that question at all? A. Not that I ever heard of.

Q. Then you always considered that you were the real owner of this property and that Mr. McCracken had no interest in it whatever? A. No, sir, I didn't consider that.

Q. Well, what did you consider? A. I considered that I had an interest and I had to have mine and Mr. McCracken had to have his.

20 Q. What interest had he? A. Why, if I owed him anything I wanted him to have it, and he told me in the presence of my son that not a cent or a dollar we should ever lose by him, that he would make everything right.

Q. When did you make up your mind that he should get out of the property what you owed him, when did you make up your mind about that?

A. What he should get out of it?

30 Q. Yes, when did you make up your mind that he should make out of that property what you owed him? A. Why that was the understanding in the beginning, I was to work with him, and he with me mutually.

Q. What did you owe him at that time? A. What did I?

Q. Yes. A. He was the endorser on these notes of mine at the bank.

Q. Then they were referred to, were they not? A. He didn't refer to them.

40 Q. Who did? A. Nobody, but he was the endorser on them, and I kept them alive by the collection of rents and paying the interest, and reducing them all I could.

Q. How much did those notes amount to? A. Well, you see it was \$450, something, I don't know exactly.

Q. Now beyond this taking care of the notes for which he was your endorser, had he any other

interest in this property? A. Besides taking care 10  
of the notes?

Q. Yes. A. No, sir, not a dollar.

Q. Now you knew that all that property was  
encumbered and that you would need money to  
pay the interest? A. Yes, and when I had the  
rent I did pay it until he coaxed me to let him  
collect the rent—I kept it all right.

Q. After you stopped collecting the rent were  
you able to pay interest on these properties? A.  
No, sir, not when he took everything, if he had 20  
left me the money I would be able to.

Q. You are quite sure he kept all the interest  
until the rents were taken into that? A. I am  
quite sure, and I kept the insurance all paid, but  
there might be something left behind, in the way  
of taxes.

Q. Yes, that brings me to the subject of taxes;  
is it not true that there were large arrears of  
taxes on all these properties? A. Yes, sir, but  
not so very much. 30

Q. Well, considerable money. Now you have  
stated that Mr. McCracken took this property.  
Where did you understand he was to raise the  
money to pay the judgment with? A. Which  
judgment?

Q. The Export Lumber Company's judgment?  
A. Why, bless my heart, he sold my homestead,  
and I didn't know that he was selling it only I  
found out afterwards.

Q. I want to know just how this judgment was 40  
to be taken care of, out of what funds? A. Which  
judgment?

Q. The Export Lumber Company's judgment?  
A. Bless my heart, he took a note that he got dis-  
counted at the bank and had the judgment as-  
signed to him.

Q. You don't understand me, try to answer me.  
I wish you would. When this property was as-

10 signed to Mr. McCracken, what was going to become of the Export Lumber Company's judgment? A. I was working with Mr. McCracken to get a note discounted, and I worked Mr. Kanouse, and he waited about two weeks for William A. Ripley to come, and I went to his house and negotiated with him to discount this note for Mr. McCracken and he helped me.

Q. You went along with Mr. McCracken did you? A. I went alone, to Mr. William A. Ripley.

20 Q. Don't tell us what you did in the absence of Mr. McCracken; I want to know what you did with Mr. McCracken? A. I went with Mr. McCracken to Mr. Kanouse to negotiate this note. I went two or three times.

Q. After the deed? A. Yes, sir.

Q. For the purpose of raising money to pay the judgment? A. Yes, sir.

Q. You are quite sure of that? A. Yes, sir, I am certain.

30 Q. Did you raise money through Mr. Kanouse? A. Yes, sir.

Q. You did? A. Well, Mr. McCracken raised it with my notes.

Q. Did you endorse the note? A. No, sir, he didn't want me to, but of course he had an object in that.

Q. What do you mean by your influence? A. Didn't I tell you that I went with Mr. McCracken to Mr. Kanouse. He was always a friend of mine.

40 Q. You think you had some influence in the bank, with judgments against you and with all your property gone, that Mr. McCracken had? A. No, sir, I don't think any such thing.

Q. Beyond the payment to Mr. McCracken of his debts through these notes, he had no other interest in this property than to hold it in trust for you, is that it? A. I didn't owe him anything else.

Q. Did he have any other interest in it? A. 10  
No, sir, no interest whatever.

Q. And you never expected him or his wife to have any other interest? A. Not a cent's worth.

Q. And you never did anything to give him any more interest? A. No, sir.

Q. You are quite sure of that? A. Certain of it because he always owed me.

Q. I show you a deed and quitclaim made on the 10th of August, 1898, purporting to be signed by Mary T. Reeves and Moses E. Reeves, is that your 20  
signature and your wife's? A. Yes, sir, that is the Belmont avenue.

Q. Well never mind you signed that paper, didn't you? A. Yes, sir.

Said paper marked Exhibit for identification No. 1.

Q. Now, there was some Pennington street property in this bunch? A. Yes, sir.

Q. And Mrs. McCracken I think purchased that property under foreclosure, and Mr. McCracken 30  
purchased it under a common law execution. You knew that, didn't you? A. No, sir.

Q. Was that property formerly yours? A. Yes, sir.

Q. What interest do you claim in this suit in that property? A. What interest?

Q. Yes. A. Why, I claim this interest, that Mr. McCracken was my agent, and I was all the while doing the repairs and he collecting rent; we done the repairs to this house all the way through 40  
without a cent of payment.

Q. You claimed to really be the owner of the property, didn't you? A. Certainly, I did.

Q. And when you repaired it you repaired it as your property? A. Yes, sir, that is what I thought.

Q. I call your attention to the bill of particulars in the suit brought by Moses E. Reeves and son against John H. McCracken, will you look at

10 that bill in the Circuit Court and see if you recognize that as the bill that you put in against Mr. McCracken for work and labor done by the firm. It looks like it, don't it? A. Yes, sir.

Q. Now turn over here to 1898, October the 4th, there is a large number of items of work done on this Pennington street property, is there not? A. Yes, sir.

Q. And you claim that he owed you for that? A. We had a bargain when we could not carry  
20 so much that he would take it out in the rent and pay us.

Q. You claim on this bill that he owed you for work on the Pennington street property? A. Yes, sir, that and other property.

Q. Well now, I am calling your attention to the Pennington street property alone? A. Well that may be one but only a small item of repairs.

Said bill of particulars marked Exhibit 2, for identification.

30

Adjourned until ten o'clock in the morning of the 25th day of November, 1902.

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Evidence given on Wednesday, January 14, 1903.

40 Counsel stated that two of the witnesses are too ill to attend court this morning, but that their evidence relates merely to the fact of their being *bona fide* purchasers for value; upon that statement, Mr. Bradner, as counsel for the complainant, says that he is willing to admit that Mrs. Christina Hockheimer, Mrs. Miller and Adele R. Bird are purchasers for value, without any personal notice of the matters alleged in the complainant's bill, but that he does not admit that they are not to be affected by notice to their agents or by such constructive notice as they may have been by the record.

MOSES E. REEVES, sworn:

10

Examined by Mr. McCarter:

Q. What value did you say the Pennington street lot had? A. The whole property?

Q. The Pennington street property? A. Well, the Pennington street property I value now to-day—

Q. No, no, at this time? A. \$5,000, nothing less.

Q. Now how much was it encumbered? A. \$2,500.

20

Q. To whom? A. Where Bromley is.

Q. Howard Savings Institution? A. Yes, sir.

Q. That was all? A. That was all.

Q. You feel quite sure about that? A. Yes, sir.

Q. Is your memory very distinct about that? A. It is.

Q. So that you thought you had an equity, and still think you had an equity of about \$2,500 in that property? A. Yes, sir.

30

Q. There cannot be any mistake about that, can there? A. No, sir, positively.

Q. Were there any taxes on the property? A. There might have been some back taxes.

Q. Well, how much? A. I can't tell you that.

Q. Well, that would have made considerable difference, wouldn't it? A. Well, it wasn't very much.

Q. Give us your best view; you are saying you had an equity of \$2,500?

40

The Court: Ask the witness whether in that equity he had any reference to the taxes.

Q. Did you in that equity have any reference to the taxes, Mr. Reeves? A. No, sir, I didn't.

Q. You think that was without regard to taxes? A. Yes, sir, I cannot say just what the tax was, but it wasn't very much.

10 Q. Whatever they were, would go off the equity? A. Yes, sir.

Q. Now, don't you remember that you made a mortgage on that property to the Orange National Bank? A. Yes, sir, I do, but that don't count anything.

Q. Well, there was a mortgage for \$1,800 to the Orange National Bank, wasn't there? A. Yes, sir.

Q. That was in addition to the mortgage of  
20 the Howard Savings Institution, wasn't it? A. I don't count that a cent.

Q. That was in addition to the Howard Savings Institution's mortgage? A. Yes, sir.

Q. I show you a certified copy of a mortgage, Moses E. Reeves and wife to the Orange National Bank, dated the sixth of January, 1896? A. That is right.

Q. That is the mortgage you referred to? A. Yes, sir, but it ain't—

30 Q. One moment; you can make any explanation you want about that to your own counsel. Who drew that mortgage? A. Mr. McCracken.

Q. And that is on the Pennington street property? A. Yes, sir.

Marked for Identification D. 2.

Q. You stated on your direct-examination, Mr. Reeves, that Mr. McCracken had done a great deal of law business for you, and that he had collected several accounts, and never accounted  
40 to you for them, and among them was a man by the name of Jacobus; do you recollect that? A. Yes, sir.

Q. In what condition was that claim of yours, against Mr. Jacobus, was it a book account or note? A. It was a book account.

Q. Wasn't it a note? A. No, sir.

Q. Just look at that; have you got your specks here? A. No, I haven't got my specks. It don't

matter what it was, there never was a note given. 10

Q. Suppose I read it to you if you haven't got your specks here? A. I don't wear specks anyhow.

Q. Oh, then perhaps you can see it? A. No, sir.

Q. I will read it. "Newark, N. J. October 25, 1895. On Demand I promise to pay to M. E. Reeves and son, or order \$56.64 for value received, with interest from date. A. D. Jacobus." Is not that the business you are talking about? 20  
A. I think that must be.

Q. "For value received I hereby assign the within note, J. H. McCracken, September 25, 1897. M. E. Reeves & Son." A. That was a scheme of Mr. McCracken's to defraud me.

Q. That is what you say about it now, eh?  
A. I will tell you if you want to hear it.

Q. That is what we want? A. Very well, I will give it to you. Mr. Jacobus was in some trouble, financial difficulty, and Mr. McCracken 30 advised me to let him collect it, as he had some affairs—and when Mr. McCracken went to Europe I went down to Mr. Jacobus, and asked him—

Q. Never mind what you went to Mr. McCracken about?

Mr. Bradner: I think he has a right to tell it.

Mr. McCarter: I do not think what this gentleman said to Mr. Jacobus, while Mr. 40 McCracken was in Europe, has anything to do with it.

The Court: I suppose counsel has a right to limit the witness to such personal knowledge as he possesses. Mr. Reeves' statements were strictly within the rule up to this time, but now he is going on to detail a conversation with some third

10 person. I presume counsel has the right to object to that.

Mr. McCarter: I will have this marked for identification.

Marked Exhibit D3.

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**Exhibit D3.**

20 \$56.64 Newark, N. J. October 25th, 1895

On demand I promise to pay to M. E. Reeves and Son or order Fifty Six dollars and Sixty four cents for value received with interest from date.

A. D. JACOBUS.

---

30 Q. You recognize your signature? A. That is my signature.

RE-DIRECT:

Q. You made a mortgage to the Orange National Bank on the Pennington street property?

A. Yes, sir.

Q. On anyone's advice?

Mr. McCarter: I don't think that is material.

40 The Court: What do you propose to show?

Mr. Bradner: Well, the witness made some remark about its not amounting to anything, and I was going to try and show that it don't amount to anything, and Mr. McCracken knew it.

The Court: The mortgage didn't, in point of fact, secure anything; you can

show that. But it is immaterial on whose 10  
advice it was made. The question is not  
on whose advice it was made, but whether  
it was a substantial mortgage which, on  
its face, it purports to be.

Q. Did Mr. McCracken know about this mort-  
gage? A. Yes, sir.

Q. What do you mean when you say, it didn't  
amount to anything? A. I mean to say that—  
since that—I gave that as collateral security on an  
endorsed note, and since that the note has been 20  
disposed of and in part paid, so that I have  
been released, and Mr. McCracken a good many  
times wished me to get that note for a pur-  
pose he had—to get more hold.

Q. You were asked about making some repairs  
on the Pennington street property? A. Yes, sir.

Q. And charging it to Mr. McCracken? A.  
Yes, sir.

Q. Why was that done? A. Well, I was do-  
ing the jobbing, and when there came a big- 30  
ger job while Mr. McCracken was collecting  
the rent, we asked Mr. McCracken if he wouldn't  
pay us—for instance, the Pennington street  
house wanted to be painted, and it amount-  
ed to several dollars; well, we asked him, and  
he agreed to pay some on different occasions.

Q. But the question which was asked you was  
why did you charge it to Mr. McCracken, if the  
property belonged to you? A. Why because we  
made a special bargain with Mr. McCracken, as 40  
he was collecting the rent; we couldn't spend  
so much on repairs, getting no rent.

Q. Who made the repairs on those several  
properties after they had been conveyed to Mr.  
McCracken? A. We did.

Q. You did? A. Yes, sir.

Q. And who paid you for those repairs? A.  
Why, the smaller repairs we got no pay for,

10 and the bigger ones, where we made special bargain with Mr. McCracken before it was done, why he paid so much of the rent.

Q. Was that agreed upon that that should be?

A. Yes, sir.

Mr. McCarter: You have gone into all this before.

Mr. Bradner: No, sir, you brought it all out on cross-examination I never heard of it before.

20 Q. Who paid the water rents on the different properties after they had been conveyed to Mr. McCracken? A. I did.

Q. For how long a time, do you know? A. Well, quite a time, several years, but I cannot say positively.

Q. When you gave the Jacobus claim to Mr. McCracken for collection was it then in the shape of a note or a book account? A. I never knew of any note. Mr. McCracken was in the habit  
30 of having my endorsement on notes and checks; he got them blank as much as three of a kind, oftentimes six at a time, and I have no recollection—I don't believe that I put that on; it must have been on before, because I went to Mr. Jacobus and asked him—

Mr. McCarter: No. no.

Q. I want to know whether, when you gave the claim to him, it was then in the shape of a note or book account? A. I never recollect  
40 of any note at all.

Q. Did you get a note from Mr. Jacobus? A. Did I give a note?

Q. Get a note from him? A. No, sir, I never got a note. I don't know what I would go to Mr. Jacobus for if I had taken his note, and asked him to pay me.

FURTHER CROSS by Mr. McCarter: 10

Q. Mr. Reeves, you paid the water rents on these properties, or such of them as you were collecting the rents from, didn't you? A. No, sir—Mr. McCracken had them a good while, and I paid it clear up to the last notch.

Q. Well, you recollect the fact that you collected the rents of these properties or some of them after Mr. McCracken had his deed, you remember that, don't you? A. I think so, but they are— 20

Q. No, answer my question. Do you or do you not remember, as you have already testified in the case, that you collected the rents on some of these properties after you gave the deed to Mr. McCracken, do you remember now today? A. I cannot recollect distinctly, but you will have a way of finding out through my agent Mr. Ball.

Q. Don't you remember that you directed Mr. Ball to make arrangements with Mr. McCracken, as he may direct, about the arrangement or payment of the rents? A. Yes, to pay Mr. Bromley his interest, it was to go there, and nowhere else. 30

Q. You gave Mr. Ball a written direction about the rents, do you remember that? A. Yes, sir, I recollect that.

Q. Now, wasn't it while you were collecting the rents on that property that you paid the water rents? A. Yes, and later besides. 40

Q. Have you got any vouchers? A. No, but I think I have got a way of showing it.

Q. I wish you would tell me how it is? A. Well, I think may be the Water Board might know.

Q. That is the only means you have got of showing it? A. Yes.

Q. That is all.

10 MARY REEVES, sworn on behalf of the complainant:

Direct-examination by Mr. Bradner:

Q. Mrs. Reeves, you are the wife of Moses E. Reeves? A. Yes, sir.

Q. Do you know Mr. McCracken? A. Yes, sir.

Q. Do you recollect signing a deed of some property, conveying some properties to Mr. McCracken? A. Yes, sir.

20 Q. Including the home up on Clinton avenue—do you remember that occasion? A. Yes.

Q. Where did you sign the deed? A. In his office.

Q. Mr. McCracken's office? A. Mr. McCracken's office.

Q. Had you been there before that occasion? A. Yes, sir.

Q. With your husband? A. Yes.

30 Q. Had you been present at any conversation relating to the proposed transfer of these properties before that? A. Before that? I cannot remember before that. When they were together.

Q. Who were there on the occasion of the signing of the deed? A. Why Charley Reeves and Mr. Reeves and myself, besides a boy in the office.

Q. And Mr. McCracken? A. And Mr. McCracken.

40 Q. Do you recollect what was said at that time and what was done? A. I guess so.

Q. Now, will you try to tell us what was said then?

Mr. McCarter: Let me see, is that competent now? What is the object, Mr. Bradner?

Mr. Bradner: I want to show what the object was in making this transfer at that time, at the time the deed was executed.

A. It was made to—

10

Mr. Bradner: Just a moment.

The Court: Well, I suppose it is competent to show the consideration. What does the deed show?

Mr. Bradner: The deed shows \$3,500 for about \$20,000 worth of property.

The Court: Well, you can show that that wasn't the true consideration. I will admit the evidence.

Mr. Bradner: I went about it in that way to let the witness tell her own story. If counsel wish me to I will ask the question.

The Court: Is it not better for her to tell her own story?

Mr. McCarter: I think so.

Q. Tell us what occurred there? A. Mr. McCracken told us to sign these deeds and say nothing about it to anyone, and to sell the property and pay our debts off, and be sure and not say anything about it before Frank Bradner, and he would make a writing but he didn't have time that day, but he would see to it immediately, and he had Charley receipt all the bills that he owed us, and showed him how to keep a separate account, and he done it right then and there, and he had Mr. Reeves make a due bill so that if he was called up on supplementary proceedings he would have something to show, and he had us make a chattel mortgage at the same time, besides the deeds. 30 40

Q. What bills do you refer to, you said he had Charley receipt? A. Where he owed us.

Q. Were there any other bills receipted at that time, do you remember? A. I don't remember.

Q. Did you notice how large a piece of prop-

10 erty it was the due bill was made out for? A. No, sir.

Q. You don't remember that? A. No, sir.

Q. Do you remember what the due bill said, was it read? A. I don't remember that, no.

Q. Mr. Reeves signed it though? A. Yes, sir.

Q. Did you sign the due bill? A. No.

Q. Did you hear anything said about any notes that Mr. McCracken had endorsed? A. No.

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

20 Q. Who took your acknowledgment on those deeds? A. Went up to Whitehead's office, I think.

Q. I will ask you how many deeds you signed at that time, do you remember? A. Well, pretty near all the properties, but I cannot remember whether there was more than one paper. Two papers, wasn't there? I cannot remember.

Q. You say you went to Mr. Whitehead's office? A. Yes, sir.

30 Q. Where was Mr. McCracken's office at that time? A. Why, down in the Globe Building.

Q. Where was Mr. Whitehead's office? A. In this building.

Q. In the Prudential Building? A. Yes, sir.

Q. And you came up here? A. Yes, sir.

Q. Who came with you? A. McCracken, and Mr. Reeves.

Q. Did Charley come with you? A. No.

Q. What occurred at Mr. Whitehead's office?

40 A. Well, there was some talk between the two lawyers about the consideration, and there was something changed about the consideration, and Whitehead told us if we were going to talk about it he would have nothing whatever to do with it, and we were to say nothing about it, and he would see to it, that is, that McCracken would give us a little writing back.

Q. What was the talk then about the considera-

tion? A. Well, I don't know as I remember just 10  
 what it was. There was something altered; Mr.  
 McCracken had put down something and White-  
 head thought it was better to change it, and they  
 changed it, and I don't remember the figures.

Q. That was after you had signed the deed?

A. Yes, sir.

Q. You don't remember what the change was?

A. No.

Q. Have you had any conversation with Mr.  
 McCracken since the deed was made? A. Yes. 20

Q. What about—have you been to his office?

A. I have been to his office, yes.

Q. What for? A. Mr. Reeves, when he was  
 sick, he would send me down there some time.

Q. What for? A. Well, if he wanted to send  
 any word or anything.

Q. Well, do you remember any of the mes-  
 sages that you took there? A. I took a mes-  
 sage that there was somebody that wanted to  
 buy our home—our place there. 30

Q. To Mr. McCracken? A. Yes.

Q. Did you see him? A. Yes.

Q. What did he say? A. He was crazy to sell  
 it. I went there myself once on my own ac-  
 count when Mr. Reeves was so sick that the  
 doctor said probably—

Mr. McCarter: Never mind.

Q. You went there one time when somebody  
 wanted to buy the place? A. Yes, sir.

Q. And you saw Mr. McCracken? A. Yes, 40  
 sir.

Q. Do you know who it was wanted to buy  
 it at that time? A. Yes, sir, Mr. Sheerer.

Q. And you told Mr. McCracken about it? A.  
 Yes, sir.

Q. What did he say? A. Why, he wanted to  
 sell it.

Q. Is that all that was said? A. Yes, sir.

10 Q. Did he come up to see Mr. Reeves? A. Yes, he came before that so often that I had to tell him not to come, and before I got home he had been there, and had him sign some papers in blank.

Q. You don't know that; you were told he had been there? A. I was told he had been there and had him sign some papers.

Mr. McCarter: I ask to have that stricken out.

20 The Court: Yes, unless you heard it from Mr. McCracken.

By the Court: Q. Did you hear it from Mr. McCracken? A. No.

#### FURTHER DIRECT:

Q. Have you signed any other papers relating to any of these properties since that original deed at Mr. McCracken's office? A. Yes, I signed a paper.

30 Q. Where? A. At his office.

Q. Do you know what property it related to? A. Pennington street property.

Q. What did he say to you? A. He said it was to see that I was willing that he should borrow more money on that property, as it wasn't a large mortgage, and he would get it straightened up, and wanted to deed it back because it was too much of a burden for him to carry, and he couldn't sleep nights, but he wanted us  
40 to take it back, and if he could raise a little more money he would do that; pay it up and deed it back.

Q. Did you sign the paper? A. Yes, sir.

Mr. Bradner: I gave notice generally to produce all those papers.

Mr. McCarter: We have that here, it has already been marked for identification.

Q. Is that the paper you signed, just look at

that (showing witness paper marked Exhibit D1 10 for identification)? A. I suppose it is.

Q. You signed it? A. I suppose so.

Mr. Bradner: I will offer it in evidence for complainants, it is a deed dated August 10, 1898, made by Mary T. Reeves and Moses E. Reeves her husband, to Selina A. McCracken, consideration \$1.00, and describes property on the northerly line of Pennington street, in the City of Newark; quitclaim deed in form, and recites that 20 the intent of this quitclaim deed is to convey and release all right of dower of the said Mary T. Reeves; acknowledged the 17th day of August, 1898, and not recorded.

Marked Exhibit C10, January 14, 1903.

Q. Do you know anything about the Belmont avenue property that was included in this deed to Mr. McCracken? A. I know about it.

Q. Yes, well what about that? A. We collected 30 the rents there, and he wanted to deed it back to me, and I told him not to, to keep the properties altogether, and he said why, wasn't it good for anything at all; I told him we had to have something to live on, and I told him not to deed it back, and it seems he did.

Q. Did you ever get the deed of it? A. No.

Q. You never saw it? A. No.

Q. How do you know he made a deed back?

A. Somebody saw it in the paper. 40

Q. And told you about it? A. And told me about it.

Q. But Mr. McCracken never made a deed and gave it to you? A. No.

CROSS-EXAMINATION by Mr. McCarter:

Q. When you went into Mr. McCracken's office, Mrs. Reeves, the day the deed was, as you say,

10 signed down there, was the deed already prepared? A. Which deed it that?

Q. The deed for the properties? A. No, sir, it wasn't all prepared.

Q. I beg pardon. A. He was preparing them I suppose then.

Q. Not what you suppose, Madam, I asked your recollection as to whether or not—A. Well, he was writing them and getting ready.

Q. Then you stayed there while Mr. McCracken  
20 wrote the deed? A. Yes, wrote part of it.

Q. What part of it? A. Yes, sir.

Q. What part do you recollect? A. Oh well, I don't know what part.

Q. And the deed was altered, you say, up in Mr. Whitehead's office? A. Yes, there was—about the consideration; the deed wasn't altered, as I know of.

Q. What do you mean about the consideration?  
A. I mean just what I say, what was put down  
30 as the consideration.

Q. Then that part of the deed which described the consideration was altered in Mr. Whitehead's office? A. I suppose it was, they said so.

Q. Oh now, Mrs. Reeves, I want to direct your attention to one thing. You are only permitted to testify to what you know personally. A. Well, there was writing; they wrote on the deed after.

Q. They wrote on the deed in Mr. Whitehead's office? A. Yes, sir.

40 Q. Who did the writing in Mr. Whitehead's office? A. Mr. Whitehead, I presume.

Q. Well, why do you presume he did it, did you see him do it? A. Yes, sir.

Q. Is that what you mean, that he wrote his name there, is that what you mean he wrote? A. I said that they altered something about the consideration.

Q. Well, did you see them alter something

about the consideration, did you see Mr. White- 10  
head alter something about the consideration?

A. Put his pen on the paper.

Q. Something about the consideration? A.  
Yes, sir.

Q. In his office? A. Yes, sir.

Q. Did you look at the deed after it was done?

A. No, sir.

Q. How do you know he put his pen on the  
paper, something about the consideration in the  
deed? A. Well, because they did so. 20

Q. And you saw him put his pen on the paper  
about it? A. Yes, sir.

Q. Well now, Mr. McCracken you think was  
engaged in writing this deed or part of it at  
least, when you went into his office, in the Globe  
building? A. Yes, he and his boy.

Q. Well, were they both writing at the deed?  
A. I suppose—it don't make any difference, does  
it, I cannot tell who wrote the deed exactly.

Q. The only difference it makes is that you 30  
are testifying in court and you are supposed to  
be telling what you recollect, and it may be im-  
portant, and his Honor the Vice Chancellor and  
the counsel will have to be the judges of its im-  
portance; now, I want to know whether it is true  
or not that Mr. McCracken, when you went in  
the office and after you got in there, was himself  
engaged in writing that deed? A. If he wasn't  
writing it he was telling the boy to do the writ-  
ing and telling him what to write. 40

Q. Very good, now, which was it? A. I guess  
that just what I said just now is exactly what was  
so.

Q. You now recollect that he was not in fact  
writing the deed himself? A. I told you what  
I know about it, that they were both engaged in  
preparing the deed.

Q. You could see whether Mr. McCracken was  
writing or not, couldn't you? A. Yes, sir.

10 Q. Did the boy and he sit at the same desk?

A. No.

Q. Well, who was writing the deed? A. The boy was writing.

Q. And Mr. McCracken? A. Mr. McCracken was part of the time showing Charley how to change these—keep a separate account of these accounts, that I told you about, receipted accounts.

Q. What was Mr. Cracken doing in regard to  
20 the deed, that is what I want to know? A. Well, he was preparing the deed, that is what I am sure of, and the boy was writing the deed.

Q. Now, did you go there for the purpose of signing the deed? A. Yes, sir.

Q. Who asked you to go for the purpose of signing the deed? A. I suppose my husband.

Q. You knew that your husband was about failing didn't you? A. I knew he was in trouble.

Q. You knew that the Export Lumber Company  
30 had just about obtained, or had obtained, or were about to obtain next day, a large judgment for several thousand dollars against your husband?  
A. Yes.

Q. Did you know that Mr. McCracken had accommodated your husband by permitting him to use his name in the bank? A. Yes, and I know that my husband had paid Mr. McCracken by letting him take his name.

Q. Now, don't be quite so anxious, but just  
40 answer my question. You can bring out all you want from your lawyer, Mr. Bradner, he is quite capable of taking care of you. Now, you knew that Mr. McCracken was on the back of notes that were over here in the Merchants' Bank, to a large sum of money, didn't you? A. In some bank.

Q. And was that spoken of that day? A. No, that wasn't spoken of, not there.

Q. Was it spoken of anywhere that day? A. 10  
I suppose I must have known it.

Q. Well, was it spoken of? A. No, I don't remember.

Q. Why did you say not there, wasn't it spoken of up in Mr. Whitehead's office? A. No, sir.

Q. You are sure of that? A. I am sure of it.

Q. Then you understood that you were endeavoring with your husband to get property out of your husband's name to prevent your husband's 20  
creditors from reaching it, is that it? A. No, getting time to pay our debts, getting time.

Q. Then you understood that you were getting rid of property? A. We weren't getting rid of it.

Q. One moment, you understood you were getting rid of property so as to avoid the payment of the Export Lumber Company's judgment? A. Not to avoid it, but to get time.

Q. Oh, to extend it, so to speak? A. To get time. 30

Q. And your understanding was that it wasn't to secure Mr. McCracken at all? A. No, sir.

Q. He was going to forgo everything he had too, was he? A. I suppose not.

Q. He was a philanthropist, he was going to give up everything? A. No, he was not.

Q. That wasn't very much like it, was it? A. No, sir.

Q. You further understood that if by means of getting what you call time, you would prevent 40  
the Export Lumber Company from collecting this judgment out of that property, was that it? A. We were going to get time to pay the Lumber Company, and not let him take \$50,000 or \$100,000 for a small amount, under Mr. McCracken's advice.

Q. How much did you consider this property

10 worth if you knew anything about it, \$50,000 or \$100,000? A. Yes.

Q. Well, which was it? A. Well—

Q. Either will do, I suppose? A. \$60,000 is a low estimate.

Q. Or you might call it \$100,000? A. No.

Q. Well, be that as it may you were seeking, as you say now, to save \$50,000 worth of property so as to pay off the Export Lumber Company some other time is that it? A. Yes, sir.

20 Q. Did you know the amount of the Export Lumber Company's claim? A. No, sir.

Q. Who told you that was the design? A. Mr. McCracken and my husband.

Q. Your husband before you went there, I suppose? A. Yes, sir.

Q. And Mr. McCracken after you got there? A. Yes, sir.

30 Q. How did you happen to go up to Mr. Whitehead's office? A. Because Mr. McCracken wanted to go there.

Q. Did he give any reason for wanting to go up to Mr. Whitehead's office? A. I don't know.

Q. You have acknowledged deeds before? A. Yes, sir.

Q. You acknowledged deeds before? A. Yes, sir.

Q. You didn't go up to the Prudential Building after signing a deed in the Globe Building and simply acknowledge it? A. No, sir.

40 Q. And you say no reason was given? A. I say I don't remember.

Q. There might have been some reason but you don't know? A. I don't know; there might have been some.

Q. The first deed included all of your property or all of your husband's property? A. I guess so, in Essex county.

Q. Well— A. No, not all.

Q. Well, then why didn't you convey the rest 10  
of it? A. Well, I cannot tell.

Q. Cannot tell about that? A. No.

Q. Nothing was said about that at all, eh? A.  
I don't remember.

Q. Do you know what properties it included,  
this deed? A. Oh, I guess I would know.

Q. Well, see if you can recollect it? A. Pen-  
nington street property.

Q. That you are quite sure of? A. And Astor  
street and Ferry street and our home. 20

Q. That is on Clinton avenue? A. Yes, sir.

Q. The old Ludlow property? A. I guess that  
is all.

Q. Now you feel quite clear in your mind you  
have thought of— A. I am not quite positive  
whether I have them all or not.

Q. You are at least certain about them and  
there may have been more? A. Yes, sir.

Q. Now, at that time, Mr. Reeves had some  
quite valuable property over in Arlington, didn't 30  
he? A. Yes, sir.

Q. Wasn't there the same danger, that the Ex-  
port Lumber Company would gobble that up for  
its small judgment of \$2,000? A. Perhaps so,  
I don't know.

Q. Don't know why that wasn't put in? A. No,  
I don't.

Q. Do you recollect what value you and Mr.  
Reeves put upon that Arlington property? A.  
No. 40

Q. About what did you estimate it to be worth?  
A. I don't know anything about it.

Q. Didn't you ever hear your husband speak of  
that property as being worth to you or to him  
or to both of you at least \$10,000 over and above  
everything against it? A. No, I don't know any-  
thing about that property, I didn't know about it  
then.

10 Q. Didn't know you had it? A. I knew I had it of course.

Q. Now, see if you can recollect any properties in Newark or Essex county that were in this deed that you owned? A. That were in that deed conveyed to him?

Q. To Mr. McCracken? A. Well, something in Peshine avenue.

Q. Yes, what else now? A. Well, there was property in Belmont avenue and in Boyd street  
20 I guess in that deed to McCracken that I didn't tell you of before.

Q. Now don't you remember that on that same day, Mrs. Reeves, another deed was signed by you to your son, Charles? A. Yes, sir.

Q. What was that for? A. Because Mr. McCracken advised it.

Q. Well, what reason was given for the advice? A. I cannot tell you that, I don't know; it all went along with the rest.

30 Q. And what property did that cover? A. Peshine avenue.

Q. What was the object of that deed? A. The same object as the other, I suppose.

Q. To express it mildly, to get time to pay the Export Lumber Company's judgment? A. Yes, sir.

Q. Did you owe Charley any money at that time? A. I wasn't doing the business.

Q. Well, your husband? A. I don't know.

40 Q. Was any due bill arranged for Charles? A. I don't know.

Q. Don't remember anything about that, eh? A. Mr. Reeves signed a due bill.

Q. For Charles? A. For McCracken.

Q. I didn't ask you about that; you told us about that; I am talking about Charley now? A. I don't remember.

Q. Was Charley to pay this back too? A.

Charley was doing business with his father, I 10  
don't know.

Q. Well, was he to pay it back? A. I don't  
know.

Q. Nothing said about that? A. No.

Q. How does it happen you know about Mc-  
Cracken and not about Charley? A. Because Mr.  
McCracken didn't belong in the family, and I left  
Mr. Reeves to settle the other affairs.

Q. Was Charley's deed acknowledged before  
Mr. Whitehead? A. Yes, I think so. 20

Q. Are you sure about that? A. I am not sure,  
I cannot tell.

Q. Well now, wasn't it true that Mr. Mc-  
Cracken was engaged in writing one deed and  
Mr. McCracken's clerk was engaged in writing  
another? A. I cannot tell you, I know they were  
both writing and both preparing the deeds.

Q. Not preparing the same deeds at the same  
time, were they? A. I guess not.

Q. I don't quite understand what you said in 30  
regard to the Belmont avenue property, won't  
you repeat that again; you were collecting the  
rents on that property? A. Yes, sir.

Q. You had to live, couldn't live on the air? A.  
Yes, sir.

Q. And your husband was sick? A. Yes, sir.

Q. Business was poor, I suppose, and you had  
to have the rents to live, that was right, wasn't  
it? A. Yes sir.

Q. Now tell us the conversation between you 40  
and Mr. McCracken or what you overheard Mr.  
McCracken say in regard to the Belmont avenue  
property? A. Why he said that things were get-  
ting so settled up now that he wanted to deed  
some of the properties back, and there was that  
Belmont avenue and Boyd street property, he  
wanted to deed back, and I said not to do so.

Q. Well, things were getting so settled up—

10 what things were getting so settled up? A. I don't know; that is what he said.

Q. Had the Export Lumber Company's judgment been paid? A. Ask somebody that knows something about the business.

Q. Well, didn't you know about that? Look at me and not at your son, was it paid or don't you know, what is the fact? A. I presume it was paid; it ought to be paid.

Q. Well, do you know whether it was paid?  
20 A. I don't understand that part of the business; I will answer what I know.

Q. That is all I want you to; now, do you know whether or not in fact the Export Lumber Company's judgment was paid? A. I think it is paid.

Q. No, that is not the question. Do you know whether or not at the time that you say McCracken wanted to give back the Belmont avenue property, do you know whether at that time the Export judgment was paid? A. I am sure it was  
30 paid.

Q. How do you know it? A. Why I heard enough talk about it. I don't do the outside business.

Q. Now, all that you know about it then is what was told you or what you overheard said? A. Yes, sir.

Q. You said that you did not want the property back, why didn't you want it back? A. I wanted it all kept together, and he was to attend to the interest. Mr. Reeves was sick and  
40 I wanted—that didn't yield so much as some others of the property, and it should all go to pay the interest and taxes.

Q. I understood you to say that you couldn't live on wind, Mr. Reeves was sick and that you had to have the rents of the Belmont avenue property to live on, which is perfectly feasible and natural; that being so, and the judgment being

paid and Mr. McCracken being willing to deed it back, why didn't you take it back? A. I didn't want to take it back unless all the rest was given back. 10

Q. Now, that is the only reason eh? A. Why—

Q. Is that the only reason? A. It had to be kept together, and when the whole was deeded back why the thing was to be settled up.

Q. What was to be settled up? A. Well, anything that was to be settled up, I don't know.

Q. Then anything that was settled up was to be settled up; is that all you know about it? A. I know about it, but I cannot tell you what I do know. 20

Q. Don't you know, as a matter of fact, Mr. Sheerer had bought the homestead on Clinton avenue long before that? A. Yes, and that was to go to pay up our debt.

Q. What whole thing was to come back, that you referred to? A. The whole property was to come back. 30

Q. Let me understand you rightly; then do I understand that your contention is that Mr. McCracken simply took this property to hold it and nurse it so that you might be able in the meantime to somehow or another raise the money to pay the Export Lumber Company's judgment? A. When we sold our property that was to pay the debts or anything that was against us.

Q. In the meantime the Export Lumber Company's judgment had been paid, is not that right? A. It ought to be paid. 40

Q. You understood it was paid, and yet when he wanted to deed you back the Belmont avenue and the Boyd street property you didn't want to take it? A. He said the things wasn't settled up.

Q. You didn't want to take it? A. I didn't want to take it until the things were cleared up.

Q. What was to be cleared up that had to be

10 cleared up? A. I cannot do the business and tell you all the particulars:

Q. When did you first learn that a deed had been made to you for the Belmont avenue property? A. Someone told me they seen it in the paper; that is the first I knew about it.

Q. Who was the someone, your husband? A. No, sir.

Q. Did your husband ever talk to you about it at all? A. After it was done I suppose he  
20 talked about it, I cannot tell what he talked about.

Q. Do you recollect going before Mr. Titus down in the Globe Building to acknowledge this Exhibit C 10, this quitclaim of the Pennington street property? A. Who is Mr. Titus?

Q. You seem to have gone on the 17th of August, 1898, before George M. Titus, Master in Chancery of Newark, here to acknowledge that paper; do you recollect that at all? A. I don't remember.

30 Q. In the back of the same building and I guess probably on the same floor with Mr. McCracken? A. I don't remember that; no, sir, I didn't know it was a deed at all; I didn't know it was any form of a deed; I know just what he told me that it was simply to show that I was willing that he should raise more money on that Pennington street house, as there wasn't but very little mortgage, and settle things up; he was always going to settle things up.

40 Q. There wasn't a very heavy mortgage on it. Do you remember signing a mortgage on this Pennington street property to secure some \$1800 to the Orange National Bank? A. Yes, sir.

Q. You have a distinct recollection of having done that? A. Yes, sir.

Q. You knew the Howard Savings Institution had a mortgage on this Pennington street property of \$2500? A. Yes, some institution did.

Q. And your present recollection is that Mr. 10  
McCracken owned that property, that is the Pen-  
nington street property, under this deed that you  
have spoken of? That is your recollection about  
that? A. He held it under that deed, he didn't  
own it.

Q. He didn't own it? A. Didn't own it, he held  
it in trust.

Q. Well, he derived whatever right he had in  
it under that deed, that is your recollection? A.  
He held it in trust. 20

Q. Under that deed? A. Under that deed.

Q. You don't recollect that as a condition for  
his execution and delivery to you of the deed for  
the Belmont avenue property, that he suggested,  
and you acquiesced in the idea that you should  
release your dower in the Pennington street prop-  
erty? A. No, sir, not a word ever was said about  
such a thing.

Q. You think you had already signed to Mr.  
McCracken a deed for the Pennington street 30  
property? A. Signed it in the office there that  
first time.

Q. Now, you were perfectly friendly with Mr.  
McCracken during all this time? A. Yes, sir.

Q. You were very good friends with him when  
you went to him and told him you understood  
Mr. Scherrer wanted to buy the homestead? A.  
Yes, he had told me before—I didn't want to sell  
the homestead, and one time when I was in his  
office Mr. Reeves had sent me down, he said he 40  
didn't know as anything could be done but sell  
the homestead, and I said I wasn't willing to sell  
the homestead, but we was anxious to get out of  
debt, and as soon as Mr. Reeves found this cus-  
tomer he sent me right down to McCracken to tell  
him.

Q. Then you changed your mind in the mean-  
time? A. Yes, anything to get out of debt and get  
out of this hole.

10 Q. What hole were you in? A. In debt, that is what I call a hole.

Q. To whom were you in debt? A. Well, I can't tell.

Q. Do you recollect the amount for which this due bill was given to Mr. McCracken? A. I do not; I don't remember.

Q. You haven't a very clear distinct idea of business, because you didn't attend to the business yourself? A. I didn't.

20 Q. You were engaged at home attending to the domestic affairs? A. Exactly.

Q. And you did about as your husband suggested, you had nothing to do with the incurring of the debt to the Export Lumber Company? A. No, sir.

Q. And you didn't know anything about business matters, did you, Mrs. Reeves? A. Only what came exactly under my notice and care.

30 Q. Well, your husband transacted the business? A. My husband transacted the business.

Q. He made the purchases and made the sales when they were made? A. Yes, sir.

Q. And you would sign any paper he suggested, wouldn't you? A. Yes, and he would sign any paper that McCracken suggested.

Q. You are sure of that too? A. I am sure of that; I have seen him do it enough times.

40 Q. You were always present when the suggestion was made? A. Always? I won't say always; but I seen him sign plenty though.

That is all.

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CHARLES E. REEVES, sworn on the part of the complainant.

Direct-examination by Mr. Bradner:

Q. You are a son of Moses E. Reeves? A. I am.

Q. Mrs. Reeves is not your mother? A. No, sir. 10

Q. She is your father's second wife? A. Yes, sir.

Q. You were in partnership with your father? A. Yes, sir.

Q. How long had you been in business with him? A. About fourteen years.

Q. Do you know Mr. McCracken? A. I do.

Q. Do you know him as a lawyer? A. Yes, sir.

Q. Do you know whether your father ever had any legal business with him? A. Yes, sir; I do. 20

Q. Prior to January 1st, 1896? A. Yes, sir.

Q. During the time that you have been in business with your father can you state whether Mr. McCracken has acted as attorney or counsel? A. Yes, sir; he has.

Q. Has he for your father individually, do you know? A. Yes, sir.

Q. What kind of legal business, what was done? A. Why, drawing deeds when my father would transfer properties, make trades, Mr. McCracken would search the records, and draw the deeds. 30

Q. What was the business of Reeves & Sons? A. Carpenters and builders.

Q. Build houses? A. Yes, sir.

Q. And in building houses did it ever become necessary to get any loans on properties? A. Yes, sir.

Q. Was anybody employed for that purpose, to get loans? A. Well, Mr. McCracken used to arrange by getting notes discounted in the bank. 40

Q. How were those notes to be taken care of? A. When the houses were finished we would get a mortgage from someone and the notes would be paid off.

Q. Do you mean that each house would take care of itself that way? A. Yes, sir.

Q. How long had that sort of business been going on prior to January 1st, 1896, about how long? A. Oh, I suppose maybe five years.

10 Q. Were you present at Mr. McCracken's office when a deed of conveyance was made by your father and Mrs. Reeves? A. Yes, sir.

Q. To him? A. Yes, sir.

Q. Which included the homestead on Clinton avenue? A. Yes, sir.

Q. You remember that occasion? A. I do, very well.

Q. Were you in the office before your father and his wife came in, or did you come in with them?

20 A. I came in with them.

Q. Who were in the office then? A. Mr. McCracken and his clerk.

Q. What was being done at that time when you went in? A. They were preparing this deed; Mr. McCracken was looking over his papers where he had our deeds; we had taken some of our deeds that we had at home with us, and Mr. McCracken was making preparations and giving directions to this office clerk, George, how to make the deed.

30 Q. Was the deed signed in Mr. McCracken's office by your father and his wife? A. I think not.

Q. You think it wasn't signed there? A. I didn't see it.

Q. Was there another deed made on the same occasion? A. Yes, sir.

Q. And who signed that? A. I didn't see anyone sign it.

Q. To whom was that deed made? A. To me.

40 Q. What property? A. Peshine avenue.

Q. Did you ever get the deed? A. No, sir.

Q. Did you ever have it in your possession? A. No, sir.

Q. Have you even seen it since the time it was talked about there? A. Never have seen the deed.

Q. Why was it made, do you know, the one to you I am talking about? A. Well, I cannot answer that only by the direction of Mr. McCracken.

Q. Why was the other deed made to Mr. McCracken? A. It was all done by Mr. McCracken's direction. 10

Q. Well, how do you know? A. Well, I know about the circumstances of the matter, and I know that Mr. McCracken advised this.

Mr. McCarter: Q. Well, in your presence? A. Yes, sir.

Q. Confine yourself to what you heard.

FURTHER DIRECT:

20

Q. What occurred at that time, what was done then about the other deed, the one to you, or what was said in your presence? A. About the arrangement.

Q. Yes. A. That he was to take the deeds for these properties, and he was to collect the rent and pay all the running affairs; the interest and taxes and keep them intact that way.

Q. Anything else? A. Well, then until such time would come when he could sell the property and pay off these encumbrances then they would be straightened up and deeded back. 30

Q. Well, what encumbrances, if any, were talked about on that occasion? A. Well there was interest and some back taxes.

Q. Were there any other debts mentioned at that time? A. No, sir.

Q. Did you know anything about any suits having been brought against your father? A. I knew that this Export Lumber affair was going on. 40

Q. Was there anything said by Mr. McCracken as to what should be done with these properties, or why he was taking them, tell us about that, if you know? A. Mr. McCracken said that these things would sweep us off the boards unless they were protected and cared for, and he advised us to make these deeds and he would take care of

10 them for us and look after them in every way for our interest; he didn't want one cent out of it.

Q. Did you see any other papers signed by your father on that occasion? A. A due bill.

Q. Who wrote that? A. Mr. McCracken.

Q. Have you ever seen that due bill since that occasion? A. I think I did in one of the cases we had in the court house.

Q. Didn't you bring suit against Mr. McCracken yourself? A. I did; yes, sir.

20 Q. Do you recollect whether the due bill was in evidence at that time? A. It was; yes, sir.

Q. Did you see any other paper signed on this occasion in Mr. McCracken's office? A. I don't remember.

Q. Did you sign any? A. I think I did.

Q. What were they? A. I don't remember whether I seen any papers in relation to this matter or not that day.

30 Q. Did you sign any papers? A. Oh, I receipted a lot of bills.

Q. Well, what were they? A. They were bills that we had done work for Mr. McCracken we were working for him doing jobbing on his houses, and they were a lot of bills that he owed us.

Q. When you say us, who do you mean? A. My father and me, Moses E. Reeves & Son.

40 Q. Why did you receipt those bills? A. He wanted those bills receipted so that in case anything was ever brought up about these things that would be out of the way so that there wouldn't be anything to run up against; I also receipted at the same time a lot of bills for the estate of Charles Dowden.

Q. The firm had bills against that estate? A. Had bills against that estate and I receipted them at the same time, and I asked Mr. McCracken what I should do about the receipt of those bills, and he said I will show you how to keep a record

of that, and he showed me how to make a record of 10  
each bill I had receipted, and he said we will  
adjust that later; I did that both in regard to  
Mr. McCracken's own bills and also the bills of  
the estate of Dowden.

Q. Did you mark them paid on your book? A.  
No, sir.

Objected to.

Q. Didn't you afterwards bring a suit against  
the estate of Dowden? A. Yes, sir.

Objected to as immaterial. 20

Mr. Bradner: I want to ask the witness  
to show that that question came up there.

Q. On this occasion was there any statement of  
accounts made out, any figuring done? A. No,  
sir; none whatever.

Q. Had you been in the office before this day,  
with your father? A. Yes, sir.

Q. Were you present at any conversation with  
Mr. McCracken? A. Oh, a great many times be-  
fore, yes. 30

Q. Before this deed was made? A. Yes, sir.

Q. Were you present at any conversation in  
which anything was said about making a convey-  
ance of the property to Mr. McCracken? A. I  
don't think I was.

By the Court: Q. I don't quite understand  
why you should have receipted bills that Mr. Mc-  
Cracken owed you, why was that, do you know?  
A. The only thing about it was that Mr. Mc-  
Cracken said he didn't want any trouble from 40  
this, he wanted everything squared up—fixed up.

Q. You were giving Mr. McCracken property—  
you were giving him real estate? A. Yes, sir.

Q. Now, if Mr. McCracken had charges against  
you or against your father and yourself why I can  
understand why bills of that sort should be re-  
ceipted by McCracken, but I don't understand  
why you should have receipted bills that Mr. Mc-

10 Cracken owed you, by conveying this property he was putting himself in your debt, according to your statement. Now why then should you have receipted bills which indicated a debt which he owed you, and your receipt indicating the payment of that debt, when in point of fact it was not paid. If Mr. McCracken had been transferring property to you, then you might have receipted those bills in payment for the transfer, but I don't quite see why you should have receipted bills which Mr. McCracken owed you. Now, can you explain that? A. The only thing I know about it, I did it according to Mr. McCracken's direction.

Q. Did't he explain why that was necessary?

A. He explained in case that anything should come out of these supplementary proceedings he mentioned.

Q. Supplementary proceedings against your father? A. Against him I understood.

30 Q. Against Mr. McCracken? A. Yes, sir.

Q. Well, that is the way you understood it then? A. Yes, sir; that is the way I understood it, it was not our managing, he managed it and directed it, and we did as he asked.

Q. You have no other explanation to make than that? A. I don't know of anything else.

#### FURTHER DIRECT:

40 Q. Did he give you any credit for those bills anywhere, that you know of? A. I never knew of any credit.

Q. Did you get any money at the time? A. Not a cent.

Q. Well, what danger was there of any supplementary proceedings at that time?

Mr. McCarter: Against McCracken you mean?

Mr. Bradner: Against anybody.

The Court: He says against McCracken. 10

Mr. Bradner: That is the way he understood it.

A. Yes, I didn't know anything about supplementary proceedings. I am not a lawyer.

Q. Did you know what they meant by that? A. No, sir; my interpretation would be that he would be brought up and investigated like, into those affairs.

Q. Your knowledge of the way— A. This transfer of property we claim it was in trust. 20

Q. Who would bring them up? A. The creditors, their creditors.

Q. Did the firm have any creditors then, do you know? A. The business was getting along, we owed bills of course, there was no trouble up to that time.

By the Court: Q. The firm was not involved in this Export Lumber Company's judgment? A. No, sir.

Q. The firm itself was in good credit? A. Our credit was good; yes, sir. 30

Q. Did you take the bills there with you or did Mr. McCracken have the bills? A. I had rendered bills and he had them in his desk, and hunted them up and I sorted them out and helped arrange and fix all that were not receipted.

Q. Did you make a memorandum of them then? A. I did.

Q. And you kept that? A. I did.

Q. Do you know whether subsequently an action was brought in your firm name against Mr. McCracken, and the question of those bills was disposed of in that action between the parties? 40

Mr. McCarter: I don't want to be technical, but there has been so much litigation between these parties and I think their ideas is so indefinite upon it, that I am going to insist, if I may, that the record

10           be offered to show what it was; these people are quite indefinite about these things.

The Court: I don't understand how the evidence can be pertinent.

Mr. Bradner: As a matter of fact the suit did not go to a trial, it was settled between the parties. I will change my question.

Q. Did your firm afterwards bring suit to recover the amount of those bills from Mr. McCracken?  
20   Cracken?

Mr. McCarter: I object; the record will show.

The Court: We haven't anything to do with the indebtedness existing between the firm and Mr. McCracken.

Q. I understood you to say that there are no statements or accounts made out? A. Never.

Q. I mean as between Mr. McCracken and your father? A. Yes, sir; never made out.

30   Q. Did he go over his books? A. No, sir.

Q. Were there any notes there before you figured up? A. No, sir.

Q. No figuring done at all? A. Don't remember any figuring done whatever.

Q. What was this due bill for that your father signed? A. The only thing I could see was to match the consideration in the deed pretty nearly.

Q. What was said about his giving the due bills? A. Well, that was another thing; at his  
40   suggestion and direction.

Q. Tell us what was said? A. Why he said we better have this thing fixed up, and he said you better make out a due bill, he said.

Q. What thing fixed up? A. This matter of this transfer of property, he wanted everything in shape so that there would be no flaw in it or nothing at all about it that would cause any trouble.

Q. What trouble could be caused?

Mr. McCarter: What he said, not what 10  
this man imagined.

Q. Tell us what was said? A. Well, I cannot  
tell every word that was said, we had a good deal  
of conversation there.

Q. Did Mr. McCracken sign any paper at that  
time, do you remember? A. I don't remember  
him signing any paper.

Q. Did you hear anything said about any  
paper being signed by him?

Mr. McCarter: I don't think you ought 20  
to lead him.

Mr. Bradner: I don't want to.

A. No, sir, I do not.

Q. Then can you tell us now from what you  
heard at that time why that property was trans-  
ferred to Mr. McCracken?

Mr. McCarter: I think he ought to tell  
us what was said, he cannot come to a  
conclusion; he says he cannot remember  
what was said; I think we ought to have 30  
what was said and not his conclusion; that  
is my position.

Mr. Bradner: I will withdraw that.

Q. Do you know what consideration was fixed  
in the deed from your father to Mr. McCracken?

A. I did know at that time.

Q. Did you hear the conversation mentioned at  
that time? A. No, sir.

Q. No amount? A. No, sir.

Q. Did you hear anything said about any con- 40  
sideration? A. No, sir.

Q. Was there anything said about why the  
property was being transferred to Mr. McCrack-  
en? A. About this judgment which the Export  
Lumber Company was about to obtain.

Q. Who said anything about that? A. Mr. Mc-  
Cracken.

Q. What did he say? A. He said that there

10 was going to be a judgment recorded, and I think he spoke about there would have to be done something quickly or they would sweep us off the boards, take all we had for a little amount of money.

Q. And was anything said further than that by any one? A. Not that I remember.

Q. What was to be done with this property after it was—

Mr. McCarter: No, what did he say.

20 Q. What did he say was to be done? A. I told them before—

Q. Did you? A. I did.

Q. What was that? A. I said that he was to take this property and hold it in trust.

Mr. McCarter: Q. Did he say that? A. He did, he said he would take this property, and he would hold it for us, he would collect the rents, he would apply these rents to paying the interest or taxes, and the necessary expenses that would  
30 come against the property. I mentioned that before.

#### FURTHER DIRECT:

Q. Was there anything said about paying this judgment or any other judgment or any other debt? A. I explained that before, how he said that he would sell the property when opportunity came up to sell the property the property was to be sold to clear off this judgment of the Export  
40 Lumber Company's.

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

Q. Well, after that transfer do you know who collected the rents of the properties that had been transferred of your own knowledge? A. Father collected part of the rent, Mr. Ball collected some of the rent.

Q. Where did your father live then? A. At the homestead at 580 Clinton avenue.

Q. How long did he continue to live there after 10  
the conveyance, about how long? A. I should  
think from January to July.

Q. Same year? A. Same year.

Q. It might have been longer? A. It might  
have been longer, I am not certain.

Q. Do you remember seeing your father sign  
any paper or lease relating to the homestead? A.  
Yes, sir.

Q. Where was that signed? A. Where?

Q. Yes? A. In Mr. McCracken's office. 20

Q. When? A. This same time.

Q. What was said about that? A. Well, all I  
know is that it was a part of the scheme.

Mr. McCarter: No, tell us what was said.

A. Well, about the same thing in regard to  
the collecting of rents and everything else, he was  
doing this for our benefit, and that it was best to  
have this thing straightened that he would be  
living, father would be occupying his house, and  
he wanted something to show for it in case of 30  
this investigation or proceedings, he didn't ex-  
pect to collect a cent of rent from my father when  
he gave it.

Q. How do you know? A. I know he didn't;  
it was understood.

Q. What was said about it? A. Said about it—  
that it was an article fixed.

Q. Fixed for what? A. For the purpose.

Q. Purpose of what? A. For Mr. McCracken  
to be free and clear of anything at all out of the 40  
way; I don't know what else to say.

Mr. McCarter: Q. Suppose you say the truth  
and the fact, that will do? A. Well, that is the  
truth.

#### FURTHER DIRECT:

Q. Was anything else said about that rent up  
there, about paying rent in the homestead? A.

10 That the lease was to be drawn up to make the thing look all right on the face of it.

Q. Do you recollect any other papers being signed on that occasion? A. No, sir.

Q. Did you go out with them when the deeds were acknowledged? A. No, sir.

Q. Didn't go to Mr. Whitehead's office? A. Didn't go to Mr. Whitehead's office.

Q. Do you know anything about the foreclosure proceedings against the Peshine avenue property?  
20 erty?

Mr. McCarter: Is that material? I object to it.

The Court: I will allow you to inquire about that.

Q. Do you know anything about the foreclosure of the mortgage on the Peshine avenue property?  
A. Yes, sir.

Q. What do you know about it, I mean from conversation with Mr. McCracken? A. I know  
30 that there came a time when we wanted to make shifts of this property, trade off for something else, and Mr. McCracken said that the shape it was in, it would have to be foreclosed in order to straighten out the tangle, and he suggested that we foreclose it in a friendly way; that we were to sign off everything so that it would make the expenses lighter, and that he would foreclose it and buy it in for our benefit; then he would transfer it to whoever we would say, and we  
40 could trade it for something that would valuable, for the equity.

Q. Where was that bargain made? A. In his office.

Q. Who were present? A. Father and I.

Q. Do you know anything about the foreclosure of the Ferry street property? A. Yes, sir.

Q. Was there any bargain made in relation to that, to your knowledge? A. Yes, sir.

Q. Where? A. I was in his office. 10

Q. Who were present? A. Father and I.

Q. What was that arrangement? A. Some kind of an arrangement.

Mr. McCarter: Well, let us have what it was?

FURTHER DIRECT:

Q. Who held the mortgage on the Ferry street property? A. Firemen's Insurance Company.

Q. What was his arrangement about that property? A. Oh, well, that was foreclosed by the 20 Firemen's Insurance Company.

Q. Yes. A. Why Mr. McCracken was collecting the rents there of course, and the interest was behind and Mr. McCracken was in Europe and they foreclosed, or started foreclosure proceedings, and father went in to see Mr. Cotter—

Q. No, that won't do? A. And he thought the proceedings had been stopped, and after a while we found out that they hadn't been stopped, and the first we knew, the place had been foreclosed, 30 and then we learned that it was in the name of Mrs. McCracken.

Q. I didn't ask you about that, I asked you about any bargain being made with Mr. McCracken about that property? A. Why that was just the same as all the rest, that he was to keep that intact as he called it, for us.

Q. Did you make any bargain with him in relation to that property after foreclosure suit had been brought? A. The Ferry street? 40

Q. Yes. I mean that you have any personal knowledge? A. No, I don't just recollect it.

Q. You don't remember any? A. No, sir.

Q. Do you know anything about the sale of the homestead property to Mr. Sherrer? A. Yes, sir.

Q. Were you present at any of those negotiations? A. The first I can remember anything

10 about the sale of that Mr. Frank Brock sent for me to come to his office.

Q. I mean in connection with Mr. McCracken only what he has said or done, that you know of?

A. Well, I know that when the price that they were speaking about was mentioned and I heard of it, I talked to Mr. McCracken about that price, and I told him it was entirely too low, that the property was worth a great deal more, and he says, we must sell something, we must sell something,  
20 thing, and he was very emphatic about it.

Q. Did he say why? A. He said that we had to have money,

Q. For what purpose? A. He said the taxes had to be met and the interest was getting behind on the Clinton avenue property, and we must have money to keep things going.

Q. And in the meantime what had become of that Export Lumber Company's judgment, do you know anything about that? A. He raised the  
30 money on that and paid it.

Q. Who paid it? A. Mr. McCracken.

Q. How do you know? A. He told me so.

Q. Did he tell you he had paid that judgment? A. He told me he had paid it, yes, sir.

Q. Did he have anything to say about Mrs. McDermott's judgment? A. Yes, sir, he said he settled that too.

Q. How was that money raised, do you know? A. He had a note discounted in the bank. Father  
40 told how he helped negotiate with William Ripley the other day.

Q. Did you ever know that Mr. McCracken had had those two judgments, assigned to himself by any conversation with him? A. No, sir.

Q. When did you first hear that? A. When I went up to the court house one time to search the records in the County clerk's office to copy something in a case that I had started there, I

don't know what you call it, whether it was a 10  
bill or what, and then I found in making that  
copy in the County Clerk's office that there was  
an account where he said this judgment remained  
unpaid and unsatisfied, I think is the words.

Q. In that paper? A. In that paper, and I  
didn't know what it meant.

Q. Wasn't that a plea or set-off that he filed?  
A. Yes, sir.

Mr. McCarter: I don't think that is fair.

Q. Do you know Mr. McCracken's handwrit- 20  
ing? A. Yes, sir.

Q. Whose handwriting is that—whose signa-  
ture? A. Mr. McCracken's.

Objected to as immaterial and irrelevant.

Mr. Bradner: It is a letter addressed to  
Mr. C. E. Reeves, and I will connect it, if  
the Court please, with this transaction  
dated June 2nd, 1898: "Dear Sir: Will you  
please meet me at Mr. Whitehead's office  
on Saturday at 11 o'clock to adjust our 30  
accounts etc. What about pending Yours  
etc. J. H. McCracken."

I offer that and promise to show that  
that related to the accounts with the com-  
plainant in this suit, and all their accounts  
generally.

Q. Do you know whose handwriting this is?  
A. Mr. Whitehead's.

Mr. Bradner: I offer that letter for the  
reason that it refers to the same things 40  
and fixes the same date for the meeting.

Mr. McCarter: I think that is utterly  
immaterial and irrelevant, a letter from  
Mr. Whitehead dated June 2nd, 1898, re-  
ferring to some account between the firm  
of Moses E. Reeves & Sons and Mr. Mc-  
Cracken, and asking them to call and bring  
their books in order that they may be ad-  
justed.

10           The Court: You offer it for the purpose merely of fixing a date.

Mr. Bradner: I offer it for the purpose of showing that Mr. McCracken had requested that a meeting should be had for a settlement of accounts between them at that time.

Mr. McCarter: Between Moses E. Reeves & Sons.

20           Mr. Bradner: This letter is addressed to Moses E. Reeves & Son, and the other is addressed to Charley.

The Court: They both relate to the firm account.

Mr. McCarter: Yes, sir.

The Court: Well, I understand how you could use the letter to fix the date, but I do not quite understand how the letter could have any relevancy otherwise.

30           Q. Outside of the bills you receipted, were there any other accounts you know of? A. No, sir.

Mr. Bradner: I offer the letters.

Objected to as irrelevant.

The Court: I don't think the letters are competent, I don't see what they have to do with the case.

Mr. Bradner: May I read this letter?

The Court: Yes.

Mr. Bradner (Reading):

40           " We have the deed for the factory property, please call and get it. I think it is very desirable that the accounts between you and Mr. McCracken should be settled, Mr. McCracken is very desirous of settlement, he will meet you at my office on Saturday next, 11 o'clock a. m., if that will be convenient for you. Please call around and bring with you your books and accounts."

Mr. McCarter: It doesn't appear at all 10  
that Mr. Whitehead represented Mr. Mc-  
Cracken in any way in that matter.

The Court: I think they are irrelevant  
so far as I can see, unless it be for the  
purpose of fixing a date. If you offer  
them, you may, for the purpose of fixing  
a date.

Mr. Bradner: I offer the letters in evi-  
dence, I do not want to restrict myself up-  
on the offer, if they are excluded very 20  
well.

The Court: Well, I do not think they are  
competent, so I will exclude them for the  
present.

Q. I show you another letter, whose writing is  
that? A. Mr. McCracken's.

Mr. Bradner: I offer that in evidence.

Mr. McCarter: It seems to me to be ir-  
relevant.

Mr. Bradner (Reading): 30

"August 19, 1898. Dear Charley: Am  
disappointed at the result in the B. L. As-  
sociation. I want to see you about getting  
the water out of the cellar, and finding  
when it gets into the cellar. Yours etc.,  
J. H. McCracken. Pennington street and  
Cedar street, both loans denied."

Offered in evidence.

Mr. McCarter: For what purpose.

Mr. Bradner: I want to ask the ques- 40  
tion—

Q. Do you know what he referred to about the  
Pennington and Cedar street loans? A. Yes, sir;  
he was trying to raise more money on these  
properties, and he had spoken to me and talked  
to me about that, and he advised me in that let-  
ter there that they had both been denied.

10 Q. What Pennington street property is that?  
A. Pennington street property, 102 and 102½ Pennington street.

Q. The same property your father has been testifying about? A. Yes, sir; the same property.

Q. What Cedar street property? A. 67 and 69 Cedar street, the same property my father has been talking about.

Q. Why did he write to you about it?

Objected to.

20 Q. Do you know why he wrote to you about it?

Mr. McCarter: From what he told you.

By Mr. McCarter: Q. Did he ever tell you why he wrote you that letter? A. No, he made no explanation about writing the letter.

#### FURTHER DIRECT:

Q. Did you ever transact any business for your father with him? A. My father had been sick, you know, after this transfer, my father became  
30 very sick, and Mr. McCracken and I used to talk a great deal about these matters.

Q. In whose handwriting is this letter? A. That is Mr. McCracken's.

Mr. Bradner (Reading):

“November 10, 1898. Mr. Reeves, Sir:  
I sent word to you yesterday, but my clerk forgot to give it to you. I want to see you about several matters and hope you can see me tomorrow, so that I can see Bromley before Saturday. Mr. Ball is making me some bother. Do not disappoint me.  
40 Yours etc., J. H. McCracken.”

Offered in evidence.

Marked Exhibits 11 and 12.

Q. Did the firm of M. E. Reeves & Son make any repairs on any of these properties after they had been transferred to Mr. McCracken? A. Yes, sir; we did a number of jobs on these different

properties until there came a time when we told 10  
 Mr. McCracken we couldn't stand it, and he said  
 that he would pay us then for these bills, that he  
 would pay out of the rents, and we went ahead,  
 and when the time came to get the pay he said,  
 make out a bill for that and I said, make out a  
 bill to whom, and he said, to me, well, I said,  
 wouldn't that be funny to make you a bill, well,  
 he said, that's all right, what difference does it  
 make, when I come to settle up this property I  
 will have that for a voucher to show that I paid, 20  
 just the same as I pay the plumber or mason or  
 anyone to make repairs on these houses, and then  
 I went to work and made the bills out, and some  
 he paid and some he didn't pay, and they are in  
 that statement there the bills that remain unpaid,  
 some he paid part of.

Q. You say settle up the property, what do  
 you mean by settle up?

Objected to.

The Court: What was said.

30

By the Court: Q. Is that the expression you  
 made use of, settle up the property? A. Yes,  
 sir; and we understood all along about that.

#### FURTHER DIRECT:

Q. You had made some objection to making out  
 a bill to him? A. I made an objection to making  
 a bill out to J. H. McCracken; the property he  
 knew was ours, and we know it was ours, and  
 I thought that wouldn't look well, and I asked 40  
 him about that, and he said that is all right, we  
 will adjust these affairs between ourselves, and  
 when the thing is settled up meaning by that when  
 the judgment was paid—

Q. Not meaning, what did he say? A. When  
 everything is cleared off and you can take the  
 properties back, then this will be for a voucher  
 that I have paid you.

10 Q. You brought a suit against Mr. McCracken, did you not? A. Yes, sir.

Q. Did you go to the court house to make a copy of a plea that he filed? A. I did.

Q. Yourself? A. Myself.

Q. Did you compare it with the original? A. I compared it, yes, sir.

Q. I show you a paper and ask you what that is? A. That is the paper that I copied.

Q. Whose handwriting is that? A. That is my  
20 writing.

Q. Of course with the exception of some marks that I have made upon it. A. Yes, sir; that is my writing.

Mr. Bradner: I wish to offer it in evidence.

Objected to.

The Court: What is the object.

Mr. Bradner: To show that in the plea  
30 or set-off, he sets up notice of a due bill which they do not produce. In this plea he claims there is one item or set-off for the sum of \$3,497 found due from said Moses E. Reeves to the defendant, on the second day of January 1896, upon the settlement of accounts between the said Moses E. Reeves and this defendant, made on the last mentioned date and up to that date, of which the sum of \$3,497 still remains due, owing, unpaid and unsatisfied.  
40 Mr. Reeves has testified that he saw the due bill in court.

Q. You remember about that? A. Yes, sir.

Q. Do you remember on what occasion? A. Yes, sir.

Q. What trial? A. At the trial of the suit that I brought up at the court house.

Mr. Bradner: I offer it for that purpose, to show that he sets up an item of

settlement of account made at that time, 10  
and that is the only object.

Mr. McCarter: I do not think there is any denial that there was a due bill, but I object to the interjection of a part of a record even for any purpose, and particularly for the purpose suggested.

The Court: Well, I suppose that if you offer the record you must offer the whole record. If you offer the record merely for the purpose of proving a copy of the due 20 bill, in the absence of the original why that is another matter.

Q. There was a due bill sent Mr. Reeves at the time the bill was sent? A. Yes, sir.

Q. And it was produced in court at the time of the trial of your case? A. It was.

CROSS-EXAMINATION, Mr. McCarter:

Q. Do you recollect quite distinctly, Mr. Reeves that the lease of the homestead was part and parcel 30 of the same transaction, drawn and signed the same day, and as you state, made subject to the same conditions? A. Yes, sir.

Q. You saw it signed? A. Saw the due bill signed.

Q. No, the lease I said? A. Saw the lease signed? I don't know as I said I saw it signed. I said I remembered seeing the lease. I saw the lease at this same trial that Mr. Bradner speaks 40 of.

Q. No, I am talking about the 2nd day of January, 1896, the date when you went down with your father and mother in Mr. McCracken's office? A. Yes, sir.

Q. You have certainly, or else I am very much mistaken, testified that as part and parcel of that transaction a lease was presented of the homestead property for a nominal rent, with the ex-

10 ception that no rent should be paid, and signed, and that it was stated by Mr. McCracken at the time that it was signed that that was one part of the same transaction, and that it didn't mean anything except to cover things up, or words to that effect, am I right? A. You are right.

Q. You are quite sure about that? A. As I say, we went there the next day, we didn't finish up matters that day, the deeds and bills were fixed up that day, but whether this lease was fixed  
20 up that same day or not I am not positive.

Q. Then why did you swear on your direct-examination that it was part of the same transaction and same conversation? A. What was done yesterday and today was all connected.

Q. Were you present the next day at another? A. Yes, sir; if it was the next day I was present.

Q. Well, when was it? A. I am not sure that it was that day.

Q. Was it one of the two days or right near  
30 by? A. I don't think it was very far off.

Q. Was it a year off? A. No, sir.

Q. Was it six months off? A. I should not think it was.

Q. Was it four months off? A. I hardly think it was.

Q. Was it a month off? A. Well, you will get down to a day after a while, I don't know.

Q. Was it part and parcel of the same interview and the same conversation and the same  
40 plan? A. As I say, I am not positive that it was the day the deeds were made, but I remember I was in the office at the time this lease business was spoken of.

Q. Then it might have been four, five, six, seven or eight months afterwards? A. I should not think it was as much as that.

Q. How did the lease business happen to be

spoken of? A. Well, Mr. McCracken thought of 10  
it, we didn't.

Q. Did you live at home at that time? A. Yes,  
sir.

Q. At the homestead? A. No, sir.

Q. Well, if it wasn't during this same trans-  
action, how did you happen to know anything  
about it? A. My father and I repeatedly went in  
there together.

Q. Yes, then you now take the position that  
it might have been some time afterwards when 20  
the lease was fixed up? A. Well, I cannot be  
positive as to that.

Q. What did he say when the lease was exe-  
cuted, now let us have it again, whenever he did  
say it, if the next day or the same day, let us hear  
what he did say? A. I would say just the same  
as I said before, that it was a plan of Mr. Mc-  
Cracken's.

Q. No, tell us what he said about the lease as  
soon as you can remember from beginning to 30  
end now, about this lease? A. Well, he said that  
he wanted these matters to be fixed up right, and  
that it might be a question about his occupying  
this property in Clinton avenue and holding the  
deed to it, and to make it strong it would be bet-  
ter to draw up a lease of that.

Q. Had you continued to occupy the property  
long after the deed before he said that, or was that  
all at the same time? A. Well, if it was after  
he continued to live there— 40

Q. No, I want your recollection? A. My rec-  
ollection of it was that it might have been a day  
or two afterwards, and it might have been that  
day, but I remember that there was a lease.

Q. And your recollection is that while the thing  
was red hot— A. Well, it was always hot with  
us.

Q. Well, the thing was red hot and in the pro-

10 cess of being finished up, and he said, here, it won't look right for you to occupy this property which partly belongs to me, and therefore we must fix up a lease, that is what he said—is that right, or words to that effect? A. I guess that was the sum and substance of it.

Q. And the lease was fixed up then and there? A. Yes, sir.

Q. You saw the lease signed? A. I don't know whether Mr. McCracken took my father into some  
20 lawyer to get him to acknowledge that or not.

Q. Did you see it signed, did you see Mr. McCracken sign it? A. I don't think I did.

Q. No? Well, now, you have stated in your direct-examination that Mr. McCracken had for several years acted as attorney for your father, to your own personal knowledge what work had Mr. McCracken done as a counsel for your father—attorney or counsel for your father? A. Father dealt a great deal in real estate, trans-  
30 ferred property, and Mr. McCracken used to make the deeds and search the records.

Q. He had been doing that for how long a time that you know of? A. Oh, I remember pretty well; oh, I should think ten years, maybe.

Q. Did Mr. McCracken represent your father in the Export Lumber Company matter? A. No, sir.

Q. Who did? A. Why my father had an interest with him in that Export Lumber Company.

40 Q. Who represented your father? A. Mr. Bradner.

Q. And your father was quite an operator in real estate? A. Yes, sir.

Q. At the time that he made this deed to Mr. McCracken about which we have been talking, he had a valuable equity in property over in Arlington, didn't he? A. Yes, sir.

Q. Worth some \$10,000? A. I guess it was. 10

Q. The equity I mean? A. The equity.

Q. Your father considered it worth that, didn't he? A. Oh, I think so.

Q. And he had other property in the City of Newark and County of Essex besides the property included in the deed? A. In the County of Essex.

Q. Yes, in Newark? A. I guess so.

Q. Just to get the thing before the court, cannot you say, if you remember, what properties were included in the deed? A. In the deed were Belmont avenue, Boyd street, Clinton avenue, Ferry street and a lot on Chestnut street, a vacant lot. 20

Q. How about Cedar street? A. Cedar street.

Q. He did own property on Chestnut street, didn't he? A. At that time. He deeded the lot to my mother.

Q. Did or did not your father own property on Chestnut street at the time he made this deed? 30

A. There were two different tracts there, now whether he owned both tracts—he had transferred one to my mother—I forget.

Q. The Chestnut street wasn't in the deed we are talking about? A. It wasn't.

Q. He did own property on Chestnut street? A. Yes, sir.

Q. And on Ferry street? A. Yes, sir.

Q. Neither of which were in the deed, and he did own property on Pennington street, now, that wasn't in the deed? A. I believe not. 40

Q. So that there were three properties at least in Newark that you now can recall, outside of the deed—besides the Arlington street property which your father had an equity in at that time—owned them at that time? A. Yes, sir.

Q. Do you know what he estimated them to be worth? A. The other three.

10 Q. Arlington, Chestnut street, Ferry street and Pennington street? A. No, sir.

Q. Didn't you hear him testify to it? A. I don't think I did.

Q. Now the firm of Moses E. Reeves & Son, as you say, had good credit? A. Yes, sir.

Q. And you stated that the object of putting this deed to Mr. McCracken was to get rid of paying the Export Company's judgment, why wasn't the rest of this property put in that deed?

20 A. Mr. McCracken's arrangement and management, we had nothing.

Q. You didn't have gumption enough to realize that this \$10,000 property over in Arlington might possibly be wiped out by this \$2,000 judgment—you didn't have gumption enough to realize that?

A. Well, that remained wholly with Mr. McCracken and his son.

30 Q. Well, you understood that there might be trouble with this Export Company's judgment wiping out your four Newark tracts that were included in the deed—it never occurred to you that there might be trouble about its wiping out this other property, eh? A. I think I can explain that.

Q. Well, tell us about it? A. I think the reason of that was because the Export Company had made an attachment or levy or something on these things and Mr. McCracken took it up right from them.

40 Q. That is the only thing why you can explain—you didn't think it was necessary to put the rest in? A. I don't suppose we gave it any consideration much, we took the advice of Mr. McCracken.

Q. How old are you? A. Thirty-six.

Q. And had been in business, I think you said, fourteen years, with your father? A. Yes, sir.

Q. Have you operated at all in real estate? A. Somewhat.

Q. Now your father had about the same time, 10  
as you understand it, had Mr. McCracken draw  
a deed to you for Pennington street, don't you  
remember that—Peshine avenue, I mean? A. I  
knew there was a deed drawn to me, yes, sir.

Q. What was the object of that—your father  
didn't owe you any money, did he? A. The ob-  
ject of that was that there was a vacant space on  
the Peshine avenue property, and there being no  
judgment against me Mr. McCracken said I could  
get on, and if the property was in my name I 20  
would have that property, and I could go on  
building and thereby continue our business.

Q. In other words, I suppose you wanted to  
get that out of the Export Company, wasn't  
that it? A. I suppose so.

Q. Then did it occur to somebody there that  
there was necessity for taking more property  
than the four tracts that were conveyed to Mr.  
McCracken apparently? A. After what—

Q. It occurred to some of you? A. It must 30  
have.

Q. Yet you don't know why it didn't occur, for  
the same object, to take Pennington street, Ferry  
street or Arlington? A. No, sir; I cannot tell.

Q. Do you mean to tell me you didn't know  
when the deed for Peshine avenue was in fact  
executed and put on record, do you mean to say  
you didn't know that—when the deed to you of  
this vacant property on Peshine avenue was in  
fact executed and put on record? A. What some- 40  
body told me or what I knew.

Q. Don't you know about it, didn't you tell  
Mr. McCracken to do it, to put that deed on re-  
cord? A. I might have.

Q. Then when you said you didn't see it  
signed— A. I would say that I did.

Q. Well, did you go on and improve that prop-  
erty? A. Yes, sir.

10 Q. Well, who owned it, did you suppose, when you were improving it? A. I supposed I owned it.

Q. You were willing to take hearsay as good enough to let you improve it, but when it comes to testifying in court, you think you wouldn't take hearsay? A. You said before, when I said what somebody told me.

Q. Wasn't there another tract on Peshine avenue adjoining this? A. Yes, sir.

20 Q. That your father and mother owned—or your father? A. Yes, sir.

Q. Why wasn't that put in the deed to Mr. McCracken? A. I cannot explain.

Q. So that outside of the four tracts in the deed to Mr. McCracken there were at least four or five other properties in the City of Newark, independent of the Arlington property, which your father owned at that time, and in which he had a considerable equity, wasn't there? A. I

30 suppose so.

Q. Now what time of the day, in Mr. McCracken's office were the words "Supplementary proceedings" used, I mean what time during the transaction before the deeds were finally prepared or afterwards? A. I heard that word a good many times afterwards and before.

Q. Did you know what they meant? A. I supposed that they meant—

Q. Well, you had an idea what they meant?  
40 A. Yes, sir.

Q. You had an idea they meant that if a judgment was obtained against a man, and you couldn't find any property you could haul him up before somebody and examine him about it? A. Yes, sir.

Q. You further knew, did you not, that those proceedings were never taken or never allowed, except when there was no tangible property that

you could get, didn't you know that? A. Yes, 10  
sir; I supposed that would be the case.

Q. It is only when they suspect a man that  
has property hidden away or in somebody else's  
name that they use those proceedings—you knew  
that? A. I suppose that is so.

Q. Now how were any supplementary proceed-  
ings could to be got against your father when he  
had \$25,000 or \$30,000 worth of property? A.  
We didn't put the words in his mouth; I heard  
him say it. 20

Q. You said you thought that meant supple-  
mentary proceedings against McCracken didn't  
you? A. I did say that, yes, sir.

Q. Well, is that what you did think? A. Yes,  
I thought it was to protect him and us both.

Q. When the question of supplementary pro-  
ceedings were taken up against whom did you  
understand the supplementary proceedings were  
to be had? A. I thought Mr. McCracken was  
doing this to protect himself. 30

Q. No. You said that something was done and  
a great deal was said, so as to look out for sup-  
plementary proceedings, now, against whom were  
these supplementary proceedings to be taken, as  
you understood it, against your father or against  
Mr. McCracken or against Mr. Bradner or me or  
who? A. I think it was against Mr. McCracken.

Q. Did you know whether Mr. McCracken was  
in debt to anybody, or had judgment against him  
or anything of that kind, at that time? A. I did 40  
not.

Q. Before you went to Mr. McCracken's office  
on this 2nd day of January, 1896, did you know  
of the proposition to make this deed? A. Did  
I know of it?

Q. Yes. A. Yes, sir.

Q. Who told you of it? A. Father said he  
wanted me to go with him to Mr. McCracken's

10 office, he told me about the arrangement; we went there and Mr. McCracken and my father and I were all there talking.

Q. Did you take any deeds with you? A. Yes, sir.

Q. When was that? A. That was in the forenoon.

Q. Of the day the deed was signed? A. Yes, sir, and we went back in the afternoon.

Q. Then you were there twice? A. Yes, sir.

20 Q. Were your father and mother with you on both occasions that day? A. I can't say about mother; I think my father was there; she was there in the afternoon.

Q. She was there in the afternoon? A. Yes, sir.

Q. Now are you speaking of the 2nd of January now, the first business day of the year? A. Whatever day these deeds were made whether the second or third.

30 Q. These deeds seem to have been acknowledged and dated—the deeds seem to be dated the 2nd of January and to be acknowledged the third, that is all the information I have about it? A. I always thought it was the 3rd of January that these deeds were made, I didn't know about the 2nd.

Q. Well now, on the day, whatever day it was, it is immaterial I think which, whether the 2nd or the 3rd; you were there twice? A. Yes, sir.

Q. And your mother was there also twice? A. 40 I can't say about her.

Q. What was your object in going in the morning? A. Mr. McCracken sent for us.

Q. Sent for you? A. Sent for my father, and he wanted me to go with him.

Q. What did your father tell you you were to go there for? A. Go there—well, he told me the story about the Export Lumber Co.

Q. Just say what he told you? A. He told 10  
me the Export Company was about to obtain a  
judgment, and Mr. McCracken had advised us to  
make a transfer of those properties.

Q. Advised us—I want you to use your father's  
language? A. He might have said me—to come  
in the office and fix these things up at once.

Q. And so you and your father went and took  
some deeds along with you? A. Yes, sir.

Q. And left them with Mr. McCracken, is that  
right? A. Left them. 20

Q. Left the deeds there? A. We left them in  
the office, Mr. McCracken had to look over them  
to make this deed.

Q. What occurred that morning with Mr. Mc-  
Cracken? A. Well, I don't think that very much  
occurred in the morning; I think it was about  
noon time.

Q. I mean the conversation? A. The conver-  
sation was that he was willing to do this.

Q. Your mother wasn't present now, was she? 30  
A. I don't think so.

Q. Now, I want to know as best you can recall,  
and I can understand that possibly you cannot  
remember every word? A. It is a good while  
ago.

Q. The best you can recall what was said by  
your father and what was said by Mr. McCracken  
at the first interview? A. I guess—

Q. To the best of your recollection? A. The  
best of my recollection was—I can remember 40  
more particularly about the afternoon, the morn-  
ing seems to me to have been just a kind of pre-  
liminary like.

Q. Was anything further said down here, about  
the deeds or something like that? A. We didn't  
take the deeds in the morning, no, sir, the deeds  
went after dinner, after father came home I went  
over the papers and got some deeds.

10 Q. What was said in the morning after you went to McCracken's office the first time, what did your father and you go down there for? A. Because of this affair, this trouble was coming on.

Q. Now what was said, you took the trouble to leave your office and go down to McCracken's office, what did you go down there for, what was said? A. By whom?

Q. I don't want you to argue with me, I want you to tell me what was said that morning? A.  
20 That is what I am trying to do. I don't think anything different was said from what I have said Mr. McCracken said there was going to be a judgment obtained tomorrow, I think he said Export Company, and that there would have to be something done at once, and he advised a transfer of this property to be made to him.

Q. This was all said in the first interview between your father, Mr. McCracken and yourself, when your mother was not present? A. I don't  
30 know what you call the first interview; it was the first interview I heard.

Q. That is what I mean? A. Yes, sir.

Q. And your father had already told you about this judgment? A. Yes, sir.

Q. And about the danger and about the proposition? A. Yes, sir.

Q. Then did you learn any news at all when you went down to Mr McCracken's office? A. Why, he took my father and I, and told us this,  
40 the same as I said now, that this trouble was coming on and the Export Company was going to obtain a judgment tomorrow.

Q. You already knew that from your father? A. Yes, sir.

Q. Go on, what else did you learn that you didn't know; I want you to tell everything that was said in Mr. McCracken's office at the first visit? A. That is about all that was said.

Q. That the Export Company was about to get a judgment tomorrow? A. Yes, sir, and that he would suggest that father make a transfer of this property to him, and that he would take it, and just the arrangement that I said before, that he would take care of it for us, he would collect the rents, he would pay the interest and the running expenses.

Q. That was all said in the morning? A. In the morning I didn't say, I said at the first interview. 20

Q. What time was that interview? A. As I say, I can't say whether it was forenoon or afternoon.

Q. First interview? A. Yes, sir.

Q. When your mother was not present? A. I think she was present.

Q. Well now, Mr. Reeves, I have been trying my best to get this story; I want the facts, did you go twice to see Mr. McCracken about that thing?

A. No, I don't think we did. 30

Q. Haven't you sworn on two or three different occasions just now that you did go twice, once with your father alone, and secondly with your father and mother? A. I don't think there was any business done in the morning, only just this explanation made to us, and I think we went down in the afternoon with the deeds prepared to make this transfer.

Q. Then all this what you call explanation, took place in the noon interview? A. No, sir, in the afternoon; it was the first interview, my first interview, and I think now it was in the afternoon after dinner, I think my father came and told me about this affair, and then he came home and we looked over the papers and took the deeds and went away after dinner. 40

Q. Did your mother go with you? A. Yes, sir.

Q. There wasn't a preliminary interview be-

10 tween Mr. McCracken, your father and yourself?  
A. No, sir, not preliminary, my first interview  
was that I heard this statement and my father  
was present and my mother and Mr. McCracken  
and I.

Q. Did your mother go down with you and  
your father? A. Yes, sir.

Q. All three went together? A. We met to-  
gether, whether I went with them or whether  
they came separate or not I don't know, but we  
20 all met in his office.

Q. Did you go to Mr. McCracken's office twice  
about this thing? A. No, sir.

Q. Why, haven't you said you did? A. Well,  
in thinking over about it I don't remember now  
much being done in the forenoon, you asked me  
what was said in the forenoon.

Q. I don't care what was said, I want to know  
if you went there twice? A. I don't think we  
went there twice the first day.

30 Q. The first interview was in the afternoon?  
A. Yes, sir.

Q. Was your mother there the next day when  
you finished up matters? A. No, sir, I think all  
the finishing up matters was about this lease if  
I am not mistaken.

Q. Then the next day after the deed was  
signed and your mother was there, you think you  
and your father went back again and executed  
this lease, and that is all that occurred that day?  
40 A. Well, I didn't have anything to do with the  
executing of the lease.

Q. Well, what do you mean by the next day  
and the lease? A. I mean that you said was this  
all done the first day, this lease, I say I can't  
remember whether this lease was done that first  
day or when, but the day I was there, that I  
mentioned, if I am not mistaken, was the third  
of January in the afternoon, I remember dis-

tinety; and about the forenoon, it strikes me that 10  
I was there before dinner, but there was no busi-  
ness done because it was nearly noon and we had  
to have these deeds, and went home to get the  
deeds and came back in the afternoon, and then  
was when the business was done.

Q. Now you come around again to the view that  
there were two trips to Mr. McCracken's office  
on the first day, whatever it was? A. No, sir.

Q. Don't you know whether you went there in  
the forenoon or about noon? A. I say I am not 20  
quite certain whether I went there in the fore-  
noon or not, but I say if I did there wasn't much  
business done, because it was near noon; if I  
went there; and the main object was to have the  
deeds that were home, and in the afternoon I  
remember distinctly being there in the afternoon,  
and my father and mother being present.

Q. And that afternoon the deeds were signed?  
A. Yes, sir.

Q. The same day you went there? A. Yes, sir. 30

Q. And the lease made? A. I don't say the  
lease, I wouldn't be certain about it being more  
than once; I know it was once.

Recess.

Q. Did you know that your father was in debt  
to Mr. McCracken? A. No, sir, I don't know how  
they stood that way.

Q. You knew that Mr. McCracken, as you have 40  
already testified, had been endorsing for your  
father? A. Yes, sir, and father had endorsed for  
Mr. McCracken.

Q. Did you ever see him endorse for Mr.  
McCracken? A. Yes, sir, he kept account of the  
notes.

Q. You are referring now to a time previous to  
this day? A. Yes, sir.

10 Q. You don't say whether or not your father was indebted to Mr. McCracken or Mr. McCracken was indebted to your father? A. No, sir. That subject wasn't referred to.

Q. I understand that your father and you were builders, and that you would build houses on vacant property, and by means of using Mr. McCracken's name, discount paper with it to raise money to buy the materials and pay your labor, and when the houses were finished you  
20 would either sell them or mortgage them, and by that means carry the property, is that right? A. Oftentimes, yes, sir.

Q. Well now, if your father's name and credit were good so that he loaned it to Mr. McCracken, why did he get Mr. McCracken to endorse his paper for that purpose? A. I cannot state as to that.

Q. Don't know why he did? A. No, sir.

Q. Didn't you know that at the time in ques-  
30 tion there were several notes in the Merchants Bank upon which Mr. McCracken's name stood as endorser? A. Yes, sir.

Q. Unpaid? A. Yes, sir.

Q. Amounting to several thousand dollars? A. I don't know the amount.

Q. How did you know about those notes? A. I knew of their being endorsed that way.

Q. And they were those notes, or some of those notes you referred to as having been given by  
40 Mr. McCracken for the purpose of raising money to enable your concern to build those houses? A. Yes, sir.

Q. Now you say that in all of this time when a judgment was about to be entered against your father, and he was afraid his property was going to be swept away for a song, Mr. McCracken volunteered to do all this for nothing, and there

wasn't a word said about himself and his own 10  
debt? A. I don't remember a word said about  
that.

Q. Do you say there wasn't a word said, or you  
don't remember? A. I say there wasn't, to my  
knowledge, a word said.

Q. Who was this clerk you speak of that was  
present? A. His name was George, he died since,  
I don't remember his last name, I think he was of  
Irish birth.

Q. It wasn't Phipps? A. No, Phipps was a 20  
paper hanger.

Q. Now you say that Mr. McCracken agreed  
to take this property—to collect the rents, to pay  
the charges and pay the interest—the charges,  
taxes, water and other interest, and also pay the  
Export Company's judgment? A. When any-  
thing was sold, yes, sir, couldn't pay that judg-  
ment out of those rents.

Q. What was said about rent for the home-  
stead, was he to get any income from that? A. 30  
No, sir.

Q. How was the interest on the homestead to be  
paid? A. The rent?

Q. No, how was the interest to be paid? A.  
Mr. McCracken was to pay that out of the sur-  
plus that was from the others.

Q. That is what he said? A. He said he would  
keep everything intact, those were his words.

Q. Including Peshine avenue? A. Well, every-  
thing that he had. 40

Q. You recall, you said a little while ago, on  
your direct-examination, that he agreed at the  
time of the foreclosure of the mortgage on  
Peshine avenue that he agreed to keep every-  
thing intact? A. Yes, sir.

Q. Now, when did he say that about Peshine  
avenue? A. When he was in his office at that  
time, I can't just say the date, but it was at one

10 time when we were thinking about making a shift of these properties so that we could transfer it and get it into money.

Q. How? A. So that Mr. McCracken could arrange to get these accounts settled up and cleared off.

Q. Did you have a purchaser for Peshine avenue at the time you were making this shift you speak of? A. A real estate man by the name of Coleman said if that was in a clear shape he could  
20 dicker it off.

Q. Dicker it off? A. Yes, sir, trade it off.

Q. When was that? A. I don't know as I can fix a date for that.

Q. Well, about when in regard to the deed? A. Oh, it was after that.

Q. After the deed? A. Yes, sir.

Q. About how long after the deed? A. Oh, I can't say.

Q. Now, he said that you said you were to sign  
30 off—we were to sign off, who were to sign off? A. Sign off what?

Q. In regard to this Peshine avenue, I am quoting the language you used that Mr. McCracken said about Peshine avenue? A. I suppose I—

Q. No I want to know what was said, who was to sign off, who did he say was to sign off? A. If the deed was in my name—

Q. I want to know what Mr. McCracken said? A. He said "You sign off."

40 Q. Who did he say that to? A. To me.

Q. Did you sign off? A. Yes, sir.

Q. How? A. By whatever proceedings there was in his—

Q. Did you sign off? A. Certainly I did everything he asked me.

Q. Well, what did you do about Peshine avenue? A. Why if you are foreclosing against a person it takes a certain length of time to fore-

close you, now if I admit or acknowledge something or other it lessens the cost, or time or something. 10

Q. Well, what did you do? A. I did whatever he asked me.

Q. You don't remember what it was? A. No, sir.

Q. Who was present when he said that if that property was foreclosed he would buy it in for your benefit, and after you got it you could trade it off? A. Who was present? 20

Q. Yes. A. Father and I.

Q. And where was that conversation? A. In his office.

Q. Well, you did sign off, you say, whatever you mean by that? A. I did whatever he suggested to do.

Q. And you knew it was foreclosed? A. I think I do.

Q. Well, why did you not ever ask him, prior to having this bill filed, to keep his promise? A. 30  
Because he told us all along he would do whatever was right and fair between us.

Q. You said you were going to have an arrangement of this, and Mr. Coleman said as soon as the title was straightened out he could make an offer, did you ever apply to Coleman or McCracken? A. Yes, sir, went to Coleman and he couldn't make it good.

Q. Then you let that matter rest from that time on, that is until this bill was filed? A. I talked 40  
to him all along about everything.

Q. Now, after that property was purchased at foreclosure, do you recollect the fact that Mr. McCracken had to pay a large sum of money in obedience to a claim by the city instituted in the form of a suit to compel the installation of water into that house? A. Water?

10 Q. Well, some water closets and things of that kind? A. Yes.

Q. You had an attorney in that suit, didn't you? A. Yes, sir.

Q. And who was that? A. Mr. Bradner.

Q. Mr. McCracken wasn't associated? A. That was before the Board of Health.

Q. Yes, the Board of Health. A. Well, Mr. McCracken went to the Board of Health once or twice for an adjournment.

20 Q. Was that before or after the foreclosure? A. I think Mr. Bradner was brought into the case later.

Q. Was that before or after the foreclosure? A. Before.

Q. Well, you were compelled to install—A. No, we weren't going to do it.

Q. You were compelled to by the city? A. No, sir.

30 Q. What was this proceeding before the Board of Health? A. Trying to make us do it.

Q. Did you succeed in that? A. As far as we went, yes, sir, they didn't compel us to do it.

Q. When was it that Mr. McCracken told you he had paid the Export Lumber Company's judgment? A. I think it was one time when I was talking to him about how the affairs stood.

Q. Well, of course I suppose it was one time, about when was that? A. I can't say.

40 Q. How long did your father's illness after the Export Lumber Company's judgment, continue?

A. He was sick quite a length of time.

Q. As near as you can recollect—six months? A. I guess so.

Q. A year? A. No, I don't think a year, but off and on he had spells, he wasn't sick all the time.

Mr. Bradner: I was under the impression that I would have the right to offer in evidence the plea or set-off sworn to by Mr.

McCracken, without admission on his 10  
part—without producing the whole record;  
if I am wrong about that I desire to put the  
record in evidence.

I also wish to offer in evidence three  
notices or *lis pendens*; I haven't those here.  
The complainant in this case is in no posi-  
tion to incur much expense and I don't  
want to refer to that if I can help it; that is  
the reason those records haven't been  
offered, I assume that Mr. McCarter would 20  
allow me to produce correct copies of them,  
but I want to put those in evidence and if I  
have to produce a certified copy I will do  
so.

The Court: Is there any objection to  
that?

Mr. McCarter: I don't know anything  
about these notices or *lis pendens*, I don't  
know what he means, they haven't been  
pleaded or referred to before, and I think 30  
they ought to be proven in the legal way.

Mr. Bradner: The legal way would be to  
produce a certified copy, but I am not pre-  
pared to do that, but I suppose I can hand  
it in afterwards.

Mr. McCarter: They are not in any of  
the pleadings.

Mr. Bradner: There is an allegation in  
the bill that the grantees of some of these  
properties had notice that the complainant 40  
was in some way interested.

Mr. McCarter: That is in a general way  
charged, but there is nothing in the plead-  
ings up to this period in any way referring  
to any *lis pendens* or any other record, it is  
simply the ordinary general way of charg-  
ing notice.

10           The Court: What *lis pendens* are these to which you refer?

          Mr. Bradner: The Export Lumber company filed a bill in this suit to set aside this deed, and there are three *lis pendens* filed to that bill; they filed a bill to set aside the deed from Reeves and wife to Charles E. Reeves, Peshine avenue property, and a deed to Mr. McCracken of the other properties, and those *lis pendens* were upon the record at the time that these conveyances were made.

20

          The Court: I don't quite understand why there were three.

          Mr. Bradner: There were two different conveyances.

          The Court: Two different suits you mean?

          Mr. Bradner: I think there was only one suit, but there seems to have been three different *lis pendens* filed; there is one against the Peshine avenue property, and here is another against the properties mentioned in the deed to McCracken and here is another against the Chestnut street property, that is out of the case. There are only two *lis pendens* that I want to use.

30

          The Court: I will allow you to renew your offer before this suit closes.

40           Complainant rests.

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JOHN H. McCracken sworn:

Direct-examination, Mr. McCarter:

Q. You are a member of the bar? A. I am.

Q. How long, if you can remember, have you known Moses E. Reeves or any member of his

family? A. I have known Moses E. Reeves over 10  
twenty-five years.

Q. When did you first commence to perform  
any professional duties for him that you can re-  
call? A. I think about 19 or 20 years ago.

Q. What, generally speaking, have been your  
relations professionally? A. Why I have nego-  
tiated for him and prepared deeds and examined  
titles of property upon which he loaned.

Q. He has stated that he placed several claims  
in your hands for collection, including many 20  
others a Jacobsen matter which he says you col-  
lected and appropriated to your own purpose, or  
words to that effect, will you please tell me wheth-  
er you recall the circumstances of the Jacobsen  
indebtedness to Mr. Reeves and what occurred?  
A. I do very clearly.

Mr. Bradner: Is that material? That  
was brought out in cross-examining Mr.  
Reeves.

Q. You may explain? A. This note was due 30  
in 1895, a year prior to the conveyance of the deed  
October 25, 1895.

Q. Mr. Bradner, therefore, is mistaken in sup-  
posing that this was after the deed, apparently.  
Now I want to know what occurred in regard to  
that Jacobsen matter? A. I had this for collec-  
tion.

Q. From Mr. Reeves? A. I had it from Mr.  
Reeves, to collect from Mr. Jacobsen.

Q. Where did the note come from? A. The 40  
note was made by Mr. Jacobsen, I think it was  
originally a book account, and there was some  
differences about the amount, and so I, by request,  
got Mr. Jacobus to put the amount in a note to  
make it specific, \$57.64.

Q. Now I see the note is endorsed by Mr.  
Reeves? A. Yes, I tried to collect it of Mr. Jacob-  
sen but I could not, and when Mr. Reeves learned

10 that I some times assisted Mr. Jacobus, he was a very nice man, and he thought I could get something out of it, and he wanted money very bad, and I bought this and paid him \$10 for it, and took my chances of collecting it, and I didn't collect it and here it is still without anything paid on it.

Q. Won't you describe now generally your professional relations, were you his regular attorney?

A. Not at all, I don't think I ever had a suit in court for Mr. Reeves, myself.

20 Q. Did you do any other professional work for him than secure loans, examine titles and draw deeds—that you remember? A. Nothing for many years.

Q. Many years prior to this deed? A. Many years prior to this transaction.

Q. Did he have an attorney other than you? A. Yes, I think Mr. Bradner was generally his attorney, and I think Mr. Whitehead was his attorney in several cases, that is, after John Cobb,  
30 he used to be his attorney and he died.

Q. Now it has been testified to by Mr. Charles Reeves that you were in the habit of assisting his father by endorsing his paper, and enable them to build houses, won't you explain those transactions to the court, how that came about and what it consisted of? A. Well, that is correct and was the practice for a good many years back, I could hardly fix the date, for perhaps ten or fifteen.

Q. Prior to this time? A. Prior to this time  
40 when this trouble arose about the Export Lumber Company's judgment.

Q. What had been the practice prior to that time, what had this practice been? A. His practice had been to get me to get money from my bank and advance to him to build or for paying various debts, I judge, and I did it, and at that time I had four or five notes in the bank of Mr. Reeves, where I had taken money out for Mr. Reeves.

Q. Notes that had been endorsed by you, and on 10  
your endorsement in your own bank the cash had  
been procured? A. Yes, sir.

Q. And used by him? A. That is right.

Q. Did Mr. Reeves during this time likewise  
loan you the use of his name? A. Towards the  
last period—prior to this time he did endorse  
some notes for me.

Q. Whatever became of them? A. They were  
left—I got a subsequent endorser, I might say  
which is a part of this transaction; I had an ar- 20  
rangement with my brother-in-law to endorse  
those notes, and when I got in with Mr. Reeves  
endorsing, why he discontinued that, and so I got  
Mr. Reeves endorse for me a few years  
prior to this time, of 1896.

Q. Did Mr. Reeves ever have to pay anything  
on account of his endorsement for you? A. Not a  
dollar.

Q. You are sure of that? A. I am sure of that.

Q. Whatever became of the notes upon which 30  
his name is endorsed, that were endorsed for you?

A. When they came due I paid them off, got  
them out of the way, they were all paid by me.

Q. Now, can you tell me to what amount those  
endorsements were? A. At that period?

Q. I mean on or about the first day of January,  
1896? A. Somewhere about \$3,500.

Q. What was the first suggestion that you knew  
of in regard to the Export Lumber Company's  
judgment, and the making of this deed? 40

The Court: Well, one moment before you  
ask that question.

By the Court: Q. Had any of these notes gone  
to protest, these notes for which you had loaned  
him your name? A. No, sir, they were in the  
bank.

## 10 FURTHER DIRECT:

Q. And he had had the proceeds? A. Yes, sir.

By the Court: Q. Were there any notes in the bank that he had endorsed for you, or which you had him protest? A. At that time?

Q. Yes. A. Yes, sir.

Q. Well, how much would that amount to? A. Well, I have no means of telling, I can tell you that they were all paid.

Q. But I am speaking of the time you have de-  
20 scribed a certain amount as having been procured for him—my question is how much was paid to you in the same way? A. Well, I have no means of stating.

## FURTHER DIRECT:

Q. Where were those notes discounted? A. At the Merchants Bank.

Q. The same? A. Yes, sir.

Q. That is to say both sets of notes, those that  
30 you accommodated him with and those that he accommodated you with, were discounted at the Merchants bank? A. Yes, sir.

Q. How did you differentiate the \$3,500 notes of which you were speaking as being notes you had accommodated him on? A. Because they were signed Reeves & Sons.

Q. And endorsed by you? A. Endorsed by me.

Q. They were the notes also of which you say he got the proceeds? A. Yes, sir.

Q. Are you quite positive that Mr. Reeves is  
40 not today liable for or never did have to pay anything on the other notes? A. I am.

Q. What method have you of fixing the notes for which you were his accommodation endorser, and of which note, the proceeds aggregated to \$3,500? A. Because at the time when he gave me a deed of certain properties to secure me on my endorsement, he desired some safeguard for him-

self with Mr. Whitehead, and so he had a chattel mortgage drawn up covering these same notes and each note mentioned by its day and date.

Q. Do you refer to the chattel mortgage that has been already offered in evidence in this case?

A. I think it is.

Q. Please look at the chattel mortgage and show us to what you just referred? A. This was prepared by Mr. Whitehead in his office, the day when the deeds were acknowledged.

Q. And the clause in Mr. Whitehead's writing here is that what you refer to? A. Yes, sir, I think that includes all the notes except one.

Q. All of which notes? A. All the notes that I had in the bank, there was one that Mr. Whitehead held that I was endorser on also.

The Court: That is a chattel mortgage given by whom?

Mr. McCarter: Moses E. Reeves to John H. McCracken, dated the 2nd day of January, same date as the deed in question, and sworn to the third of January, same day the deed is acknowledged. I will now read Mr. McCracken's affidavit which is the matter he has referred to in his evidence. 30

Mr. Bradner: I don't know that I understand that, and perhaps the witness made a mistake. I understood him to say that Mr. Reeves wanted some security for the notes that he had endorsed for Mr. McCracken, and that mortgage was given for that purpose. 40

Mr. McCarter: No, I didn't understand that at all.

The Court: He stated that Mr. Reeves wanted some security, the security for what I didn't gather.

Mr. McCarter: Let me read this first. "John H. McCracken, mortgagee in the

10 foregoing mortgage named, being sworn, says:” (Counsel read same.)

The Court: That chattel mortgage covers what?

Mr. McCarter: This mortgage covers the goods and chattels, in house and barn known and described as No. 580 Clinton avenue, and then the schedule describes them as the dwelling house, piano etc., household furniture, etc., of Mr. Reeves on  
20 the Clinton avenue homestead.

Q. The notes that are mentioned then in this chattel mortgage are the memoranda that you have of the notes that existed at that time in the bank? A. They are with one exception, there was one note that Mr. John Whitehead had where I was endorser, for \$500.

Q. In addition to this? A. Yes, sir.

Q. What do you mean—Mr. John Whitehead? A. I mean lawyer Whitehead loaned Mr. Reeves  
30 \$500, and took Mr. Reeves’ note with my endorsement on it.

By the Court: Q. Who got the money? A. Mr. Reeves.

Q. The consideration of the real estate mortgage was \$3,500?

Mr. McCarter: Yes, sir.

#### FURTHER DIRECT:

Q. Now Mr. McCracken those notes then out-  
40 standing, in addition to the John Whitehead note, to which you just referred—how did the question of this deed first come up? A. My first information was that Mr. Bradner came to my office as attorney and said he had a suit for Mr. Reeves where a judgment would be entered by agreement with C. T. Swayze on the 4th of January, he agreed to sign a relicta, he had no defense and was going to do that, Mr. Reeves told him he was

indebted to me in a large amount, and he thought 10  
he would tell me about it.

Q. When was this? A. The morning of the 2nd  
of January, I think, and I think he suggested that  
Mr. Reeves would secure me in some way, and he  
immediately sent Mr. Reeves in to see me.

Q. Did Mr. Reeves come? A. He came in to  
see me.

Q. Alone or in company? A. Alone.

Q. On the same day? A. I think it was on the  
same day, and I expressed my surprise at what I 20  
was doing for him, carrying him, as I say, and get-  
ting money out of the building loan and carrying  
him in the bank, that he would have a suit, on the  
eve of judgment, and never tell me that such a  
suit was in progress, and he apologized for that  
and said he thought—Mr. Bradner told him he  
would succeed in the end, and he thought he would,  
and he hadn't told me on that account. I told him  
I thought it was only honorable to tell me in such 30  
a serious matter; he said he thought he could se-  
cure me in his indebtedness to me, and suggested  
giving me a deed on some properties, and he  
mentioned four properties.

Q. Which were they? A. It was a place on  
Clinton avenue what they call the homestead, 580  
Clinton avenue; a place in Boyd street, a place on  
Belmont avenue, a place in Astor street—well, I  
said I supposed that was what he could do, and  
expressed my fear on account of his property be- 40  
ing mortgaged up to the flagstaff, and the taxes  
and interest back, with what would I pay them  
with even then, and he said that was all he could  
do, and he suggested giving me a deed for these  
properties, and I told him that under the circum-  
stances, the only thing to do was to take the deed,  
and immediately we went right over to John  
Whitehead.

Q. You and he did? A. Mr. Reeves and I and

10 told him what had taken place, because I was an endorser, to Mr. Whitehead for his loan of \$500, and told him about the predicament Mr. Reeves was in, and that Mr. Reeves suggested giving me a deed for some property and after we talked the matter over why he said that was all that I could get and so he gave me the deed for those four properties.

Q. Hold on, don't get ahead of your story; up to this time nobody was with him, I understand, 20 at all? A. No, sir. Then the next step, we went back to the office, and he gave me the name of these four properties, and said he would get my deeds for them to copy and make my deed, and I had had loans on different properties, and by looking over my records I had copies of the deeds there, and so I told him I would immediately prepare them, and it wouldn't be necessary for both he and his wife to sign, and he said he would make arrangements that that be done, and he was as 30 much in a hurry as I was, and I was in a great hurry. Well, I prepared the deeds.

Q. How many did you prepare? A. I prepared one deed covering the four pieces of property.

Q. Did you have the data in your office with which to make that deed? A. Yes, sir, I did, and I had my clerk draw them up, and that was a deed here in evidence.

Q. Now I will ask you to look at that deed a moment. I show you this deed already offered in 40 evidence, dated January 2nd, 1896, Moses E. Reeves and wife to you, and ask you if that is the deed you have just been asked about? A. That is the deed.

Q. In whose handwriting is the body of that deed? A. My clerk's.

Q. What was his name? A. George, I cannot tell you his last name.

Q. Was it Phipps? A. No, sir, he was a young 10  
man about twenty years old, he died since.

Q. Well, he was a clerk at that time? A. Yes,  
sir.

Q. He wrote the entire deed? A. The entire  
deed.

Q. Including the consideration? A. Every-  
thing in it, and this deed was prepared when Mr.  
Reeves came in on the third of January in the  
afternoon, and I think Charles Reeves brought  
Mrs. Reeves in at the time, with him. 20

Q. So only Mr. and Mrs. Reeves and Charles  
came into the office on the third to execute this  
deed? A. Yes, sir.

Q. The deed was ready was it? A. This deed  
was ready.

Q. Now, I want to know about this deed to  
Charley, what about that? A. Then when he came  
in, when Mr. Reeves—they all met in the after-  
noon of the third day of January, and then Mr.  
Reeves wanted a deed made to his son Charles of 30  
the property on Peshine avenue.

Q. Yes. A. And my clerk drew it up, and we  
took both deeds over to Mr. Whitehead to get ac-  
knowledged.

Q. Now, what was said in the afternoon of the  
3rd, when Charles and Mrs. Reeves and Mr.  
Reeves came there in your office, before you went  
to John Whitehead's office to acknowledge the  
deed? A. There was no talking at all more than  
to prepare the deed. Moses E. Reeves to Charles 40  
E. Reeves, Peshine avenue property.

Q. There has been testimony by three witnesses  
in this case to the effect that at that conversation,  
that afternoon, in your office before going to Mr.  
Whitehead's office, you stated to them that the  
whole object and purpose of this transaction was  
to get the title out of them on account of the Ex-  
port Lumber Company's judgment and that you

10 would take the property and hold it and collect the rents—pay the interest, taxes and other charges, and if possible sell it, and with the proceeds pay the Export's judgment, and recount to them for the balance, did such a conversation take place? A. Every word of that conversation is an absolute falsehood, there isn't one single word or sentence in it true.

Q. No such conversation as that took place? A. There wasn't a word of conversation about it.

20 Q. Did you take that deed with that purpose or understanding? A. What understanding?

Q. That it was to be done, as I just said they swore? A. Not a thought of it.

Q. Now, what purpose had you in taking the chattel mortgage in addition to the deed? A. I didn't have any purpose, that was Mr. Reeves' suggestion to Mr. Whitehead to draw it up, to keep somebody from taking away his chattels, I didn't care anything about that.

30 Q. The chattel mortgage then wasn't suggested until you got to John Whitehead's office? A. No.

Q. How did you happen to go over to Mr. Whitehead to have that deed acknowledged? A. Well, I made arrangements with Mr. Reeves, when he said he would make the deed that Mr. Whitehead had there in the afternoon to take the acknowledgment, and because he was really concerned, to some extent, with the same kind of a transaction.

40 Q. That is this \$500 note? A. He was a claimant and I wanted him to see that things were satisfactory.

Q. Now you went over to Mr. Whitehead's office—who went to Mr. Whitehead's office? A. Mr. and Mrs. Reeves and myself.

Q. Where was the deed signed? A. In Mr. Whitehead's office.

Q. It wasn't signed down at your office? A. No.

Q. And it was acknowledged as appears, before 10  
Mr. Whitehead there that day? A. Yes, sir.

Q. Was any alteration made in the deed in Mr.  
Whitehead's office? A. Nothing.

Q. Did Mr. Whitehead change the consideration  
in any way, stated in the deed? A. Not at all,  
the only thing he wrote on the deed was his ac-  
knowledgment, he wrote that in the chattel mort-  
gage there.

Q. Was the chattel mortgage prepared before  
you signed the deed—before they signed the deed 20  
in Mr. Whitehead's office or afterwards? A. I  
cannot tell that, it was all at the same time, I don't  
have any recollection of just that particularly.

Q. Well now, a lease has been spoken of? A.  
Yes, sir.

Q. I show you a lease from John H. McCracken  
to Moses E. Reeves, dated May 1st, 1896, and ask  
you if that is the lease that was made by you of  
the homestead to Mr. Reeves? A. It is.

Q. When was that lease actually made? A. It 30  
was made on or about the first day—

Q. Of what? A. Of May, 1891.

Q. Get the year right? A. 1896.

Q. Was the lease made at the time of or within  
a day or two of the deed? A. Not at all, this lease  
was not made until after I bought the property at  
sheriff's sale.

Q. It was not? A. No, sir.

Mr. McCarter: The lease is already in  
evidence.

40

Q. Well, after you got the deed and put it on  
record, what next occurred in the transaction? A.  
The next development was a *lis pendens* filed the  
second day after by Colie & Swayze for the Ex-  
port Lumber Company's judgment.

Q. Go right on? A. And then they had levied  
on all these various properties, and they adver-  
tised them for sale, and they did sell them and I  
bought part of them.

10 Q. Which did you buy? A. I think I bought—  
I can hardly tell without referring to the deed,  
because there were two sales, I bought all that  
was levied on, I mean that the *lis pendens* was  
filed against, four.

Q. I am talking now only about the property  
covered by the deed? A. Well, I bought them at  
the first.

Q. You did deed in under the sheriff sale, all  
four of the tracts included in the deed? A. I did.

20 By the Court: Q. That was the sale under the  
judgment? A. That is right.

FURTHER DIRECT:

Q. Under the Export Lumber Company's judg-  
ment, the levy that Colie & Swayze made, you  
bought in the same tracts after you had gotten a  
deed? A. Yes, sir, it was their judgment and  
other judgments.

30 Q. What other judgment was there besides  
theirs? A. There was one by Mary McDermott  
and one or two others, and I don't remember the  
judgment creditors.

Q. About how much did they amount to? A. I  
haven't the data of that.

By the Court: Q. Were those judgments re-  
covered, or other judgments that you speak of  
recovered before or after the judgment of the  
Export? A. After.

FURTHER DIRECT:

40 Q. Now those judgments are all mentioned and  
the execution set out in those sheriff deeds you  
have before you? A. Yes, sir.

Q. What four properties were included in this  
deed to you, and which you bought under the sher-  
iff's sale first? A. The Belmont avenue property,  
the Boyd street property, the Clinton avenue  
property and the Astor street property.

By Mr. Bradner: Q. Hume street, mentioned  
in the deed is the same as Boyd street? A. Yes,  
sir.

## FURTHER DIRECT:

10

Q. You supposed that you added to the title that you had derived by purchasing at a common law execution? A. I did.

Q. And whatever you got, you got and whatever you didn't get you paid for of course. Now, having these two sets of conveyances—

The Court: Hadn't you better ask him there what he paid?

Q. What did you pay the sheriff? A. I would have to refer to the deed to tell that.

20

Q. All right? A. \$205.

Q. For each? A. One was \$50, one \$100, one \$20, and one \$35.00.

Q. That was the four tracts? A. Yes, sir.

Q. Making a total of \$205? A. Yes, sir.

Q. What is the date of that deed? A. April 14th.

Q. 1896? A. 1896.

Q. What execution is it sold under? A. It seems to be sold under the Export Lumber Com- 30  
pany's judgment.

Q. Any other? A. That is the only one mentioned.

Q. When was your attention first directed to the fact that the property was advertised for sale? A. Well, I cannot fix the date, but I—

Q. Had you in the meantime become the owner of the Export Company's judgment? A. No.

Q. When did you become the owner, if you did, of that judgment? A. I think it was somewhere 40  
about the first of April.

Q. What time—when before the sale? A. I think it was only a week or two before the sale.

Q. Paid the full amount of that judgment to Colie & Swayze? A. Yes, sir.

By the Court: Q. Then it was your sale? A. Yes, sir.

## 10 FURTHER DIRECT:

Q. You took up the advertisements and proceeded with the sale? A. The advertisement was just continued.

Q. You didn't start this, but after it was going you came in and got control of the judgment, and went on, is that right? A. Yes, sir.

Q. At this stage of the game you in April, 1896, had a deed from Mr. and Mrs. Reeves for those four lots, and you also have a sheriff's deed if it  
20 is worth anything? A. Yes, sir.

Q. What happened to you in regard to the rents of those four tracts from the time of your first purchase on? A. Well, Mr. Reeves continued—after my purchase.

Q. After your purchase? A. Mr. Reeves continued to collect them for some time, but I have no recollection of the exact date.

Q. How did that happen? A. Because I was trying to get him to hand over the properties to  
30 me, as I bought them, and he was slow about doing it, but the Belmont avenue property he continued to collect, and the place on Clinton avenue, he made a lease with me to pay me \$25 a month, and Boyd street, this soon after was foreclosed by the Firemen's Insurance Company, and taken.

By the Court: Q. Taken by you or somebody else? A. No, taken by somebody else.

## FURTHER DIRECT:

40 Q. So that you never got any final control of the Boyd street property? A. No.

Q. That was foreclosed? A. Yes, sir.

Q. Now I notice that Exhibit C4, is a direction from Mr. Reeves to Mr. Ball to make arrangements with J. H. McCracken, as he may direct about the collection and payment of the rents you may receive from Ferry street property and the two Astor street houses; you succeeded finally in getting that out of Mr. Reeves? A. Yes, sir.

Q. That was on January 27th? A. January 10 27th.

Q. 1897? A. Yes, sir.

Q. Who had been collecting the rent previous to January 27, 1897, on the Ferry street? A. Mr. Whitehead.

Q. For whom? A. Mr. Reeves.

Q. Had you endeavored to collect the rents before or had you just let that go on? A. I had been trying to get them from time to time, but he always warded me off, and said he would do it 20 very soon.

Q. Now what rent, if any, was paid under this lease? A. Nothing.

Q. By or to you? A. Nothing.

Q. Was any statement made at the time that this lease was given to you that this was part and parcel of the scheme by which you were to simply hold this property in trust for them as has been stated here this morning? A. Not a word of it, and he never claimed to do any such thing. 30

Q. Was Charles present when that lease was signed or made out and executed and delivered to you? A. I don't think he was.

Q. Now you stated that Mr. Reeves continued to collect the rents from the Belmont avenue property? A. Yes, sir.

Q. How did that happen? A. He said he must have some income, some place and he could handle that and get the rent out of it, and it would give him an income, and he would soon get on his feet 40 and get started and straighten all his matters up, and pay up all these things he owed.

Q. Now, it has appeared in the case that a deed was subsequently made by you to Mrs. Reeves for the Belmont avenue property—will you tell us how that came about? A. Mr. Reeves seemed to have a good opinion of that property, and said he could get good equity out of it if he

10 could control it, and trade it off, and I told him that I would deed it to him, and my wife had a dower interest in that, and his wife had a dower interest in the place on Pennington street where my wife had bought at sheriff's sale, and so I agreed to give him a deed of myself and wife for the Belmont avenue property, and he would release the dower on the Pennington street property which my wife held, and so I gave him the deed.

Q. How did it happen to be put in her name?

20 A. He wanted it put in her name.

Q. Did he tell you to do that? A. Yes, sir.

Q. And this deed dated September 1st, 1897, from John H. McCracken and wife to Mary T. Reeves, was the result, was it? A. It was the result, that deed I held in my office a good while, because he was waiting to trade it off, and didn't want to be put on record, and so it laid in the office quite awhile, September, 1897, and it wasn't recorded until November, 1898, about a year, and  
30 in the mean time he didn't succeed in selling it, and so that was foreclosed also, and that was Mr. Reeves matter, he had that.

Q. You finally agreed to surrender that to him as a consideration for what? A. For a release of dower in the Pennington street property that his wife still held a dower interest in.

Q. We haven't yet had this Pennington street property, that was not in the deed, Mrs. Reeves was mistaken about that? A. Yes, that was not  
40 in the deed to me.

Q. That originally belonged to whom? A. Moses E. Reeves.

Q. How did Mrs. McCracken get title to that property? A. Sheriff's sale, under the common law execution.

Q. Under what judgment? A. I think it was under the Export judgment and other judgments.

Q. Have you got the sheriff's deed there? A.

This was the Export, and there were other levies 10  
made subsequent, but they don't appear here in  
this, this was the original levy, then the other  
judgments were handed in attached to the same  
one.

Q. The sheriff's deed which is already in evi-  
dence, I believe dated June 2nd, 1896, from Her-  
man Lehlbach, sheriff, to Selma A. McCracken,  
recites the issuance on the fourth day of January,  
1896, of an execution at common law, and on the  
second day of January of the same year the issu- 20  
ance of another execution recites the sale under  
it by these executions, and describes the Penning-  
ton street property. What is the date of that  
deed? A. June 2nd, 1896.

Q. When you purchased that property as Mrs.  
McCracken did under that common law execution,  
was any arrangement made by you or by her or  
by you for her with Mr. and Mrs. Reeves or either  
of them to the effect that you bought that for 30  
them, and that you were holding it in trust for  
them or anything of that kind? A. Not a word of  
the kind.

By the Court: Q. Did they know that you were  
selling under that judgment, selling this property  
under that judgment, did you tell them? A. Yes,  
it was talked about when it was going to be sold.

#### FURTHER DIRECT:

Q. Where was that spoken of? A. They were  
in my office talking about it some time prior to the 40  
sale, I think it was a week or so.

By the Court: Q. What was that conversation?  
A. Why I told Mr. Reeves that these properties  
were being sold and he was simply paying no at-  
tention to anything, he claimed that he had a  
property across the river, that was a very valu-  
able one, and he could get \$4,000 or \$5,000—I will  
have to refer to that in another matter after a

10 while, and he said he would attend to it, and I told him then to be on the alert and do it, because I didn't know whether I could succeed in getting this money or not, it was held off until nearly the last day.

Q. What arrangements were you talking about now, arrangements for getting loans on that Arlington property? A. I talked about getting the loan on the Arlington property but I hadn't succeeded in getting it, and I told him his business  
20 was to attend to these matters or his properties would be sold, and he said he would attend to them.

Q. Did you tell him then that you held that judgment? A. I don't know that I did tell him, I held it, and I don't know that I did hold it, it was so near up to the time when they were going to sell.

#### FURTHER DIRECT:

Q. What judgments was that sold under, cannot you look at it and see what judgments that was sold under, and when, in reference to the time that you obtained control of the Export judgment, that levy was first made? A. This  
30 levy was first made the first week in January of 1896.

Q. Now, there are two levies mentioned there, who was the other levy in favor of? A. It was in favor of the Export.

Q. There are two levies—two levies on the same judgment? A. Two sets of property sold under  
40 the same judgment.

Q. I am referring to the Pennington street property, I want to know if there are not two executions referred to by the sheriff, just read the deed please and see whether it is more than the Export Lumber Company's judgment or not? A. I didn't notice it, one judgment in this deed.

Q. Do there appear to be two levies?

By the Court: Q. Well, that is the Export Lumber Company's execution, is it? A. Yes, sir. 10

Mr. Bradner: I am willing to admit there is another judgment in favor of Mary A. McDermott.

FURTHER DIRECT:

Q. Was that the only deed we have just been referring to, under which title to the Pennington street property was acquired? A. Yes, sir.

Q. Now, do you recall when it was that you became the owner of the Export Lumber Company's judgment, when you bought that, have you any memorandum with you that will enable you to tell when it was? A. Only except the judgment itself. 20

Q. You may refer to anything you have got here. I will read the recital of the three executions in the deed just referred to (counsel read). Now have you found out when you obtained control of the—A. I don't see the time here, it was about a week prior to the sale. 30

Q. Which sale? A. The first sale.

The Court: The sale in April.

Mr. McCarter: Mr. Reeves produces a search here of the Export to John H. McCracken, assignment of judgment dated April 13, 1896, so that seems to be about it.

Q. Mr. McCracken did you own or control the State Banking Company and the Mary McDermott judgments? A. No, sir. 40

Q. Mrs. McCracken purchased the Pennington street property, whose money was that that went to the sheriff in payment of that execution? A. Her money.

Q. Now, you have stated that this release of dower was obtained by you for her in the manner you have indicated?

The Court: That is the Pennington

10 street property for which \$45 was bid at the sale?

Mr. McCarter: Yes, sir.

The Court: What mortgage was that subject to?

Witness: It was subject to two mortgages, one for \$2,500 and one for \$1,800.

By the Court: Q. Well, was that \$1,800 mortgage the Orange bank mortgage that has been spoken of? A. Yes, sir, the Orange bank mortgage.  
20 gage.

Q. Has any part of that money been paid the Orange bank mortgage? A. It has not.

Q. Now then I think you stated there were some taxes on the property? A. There were about \$300 of taxes.

#### FURTHER DIRECT:

Q. How was the property improved? A. It had two houses built together of very common  
30 character, occupied by negroes.

Q. Where is it located in regard to the railroad? A. About one block below the Pennsylvania railroad.

Q. East? A. Yes, sir.

Q. Is Pennington street paved there? A. It was not then.

Q. It is now. What value did you place, or did Mr. Reeves place, as far as you know, upon that Pennington street property? A. I don't know  
40 what value he placed but I cannot place on it anything more than the encumbrances, if you could make both the mortgages stick.

The Court: Q. Who has paid off this \$1,800 mortgage?

#### FURTHER DIRECT:

Q. What about the \$1,800 mortgage, what became of that? A. It is there yet, it was there at

that time, and there was a suit pending, they commenced to foreclose that mortgage, and Mr. Whitehead represented Mrs. McCracken, he held that the levy was made prior to the recording of the mortgage so that the suit was withdrawn. 10

Q. Well then did the title that Mrs. McCracken got antedate that mortgage? A. Oh, no.

Q. Well, was Mrs. McCracken's title subject to that mortgage? A. Subject to that mortgage.

Q. What became of that, does Mrs. McCracken still own that property? A. Yes, sir. 20

Q. Subject to the Orange mortgage, and subject to what other mortgage? A. Hood mortgage.

By the Court: Q. The Orange mortgage was a collateral mortgage given to secure Mr. Reeves' debt, or what was it? A. Well, it was a straight mortgage, I believe there was some arrangement with the parties, but the mortgage was a straight mortgage.

Q. What do you mean by arrangement with the parties? A. I heard Mr. Reeves say he had a note in the bank, and they required a mortgage of \$1,800 from him to give him time when he paid his note. 30

Q. Did he tell you what the note was? A. I think it was \$1,800.

By the Court: Q. Mr. Reeves has paid off that note, he says, to some extent.

#### FURTHER DIRECT:

Q. Do you know that that note was paid? A. I don't know anything about it. 40

Q. Now this quitclaim deed or release of dower, as you call it, to Mrs. McCracken, that was acknowledged—was that signed in your presence, did you see Mr. and Mrs. Reeves sign that? A. Yes, sir.

Q. Was the deed explained to them? A. It was.

Q. And acknowledged apparently before Mr. Titus, do you recollect that fact? A. I do.

10 Q. Did you go with them to Mr. Titus' office?

A. I went to his office.

Q. They understood what they were doing? A. Yes, sir, read about it and talked about it.

Q. That was part of the transaction by which you completed Mrs. McCracken's title to the Pennington street property, as a consideration for releasing any title that you might have to the Belmont avenue property, am I right? A. That is right.

20 Q. Now it has been stated that some bills were rendered to you by the Reeves for repairs on the Pennington street property, and that that was done merely as a voucher, to show that there was that much more money, apparently, due from you to them on that property, what was the fact about that bill? A. Any repairs on the property I paid them for, it was on the same basis as any other property that I owned or anyone else owned that I was looking after, there was no understanding

30 of the kind at all.

Q. What was said at the time this bill was made out, as has been testified to about that, how did they happen to give you this bill? A. I don't know anything more than it was bills for repair.

Q. When did you first discover or learn, rather, that Mr. and Mrs. Reeves or either of them claimed that you held this property that they had deeded to you on January 2nd, 1896, in trust for them? A. Not until suit was commenced for

40 them.

Q. Had any such claim ever been suggested or intimated to you before that? A. Not at any time.

Q. You mean this suit—you refer to this suit? A. Yes, sir.

Q. Charles Reeves has testified that he acquired title to the Peshine avenue tract by a deed made about the same time that your deed was made,

won't you now tell the court how that occurred— 10  
 what occurred about that? A. It was at his re-  
 quest.

The Court: Is that conveyance attacked?

Mr. McCarter: No, sir.

The Court: Then what has it to do with  
 this case?

Mr. McCarter: I don't know that it has.

I think your Honor is quite right.

Q. I want to ask you in regard to this Arlington  
 property, you knew that Mr. Reeves owned that 20  
 property? A. Yes, sir.

Q. What value did he place on that property,  
 the equity in it? A. \$10,000.

Q. You have spoken before of some effort on  
 your part to get a loan for him on that property?  
 A. Yes, sir.

Q. When did you commence to make those  
 efforts? A. Somewhere about the middle of Jan-  
 uary of the same year, 1896.

Q. How long did those efforts continue? A. 30  
 Why perhaps two months, I cannot tell when I  
 stopped, I kept on trying but I didn't succeed in  
 getting it.

Q. Did that property stand in his name? A.  
 Yes, sir.

Q. What was that property? A. A very large  
 mill property with riparian rights extending into  
 the river one hundred feet front, and it was a  
 large mill with all the machinery and various fix-  
 tures.

Q. Did he use that as his mill at that time? A. 40  
 I don't know that he was running the machinery,  
 it was once called the Cadmus company, a manu-  
 facturing company, where they manufactured  
 sash and doors and all those things.

Q. Did you succeed in getting a loan after that?  
 A. I did not.

Q. Were you endeavoring to get that loan when

10 you told him of the fact that these other executions were coming on here? A. I was.

Q. About the Pennington street property? A. I was.

Q. Now I would be glad if you would recite in detail everything you remember to have said to Mr. or Mrs. Reeves, in regard to the fact that there was danger of their losing these other pieces of property, I mean other than the four that were in your deed? A. Never had no con-  
20 versation at all with Mrs. Reeves.

Q. Well, Mr. Reeves? A. I told Mr. Reeves about that, and about the middle of January, Mr. Reeves came in and saw me one morning, and I was under considerable pressure, I was walking the floor, and he came in and told me he would like for me to do him one favor, and that was to get a loan of \$4,000 on the Arlington property, and he produced a letter from Benjamin F. Crane showing that it had a fair estimated value of \$10,-  
30 000. Well, I was angry, I told him that I had been working for him procuring loans year after year, and now he had done me up by allowing a suit to proceed against him without ever giving me an inkling of it, and it destroyed my credit, and I had been called down by the bank by telling me I must meet the next note that came due, which I had no means of doing, and all large notes, of course, as there was a judgment against him, and I told him the way he had used me he wasn't entitled to any  
40 consideration, and he talked so nice and urged me so strongly—if he had a real estate man to do that he would charge him two and a half per cent, and it would be \$100, and I had been doing it time and time again without one single cent.

Q. Then what? A. Got the loan that very same night, and of course he flattered me, telling me I was worth more than all the real estate men in Newark, and I had helped him out with so many

loans, and this was only the last one, and how 10  
 thankful he would be, and after I told him what  
 a real estate man would charge him, he said he  
 was perfectly willing to pay that, and I said, you  
 don't do it, all the time, and I said I have no as-  
 surance for getting that loan, because it is a mill  
 property, and you cannot get moneyed men to go  
 on that kind of property and my private opinion  
 is that it will be very difficult to get it, and I don't  
 know whether I could possibly do it, and he said,  
 I will tell you what you do, you just make the 20  
 effort, do your level best, he said I know you will  
 do that, and I am willing to pay you commission if  
 you will do that for me.

Q. How long was this conversation after the  
 deed to you? A. About fifteen or eighteen days,  
 this was, as near as I can recollect it, about the  
 15th or 18th of January, and the result was that  
 I tried, I took different parties over there, it was  
 an unhandy place to get at because you had to  
 walk a good distance, and Mr. Whitehead repre- 30  
 sented an estate where he had some money, \$4,000,  
 he had the money and he went and looked at the  
 property, but declined to make the loan, I tried  
 everybody I could hunt up, to get it, but I didn't  
 succeed, and the result of that was on my book ac-  
 count, when he was asking me to draw a check  
 once I charged him the \$100 according to our talk  
 at that time, I am a lawyer and although it was  
 more like shoe leather, yet I called it legal services  
 rendered.

Q. That accounts for the \$100 charge, legal ser- 40  
 vices, in a bill that has been referred to? A. That  
 is it exactly.

Q. Now I want to turn your attention more par-  
 ticularly to another statement you have made to  
 him during any of these times, of the fact that  
 this Pennington street property, or other prop-  
 erties inclusive of those you had your deeds for,

10 were going to be sold under the hammer? A. We had no conversation of that kind, but there was this Boyd street which used to be called Hume street—Boyd street, at any rate, he said he could get a great deal out of that property if I bought it, and there was no question but what it was mine, but he said he would do this, he knew he could trade it off for lots, and if he could and I would agree and I would make the deed he would give me a half or I would give him a half rather, of what  
 20 we would get out of it, and his son Charles and I went up to Irvington and looked at a lot of property to trade the Boyd street off for; I was glad to get out and get something out of it myself, but we couldn't find anybody to trade; when they came to look at it it had about \$800 of assessments and taxes against it, and there were three houses built on a fifty foot lot, and I wouldn't want to tell, in the presence of these people, what kind of a condition the cellar was in, where the toilet was  
 30 frozen up when I went to look at the house, and so we did not succeed.

Q. Now it seems that under three executions the Pennington street and other tracts were advertised for sale by the sheriff? A. Yes, sir.

Q. And Mrs. McCracken bought it in? A. Yes, sir.

Q. Did you or not before she bought in that property under those executions, have any talk with Mr. Reeves in regard to the fact that that  
 40 was going to be sold, the Pennington street property? A. Yes.

Q. Tell us what occurred? A. I told him that there was a whole lot of the properties advertised for sale, and he must look after them and take care of them.

Q. Where was that? A. One time I told him that in the office.

Q. Now you said it was in regard to this loan

you were trying to get that he hoped to get the 10  
money to pay them? A. To pay all these notes off  
if he could get \$4,000 he would straighted up those  
matters.

Q. What other properties were advertised for  
sale besides the Pennington street? A. Under the  
common law execution?

Q. Yes. A. Well, I think Peshine avenue, the  
part that he held was sold, and there was the  
Ferry street property I think was sold, and I  
guess that was all, that is all that I know of. 20

By the Court: Q. Bought in by your wife? A.  
No, sir.

FURTHER DIRECT:

Q. Who bought in the Peshine avenue? A. I  
did.

Q. You yourself did? A. Yes, sir.

Q. Who bought in the Ferry street? A. I did.

Q. Yourself? A. Yes, sir.

Q. Under the common law execution? A. Yes, 30  
sir.

Q. At about this same time? A. No, it was  
some time after that, because just as soon as the  
Firemen Insurance Company learned that I  
bought it in they came right to me and said, now  
here, I understand you bought that property, I  
said yes, then they said I want you to pay the  
taxes and reduce the interest.

Q. What interest had they in it? A. They had  
a mortgage on it, and the taxes were back some 40  
\$400 or \$500.

Q. Which property are you referring to now?  
A. Ferry street property.

Q. Well now did they subsequently commence  
foreclosure proceedings? A. Yes, sir, I tried to  
get them to hold off and they said no we got to be  
paid up, so they foreclosed and sold the property.

10 Q. You went abroad about this time? A. Yes, sir.

The Court: Q. They sold the property, who bought it? A. Mrs. McCracken.

FURTHER DIRECT:

Q. How much was paid on that? A. All of it I think was, \$2600 I think.

Q. Whose money paid for it? A. Mrs. McCracken's.

20 Q. Someone else said, I think it was Mrs. Reeves that while that was being done you agreed to purchase that for them? A. There was never a word of the kind talked about or thought about by me, and I don't know whether it was talked about by them, but there was never a word said by me concerning that.

Q. The sheriff's deed for the Ferry street property is there before you, is it? A. I think it is.

30 Q. Just pick it out please, first the common law and second the execution? A. Ferry street don't seem to be here.

Adjourned.

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Evidence given on Thursday the fifteenth day of January, 1903.

JOHN H. McCracken, re-called:

40 Further direct-examination by Mr. McCarter:

Q. We will now take up the subject of the Ferry street property, Mr. McCracken, that property as we have already seen was not in your deed from Mr. and Mrs. Reeves? A. It was not.

Q. A mortgage of how much stood upon that property? A. I think about \$2,000.

Q. Held by? A. The Firemen's Insurance Company.

Q. It was stated by Mr. Charles Reeves or one 10  
of the witnesses that you agreed to watch that  
foreclosure for these people, to hold it intact, to  
buy it in, to preserve it for them, was any such  
agreement as that to be made with them? A.  
Not a word of the kind was said at any time.

Q. Tell us what you know about the Ferry  
street property, all that occurred between you  
or Mrs. McCracken about that property? A. When  
the property was under foreclosure and about to  
be sold— 20

The Court: Cannot you give us some  
dates on the subject, when the foreclosure  
was commenced and when the property  
was sold?

Q. First the sheriff's deed, Mr. McCracken?  
A. That deed is dated August 22, 1898, the suit  
was commenced some time in 1897.

The Court: Q. Well, that is pretty indefinite.  
A. I think it was commenced while I was ab- 30  
sent in Europe, and that was—I went away on  
July 10th and returned September first.

#### FURTHER DIRECT:

Q. And your impression is that the foreclosure  
suit was commenced while you were absent? A.  
Yes, sir.

Q. How was your attention directed to the fact  
that the property was under foreclosure? A.  
I was served with notice as the defendant.

Q. Now, what interest had you or Mrs. Mc- 40  
Cracken in that property, I want the Vice Chan-  
cellor to be fully posted? A. I had bought it  
at sheriff's sale.

Q. Now, have you the deed from the sheriff  
by which you derived or thought you derived a  
common law title to that property, let us learn  
the facts about that? A. I have.

Q. What is the date of it? A. June 2nd, 1896.

10 Q. That property was sold under what execution or executions? A. I only see the Export Lumber Company here, but I know there were two or three other judgments that—

Mr. Bradner: I object to that part of it.

Mr. McCarter: The witness is now looking at the deed, and according to the deed I understand him to say that the sale was made under the Export Lumber Company's judgment.

20 Q. Satisfy yourself about that, Mr. McCracken. The deed recites an execution against George W. Reeves and Moses E. Reeves at the suit of the Export Lumber Company, also an execution against the same defendants and Sarah E. Faitout at the suit of the State Banking Company, also execution against Moses Reeves at the suit of Mary A. McDermott, it describes the property on the southerly line of Ferry street as  
30 being sold for \$45 to John H. McCracken. It also recites the other tracts described in the deed as having been sold for the other sums to the same party. Did you control or have any interest in the judgments of the State Banking Company and Mary A. McDermott? A. I did one Mary A. McDermott.

Q. Of Mary A. McDermott? A. Yes, sir.

Q. There is an execution there, Mr. McCracken, in favor of Mary A. McDermott against the  
40 Reeves, did you control that judgment? A. Yes, sir.

Q. Did you control the State Banking Company's judgment? A. No.

Q. Had no interest in that whatever? A. No, sir.

Q. But you had bought up the Mary A. McDermott judgment and the Export Lumber Company? A. Yes, sir.

Q. How much did they amount to? A. About 10  
\$2,600.

Q. The whole of them? A. Yes, sir.

Q. Well, you bought in then, under this common law execution the Ferry street property and the Peshine avenue property, under that deed?

A. Yes, sir.

Q. Now, as owner of the equity or as alleged owner of the equity—as owner of the equity therefore you were subpoenaed to answer the foreclosure bill of the Firemen's Insurance Company upon Ferry street? A. I was. 20

Mr. Bradner: I object, I think the record ought to show just what it is.

The Court: I will allow that.

Q. When the property was sold it went to a sale under that foreclosure? A. It did.

Q. How soon after you got back from Europe? A. It was the following year.

Q. The foreclosure sale? A. The foreclosure sale. 30

Q. The sheriff's deed is before you, how much was paid? A. For the property at the sheriff's sale?

Q. I mean under foreclosure now? A. I think it was \$2,600.

Q. By Mrs. McCracken? A. By Mrs. McCracken.

Q. Of her money? A. Yes, sir.

Q. Was it your money? A. No, sir.

Q. What was there due the Firemen's Insurance Company? A. I think about \$100, less than the property brought. 40

Q. How much surplus was acquired by you at that sale, if any? A. I think it was somewhere about \$100, I can't recollect the amount.

Q. What conversation have you had at any time with either Mr. or Mrs. Reeves or Charles Reeves concerning the Ferry street property, in

10 regard to your holding it for them or making any arrangements to preserve it for them, or acting in any way for them in regard to it? A. There has been no conversation about it.

Q. How did you happen to buy in that property under the common law execution? A. Well, first I had an interest in it, by virtue of the sale to me.

Q. No, the common law execution? A. The common law execution.

20 Q. You didn't understand my question, how did you happen to buy it in? A. Mrs. McCracken bought it in.

Q. Under the common law execution? A. Because it was levied on.

By the Court: Q. I understand the deed was taken in your name? A. The common law execution, yes, sir.

Q. Then Mrs. McCracken didn't buy it in? A. You are speaking of the common law execution.

30

FURTHER DIRECT:

Q. I asked you how you happened to buy it in under the common law execution? A. Because I held the judgment.

Q. Was the State Banking Company pushing its execution? A. Yes, sir, they levied also.

Q. Now you say you never had any conversation about buying that for them or holding it for them at any time? A. No.

40 Q. Did they know that you had bought it? A. Yes.

Q. How did they know that? A. Because I told them I bought it and asked them to turn over the property to me to collect the rents.

Q. When was that? A. Right after it was bought.

Q. What did they say? A. Well, he continued collecting, he said he would do it, but then he didn't do it.

Q. How soon after your common law deed did you get in possession of the rents of the Ferry street property? A. I don't recollect the date, but there is an order here in evidence where Ball asked him to turn the rents over to me.

Q. Now did that apply to the Ferry street property, that order of Balls? A. I think he did.

Q. After you obtained the order from Mr. Ball, you say you think you did collect the rents on the Ferry street property, is that right? A. Yes, sir.

20

Q. When he signed that order did he make any claim to you in regard to the fact that you held that property for him? A. He did not.

Q. I show you the order dated January 27th, 1897, from Mr. Reeves to Mr. Ball, Exhibit C4, and ask you if that is the order you refer to? A. That is the order.

“Please make arrangements with J. H. McCracken as he may direct, about the collection and payment of the rents you may receive from the Ferry street property and the two Astor street houses, and oblige

Yours respectfully,  
MOSES E. REEVES.”

Q. The Astor street houses, I think you said were in the deed? A. They were.

Q. On the 2nd of June, 1896, what were your relations professionally or otherwise with Mr. Reeves, I mean by that, were you acting for him in any way? A. I was not.

Q. When was it, if you can place the time, when you were undertaking to get the loan for him on the Arlington property, and when did you abandon that and tell him? A. I commenced about the middle of January, and I have

40

10 no recollection or data of the time that I discontinued, I don't think it was very long, but I have no way of fixing the time.

Q. Did you finally abandon it and tell him you would abandon it? A. I told him I could not succeed in getting it.

Q. Was it before or after the sale or execution of these judgments? A. Before.

Q. Have you done or performed any professional act for Mr. Reeves from that time to the  
20 present, and if so, what? A. Since the time of the sale?

Q. Yes—well, say from January 1st, 1896, down to the present time, beyond the effort to secure a loan for him on the Arlington property? A. I don't think I have directly. I was concerned in a case that Mr. Whitehead had, by searching a title to see about a lien that a party by the name of Chardavoyne had—I think I rendered services in examining the title.

30 Q. When was that? A. That was subsequent. I cannot fix the date.

Q. Was it that year or the next? A. I think about the next year.

Q. Now, did Mr. Reeves employ you to search the title at that time, or what was your employment? A. Well yes, I was employed, I think, to search the title, to ascertain whether a lien could be effected or not, on the property.

40 Q. Now turning to the Pennington street property, give us the history of that place? A. Pennington street, that property was foreclosed by the estate of Dowden who held the mortgage on it, and bought it in by me.

Q. I am talking about Pennington street now, I would prefer to take that up first? A. When the Pennington street property was advertised for sale?

Q. Under what? A. Under a common law execution.

Q. Which executions, the same ones again? 10  
 A. The same executions.

Q. The same ones? A. Yes, sir.

Q. Go on? A. I saw the place was in a very bad repair and occupied by colored persons.

Q. Well, you bought it in? A. No, I didn't think I could handle it to buy it in individually myself, and I told Mrs. McCracken about it.

Q. Well, she bought it in? A. She bought it in.

Q. And we proved the deed of that yesterday I think? A. Yes, sir. 20

Q. What is the date of that? A. June 2nd, 1896.

Q. Under the same three executions? A. Yes, sir.

Q. And what mortgage was on that? A. One for \$2,500 and one for \$1,800.

Q. Mrs. McCracken still owns that? A. She does.

Q. Was it your money or her money that bought that? A. Her money. 30

Q. What are the facts in regard to the Peshine avenue tract that was bought in under a common law execution, the same one I think that I read this morning? A. The same execution.

Q. The same execution that I read this morning in regard to the Ferry street property also sold the Peshine avenue tract? A. Yes, sir.

Q. Are they the same deed, Mr. McCracken for the whole three? A. Yes, sir.

Mr. McCarter: I got the impression that 40 they were separate deeds.

Mr. Bradner: Part of the Peshine avenue tract was sold on April 14th, 1896, and another part on June 2nd, on those executions.

The Court: What other property was sold, if any in April under the first sale.

Mr. Bradner: Under the first levy the

10 property sold under the first levy were Clinton avenue, Astor street, Hume street, that is Boyd street, Belmont avenue, Chestnut street and a part of Peshine avenue.

The Court: That was in March?

Mr. Bradner: That was in March or April, yes, April 14, 1896.

The Court: Were any of those properties included in the mortgage—I mean the deed to him?

20 Mr. Bradner: Yes, that covered all the properties in the deed to him.

The Court: Were there any properties that were sold at that sale not in the deed to him?

Mr. Bradner: Yes, Peshine avenue was not in the deed.

The Court: Anything else?

Mr. Bradner: No, sir.

30 Mr. McCarter: That was April 14th deed.

Mr. Bradner: Yes, sir. On the June first deed none of the properties were in the deed to him, and they also included Pennington street, Ferry street, Chestnut street, another lot on Chestnut street and a part of Peshine avenue.

40 The Court: Who ordered this second sale made in June, 1896, who directed the sheriff to make it. The sheriff sold in April, a number of properties, now somebody must have directed him to go on and sell these other properties, now, who was it?

Witness: I think it was a continuation of the sale.

Q. Who directed him to sell on that particular day, there must have been somebody who directed the sheriff, in the first place to make those ad-

jourments, and in the second place to sell, now, 10  
 who was it? A. I think I did.

Q. Then, as I understand you, all Mr. Reeves' property was levied upon in the first instance, all except the Arlington property, but you directed a sale of certain of the property in April and a sale of certain other—the rest of the property levied upon in June, is that it? A. Well, I am only speaking from memory, I think there were two or three parties at the sheriff's office that had levies and requested the sale, I didn't 20 know, individually that I had anything to say on it, but I think it was the bank and the persons who were interested in the judgments that requested the property to be sold.

Q. You were the only person interested in the judgments, as I understand, except the bank judgment?

FURTHER DIRECT:

Q. Was there anybody else interested in any 30 of those judgments except the bank and yourself? A. I don't remember if there was.

Q. Well then, it was you and the bank? A. 35 Yes, sir.

By the Court: Q. Who was the attorney of the bank? A. I don't recollect now.

The Court: Who was it, Mr. Bradner?

By Mr. Bradner: Hadn't the bank judgment been assigned to Mr. Whitehead at that time?

A. I don't recollect. 40

FURTHER DIRECT:

Q. What the Vice Chancellor is anxious to find out, and what I want to know is, how it happened that this bank which had a judgment for several hundred dollars seems to run right along with you, how was that, were you working together, did you control the bank or what connec-

10 tion did you have with this bank judgment? A. I didn't have any connection with the bank judgment.

By the Court: Q. Didn't you consult with Mr. Whitehead in regard to those? A. I don't recollect consulting with him.

FURTHER DIRECT:

Q. Did Mr. Whitehead control that judgment, to your knowledge? A. I don't remember that  
20 he did.

Q. Well, what part did the bank judgment play in this matter, weren't they looking after their money, or did they give it up, what was the whole thing, let us get at it as quick as we can? A. Well, I don't think that the bank received anything.

Q. Well, did they abandon the whole thing? A. All I recall is the sale that took place that day, and the purchases were made I think—on  
30 the 14th—are you speaking of the first sale on the 14th?

Q. Either one or both, there seems that on the 14th of April a sale was made of a portion of this property under judgment controlled by you and also by the State Banking Company? A. That was after I took the assignment of the judgment, I think they were advertised for sale, and went on and were sold.

Q. It also seems that on the 6th day of June  
40 sales of other properties were made under the same executions?

Mr. Bradner: The State Banking Company wasn't in the June 6th at all.

A. I will tell you who attended to it, Judge Swayze attended the sale, he was there and also Mr. John Whitehead was there at the sale, they were at the sale and ordered it sold.

Q. Who did Mr. Swayze represent, you? A.

I think he represented me, likely on account of 10  
my taking the judgment.

Q. Who did Mr. Whitehead represent? A. He  
represented his own claim.

Q. Then he had bought the State Banking  
Company's judgment? A. That is my recollec-  
tion, I think that was it.

The Court: Q. I want to get to the facts, be-  
cause this is of the utmost importance, Judge  
Swayze, as I understand was the attorney of  
record together with Mr. Colie, in the recovery 20  
of the Lumber Company's judgment, now that  
judgment was assigned to you, does it appear  
exactly when?

Mr. McCarter: We have the assignment  
I found it in one of the papers. I offer  
in evidence the two assignments of judg-  
ments from the Export Lumber Company  
to John H. McCracken, dated respectively  
April 13, 1896, one marked D10, and the  
assignment of judgment of the Export 30  
Lumber Company, Limited, against George  
W. Reeves to Moses E. Reeves, recovered  
in the Essex Circuit Court on the 4th day  
of January, 1896, for \$2,175.35 damages  
and \$35 costs, dated April 13, 1896, and  
recovered January 4, 1896. It seems to  
be proven on the 13th day of April, 1896,  
in New York by the Export Lumber Com-  
pany.

I further offer in evidence assignment 40  
dated the 13th of April, 1896, by the Ex-  
port Lumber Company of the Mary Mc-  
Dermott judgment; judgment entered the  
8th of February, 1896, against Moses E.  
Reeves and George W. Reeves for \$463.50  
damages and \$44.59 costs, it is proven on  
the 13th of April and recorded on the  
18th of December, 1896, and recites an

10 assignment of the McDermott judgment to  
the Export Lumber Company.

D11.

Now the sale took place on April 14th?

Mr. Bradner: Yes, sir.

The Court: Q. Your recollection having been refreshed by the papers offered in evidence, can you tell us what connection Mr. Swayze had with this sale, outside of his assignment to you of these papers?

20 Mr. Bradner: The sheriff's books show it your Honor, when the sheriff's books were here they showed that Colie and Swayze signed the conditions of sale, his record showed Colie and Swayze attorneys, they signed the conditions of sale on that June 2nd sale.

The Court: I am talking about the April 14th. I want Mr. McCracken's recollection, it having been refreshed by these papers, I want his recollection as to the connection which Colie and Swayze had with this sale, they assigned apparently the day before the sale, now what did they have to do with the sale?

30 A. I don't know anything that Mr. Swayze had more than to take the assignment of judgment, that he agreed to look after the sale, that was a part of our arrangement.

Q. Look after the sale for you? A. The sale  
40 of the property.

Q. For you? A. Yes, sir.

#### FURTHER DIRECT:

Q. Now, turn to the deed, under the sale of April 14th, and tell us what tracts were conveyed by that deed? A. Clinton avenue tract, Astor street, Hume street, that means Boyd

street, Belmont avenue, Chestnut street and Peshine avenue. 10

Q. That did not satisfy these judgments? A. It did not.

Q. Now, what the Vice Chancellor and I want to know is how did it happen that on the sixth of June another sale took place? A. Because the judgments were not satisfied.

Q. In the meantime you say Mr. Whitehead had become interested in the judgment of the State Banking Company, had he? A. Yes, sir. 20

Q. And you and he finally determined to sell, I suppose, on the 6th day of June? A. On the 2nd day of June.

Q. And the property was sold, now what property was sold then? A. Another portion of the Peshine avenue, Ferry street and Chestnut street.

Q. Then none of the property that was sold under the June deed was included in the Reeves deed to you, was it? A. No, sir.

Q. And some of the property that was sold under the April deed was in the deed to you? A. Excuse me, you are speaking of the Reeves deed. 30

Q. (Question read.) A. Yes, that is right.

Q. The Peshine avenue tract that was purchased—

The Court: Q. Did Mr. Whitehead buy anything in at this June sale? A. He did, he bought in the Cedar street property, I mean the Pennington street property for Mrs. McCracken. 40

#### FURTHER DIRECT:

Q. At the June sale? A. At the June sale.

By the Court: Q. Well, did he buy in any thing for himself to protect his own judgment? A. No, sir.

Q. Well, did the sale take place under this judgment in June? A. It did.

## 10 FURTHER DIRECT:

Q. How did it happen that Mr. Whitehead bought in for Mrs. McCracken, why didn't you buy in for Mrs. McCracken? A. The place was in bad repair and occupied by colored tenants, and the Howard Savings Institution that held the mortgage were threatening suit, and I couldn't get money to take care of it and put it in repair, and after telling Mrs. McCracken about it, why my idea was to abandon it, and she said  
20 if she would put the money in I could look after it, whether it would be safe and likely to get it out, and I told her I thought it would, and then she said she would put the necessary money in to buy it, and so Mr. Whitehead represented her in the transaction, and she did buy it at sheriff's sale.

Q. Well, did she have any interest to protect?

A. No, sir.

Q. Then it was a speculation on her part, pure  
30 and simple? A. It was a speculation.

Q. She, up to that time had no interest whatever in the Pennington street property of any kind whatever? A. No, sir, and with the chances of what was against it, it was mortgaged for more than it was worth, it had two mortgages on it, and there was a chance that there was to be a suit on it.

Q. Let us have the quitclaim, Mr. McCracken, of Reeves to Mrs. McCracken, on Pennington  
40 street, and our deed of Belmont avenue? A. The deed to Mrs. Reeves is September 1st, 1897, the release is August 10, 1898, and this deed was made to Mrs. Reeves, and was left in my custody, and it wasn't recorded until November, 1898.

By the Court: Q. When was it acknowledged?

A. The Reeves deed was acknowledged on the first of September, 1897.

Q. And the other deed? A. The other deed 10  
was acknowledged August 17, 1898.

FURTHER DIRECT:

Q. Now take up the Peshine avenue property,  
what mortgage was on that prior to the purchase  
of the common law title? A. There were three  
mortgages.

Q. Well, what were they? A. One was—part  
of it to a building and loan association, the mort- 20  
gage on one tract, the estate of Dowden, and  
subsequently there was a second mortgage on the  
whole two tracts to the estate of Dowden, and  
subsequent to that there was a mortgage to a  
building loan on one tract.

Q. Did your common law execution title cover  
both the Peshine avenue tracts? A. It did in  
two sales.

Q. Exactly—what two sales? A. No, I think  
it only covered part of it.

Q. Then what mortgage was on the property 30  
that you had the common law title to? A. Two  
mortgages to the estate of Dowden.

Q. Two Dowden estate mortgages? A. Yes,  
sir.

Q. Amounting to? A. I think \$3,600.

By the Court: Q. The estate represented by  
whom; who were the beneficiaries of the estate  
of Dowden—of the estate of C. S. Dowden? A.  
Charles Dowden was, my father-in-law, deceased.

Q. Now, who were the executors of that estate 40  
at that time? A. George A. Dowden and Wil-  
liam H. Burnett.

Q. As executor did they have these two mort-  
gages on that Peshine avenue property? A.  
Yes, sir.

Q. You were their attorney? A. Yes, sir.

Q. And who were the beneficiaries of that es-  
tate? A. Mrs. McCracken, my wife and her sis-  
ter.

10 Q. What is her sister's name? A. Nettie Guelick.

Q. And Mrs. McCracken, were there any other heirs or beneficiaries? A. No, sir.

Q. Was George Dowden a beneficiary? A. No.

Q. You think not? A. No, not under the will.

Q. Was there anybody else besides Mrs. McCracken and Mrs. Guelick interested in the property of their father? A. Yes, Henry Dowden was a beneficiary.

20 Q. Who was he, a brother? A. Yes, sir.

Q. Those two mortgages were due, were they? A. They were.

Q. When did you receive instructions to foreclose them and from whom?

The Court: How much did you say they amounted to?

Witness: I think thirty-five or thirty-six.

Q. (Question read.) A. From the executors, about the time it was commenced.

30 Q. And that was? A. That was in, I think about 1898.

Q. You don't find the deed? A. No, sir, I didn't find the deed.

40 Q. Well now the foreclosure proceedings were prosecuted by you in that way on that property, Mr. Charles Reeves said yesterday, that that foreclosure proceeding came at a time when they wanted to make shifts; he said that you remarked to them it would have to be foreclosed in order to enable them to make the shifts that they were to sign off, that you then would foreclose and buy it in for their benefit, and that after we, meaning they, got it, in the way that he suggested, namely, by having you buy it in, they could trade it off, now, what were the facts about that, in the first place, did you have any such conversation about that with Mr. Dowden? A. There was no arrangement made at all, they

would take for their interest, I think something like \$300, and the taxes were unpaid, and he refused to put the sanitary arrangement in that the city required, and there was a suit pending I think at that time, a suit was commenced.

Q. Who was their lawyer in that suit? A. Mr. Bradner, that was the suit against the Board of Health when he refused to put the sanitary arrangements in that they wanted, and consequently it was foreclosed.

The Court: Q. He had been receiving the rent of that property? A. He had until the foreclosure was consummated.

Q. Did he receive the rent up to the time of sale? A. He received the rent up to the time of that sale.

Q. Of the foreclosure sale? A. Yes, sir.

The Court: This was not one of the properties that Mr. Ball was receiving rent for?

Mr. McCarter: No, sir, but Mr. Reeves gave Mr. McCracken the right to get the rents, that was the Ferry street and the two Astor street houses that are all included in the notice there.

#### FURTHER DIRECT:

Q. Did you make any arrangements of any kind with them on behalf of anybody by which that property would be bought in for their benefit? A. Not at all. 40

Q. Did you know that they had anybody who was endeavoring to buy that property at that time? A. I had no knowledge of it at all.

Q. It was stated yesterday that some Mr. Coleman had some suggestions in regard to it, did you know anything about that? A. I didn't know anything about it.

Q. Was that property purchased under fore-

10 closure and by whom, and for what amount? A. It was purchased by me for the sum of \$2,000, but I have not the deed here.

Q. It doesn't seem to be here? A. Oh yes, I have it here, it was purchased December 13, 1897.

Q. December 13, 1897? A. Yes, sir.

Q. Then the foreclosure suit must have been four or five months before that—it must have been commenced four or five months before that,  
20 I suppose? A. Yes, sir.

Q. And purchased by you for how much? A. \$2,000.

Q. You say there were taxes in arrears and lack of sanitary plumbing in the house? A. Yes, sir.

Q. Did you agree, on behalf of anybody to purchase that property, or protect any interest they had in it? A. Not a word of the kind to anybody or even thought of by me; and I bought  
30 it in, at the time the estate considered it neglectful for me to let the interest go back so far, and I made the loss good to them.

By the Court: Q. What was the property worth? A. Well, it is very little, if anything, over the mortgage, as it stood.

Q. What is your judgment as to what that property is worth, or was worth at the time you bought it in? A. Well, it was mortgaged for about \$5,600, I don't think it was worth any  
40 more than that, neither of the houses had cellars under them and they were dilapidated.

Q. I think you said that it was mortgaged for \$3,500? A. It was mortgaged to the Dowden estate for \$3,500, but a part of it—the Dowden estate held the whole part, held the mortgage on the whole thing, it subsequently was built up, and a mortgage put on to it with the understanding that a certain amount was to be paid

for a release, but they didn't get the money 10  
 necessary to get the release, and consequently  
 it tied up the whole property, that was the rea-  
 son it was rushed through into foreclosure, in  
 order to straighten the matter up, and get the  
 tangle unraveled, in the first place the Dowden  
 estate had a mortgage on one part of this prop-  
 erty, subsequently they took a mortgage on the  
 whole of it.

FURTHER DIRECT:

20

Q. That is the two tracts? A. Yes, sir.

Q. And the two mortgages altogether amounted  
 to how much? A. \$3,600. Then one part of  
 that was conveyed by Mr. Reeves about the time  
 he failed, to Charles Reeves, and Charles Reeves  
 commenced building it up, and when he had his  
 building well along he failed to get a loan, con-  
 sequently it was put in the building loan asso-  
 ciation where he expected to get a release from  
 that part of the Dowden estate, they never got 30  
 the money to get the release, and consequently  
 the Dowden mortgage continued over the whole  
 property which was foreclosed, when it was sold,  
 it was sold of course subject to the other mort-  
 gage, the Dowden mortgage was foreclosed which  
 covered the whole tract, and the amount that  
 was covered by the building loan mortgage was  
 there still, and that was a mortgage, all of \$3,000,  
 to be paid, so they were not made a party to the  
 foreclosure.

40

The Court: Q. I thought you said the building  
 loan mortgage was subsequent to your mortgage?

A. Subsequent.

FURTHER DIRECT:

Q. How many feet of property was there on  
 Peshine avenue? A. 102 feet.

Q. One of those was improved and one unim-  
 proved? A. Yes, sir.

10 Q. The unimproved was the tract conveyed to Charles with your deed? A. Yes, sir.

Q. There was included in the \$3,600 mortgage to the Dowden estate, both? A. Both tracts.

Q. How long had that mortgage been on there, about? A. Perhaps ten or twelve years.

Q. Now, Charles wanted to improve the vacant property which he got a deed for, and you say that he went to a building loan and executed a mortgage upon it, and expected to get a release  
20 from Dowden in order to make his building good? A. That is right.

Q. He couldn't get the money? A. That is right.

Q. And so the Dowden mortgage continued a blanket mortgage on both properties? A. Yes, sir.

Q. Did the building loan advance any money? A. \$3,000.

Q. Subsequent to the blanket mortgage to the  
30 Dowdens— A. Then when the Dowden mortgage was foreclosed they sold the entire property.

Q. Well, was there anything due from Charles Reeves to the building and loan? A. \$3,000.

Q. And that was secured to the building and loan, how? A. By a mortgage.

Q. And that mortgage was in what relation to the Dowden mortgage? A. Subsequent.

By the Court: Q. You said a few moments ago that after you had bought in, the property  
40 was sold subject to the building and loan mortgage, now I don't understand that? A. It was because the building and loan mortgage was subsequent, and they were not made a party to the suit.

#### FURTHER DIRECT:

Q. They were not parties to the foreclosure suit of the Dowden estate? A. No.

By the Court: Q. Why didn't you make them 10 parties?

FURTHER DIRECT:

Q. Why were they not made parties? do you know? was that an oversight on your part? A. No, because there was a mortgage there that had to be paid and didn't want to stir it up, it was in such a condition I couldn't get another mortgage on it, perhaps.

Q. Well, at any rate you didn't foreclose their 20 equity out when you bought in under the Dowden foreclosure the building loan mortgage still existed? A. That is right.

By the Court: Q. If you had made the Building 30 Loan a party, their mortgage being subsequent to yours, you would have got a clear title; why didn't you do it? A. Because I knew that mortgage had to be paid off, and I was counsel for the Building and Loan Association, and when the matter went on why I left their claim as 30 it was because I was under obligations at any rate.

Q. You were under obligation to the Building 40 and Loan? A. Yes, sir, because we expected to get the release, and that was a disappointment, the release was a disappointment, we expected to get the release, and when I pronounced the title clear I had money in my hands to make it clear, to pay it, but they took it and paid other obligations; that was his money and he drew 40 the money to pay other things, and consequently it was one of these matters pretty well mixed up, and I did the best I could under the circumstances.

By the Court: Q. Did all this happen after you had your common law execution executed, or did it happen before? A. The property was built up before.

10 Q. I understand you to say that Reeves took this vacant lot, with the idea of building on it?  
A. He did.

Q. And then he did commence to build on it, and he did make application to the building loan for this money; now, if that is so, why then all this thing must have happened after you got your title under that common law execution, if that is not so, I don't understand it. This is of course very important.

20

FURTHER DIRECT:

Q. Do you recollect whether the Charles tract was in the April or June deed, or in your sheriff's sale? A. It was in the April.

Q. Had Charles then commenced to build? A. I am not sure. There was a part was put up a year or so before the building was started, but I don't remember the dates of when that occurred.

30 Q. Now, I understood you to say that the Building and Loan, of which you were counsel, had expected to get a clear title for their mortgage? A. Yes, sir.

Q. And that you had so advised them that they would—that you were disappointed in the failure of the Reeves to get a release from Dowden, and so you didn't undertake to cut out the Building and Loan in the foreclosure of the Dowden property, is that the situation? A. Yes, sir.

40 Q. For that reason? A. That is correct.

By the Court: Q. The point is here, if you own that property under the common law execution, how did it happen that you let Charles Reeves go on and build upon it and get a loan upon it? A. The building prior to this was partly up.

Q. Well, why did you let him go on and finish it; he wasn't going to work for your benefit?

A. I cannot give any reason why matters con- 10  
tinued.

Q. Didn't that indicate very clearly to your mind that he had an interest in it, after you bought? that you regarded him as having an interest in it?

Mr. McCarter: Under your common law execution, now. A. Yes, he certainly would have an interest in it, I don't recollect what was done after that.

20

FURTHER DIRECT:

Q. The question was whether the fact that you permitted Charles to go on and improve the vacant Peshine avenue property didn't indicate pretty strongly that Charles had an interest, with your assent, in that property, although you had the common law title? A. In finishing it up?

Q. Yes. A. Yes, sir.

CROSS-EXAMINATION by Mr. Bradner: 30

The Court: This case is considerably simplified by the admission on the part of Mr. McCracken that he is obliged to account or should fairly account for the property conveyed by the deed, as to that you need not examine, we will confine ourselves to these other properties which were purchased under the common law executions, and with the subsequent dealings with those properties.

40

Mr. Bradner: I agree with that, but I would like to get that on the record that if at any future time Mr. McCracken should set up his discharge in bankruptcy against his liability to account, then I can go into it to show whether it was a fraudulent trusteeship on his part. He has actually been discharged in bankruptcy since this suit was brought.

10           The Court: Why, is not the title in the trustee in bankruptcy?

Mr. Bradner: That I don't know.

Q. I understand you to say that you hadn't acted as Mr. Reeves' counsel prior to January 2nd, 1896?

Mr. McCarter: No, sir, he said he had been his attorney in searches.

Q. Had you acted as his counsel, had you given him advice about transferring property and obtaining loans? A. I have talked with him concerning those things.

Q. Haven't you drawn deeds of conveyances for him on numerous occasions? A. Yes, sir.

Q. And mortgages also? A. I have drawn deeds, mortgages and examined titles of property.

Q. I show witness Exhibit C5, was that signed by you? A. I think it is.

Q. It is not in your handwriting is it—whose handwriting is it? A. I cannot tell.

Q. Are not the last two items in pencil in your writing at the foot of it? A. Yes, sir.

Q. The other was sent from your office? A. I believe it was.

Q. Have you your books here? A. I have not.

Q. Hadn't you ever acted as his counsel in your suits before that date, January first, 1896? A. I don't remember any case.

Q. I find a bill, John Collins, legal services June, 1892, what was that? A. That was a suit conducted by Mr. Whitehead where I assumed the responsibility of the costs in the case, that was when I was engaged in New York in an insurance business and I assumed the costs in the suit, and Mr. Whitehead attended to the matter, I don't know exactly how I was mixed up in it, but I paid the costs there.

Q. Did you act as attorney and counsel in the suit? A. No, sir.

Q. But you charged for it? A. Well, I looked 10  
after the matter with Mr. Whitehead in some  
way.

Q. In May, 1894, District Court, tenancy, what  
does that mean? A. I think I dispossessed a  
tenant, what is the amount of that?

Q. On the third of January, 1896, you have a  
charge for drawing four deeds, what deeds did  
you refer to? A. I don't recollect about that,  
I remember drawing two deeds, but I don't re-  
member drawing four. 20

Q. You charged \$25 for your legal services  
on that same day, what legal services did you  
render on that day to Mr. Reeves? A. On what  
day of the month was that?

Q. The third day of January, the same day  
this deed to you is acknowledged? A. That is  
when the deeds and papers were prepared by  
myself and Mr. Whitehead, in evidence here.

Q. And you made a charge for that, for your  
services? A. Yes, sir. 30

Q. On the 22nd day of January you have a  
charge on this bill, legal services, and with  
Whitehead and Colie & Swayze \$100 what is  
that? A. The main work of that was done in  
procuring a loan by an understanding between  
Mr. Reeves and I on the Arlington property.

Q. What services did you render to Mr. Reeves  
in connection with Colie & Swayze? A. Well,  
I was at Mr. Swayze's office with Mr. Reeves,  
it was perhaps no definite legal service more than 40  
taking up my time or being with him at these  
places looking into and investigating the matter,  
and seeing what could be done, and getting them  
to hold off, etc., I don't know just exactly.

Q. You mean to hold off the sale on the Ex-  
port Lumber Company's judgment? A. Yes, sir.

Q. Had they advertised the property at that  
time? A. I think they had.

10 Q. They had filed a bill in the Court of Chancery? A. Yes, sir.

Q. To set aside this deed that had been made to you? A. Yes, sir.

Q. You went to see them about that also, didn't you? A. I don't just exactly remember what the interview was, I know there was some time taken.

Q. When you made the charge against Mr. Reeves for your services at that time, you considered you were acting as Mr. Reeves' attorney? A. I considered I took up time for him, I didn't consider myself attorney in that suit.

Q. What were you trying to do for him with Colie & Swayze? A. He asked me to go with him there and I did so.

Q. Were you trying to get that judgment settled up in some way? A. I cannot answer the question exactly, perhaps I told him I was making an effort to get money on some property, I don't know as I told the particulars of what was done at the time.

Q. Since that time you have rendered some legal services for Mr. Reeves, haven't you? A. I may have done some I don't remember the particular cases.

Q. Did you draw some bonds and mortgages for him on the Pennington street property? A. Yes, I did.

Q. Did you draw the mortgage to the Orange National Bank and charge Mr. Reeves for it? A. That is the one I refer to.

Q. Yes. I find a charge on February 18th, legal services, 1896, six and a half days, \$25 no designation, what was it about, do you remember what that was for? A. I don't remember.

Q. Evidently you were performing some legal services for him at that time? A. Well, sometimes it was strictly legal, sometimes looking af-

ter some matters that required attention, I will 10  
call it legal because I am a lawyer, if I charge  
at all I charge what I do as legal services.

Q. Did the Orange National Bank bring suit  
against Mr. Reeves on the mortgage? A. They  
brought a suit, I forget what parties were made  
defendants.

Q. Was that a suit to foreclose that mortgage?  
A. Yes, sir.

Q. Did you defend that suit? A. No, Mr.  
Whitehead defended it. 20

Q. That was a suit to foreclose the mortgage  
on Pennington street, wasn't it? A. Yes, sir.

Q. What was the result of that suit? A. The  
suit was discontinued.

Q. It was discontinued? A. Yes, sir.

Q. Didn't you make a charge against Mr.  
Reeves in December, 1896, \$50 for your legal  
services in that suit? A. I don't think I did.

Q. Didn't you file a plea of set-off in May,  
1899, in a suit brought against you by Charles 30  
E. Reeves as assignee of the claim of Moses E.  
Reeves, in which you set out an account due you  
from Moses E. Reeves, and in that account an  
item under December 5, 1896, legal services ren-  
dered to suit by Orange National Bank on mort-  
gage, \$50 did you do that? A. I don't recollect  
it.

Q. You had had a great deal of experience,  
hadn't you, in getting loans and taking bonds and  
mortgages and preparing bonds and mortgages? 40  
A. Considerable experience.

Q. Why didn't you have Mr. Reeves give you  
an actual mortgage on this property to secure  
you? A. At what time do you refer?

Q. On January 2nd or 3rd, 1896? A. It came  
something like a thunderbolt, I took what was  
suggested at the time and a deed was suggested  
and I took it.

10 Q. You were in a hurry? A. Yes, I was considerably worried that day.

Q. Did you have the descriptions of the property in your office? A. Yes, sir.

Q. Did you have a description of the Ferry street property in your office at that time? A. I think I did.

Q. And Pennington street? A. I think I did.

Q. And Peshine avenue? A. Well I was I think, I don't know which properties I had.

20 Q. Didn't you put in that deed at that time every description that you had in your office? A. Oh, no.

Q. Did not? A. No.

Q. Did Mr. Reeves bring any of his title deeds to your office at that time? A. I don't know whether he did or not, he designated the properties that I had put in the deed.

Q. Was anything said about the Ferry street property? A. At the time he made the deed, no.

30 Q. Was anything said about the Peshine avenue property? A. No.

Q. Or Pennington street? A. Well, during that period there was something said about the Peshine avenue property.

Q. I mean at the time this deed was made out and executed? A. You mean the deed of the property to me?

40 Q. Yes. A. That same day or the day it was executed, he told my clerk to make a deed to Charles for some of the property?

Q. No, you mean part of the Peshine avenue property? A. Yes, the Peshine avenue property.

Q. Why wasn't the Ferry street property put in the deed to you? A. He didn't offer it, these properties that he put in some of them I hadn't seen, I didn't know where they were, but he just named the four properties that he wanted put in the deed, and I followed his request.

Q. You know the Astor street houses? A. Yes, 10  
sir.

Q. Knew all about them? A. I knew where  
they were, yes.

Q. Hadn't he built them through you—you got  
loans for him while he was building those prop-  
erties? A. I don't think so.

Q. Didn't you know all about the Belmont ave-  
nue property? A. Yes, that is the only property  
I did know.

Q. Didn't you own that at one time? A. I 20  
owned the ground.

Q. And sold it to Mr. Reeves? A. Yes, sir.

Q. You knew about the Boyd street property  
too didn't you? A. No, I didn't know where it  
was until I hunted it up after the deed was made.

Q. Did you on that occasion have any settle-  
ment with Mr. Reeves, in order to ascertain how  
much he owed you? A. No.

Q. Did you have any settlement of accounts?  
A. Not at that time. 30

Q. Did you ask him on that occasion to sign a  
due bill? A. No.

Q. Did he sign one? A. I don't think he did.

Q. Did you produce one at the trial of this suit  
that I have referred to, in the Circuit Court? A.  
I don't think I did.

Q. Will you say that you didn't? A. I will say  
I don't think I did.

Q. Didn't you produce it on the trial of that  
case and claim it as an off-set? A. I don't think 40  
so.

Q. Didn't you file a plea in that case in which  
you stated that you had a settlement of accounts  
with him on January 3rd and he owed you \$3,497?

A. I don't recall it.

Q. So that the only reason that you didn't take  
an actual mortgage from him was because he  
wanted to make a deed? A. Well, that was sug-

10 gested, talked about why it should not be done, that was suggested and done at the time.

Q. Did he suggest it? A. I think he did; I think he suggested it first.

Q. Did he suggest it? A. That is my recollection.

Q. He came to your office when you called for him to come there and suggested to you that he should make a deed? A. I did not call for him, you sent him there.

20 Q. Didn't you say on your direct-examination that you sent for him when you heard there was a judgment about to be entered against him? A. I don't think I said that, I think I said you told me there was a judgment to be entered up, and you spoke for him, I think that is a fact.

Q. You didn't send for him to come? A. Unless I told you to tell him yes, come in, yes, I can say I seen you, if you call it that way.

30 Q. You didn't say anything to him about a mortgage because he wanted to give you a deed an actual conveyance of the property? A. I don't think I said anything about it, I think the conversation about the deed was talked over in Mr. Whitehead's office.

Q. Was that before the deed was made? A. Yes.

Q. The same day? A. I think it was the second.

40 Q. And when you went to Mr. Whitehead's office on the third to have this deed acknowledged, the chattel mortgage was prepared? A. Yes, sir.

Q. Did Mr. Reeves request that? A. He did.

Q. He wanted to give you a chattel mortgage? A. Yes, sir.

Q. To secure those notes? A. Well, that is the way it purported to be.

Q. You didn't ask him for it? A. No.

Q. In fact you didn't ask him for any security

for anything, did you? A. Certainly I asked him, 10  
when he suggested the deed I said I wanted it.

Q. Before he suggested it did you ask him for  
anything? A. Well, he came to me.

Q. What did he say when he came into your  
office after I had told you that judgment was  
about to be entered against him? A. He said he  
wanted to convey some pieces of property to me.

Q. He said he wanted to convey some property  
to you, is that what he said? A. I think it is.

Q. Did he say why? A. To secure the money 20  
he owed me, advanced to the bank.

Q. Well, he left it to you to prepare a proper  
conveyance to secure you, didn't he? A. Well,  
yes, I suppose he did.

Q. Now I ask you why didn't you draw a mort-  
gage? A. Because he told me that he wanted to  
convey it, he wanted to make the deed of certain  
properties.

Q. You were the lawyer in the matter, why did  
you take the chance of absolute conveyances when 30  
it was so easy to draw a mortgage? A. I don't  
know any reason why it was done more than it  
was.

Q. You cannot give any reason? A. Any rea-  
son, why, yes.

Q. Didn't you immediately after you got that  
deed claim to be the absolute owner of that prop-  
erty? A. No.

Q. Didn't you say so? A. No, sir.

Q. Didn't you tell Mr. Hugh Reed that you 40  
bought that property for Mr. Reeves at the time  
you were negotiating to sell the Astor street  
property to Mrs. Miller, didn't you say to Mr.  
Reed at that time when he was negotiating with  
you in reference to the Astor street property that  
you had bought the Astor street property from  
Mr. Reeves? A. No.

Q. You did not? A. No, sir.

10 Q. You didn't consider that you had bought it from him? A. Before I sold it, certainly I did. When I bought it at sheriff's sale I considered I bought it.

Q. You considered then you had bought that property? A. Yes, sir.

Q. Did you at the time you got the deed from Mrs. Reeves consider that you had bought the property from him? A. No.

20 Q. What did you understand to be your legal position then? A. At that period I thought my legal position was that it was a claim simply.

Q. Claim against those properties? A. Yes, sir.

Q. Were those notes afterwards—that you had endorsed—were those notes afterwards surrendered to Mr. Reeves? A. Since that was to settle these suits—

Q. Never mind how it was done, if they were surrendered to Mr. Reeves? A. I surrendered them to you.

30 Q. As his attorney? A. Yes, sir.

Q. You have now no notes of Moses E. Reeves and son have you? A. No, I don't think I have. Don't you want to tell how they were surrendered?

Q. Yes, I would be willing to tell and let the record go in with the copies of it to show how the settlement was? A. You said that that would be the end of a litigation and I thought it would be.

40 Q. Never mind I didn't ask you that, if I said that, I had no power to say it. At the time you surrendered the notes you considered that a settlement of those notes, didn't you? A. Well, sort of a settlement, it was a surrender.

Q. You didn't intend to make any further claim under any of those notes? A. No, for you told me if I did there would be a judgment against me, and I couldn't get any money on them.

Q. Did you get any further claim under those

notes at the time you surrendered them? A. No, 10  
I didn't intend to make any further claim.

Q. Then why didn't you surrender the chattel mortgage also? A. Never asked for it.

Q. Well, we ask for it now. A. Well, take it.

Q. You make no claim under that chattel mortgage? A. No, Mr. Reeves wanted them so that they couldn't swoop down and take those notes, and ask Mr. Whitehead to make a mortgage, and I never asked him for anything and didn't want anything. 20

The Court: If that is the case then it is a case of actual fraud.

Witness: We make no claim on the chattel mortgage. Mr. Whitehead acted for him and then he wanted me to keep his creditors off. Mr. Reeves, when he stated what he wanted to do, to get his property out of his creditors' hands, I guess as far as that is concerned, he told the truth, but when he said I was getting it away from him, it was a falsehood, but the whole manipulation 30  
has been for him to dodge his creditors.

Q. That was the object? A. And you have a property that he smuggled, when he went into bankruptcy the first time and got the property afterwards yourself, you know that there was trickery in that.

Q. Do you mean to say Mr. Reeves' object in making the chattel mortgage to you was to get ahead of his creditors? A. I think it must have been, because I didn't want it. 40

Q. That was made at the same time the deed was made, wasn't it? A. Yes.

Q. And made to secure the very same debt?

A. The notes were referred to right in that chattel mortgage.

Q. You didn't ask him for any security at all, did you? A. Certainly I asked him for the deeds.

Q. I understand you to say he came in the of-

10 fice and asked you to give it to them? A. Yes, and I told him I would accept them.

Q. You have sold the Clinton avenue property, haven't you? A. Yes.

Q. Do you remember what you got for that? A. \$11,250.

Q. How many mortgages were on that property? A. One.

Q. How much did that amount to? A. The principal \$6,000.

20 Q. So that there was an equity of \$5,250 on one property? A. No.

Q. Well, I say an apparent equity? A. Yes, sir.

Q. You had to pay some other things out of that? A. The taxes and the interest and commission for selling, etc.

Q. Did you keep any account with Mr. Reeves? A. No.

30 Q. When you got this deed from him did you open an account with him? A. No.

Q. You haven't any account at all with him, have you? A. I have charged for work I did, that is all.

Q. Have you any account of payments that you made on any of these properties or rents that you collected, those that are in the deeds I will refer to those first? A. No, I consider I was the absolute owner under the common law judgment.

40 Q. At the time Mr. Reeves came to see you and you had heard that the Export Lumber Company was about to take a judgment, did he tell you that, that company was willing to take a second mortgage on the Clinton avenue property in settlement of their claim? A. No.

Q. Didn't tell you that? A. No, sir.

Q. Did you know that such a bond and mortgage had been prepared by Mr. Swayze and Mr. Reeves requested to execute it? A. No, sir.

Q. Reeves didn't say anything about it? A. 10  
No.

Q. Did you ever have any order from Mr. Reeves to collect the rents on any other properties besides those mentioned in the order that you have produced here, Exhibit C-4? A. No.

Q. You never had any other order? A. I think not.

Q. Did you collect the rents of the Boyd street property? A. I did for a period.

Q. Did you keep any account of them? A. No. 20

Q. Of what you paid out? A. No.

Q. Never rendered any account to Mr. Reeves? A. No.

Q. Have you paid them any part of the proceeds of the sale of the Clinton avenue property? A. No.

Q. Have you kept any account of the rents of the Astor street houses? A. I have not.

Q. You haven't rendered any account to him at all? A. No. 30

Q. After your wife purchased the Pennington street property at the sheriff's sale, the deed was made to her—did you collect the rents there? A. I did; I don't know how soon.

Q. Well, how long did Mr. Reeves continue to collect the rents after that sale? A. It seems to me nearly a year.

Q. After the sale to your wife? A. I cannot fix the time.

Q. About a year after that? A. I don't know, 40  
it might not have been, I don't know how long it was, I know we had one or two interviews about collecting rents, and he agreed to turn the properties over that I had bought, and yet he deferred doing it.

Q. Who paid the interest on the mortgage on that property during that time, after the sale to your wife? A. Mrs. McCracken.

10 Q. Don't you know that Mr. Reeves paid interest after that sale? A. I don't think he did.

Q. Well, did you mean that you paid the interest there and let him collect the rents for about a year? A. No, if he collected the rents why I think he paid interest on any property that he collected the rent of.

Q. So that if he collected the rent of Pennington street for about a year after the purchase by your wife, why he paid the interest too? A. I don't think it was that length of time, and I don't know that there was any paid by him, I don't know.

Q. Did you ask him to make some repairs on that property? A. Yes.

Q. And did you tell him to charge it to you? A. Yes, perhaps I did, I don't know anything about it, I was going to pay the cash when he got it, then I don't know how it happened that I didn't, I didn't tell him to charge it to anybody.

30 Q. Didn't he render a bill to you? A. I don't think he did.

Q. Didn't he render a bill to you in October, 1898, and didn't you make a payment on account of it at that time? A. Well, I can't remember whether I did or did not.

Q. You didn't tell him to charge that to your wife? A. I didn't tell him to charge it to anyone.

Q. Didn't tell him your wife had bought the property at the sale? A. Yes, I told him that.

40 Q. When did you tell him that? A. Immediately after it took place.

Q. Have you ever called upon him or his wife, to your knowledge, to pay the mortgage held by the Orange National Bank? A. No.

Q. Don't you know that that has been settled? A. No.

Q. That claim? A. No, I do not know it.

Q. That was Mr. J. H. Baldwin's indebtedness that it was given to secure, wasn't it? A. I don't

recollect what the circumstances were, I know the 10  
bank held a note in which Mr. Reeves was con-  
cerned, and he asked me to draw a mortgage, that  
is all I knew.

Q. Didn't you know it was Mr. J. H. Baldwin's  
note endorsed by Reeves? A. No, sir.

Q. Didn't you go to see Mr. Baldwin about it?  
A. I may have, he having the claim, but I didn't  
know just the nature of it.

Q. Didn't you go to see him and try to get that  
mortgage out of the way? A. I don't think I did. 20

Q. Didn't Mr. Baldwin tell you that he wouldn't  
do anything in the matter without Mr. Reeves'  
consent? A. I don't remember a conversation  
with Baldwin about the matter.

Q. Who has been collecting the rents of Pen-  
nington street since Mr. Reeves stopped collect-  
ing them? A. I have.

Q. Personally? A. Yes, sir.

Q. Have you paid them over to your wife? A.  
Yes, sir, I paid them over to her with some other 30  
moneys.

Q. Have you kept any account of them? A. No,  
sir.

Q. After she had made the purchase did you  
make any arrangement with Mr. Reeves to en-  
deavor to raise a loan on the Pennington street  
property out of some building and loan associa-  
tion? A. No.

Q. Is it not a fact that you wanted a release  
of the dower there and a deed from him, and you 40  
told him that you would have to have a deed from  
him of that property because it was not included  
in the first deed, so that you could get a loan from  
the building and loan association? A. No, sir.

Q. What does this letter mean, Exhibit C-11?

Mr. McCarter: I suppose the letter will  
speak for itself, I object to the question.

A. I don't know what that might refer to, I had

10 half a dozen loans out of the building loan and couldn't tell you about it.

Q. I will call your attention more particularly to it. "August 19, Dear Charley: Am disappointed at the result of the B. L. Association, want to see you about getting water out of the cellar, and finding when it goes into the cellar. Yours J. H. McCracken." Do you know what property that referred to? A. I think to a place on Plane street, there was a great deal of trouble about water in

20 the cellar.

Q. On the foot of the letter it says Pennington street and Astor street both loans denied, what loan did you refer to then? A. I don't know whether I was trying to get a loan on them, to raise money, or what it could refer to.

Q. There wasn't any other Pennington street property, was there? A. I don't see there I am getting a loan for it.

30 Q. I don't ask you that, was there any other Pennington street property? A. No, sir.

Q. Was Charley Reeves interested in this Pennington street property that you know of? A. Not that I know of.

40 Q. You don't know why you should state to him that the Pennington street loan had been denied? A. No; I might have been trying to raise money from some source, to get money to do something with; there are many things it might be, but I don't know what connection it would have with our matter at all. It might have been the result of the Howards threatening to foreclose, they did threaten to foreclose.

Q. The Pennington street? A. Yes, sir.

Q. How was Reeves interested in that foreclosure? A. He wasn't.

Q. There wasn't any reason why you should tell him that you had been successful in getting a loan on that property, was there? A. Well, many

things might happen, very often times they wanted to borrow some money, and sometimes they knew when I was getting it, and there might be inquiries—but I have no knowledge of anything that would connect it with any of our transactions.

Q. The release of dower on that property is dated August 10, 1898? A. Yes, sir.

Q. Now, do you mean to say that that release of dower was not obtained in anticipation of your getting a loan on that property, and for the very purpose of perfecting the title so that the loan could be obtained? A. Certainly not.

By the Court: Q. What was its object, it must have had some object in view, what was the object? A. Wanted to make title clear—the quitclaim deed you refer to?

Q. Yes. A. To make the title clear.

#### FURTHER CROSS:

Q. Why did you want to make the title clear?

A. So that it would not be clouded. 30

Q. Why did you want any deed from Moses E. Reeves' quitclaim from him? A. No special reason more than the two usually sign the release, I mean the release of dower, it is usual for both to sign.

Q. Well then at that time you were not endeavoring to get a loan on that property? A. No.

Q. And you cannot explain the statement in your letter that the Pennington street loan had been denied? A. No, sir. 40

Q. You commenced to collect the rents at Ferry street, after you got the order for them, did you not? A. I think I did.

Q. And that order is dated January 27, 1897, why didn't you collect the rents from the time you bought that property at sheriff's sale in June, 1896? A. Because he was collecting them himself, or it was being collected for him.

10 Q. He wouldn't let you have them? A. No.

Q. Did you tell him you had bought the property at sheriff's sale? A. Yes, sir.

Q. How did you finally induce him to make the order for the rents? A. Well, he agreed a certain period back of that—if I would allow him to collect them to a certain time that he would hand them over.

Q. What was that property rented for, how much a month? A. I think it was somewhere  
20 about twenty-odd dollars.

Q. Twenty dollars? A. About \$20 I think.

Q. Wasn't it rented for \$40 a month? A. No, sir.

Q. Weren't there three houses on it? A. No, at that time one of the buildings was very dilapidated it was vacant, and I think it stayed vacant nearly a year, one of the buildings, there were three small buildings on it, and one of them had—  
30 I think that was occupied by two tenants at \$7.00 each, and then there was a little old house, and I think that rented for \$5 a month.

Q. After you commenced to collect the rent did you pay any interest on the mortgage? A. Yes, I think I did, yes.

Q. How often did you pay interest? A. I don't recollect how often but I know I paid interest.

Q. Was the interest in arrears when you commenced to collect the rents? A. Yes, sir.

Q. How much? A. I think it was, I cannot  
40 remember exactly, but I think something like a year.

Q. Did you know the condition of the property and the amount of the mortgage and what taxes and interest were due when you bought it at sheriff's sale? A. You mean in the common law—

Q. Yes. A. No, I didn't know that—I knew at that time—I learned it afterwards.

Q. You bought it in as a speculation, didn't

you, that property? A. Well, bought it as a 10 chance, I suppose you could call it that way.

Q. You bid forty-five dollars on it? A. Yes, sir.

Q. You didn't actually pay any money to the sheriff did you? A. No.

Q. And I will go back to the Pennington street property, did your wife actually pay any money to the sheriff on that purchase? A. Yes, sir.

Q. Actual money? A. Yes, sir.

Q. Sure about that? A. Yes, sir. 20

Q. And the sheriff paid it over to you on account of your judgment? A. No, Mr. Whitehead paid that; Mr. Whitehead represented my wife and paid \$40.

Q. Or whatever it was, to the sheriff? A. Yes, sir.

Q. Was that money paid over to you on account of your judgment or credited on the cost of the sale? A. It was credited on the cost of the sale.

Q. You are sure about that, are you? A. I think so, I don't remember particularly about it. 30

Q. But on your purchase you didn't pay anything? A. I don't know whether it was purchased on my judgment that I held or the one that Mr. Whitehead held.

Q. You mean her purchase? A. Her purchase.

By the Court: Q. What were the sheriff's costs of that sale, do you remember? A. I don't remember, I think, my recollection, is that they were about \$100—they were \$90.70.

Q. That is the total sheriff's fees and costs? 40

A. Sheriff's fees.

28X

#### FURTHER CROSS:

Q. Sheriff's fees on the June second sale? A. Yes, sir.

By the Court: Q. Including the assessments? A. Yes, sir.

## 10 FURTHER CROSS:

Q. Did you pay that bill to the sheriff, the \$90.70? A. Yes, sir.

By the Court: Q. What was done with regard to the balance of the purchase money, was there any cash paid, in respect to the balance? A. The balance was paid to the sheriff.

Q. Then the sheriff must have immediately paid it back to you? A. No, the full amount of the sheriff's fees was \$90.

20 Q. That was paid to the sheriff, of course, now if any more money was paid to the sheriff by you he must have immediately returned it to you? A. No, he kept that and the balance was paid.

## FURTHER DIRECT:

Q. How much did you pay the sheriff, did you pay him the whole \$90 or the difference between the \$45 and the \$90? A. The difference between the \$45 and the \$90.

30

## FURTHER CROSS:

Q. Did you give a check for it? A. I didn't.

Q. Did you see the money paid over to the sheriff by Mr. Whitehead? A. I think I did, I am not sure about it.

By the Court: Q. As I recall the total amount bid on the various properties was something like \$250.

40 Mr. Bradner: One hundred seventy dollars on the four properties on that sale.

The Court: Out of that \$170 the sheriff was entitled to \$90 and some cents—well now what disposition was made of the balance, was there any payment or was that simply credited?

The Witness: The balance was—the sheriff's fees are paid.

## FURTHER DIRECT:

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Q. The property eventually fetched, Mr. McCracken, about \$170? A. That was credited on the execution.

## FURTHER CROSS:

Q. So that there was \$170 credited to the executions? A. Yes, sir.

Q. Less his fees of course? A. Yes, sir.

By the Court: Well now, when it came to the second sale—was that the second sale? 20

Mr. Bradner: Yes, sir.

The Court: Now about the first sale?

Mr. Bradner: That he bought himself, there were no outsiders in that at all, the first sale Mr. McCracken bought it all in himself.

The Court: I want to know how the money was paid, Mr. McCracken testified that he bid certain monies for the property, but he didn't tell us how he satisfied his bids; I want to know how he satisfied his bids. 30

The Witness: It was credited on the execution.

Q. There wasn't an actual payment of money except so far as it was necessary to pay money to satisfy the sheriff's fees, is that it? A. That is all.

## FURTHER CROSS:

40

Q. Didn't you have some arrangement with your wife whereby she didn't have to pay any money at that time? A. No, sir.

Q. Did you know that she gave the money to Mr. Whitehead to pay the amount of that bid? A. I did.

Q. You know that? A. Yes, sir.

Q. And that money came back to you? A. No.

10 Q. As the owner of the judgment? A. Yes, it was paid there in the costs.

Q. She got the credit of it? A. Yes, sir.

Q. Did you ask her to buy that property? A. No, not particularly.

Q. How did she know anything about it? A. I told her about it.

Q. Did you tell her you were going to sell it under these executions? A. I told her it would be sold—which property are you speaking of now?

20 Q. Pennington street? A. Yes, sir.

Q. Did you tell her it was Mr. Reeves' property you were going to sell? A. Yes, I think I did.

Q. You knew at that time that Mr. Reeves could not protect himself, didn't you? A. Could not?

Q. Yes. A. Yes, I knew there was a judgment against him.

30 Q. You knew that he couldn't raise any money to buy in this property or any of it? A. Well, I didn't.

By the Court: Q. You were trying to raise money for him, you said yesterday, for that purpose? A. I had been trying to raise money for him, and I found I couldn't succeed.

Q. Well now was Mr. Reeves, either one of them, either Mr. Moses Reeves or Charles Reeves present at either of the sheriff's sales? A. I cannot say whether they were or not, I think that they were.

40 FURTHER CROSS:

Q. You think they were? A. I think they were.

Q. You don't want to say they were, do you? A. I am not positive about that.

Q. Did you notify either one of them of the day of the sale? A. Yes, we talked about that several times.

Q. Before the sale? A. Before the sale.

Q. Did you tell them that they would have to 10  
raise the money and protect themselves in these  
sales? A. I don't remember what conversation we  
had about it, of course I told him to raise the  
money, if he could do so, but I didn't know just  
what was said in detail.

Q. Did you give your wife any idea of what  
she would have to bid on any one of these prop-  
erties if she wanted to buy it? A. No.

Q. Why was Pennington street property se-  
lected for her to purchase? A. Well, there was 20  
considerable to be paid out on that to keep it in-  
tact, and he had destroyed my credit at the bank,  
so that I couldn't raise money, and I thought if  
that property was looked after and repaired and  
put in condition we could get the money back from  
it, if she had the money to put it in order.

Q. Your idea was then that you couldn't handle  
that property? A. No.

Q. You expected to have to buy these proper-  
ties in at this sale, didn't you? A. No, I didn't 30  
know how that might terminate.

By the Court: Q. You say that at the time you  
took a deed for these properties you understood  
that your relation was that of mortgagee, that  
you understood that you were taking a deed as  
security, you stated that? A. Yes, sir.

Q. Now, that being so, what induced you, three  
months afterwards, to become the owner under  
the judgment sale of the same property? A. It  
was not the same property at all.

Q (Question read): A. I did not, it had nothing  
to do with the same property, and after I had  
looked the property over to do that, I was in  
doubt about getting anything out of any of them,  
and they were mortgaged for so much, and the  
taxes were so far back, and the repairs was in  
such condition that I thought there was a chance  
almost of anything that was offered for these  
properties that I am talking about. 40

## 10 FURTHER DIRECT:

Q. You haven't understood the question. The Vice Chancellor says that on the third of January, 1896, you took a deed for four pieces of property as security for a debt, in April of the same year you took an actual deed from the sheriff for the same properties under the common law execution; now, he wants to know why you did that? A. To perfect the title, because of these *lis pendens* filed, and the mortgage on the first  
20 property was in the hands of an attorney for foreclosure, and I was tied up by virtue of the *lis pendens* against the property, and I was advised by Mr. Whitehead that if I obtained a judgment or purchased them at sheriff sale that that would perfect the title so that I could dispose of them, and that would make me the owner of the property. In other words that it would clear the title.

## 30 FURTHER CROSS:

Q. Well, when the suit was brought by the Export Lumber Company, in the Court of Chancery, why didn't you—were you made a party to that suit in the Chancery suit and served with papers?  
A. I think so.

Q. Why didn't you defend that suit and set up your claim as mortgagee? A. Because the papers were in the hands of an attorney to foreclose them for non-payment of interest, and the taxes being back, and they were just proceeding  
40 to do that.

Q. On which property? A. On the Clinton avenue property.

Q. On the Clinton avenue property? A. Yes, sir.

Q. Well, there were several other properties, why didn't you maintain your position there as mortgagee in that suit, setting up this claim that

you held the mortgage on those properties, and 10  
that you are called a fraudulent grantee? A.  
Well, I thought if a litigation of that kind was  
pending the other parties would take the prop-  
erty away, and I wouldn't get anything.

Q. You were afraid that they would succeed in  
that suit, weren't you? A. No, sir.

Q. Is not that the reason you went and bought  
the judgment? A. No.

Q. Why did you buy the judgment? A. I was  
advised by Mr. Whitehead to do it, and I did it. 20

Q. That was Mr. Whitehead's fault, was it, that  
you bought that judgment? A. Well, if you call  
it a fault.

Q. Weren't you afraid, Mr. McCracken, that  
the Export Lumber Company would succeed in  
their suit, set the deed aside and sell their prop-  
erty? A. I don't know as I—I didn't particularly  
look at it in that light.

Q. I will direct your attention now to the Ferry  
street property. I understood you to say that the 30  
foreclosure suit was started while you were away  
in Europe? A. I think it was.

Q. Had you stated to any official of the Fir-  
men's Insurance Company that you wouldn't pay  
the interest on that mortgage, and they would  
have to foreclose? A. No.

Q. You did not? A. No, sir.

Q. Didn't you say that to My Colyier? A. No,  
sir.

Q. Did you pay any interest on that mortgage? 40  
A. I think I did, I think I sent a check to them  
for interest and they returned it to me.

Q. Returned it to you? A. Yes, sir, and said  
that they wanted the whole matter paid up.

Q. Well, why don't you settle up the interest  
then? A. They wouldn't take it, they said we  
should pay the taxes too, and I think there was  
between \$400 and \$500 taxes and assessments.

10 Q. Did you refuse to settle with them because you were unable to, is that the reason? A. Oh, yes.

Q. And you let it go to a foreclosure? A. Well, they commenced foreclosing.

Q. You let it go to a sale? A. Yes, sir.

Q. Now, at that sale had you made any arrangement with Mrs. McCracken to buy that property in? A. I told her about it, and told her that the properties were being taken one after another,  
20 where I had had some claim, and she suggested taking her money out of the building and loan, and using it for paying for it, and asked me by my attention in looking after it, whether it would be safe to carry that.

Q. When did you tell her about the Ferry street property? A. Just prior to the sale.

Q. Did she then agree with you that she would advance the money to purchase that property?

A. She said she would, yes.

30 Q. Did she have the necessary money in hand to do it? A. Well, I can say yes and no, she had shares in the Building and Loan association that entitled her to take money.

Q. Did those shares at one time belong to you? A. No.

Q. Did you take them out in her name? A. Yes, sir.

Q. And you had paid the dues on them yourself? A. No, sir.

40 Q. Did you arrange with the Building and Loan association to make a loan on this Ferry street property before the sheriff sale on the foreclosure suit? A. No.

Q. Who did the bidding at the sheriff sale? A. I think I did.

Q. You signed the conditions of sale too, didn't you, as purchaser? A. I am her solicitor.

Q. Didn't you do it actually as purchaser,

didn't you see the book here the other day, Mr. 10  
Benedict had it here you signed it as purchaser?

A. I didn't see the book, no.

Q. Is not that the fact? A. No, I didn't sign  
it, I wasn't the purchaser and I didn't see the  
book, I don't think it was signed that way.

Q. Didn't you afterwards direct the sheriff to  
make the deed to Mrs. McCracken? A. The deed  
was made to Mrs. McCracken when it was pur-  
chased. I represented Mrs. McCracken at the  
sheriff's sale in buying it. 20

Q. How was that purchase money paid to the  
sheriff? A. I think it was a check from the Build-  
ing and Loan, I don't remember how it was paid.

Q. Wasn't it paid by your checks? A. I cannot  
tell about that, I do know it wasn't my money.

Q. The money came from a new loan on the  
same property, didn't it? A. It was a loan on  
the same property, yes.

Q. How much of a loan did you get on that  
property? A. I think \$2800. 30

Q. And there was a little less than \$2400 due  
to the Firemen's Insurance Company wasn't  
there? A. No, over \$2600.

Q. But you got more than enough to pay them  
off? A. No, I think not—perhaps the sale did  
amount to more than that.

Q. Didn't you raise more than enough money  
to pay them, I mean from the new loan?

#### FURTHER DIRECT:

Q. The question is whether the loan that you  
secured from the Building and Loan was of suffi-  
cient size to pay all of the Firemen Insurance  
Company's decree? A. It was. 40

Q. And more too? A. Yes, sir.

By the Court: Q. What became of the taxes,  
did you pay the taxes too at that time when that  
Building and Loan mortgage was made? A. Yes,  
sir.

## 10 FURTHER CROSS:

Q. Was there enough in the \$2800 to pay that too? A. I think there was.

Q. So that \$2800 paid everything? A. Yes, sir.

Q. What Building and Loan was that? A. The New Jersey Building and Loan.

Q. Were you the counsel of that Building and Loan? A. Yes, sir.

Q. And advised loans? A. No, I don't advise loans.

20 Q. Didn't you approve the title? A. I approved the title, yes, sir.

Q. And made the application for the loan? A. Well, perhaps I did, if it was verbal I did it.

Q. Why couldn't you have gotten a loan and saved the expenses of that foreclosure suit on this same property? A. Well, I never thought of taking care of it, I thought the encumbrance was so great and the buildings were so poor.

30 Q. When did it occur to you to take care of the property? A. About the time that they were selling out.

Q. Didn't Mr. Reeves come to you and ask you to take care of that for him? A. I don't think he ever did.

Q. Didn't you promise to do so, that you would buy it in and take care of it for him? A. No.

40 Q. Well, the Building and Loan wouldn't loan up to the full value of the property, would they? A. Well, they do thereabouts, of course not what they consider the full loan, but if there is some margin inside, as the value of the shares, they determine the value of the shares, and some times a person pays in considerable before they borrow a loan and their shares would be of considerable value, and in that way you can get a larger amount, because they count what they loan without making any deduction on the shares—they loan very nearly the full value.

## FURTHER CROSS:

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Q. What is the rule in the New Jersey building and loan as to what relation the value of the property should bear to the amount of mortgage that is wanted—amount of loan that is wanted?

A. They have no definite rule.

By the Court: Q. When you made your application I presume you stated the value of the property, didn't you? A. They some times state, what the borrower may see fit to state, but the directors place the value on it, and place the amount of the 20 loan.

Q. When you made your application you must have stated some value, do you remember what value you stated? A. I don't remember what value it was.

Q. The applications are in writing, are they not? A. Yes, sir sometimes.

Q. Then your application must be on file? A. Sometimes they are done without the blanks, the directors take the diagram, or the number of the 30 property and the diagram, and simply look at it and report whether they will make a loan upon it or not, the usual way is to fill out a blank, but that is not always done.

Q. How was it in this case, did you fill out a blank? A. I don't remember how that was in this case.

## FURTHER CROSS:

Q. Has not that loan been changed again, haven't you got a new loan out of the State Build- 40 ing & Loan Association? A. No.

Q. Wasn't it the State Building & Loan that you applied to first, are you not mistaken in saying that it was the New Jersey? A. No.

Q. Has that property been paying its way since you got that loan? A. Since I have repaired it it has done fairly well.

The Court: Q. How much does it rent for? A. It rents for \$38 now.

## 10 FURTHER CROSS:

Q. What are the taxes on it? A. The assessments—

Q. What taxes do you pay a year? A. I think about \$70.

Q. And the interest on this mortgage is what, five per cent? A. Six per cent. After I had it I put new roofs on the buildings and put plumbing in and overhauled the places in general.

Q. Well now, at the time the deed was made to  
20 you in January, 1896, a deed was also made by Mr. Reeves to his son of a part of the Peshine avenue property, was that a vacant lot or was there a building being erected at that time? A. There was a building I think partly erected.

Q. And they wanted to finish that building? A. Yes, sir.

Q. Had a loan been obtained on that lot and the new building from a building and loan association? A. At that time?

Q. Yes. A. I forget whether it was at that  
30 time or since.

Q. Well, there was a loan made on that new building by a building and loan association? A. Yes, sir.

Q. And you were the counsel of that association, weren't you? A. Yes, sir.

Q. And the money was paid into your hands?  
A. Yes, sir.

Q. For what purpose? A. For the purpose of  
40 the owner.

Q. Purpose of what? A. It was paid in for the owner.

Q. You mean that when you got the money then it belonged to the owner, is that what you mean?  
A. Yes, sir.

Q. It was left in your hands by Mr. Reeves, wasn't it? A. Yes, sir.

Q. How much money was it? A. \$3,000.

Q. Has he asked you to give him an account of that money? A. I don't know whether he has or not, but I have given him an account of it.

Q. I ask you if that is the account that you gave him? A. I don't recognize the writing or the figures, it refers to 220.

Q. Two hundred and twenty Peshine avenue, is that your writing? A. No, sir.

Q. Don't you know whose writing it is? A. It looks like the writing of a clerk that I had at one time.

Q. Then you directed him to make this out, did you? A. There may be incurred amounts there to that extent.

Q. You state here that you received from the building and loan \$2700, are you mistaken about that, in your account, did you get \$3,000? A. That is up to a certain period, perhaps, I know that he got all the money that he borrowed; that might be a statement up to a certain period.

Q. This statement begins May 20, 1896, and continues to—it must be the following year in March, amounts drawn account of loan on Peshine avenue, the items are check, check, so much, but doesn't state what for.

The Court: Was that the property Mr. McCracken bid in?

Mr. Bradner: He bid it in afterwards, yes, bought it in. Now this begins May 20th, he bought it in on the 2nd day of June, 1896, and all these payments that he paid out of the owners money he paid out after that date, it amounts to about \$2700, after he bought the property in he paid for it with Mr. Reeves' money.

Q. Made these payments at Mr. Reeves' request, on account of the building that was progressing? A. That is right, yes, sir.

Q. And you continued to make those payments

10 after you had bought this property at the sheriff sale on the execution?

Mr. McCarter: That is in the June deed of Peshine avenue, not April.

The Court: The payments were continued up until 1897, the following year.

Q. Is that so? A. I think so.

Marked Exhibit C Statement.

FURTHER CROSS:

20 Q. Was there any surplus over the cost of the house? A. No.

Q. From that loan? A. No, I don't know what the cost was, Mr. Reeves had the amounts drawn for the full amount that he received from the loan.

Q. Have you any account in a book in reference to that loan, and your payments, your disbursements? A. Yes, sir.

30 Q. That would show just where you paid the money? A. No, they were—Mr. Charles Reeves I think in that case gave me a written request to pay the money, as his father would direct, and that is my recollection, and they were drawn to him most of the checks.

Q. Why did you continue to pay that money out—their money, after you had bought the property at sheriff's sale? A. Well, the loan had been made to the association, and it was done at their request, I can give no further reason; I have forgotten the dates of course.

40 Q. You didn't tell them that you had bought in this property, and that they were paying for your house, did you? A. I don't think I had anything—there were two finished houses on this property, but I don't think I ever had anything to do with that, I have forgotten if it was bought in as one of the claims of the sheriff's sale, under the common law execution, I never collected any rent or had anything to do with the property after, until the foreclosure.

Q. After that you say you began foreclosure 10  
suit of the Dowden mortgages, which covered all  
the Peshine avenue property? A. Yes, sir.

Q. And you commenced that suit because the  
interest was in arrears, is that the reason? A.  
Yes, sir.

Q. Was there any surplus money out of this  
loan from the building and loan association which  
you might have applied on account of the inter-  
est? A. No.

Q. Were there not a large number of claims 20  
against the Dowden estate for repairs made on  
different properties which you might have applied  
on the interest? A. There were some that were  
applied on the interest on the mortgage but didn't  
nearly pay it off.

Q. Didn't you, at the time the deed was made  
to you on January 3, 1896, request Charles Reeves  
to receipt a number of bills against you that the  
firm had against you? A. No.

Q. Did not? A. No, he receipted three bills. 30

Q. Just answer yes or no? A. No, sir.

Q. Did you request him to receipt a number of  
bills against the Dowden estate at that time? A.  
I did.

Q. Did they not afterwards bring an action at  
law against the Dowden estate to recover those  
very same bills? A. Yes, sir.

Q. You were present at the trial of that suit,  
were you not? A. Yes, sir.

Q. And there in behalf of the defendants as a 40  
witness? A. Yes, I was a witness in that case.

Q. Didn't you testify at that time that the  
executors had not authorized you to bring that  
suit? A. No.

Q. Didn't you hear Mr. Dowden say that? A.  
No, he didn't say that.

Objected to.

Q. Isn't it a fact that you had not been directed

10 by the directors to bring that suit? A. No, it is not so, and the three bills, that are receipted there, they had to pay over again, they were receipted on the mortgage.

Q. That is all.

Adjourned.

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20 Evidence given on Thursday, April 15th, 1906.

JOHN H. McCracken, sworn:

Direct-examination by Mr. McCarter:

Q. It has appeared, Mr. McCracken, that the Peshine avenue consists of two tracts of which Charles Reeves became the owner of a part on the same day of the deed of January 2nd to yourself, 1896, leaving Mr. Moses E. Reeves the owner of the remainder. Are you familiar with the history of the ownership of the two Reeves titles of the Peshine avenue property after the conveyance

30 A. Yes, sir.

Q. Will you describe, please, the two lots, their relative characteristics and value, the one that Charles acquired title to on January 2nd, 1890, and the one that Mr. Reeves continued to own up to that time? A. The part that Charles E. Reeves took title to was, I think seventy-two feet front, and was occupied by two buildings, one a house and the other an unfinished building.

40 Q. How much property remained in Mr. Moses E. Reeves? A. I think thirty-six feet.

Q. What was the character of that? A. It had an old house upon it, and the first mortgage—

Q. The character of the improvements I was asking about? A. It was a very old house—no cellar under it, and it was in pretty bad repair.

Q. Now, give the relative value of those two? A. I tried to sell it for \$2300.

Q. Which? A. The house belonging to Moses E. Reeves, I didn't find a buyer, it was mortgaged for \$1500 or \$1600, I am not sure which, to the Dowden estate. 10

Q. That particular part? A. Yes, sir, that belonged to Moses E. Reeves,—there was a blanket mortgage on both parts subsequent.

Q. What value did you attribute to the Charles Reeves tract? A. At that time.

Q. At that time? A. Well, there was a house on it in similar condition to the other house which I have just described of Moses E. Reeves and I think that had a mortgage on of \$1500 or \$1600, I am not sure which. 20

Q. It was twice the size of the first tract? A. That consists of an unfinished house—partly done.

Q. Now, after the foreclosure suit, under the Dowden mortgage of the whole Peshine property, and its acquisition by you, it was subsequently sold to Mrs. Hockheimer? A. Yes, sir.

Q. What consideration did Mrs. Hockheimer give, and what did the transfer between Mrs. Hockheimer and yourself and Mrs. McCracken consist of; give the details of that? A. Mrs. McCracken and I made a deed for all the Peshiae property, that is, the thirty-six and also the seventy-two feet which comprised the whole of the Peshine property, and Mrs. McCracken gave \$1,000 in cash and property that she owned on Washington avenue in Woodside, the three-story house producing \$34 rent a month, and there was \$2,000 mortgage against it at the time it was sold and conveyed. 30 40

Q. What is your idea of the value of the equity in the Washington street property that belonged to Mrs. McCracken, that she put in as part of the Hockheimer deal? A. Well, I think it was worth \$4500.

Q. Then \$1,000 of her money in the Washing-

10 ton avenue property was put in and Mrs. Hockheimer conveyed what? A. Conveyed to Mrs. McCracken a place in Vailsburg.

Q. And that was subsequently transferred as the supplementary bill alleges, to Mr. Mayo? A. Yes, sir, Mrs. McCracken exchanged the Vailsburg property for property on Mitchell Place in East Orange.

Q. That is all.

20 CROSS-EXAMINATION by Mr. Bradner:

Q. How much is the property on Mitchell Place worth, Mr. McCracken? A. We consider it worth about \$6,000.

Q. What does it rent for? A. \$40 a month.

Q. What did you value the Peshine property at when you bought it in under the sheriff sale?

A. I don't know whether I placed any value particularly on it.

Q. You bid \$2,000? A. Yes, sir, I think I did.

30 Q. There was a deficiency on that sale—not enough to pay the mortgage debt? A. I don't remember exactly what the decree called for.

Q. I understand you to say that the Peshine avenue, which had a frontage of seventy-two feet, was conveyed to Charles E. Reeves by his father?

A. Yes, sir.

Q. Seventy-two feet front? A. Yes, sir.

Q. That is the largest portion? A. Yes, sir.

40 Q. That was vacant ground, wasn't it? A. No, sir.

Q. Did you make a search and sign it and file it, in the foreclosure suit of Dowden vs. Reeves? A. I think I did.

Q. Now look at the beginning of it, Mr. McCracken. There is a diagram there showing the Peshine avenue property—part of it in blue pencil and part in red pencil, which was the tract conveyed to Charles? A. The red tract.

Q. What is the first item in the search, is it 10  
not Moses E. Reeves and wife to George A. Dow-  
den and others, setting out the mortgage upon  
the property? A. It is.

Q. The first tract is given as beginning on the  
easterly side of Peshine avenue at a point dis-  
tant 250 feet northerly to the north-east corner  
of Bigelow and Peshine avenue, which beginning  
point is the north-west corner of lot No. 70 in  
said block, on said map, thence north-easterly  
along said avenue thirty-six feet; that is the first 20  
tract, that is the thirty-six foot lot, is it not? A.  
Yes, sir.

Q. Now the second tract is beginning at a point  
in the easterly side of Peshine avenue distant 433  
feet and seven inches from the southerly corner  
of Peshine avenue and Clinton avenue, thence  
running easterly one hundred and five feet, thence  
northerly and parallel with the first line seventy-  
two feet—that is the second seventy-two foot lot,  
is it not? A. Yes, sir. 30

Q. Now you have there in your abstract of title  
reference to a deed from Moses E. Reeves and  
wife to Charles E. Reeves, as being the same  
premises above described, as the second tract; is  
that correct? A. No, sir, I am supposing it was—  
unless I make a mistake in the diagram; I don't  
know. I know by examination of the records re-  
cently how the description did run and what it  
covered.

Q. Well, there was a building on the small 40  
tract, wasn't there? A. Yes, sir.

Q. And at the time you bought this property  
in at foreclosure sale there was a new building  
on the large tract, wasn't there? A. Yes, sir.

Q. New building that had cost how much? A.  
I don't know.

Q. Didn't it cost more than \$2,000? A. Yes.

Q. Wasn't the loan made by the Building Loan

10 Association on that new house and lot \$3,000?

A. Yes, sir, I think it was.

Q. That money went into your hands? A. It went through my hands.

Q. It went into your hands to be disbursed, didn't it? A. Yes, sir.

Q. When you foreclosed that mortgage you did not make the Building Loan Association a party, did you? A. No, sir, I so stated in my evidence.

Q. When the property was sold to Mrs. Hockheimer, was the mortgage to the Building and  
20 Loan association paid off? A. Yes, sir.

Q. What value did you put upon the Peshine avenue property when you made the deal with Mrs. Hockheimer? A. Well, in dollars and cents I don't know that I fixed any definite value, I think probably I wanted to get rid of it.

Q. What did you get out of it? A. I made an exchange for other property.

Q. What other property? A. I personally? I  
30 exchanged that and Mrs. McCracken's property for the Vailsburg property.

Q. What was your interest in the Vailsburg property? A. I don't know as I can answer that question.

Q. You had some interest in it, didn't you?  
A. Well, I didn't take any interest. I got rid of the pile of mortgages which were on the property there when I got it, and I had to pay up the estate, so I had to remortgage it to make the Dowden estate whole.  
40

Q. What values was put on the Vailsburg property by Mrs. Hockheimer? A. I think \$6,000 or \$6,500.

Q. Wasn't the deed made for the consideration of one dollar? A. It may have stated so.

Q. How much were you to be credited as having paid towards that consideration of \$6500?

A. There was no arrangement concerning it.

Q. You didn't make any arrangement with your wife about it, you just contributed it, is that so? 10

A. Yes, sir.

Q. You didn't give her that? A. Well, there was nothing said concerning it.

Q. And when the further conveyance was made of the Vailsburg property for the East Orange property there was no agreement made between you about that? A. No, sir, not at all.

Q. And you then never have been paid for the Peshine avenue property other than what your interest may now be in the East Orange property? 20

A. I cannot answer that definitely. I did receive something because afterwards, when the Vailsburg property was taken by Mrs. McCracken there was a mortgage taken upon it, and she let me have a portion of that money.

Q. Don't you remember what you got? A. No, sir, but I had some obligations to take up.

Q. Was there any agreement made as to the purpose for which that money was given to you? 30

A. No, sir.

Q. Did you put in your petition in bankruptcy your interest in this Vailsburg property of the East Orange property? A. I had no interest in it.

Q. Then you think you had no interest in it at all? A. No, sir.

Q. Did you ever convey your interest to anybody? A. In which property.

Q. In the Vailsburg or East Orange property? 40  
A. No—well, yes, I conveyed my interest when the conveyance was made of course—I conveyed any interest I had, because I signed the deed.

Q. But in signing that deed you did not intend to make your wife a present of your interest in the Vailsburg property, did you? A. I had no interest there.

Q. Well, you had given the Peshine avenue

10 property for the Vailsburg property? A. Yes, but it was merely she paid me a certain amount, I have no record of how much of the proceeds that came from the Vailsburg property, immediately on getting it she mortgaged it for \$3,000 and gave me—well, I cannot say how much.

Q. You said a moment ago that it wasn't given you for any definite purpose that you had no agreement with her about it? A. No special agreement about it, but she gave it just the same.

20 Q. That is all.

#### RE-DIRECT-EXAMINATION:

Q. You spoke about a mortgage which you had to make good, or were some obligations about on the Peshine avenue property; what about that?

A. That was the Dowden estate mortgage.

30 The Court: As I understand it the Dowden estate mortgage was foreclosed, and Mr. McCracken bought in the property for \$2,000. Now that \$2,000 of Mr. McCracken's money was of course applied to the Dowden estate, and that left Mr. McCracken with whatever equity there was in the Peshine avenue property. Now is there any trust there?

Mr. Bradner: Mr. Reeves and his wife and his son testimony all was that that foreclosure was for the purpose of clearing up the title to this property.

40 Q. Now the Building Loan Association was not made a party to the foreclosure proceedings of the Peshine avenue property. I don't care to go into it again, except to say—did you yourself, prior to the Hockheimer transfer in any way take care of the building and loan interest upon the property? A. I paid it off.

Q. Yes, that is it exactly. How much did you pay? A. How much did I pay?

Q. To settle that claim? A. \$3,000 plus the interest. 10

Q. That is over and above the \$2,000 which the Dowden mortgage produced at the sale? A. Yes, sir.

Q. So that you personally paid the purchase money under the Dowden mortgage and over \$3,000 besides to satisfy the building loan mortgage that was a lien upon this property? A. Yes, sir.

Q. Before the Hockheimer transfer? A. Yes, 20  
sir, and at the time the Dowden foreclosure of mortgage took place there was a suit pending to make Mr. Reeves connect with the sewer which would cost \$300 to connect the sewer, and he was fighting it through Mr. Bradner, and I had to do that.

Q. You had to do it? A. Yes, sir, to connect it just as soon as I got my title, and they only stayed those proceedings until I could get title.

Q. So that your total expenditure after the acquisition of the title upon the Peshine avenue tract would aggregate how much? A. Why \$2,000—\$3,200 straight mortgages at first, and \$3,000 by the Building and Loan, and I, upon my honor, had paid the Dowden estate all they lost by Mr. Reeves. 30

Q. I am asking you about the charge upon the property? A. Well, I had to pay them all up.

Q. What did you pay? A. I paid the Dowden estate about \$600 or \$700.

Q. Do you mean in addition to the \$2,000? A. Yes, sir. 40

Q. Why did you pay in addition to the \$2,000 that you bid, \$600 more? A. Because I had represented the estate, and I was honor bound to do it

Q. What did that represent? A. Balance outside of the mortgage.

10 Q. Interest? A. Interest—a great deal was interest and taxes back on the property, and an assessment.

Q. Assessment, taxes and interest on the mortgage of Dowden? A. I think the whole thing aggregated something like ten hundred dollars or twelve hundred dollars which had to be paid, besides the \$2,000 I paid at sheriff's sale.

Q. Now besides that you had to take care of the building and loan mortgage? A. Yes, sir.

20 Q. Aggregating \$3200 more? A. Yes, sir.

Q. That you paid all up? A. Yes, sir.

#### FURTHER CROSS:

Q. Did you raise that money on the Vailsburg property? A. No. What money?

Q. To pay off the building loan? A. No, sir.

Q. Didn't you get a loan on the Vailsburg property? A. It was all done before that was thought of.

30 Q. Didn't you say a few minutes ago you got a loan of \$3,000 on the Vailsburg property? A. No, I never did.

Q. Didn't you say that money was got to pay off the building and loan? A. No, sir. It was a year or so afterwards.

Q. What was a year or so afterwards? A. The Vailsburg transfer was made a year or so after all these other things were done.

40 Q. Did you get a new loan on the Peshine property? A. I did, to pay the building and loan off.

Q. How much? A. \$3600 I think it was.

Q. On all the houses? A. Yes, sir.

Q. On the new house? A. Yes, sir.

Q. Did you get a new loan on the two small houses? A. I am not sure whether I did or did not, I think I got a loan on one of those houses and paid off the mortgage on it.

Q. There were two small houses too? A. Yes, 10 sir.

Q. You made a mistake just now when you said there was only one? A. No, sir, I said there was one old house on each lot, besides the new house that wasn't finished.

Q. Do you know what the two small houses rent for? A. I think \$15 a month.

Q. What did the new house rent for? A. I think it was \$7.00 or \$8.00 a family. I forget exactly. 20

Q. How many families in it? A. Six.

Q. How much did the mortgage encumbrance amount to on Peshine avenue property when it was sold to Mrs. Hockheimer? A. About \$6,000.

That is all.

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