

ANSWER

# INDEX

	PAGE
Bill of Complaint .....	1
Answer of Defendants .....	6
Replication .....	8
Opinion of Vice-Chancellor .....	40
Final Decree .....	43
Notice of Appeal .....	45
Petition of Appeal .....	46
ANSWER TO PETITION OF APPEAL - - - - -	47A
TESTIMONY.	

*For Complainants.*

Erastus P. Griffin,		
direct examination.....		10
cross " .....		18
Emma Lieb,		
direct examination.....		20
cross " .....		23
Frank E. Griffin,		
direct examination.....		37
Bertram B. Miller,		
direct examination.....		37
cross " .....		38
re-direct " .....		39
re-cross " .....		39

*For Defendants.*

John C. Griffin,		
direct examination.....		24
cross " .....		26
re-direct " .....		33, 36
re-cross " .....		34, 36

EXHIBITS.

	Off'd P't'd	
C. 1. Deed. Christian Rickert <i>et ux</i> to John C. Griffin .....	9	48
C. 2. Will of Henry C. Griffin ....	10	51
C. 3. Agreement between Company and Griffin Sons .....	13	53
C. 4. Eleven checks on account of mortgage .....	14	
C. 5. Six Checks for taxes and as- sessments .....	15	
D. 1. Assessment bill of the City of Elizabeth .....	34	
Stipulation as to Exhibits C. 4, C. 5 and D. 1. ....		55

## BILL OF COMPLAINT.

Filed August 13, 1925.

# In Chancery of New Jersey

*To the Honorable Edwin Robert Walker, Chan- 10*  
*cellor of the State of New Jersey.*

The complainants, Emma Lieb, Edward W. Griffin and Erastus P. Griffin of the City of Elizabeth, County of Union and State of New Jersey, and Frank E. Griffin and William J. Griffin of the City of Jersey City, in the County of Hudson, and State of New Jersey, respectfully show that:

1. On the 17th day of May, 1909, Christian 20  
Rickert was the owner in fee simple of the following described lands and premises in the City of Elizabeth, County of Union and State of New Jersey.

All that certain tract or parcel of land and 30  
premises hereinafter particularly described, situate, lying and being in the City of Elizabeth, formerly in the Township of Union, in the County of Union, and State of New Jersey, and which is more particularly laid down, designated on a certain map entitled "Block number Four (4) of a Map of Elmora, Union County, New Jersey, belonging to Williard J. Crawford, and James Parmelee" (now on file in the office of the Clerk of County of Union) as Lot Number One (1) as laid down on said map.

2. On that date at the request of Henry C. 40  
Griffin, who was the father of the complainants and the defendant, John C. Griffin, said Christian Rickert and Martha B. Rickert, his wife, conveyed

*Bill of Complaint.*

said premises above described to the defendant, John C. Griffin.

10 3. The said Henry C. Griffin advanced the purchase money for the conveyance of said premises by the said Christian Rickert and wife to the defendant, John C. Griffin, and the conveyance was made to him with the understanding and agreement that he was to hold the premises for the said Henry C. Griffin and to dispose of the same as the said Henry C. Griffin should order or direct.

4. The said John C. Griffin did not pay any part of the purchase price for the conveyance of the said premises to himself.

20 5. The said Henry C. Griffin died on the sixth day of February, 1913, leaving a last Will and Testament wherein he devised all of his property real and personal, except his interest in the business, which he was conducting under the name of Henry C. Griffin & Co., at 143 and 145 Varick street, New York City, to his wife, Josephine Griffin. His business mentioned just above, was devised one-third thereof to his wife, Josephine Griffin, one-third thereof to Erastus P. Griffin and the other third to the defendant,  
30 John C. Griffin.

6. At the time of the conveyance of the premises herein described to the said John C. Griffin, they were subject to a mortgage of \$2,500. held by Anna M. Hobbs of the Borough of Roselle, Union County, New Jersey.

40 7. From the time of the conveyance to the said John C. Griffin of said premises, the said Henry C. Griffin, up to the time of his death, paid the interest on said mortgage and all taxes

*Bill of Complaint.*

and assessments, which were levied against said premises; but at the time of his death none of the principal on said mortgage had been paid.

8. At various times since the death of the said Henry C. Griffin and down to the 10th day of September, 1918, there was paid out of the receipts of the business of Henry C. Griffin & Co., which, under the Will of the said Henry C. Griffin, passed in equal shares to his wife, Josephine, to his son, Erastus P. and to the defendant, John C. Griffin, all interest, which became due thereon, together with the entire principal sum of said mortgage and the said mortgage was cancelled of record on September 10, 1918. 10

9. Under the terms of the Will of Henry C. Griffin, Josephine Griffin became entitled to an estate in fee simple in the premises described herein. 20

10. Josephine Griffin died April 15, 1921, intestate without ever having had the premises described herein conveyed to her, leaving the complainants, a daughter, Clara A. Griffin, now deceased, and the defendant, John C. Griffin, as her only next of kin and heirs at law.

11. On the 21st day of April, 1922, said John C. Griffin, then unmarried, mortgaged the premises described herein to Elizabeth Horre and Marie Elizabeth Goebe, executrices, and George W. Horre, William H. Horre and Julius Horre, executors of William Horre, deceased, for the sum of \$5,000. and used said funds for his personal purposes. Said mortgage is still a lien against said premises, no part thereof having been paid. 30

*Bill of Complaint.*

12. On or about the Seventh day of May, 1925, the said Clara A. Griffin died unmarried and intestate, leaving as her only next of kin and heirs at law, the complainants and the defendant, John C. Griffin.

10 13. On or about the Fourth day of June, 1925, the said John C. Griffin married one, Beatrice Carpenter.

20 14. The complainants have demanded of the defendant, John C. Griffin, that he convey said premises to some one, who would hold the same for the benefit of himself and themselves, according to their respective interests, or pay to each of them the reasonable value of their respective shares; but the defendant, John C. Griffin, refuses to comply with any of their requests or in any way establish the rights of the complainants in said premises.

The complainants are without adequate remedy in the Courts of Law and therefore pray:

30 1. That John C. Griffin and Beatrice C. Griffin, his wife, who are the defendants to this suit, may answer this Bill of Complaint and each statement therein made.

2. That the defendants may set forth and specify their title or claim to the lands and premises described herein.

3. That the defendants may be decreed to hold the title thereto in trust for themselves and the complainants, according to their respective interests.

40 4. That the rights of all the parties to this suit, in or to the lands hereinbefore set forth, may be fixed and settled by this court.

*Bill of Complaint.*

5. That the defendant, John C. Griffin, be directed to pay off the mortgage on the premises described herein or that his interest in said premises, be credited against said mortgage and that he be directed to pay the balance of the said mortgage to the complainants.

10

6. That a Writ of Subpoena may issue commanding the said defendants to answer this Bill of Complaint and to abide by such decree as this court may make in the premises and that the complainants may have such further relief as this Honorable Court may think equitable and just.

FRANK A. ENGLISH,  
Solicitor for and of Counsel with  
the Complainants.

20

30

40

**ANSWER OF DEFENDANTS.**  
*Filed Sept 23 1928*  
**IN CHANCERY OF NEW JERSEY.**

10	<p><i>Between</i></p> <p style="text-align: center;">EMMA LIEB, <i>et als.</i>,</p> <p style="text-align: center;"><i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">JOHN C. GRIFFIN and BEATRICE C. GRIFFIN,</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p><i>On Bill.</i></p> <p><i>Answer of Defendants.</i></p>
----	---	--

20 The answer of the defendants John C. Griffin and Beatrice C. Griffin to the bill of complaint filed in the above cause:

1. Defendants reside at Number 649 Wyoming avenue, in the City of Elizabeth, New Jersey.
2. Defendants admit paragraphs 1 and 2 of said bill.
3. Defendant John C. Griffin answering paragraph 3 of said bill admits the purchase price was paid by the said Henry C. Griffin, but denies the remainder of said paragraph.
- 30 4. Defendant John C. Griffin admits paragraphs 4, 5 and 6 of said bill of complaint, and has no knowledge as to the matters stated in paragraph 7, and admits paragraph 8.
5. Plaintiff denies paragraph 9, and admits so much of paragraph 10 relating to the death of Josephine Griffin, and her surviving kin, but denies that the deceased had any right in the property mentioned in said bill.
- 40

*Answer of Defendants.*

6. Plaintiff admits the making of the Bond and Mortgage mentioned in paragraph 11, and that it is still a lien upon said property, but denies that he used the moneys for his personal purposes; instead, the \$1,000. of the same was given to his sister Clara A. Griffin to run the house, about \$2,500. was used in paying for street paving and assessments, several hundred dollars more for work about the house and about \$300. for personal use. 10

7. Defendant John C. Griffin admits paragraphs 12 and 13 of said bill.

8. Defendant John C. Griffin admits so much of paragraph 14 of said bill as to the demands made upon him by the complainants, and also admits his refusal to comply with said demands based upon the grounds that complainants have no right in such property, and defendant is under no obligations to comply with such demands; defendant claiming ownership of said property by absolute gift. 20

Defendants therefore pray that the bill of complaint may be dismissed with costs.

J. A. KIERNAN,  
Solicitor &c., of Defendants. 30

**REPLICATION.**

Filed Oct 2, 1925

## IN CHANCERY OF NEW JERSEY.

	<p style="text-align: center;"><i>Between</i></p> <p>10     EMMA LIEB, <i>et als.</i>,</p> <p style="padding-left: 100px;"><i>Complainants,</i></p> <p style="padding-left: 100px;"><i>and</i></p> <p>         JOHN C. GRIFFIN and BEA-</p> <p style="padding-left: 100px;">TRICE C. GRIFFIN,</p> <p style="padding-left: 100px;"><i>Defendants.</i></p>	} <i>On Bill.</i> <i>Replication.</i>
--	--	--

The complainants join issue on the answer of the defendants.

20

FRANK A. ENGLISH,  
Solicitor for the Complainants.

30

40

## TESTIMONY.

57—672

## IN CHANCERY OF NEW JERSEY.

---

*Between*EMMA LIEB, *et al.*,  
*Complainants,**and*JOHN C. GRIFFIN, *et al.*,  
*Defendants.*

---

10

*On Bill,*  
*&c.**Testimony.*

Testimony taken in the above-entitled cause,  
at the Union County Court House, Elizabeth,  
New Jersey, on Thursday, the twenty-seventh  
day of May, 1926, at eleven o'clock, A. M.

20

Before HON. MALCOLM G. BUCHANAN, Vice-  
Chancellor.

Appearances:

Frank A. English, Esquire, and Francis A.  
Gordon, Esquire, for complainants.

J. A. Kiernan, Esquire, for defendants.

Mr. Gordon: I offer in evidence deed made by  
Christian Rickert and Martha B. Rickert, his  
wife, dated the seventh day of nine, 1909, made  
to John C. Griffin, conveying premises known as  
Block No. 4—conveying the premises mentioned  
in the bill of complaint, and recorded in the office  
of the Register of the County of Union, in Book  
527, page 6.

30

Said deed is marked "Exhibit C. 1."

Mr. Gordon: I offer in evidence the probate  
copy of the will of Henry C. Griffin, dated No-

40

*Erastus P. Griffin, direct.*

vember 24, 1911, with letters testamentary attached, issued by the Surrogate of the County of Union, February 25, 1913.

Said copy of will is marked "Exhibit C. 2."

10 ERASTUS P. GRIFFIN, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

*Direct examination by Mr. Gordon.*

Q Where do you live? A 654 Westfield avenue.

Q You are the son of the late Henry C. Griffin and Josephine Griffin? A Yes.

20 Q In 1909, your father was alive? A Yes, sir

Q And engaged in business in the State of New Jersey? A Yes.

Q What? A Millwright contracting business.

Q Who was he engaged with? A Myself.

Q Who else? A Him and I.

Q What was the firm name? A Henry C. Griffin & Company.

30 Q Where were you living at that time? A Home.

Q At the home? A Yes.

Q Who else was in that home? A In the home?

Q Who else was living home? A John, Will, not Ed.

*By the Court.*

Q Do you mean your father's home when you say "home"? A Yes.

40 Q Did he own the property? A Yes.

*Erastus P. Griffin, direct.*

Q Where was that? A 19 Wyoming avenue at that time; it has been changed now.

Q To another number? A Yes.

Q Do you remember when the property, 649 Wyoming avenue, was purchased? A It was purchased 1906 or '07.

Q The deed was made May 17, 1909? A 10  
Yes.

Q Does that refresh your recollection? A  
Yes, sir.

Q Made to John C. Griffin? A Yes.

Q Now, at the time when that property was put in the name of John C. Griffin, do you recall what transpired between your father and John, and any other members of the family in connection with the property? A Several things said about it. 20

Q What? A One thing particular said, that he was going to put the house in John's name to keep it safe for my mother in case anything should happen to the business which he was in at that time.

Q Who was in? A My father was in.

*By the Court.*

Q When and to whom was that said? A  
It was said to me. 30

Q Who else? A It was said to me and all of us in the house; we all knew it at the time why he done it.

Q It was said to all of you in the house? A  
Yes.

Q Including your brother John? A Yes.

Q Is this the same property as— A That was the same property.

Q I asked you if your father owned that house in 1909? A Yes. 40

*Erastus P. Griffin, direct.*

Q He evidently didn't own it until the time of this deed? A I recollect now; it was in 1909—

Q Just a minute. Prior to that, your father had occupied that house as his home? A Yes.

Q With all the children? A Yes.

10 Q But up until that time he had occupied it as a rented house? A Yes.

Q What else was said about taking over the property? A Just what do you mean "What else was said?"

Q Was John engaged in business? A 1909? No, he was with the United States Express Company.

Q Employed by them? A Yes.

20 *By the Court.*

Q How old was he at that time? A He is 42 years old now.

Q That is seventeen years ago? A Yes, sir.

*By the Court.*

Q Was he the youngest of the children? A No, sir.

30 Q Now, who paid the taxes on this property?  
A Henry C. Griffin & Company, Incorporated.

Q How did that company come into being as a corporation? A By us boys; all us boys made it a corporation after my father died.

Q And that was under the terms of his will?  
A Well, no; I don't believe so.

*By the Court.*

40 Q When did your father die? A February 6, 1913.

*Erastus P. Griffin, direct.*

Q Between February, 1909 and 1913, who paid the taxes on this property? A Father did.

Q Who paid for the repairs? A Father paid everything.

Q And insurance? A Yes, he paid every penny.

Q And occupied the property as a home for himself and the children as theretofore? A Yes. 10

Q Your father died February 6, 1913? A Yes, sir.

Q Then, H. C. Griffin and Company were incorporated February 5, 1913? A Yes.

Q That concern consisted of whom? A All the boys. There was Frank, John, Erastus, Ed. and Will.

Q And mother? A And mother, yes. She had 33 shares. 20

Q On the 7th day of March, 1913, was there an agreement made between Griffin and Company, John P. Griffin, Erastus Griffin and Josephine Griffin, in reference to the premises involved in this suit? A Yes.

Q I show you that agreement and ask you if that bears the signature of John P. Griffin, the defendant? A That is his signature.

Mr. Gordon: I offer it in evidence. 30

Said agreement is marked "Exhibit C. 3."

Q Thereafter, and in pursuance of that agreement, did the John C. Griffin & Company, or Henry C. Griffin and Company, pay any moneys in connection with the mortgage in this suit? A Yes.

Q I show you a bundle of checks, and ask you if these checks represent payments to Anna 40

*Erastus P. Griffin, direct.*

N. Hobbs on account of the principal and interest on the mortgage in this suit?

The Court: That is not denied, is it?

Mr. Kiernan: No, sir.

10 Mr. Gordon: I offer them in evidence as one exhibit.

Said checks, eleven in number, are marked "Exhibit C. 4."

Q At the time when the property was taken over by your brother John in his name, did your father have any creditors that he owed money to? A No, sir; not that I know of.

Q Were you familiar with his business affairs? A Yes, sir.

20 Q Who paid for the water used in connection with this property since your father died? A Henry C. Griffin & Company, Incorporated.

Q I show you—

The Court: That will not be denied, will it?

Mr. Kiernan: No.

30 Q What other items in connection with this property were paid by Henry C. Griffin & Company? A Pretty near all the items. The taxes were paid, the telephone bills—

Q I show you six checks, payable to the order of the City of Elizabeth? A Yes.

Q And ask you whether they represent payments made in connection with taxes and assessments affecting these premises? A Yes, sir.

40 Q Made by Henry C. Griffin & Company? A Yes.

*Erastus P. Griffin, direct.*

Mr. Gordon: I offer them in evidence.

Mr. Kiernan: We admit that.

Said checks, six in number, are marked  
"Exhibit C. 5."

*By the Court.*

Q Up until what time did these payments of the carrying charges on this property by Henry C. Griffin & Company continue? A Up to my mother's death. We haven't got all the checks for taxes there; we couldn't find them all. We paid everything while she was alive.

Q Did that company pay anything after her death in respect to this property? A No. We paid for my sister's doctor's bills.

Q I mean on the taxes or upkeep charges? A No, sir.

Q Why? A We stopped it at that time.

Q Why? A We thought John could take care of sister then and the house. He had no family, and there was just my sister at the home and John.

Q Was anything said to John about it at that time? A Yes.

Q What? A We told him we wouldn't pay any more taxes over there, because my father told me before he died, that would I see that everything was paid and the mortgage paid off on the home; I told him I certainly would, from his business.

Q I am speaking at the time of your mother's death. At the time of your mother's death to whom did you believe the property belonged?

A To my mother; I never thought otherwise until we found out about it.

Q And after your mother's death, to whom did you believe the property belonged? A She

10

20

30

40

*Erastus P. Griffin, direct.*

didn't leave any will; I thought it belonged to all of us.

Q Was anything said between you and your brother John? A No.

Q Or in your presence by the others and your brother John, as to who owned this property?

10 A No.

Q Nothing said? A No.

Q But there was a conversation in which you said to your brother John that you thought he could take care of the carrying charges of the house? A Yes, the boys at the office thought he could do that.

Q There was a general meeting of the sons? A Yes.

20 Q What was said? A The company couldn't afford to pay any more taxes, and we said we thought he would take it up and pay it as rent.

Q He and your sister were the only ones living at the time at the house? A Yes.

Q The other boys had married and got homes of their own? A Yes.

Q Did you ever discuss with John, the question about conveying the property back again?

30 A There were questions brought up when my father was sick; I used to go out walking with him Sunday mornings, and he brought the question up that he would like to turn it back to my mother. I said, "That's up to you, pop; anything you do I am satisfied, it's all right."

Q Was that information ever conveyed to John? A He should know about it; he was in the house at the time. Sunday mornings we discussed lots of things, and he was there.

Q He was there at the time? A Yes.

40 Q Do you know whether he heard it or not? A He must have heard it.

*Erastus P. Griffin, direct.*

Q Did you ever have a meeting with John at the office of Mr. Kiernan with your brothers and sisters with reference to this matter? A Yes.

Q Was there any discussion as to the ownership of this property? A There was one question brought up, why was the house put in his name, and he said, "For protection." 10

*By the Court.*

Q Who said? A John.

Q Whom did he say that to? A To all of us.

Q What else was said? A I think that's all that was said about the house that I can remember.

*By the Court.*

20

Q How did this meeting come to take place?  
A To settle the estate of my sister Clara. Frank Griffin was the administrator of the estate, and we went down there and had a meeting, and Jerry was our attorney at that time.

Q There was no dispute at that time as to the ownership of the house? A No.

Q None at all? A No, nobody said anything about it.

Q Your sister Clara died when? A May, 1925. 30

Q She died unmarried and intestate? A Yes, sir.

Q May 7, 1925? A Yes.

Q I show you the minute book of the Henry C. Griffin & Company, and ask you whether or not that is the minute book of the corporation?  
A Yes, that is.

40

*Erastus P. Griffin, cross.*

Mr. Gordon: I desire to offer in evidence the resolution dated February 28, 1913.

The Court: You admit the contract was duly authorized?

Mr. Kiernan: Yes.

10 Mr. Gordon: I will withdraw the offer.

*Cross examination by Mr. Kiernan.*

Q Whereabouts were you living in February, 1913? A I was over the office.

Q At the time of your mother's death? A I was over the office.

Q Were you living in New York? A With my father.

20 Q Were you living at home, 649 Wyoming avenue? A Yes.

Q Who else was living home besides you? A John and Emma and Clara.

Q Was Edward living at home at that time? A I don't remember whether he was out West or living home; I don't think he was living home.

Q After your father's death, you were living home at that time? A Yes.

30 Q Do you remember a meeting held at the house where the will of your father was read? A Yes.

Q Do you remember you and Frank, was it, were very dissatisfied because you were not mentioned as to the business? A No, I had no dissatisfaction with the will at all.

Q Didn't somebody bring up the question of the house at that time? A Not that I remember, no.

Q You don't remember that? A No.

40

*Erastus P. Griffin, cross.*

Q Didn't all of you bring up about the house?

A No, I didn't, about the share of the business, that's all.

Q Who was there? A All were there.

Q Didn't she say the house was John's? A No, I can't remember any such thing as that.

Q Can't you remember that? A No, because before she died— 10

Q I am asking you about this time? A No, I don't remember that.

Q She might have said it? A I think if she said it I would remember it.

Q You were walking with your father when he mentioned to you about this deed? A Yes, about the house.

Q At that time you knew the deed had been made to John? A Oh, yes, I knew in 1909 it had been made to him. 20

Q Your father died February, 1913? A Yes.

Q Your mother died in 1921? A Yes.

Q You know that Mr. Rickert, who made this deed, he is dead? A Yes, sir.

Q And Judge Gilhooly was your father's lawyer? A Yes.

Q And he is dead? A Yes.

Q And your sister Clara was living at home at that time? A Yes. 30

Q She is dead? A Yes.

Q She died in May, 1925, didn't she? A Yes.

Q Just what did your father say to you at the time that he told you about putting the property in John's name? A He said he was going to put the house in John's name, because he wanted a home for our mother as long as she lived, in case anything happened to the business they couldn't touch the home. I told him "It suits me." I had no objection. 40

*Emma Lieb, direct.*

EMMA LIEB, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

*Direct examination by Mr. Gordon.*

10 Q Mrs. Lieb, you are one of the complainants in this case? A Yes, sir.

Q You are the daughter of Henry C. Griffin?

The Court: That is admitted in the pleadings.

Q Do you recall how the Wyoming avenue property involved in this suit was placed in the name of your brother John? A Yes, sir.

20 Q Please tell us what happened at or about that time? A Well, that was when my father started in business, and he felt as though to protect his home he would put it in John's name, because John had nothing to do with the business at that time, and to protect his home he would put it in John's name.

*By the Court.*

30 Q When and to whom did he say that? A In the presence of several of us who had come there. My mother was there and my sister.

Q Who else? A John was there, and I don't now about my other brothers, but my sister and my mother were there.

Q Before or after the purchase of the house? A When he deeded the house over to my brother John.

40 Q When who? A My father turned the house over.

*Emma Lieb, direct.*

Q Your father didn't deed the property over?  
A Well, when it was put into John's name.

Q Was it before or after the actual purchase of the property that this was said? A Well, I believe it was after.

Q Did your father speak about his intention to purchase this property before he bought it? 10  
A Yes.

Q What did he say? A He did remark about that, but I was quite young at the time, I didn't pay much attention to it; but I do recall him saying about buying this property.

Q Well, you were living at the house at that time? A Yes. Didn't you ask me if he talked about buying the property?

Q Yes. Do you know he did buy the property? A What? 20

Q Do you know who bought the property?  
A My father, as far as I understood.

Q Do you know? A As far as I understand he did, yes.

Q What is the basis of that understanding?  
A He spoke of buying it as his home.

Q Before this time he lived there and yourself and the rest of the children lived there, and it was his home at that time, but it was rented?

A That I couldn't say. 30

Q You don't know that? A No.

Q He didn't own it before he bought it, did he? A No, sir.

Q Yet, he did occupy it as his home before that? A I couldn't answer.

Q Weren't you living with the family before this deed was made? A Yes.

Q You had been living in this house how long before this deed was made? A I couldn't answer that. 40

*Emma Lieb, direct.*

Q A month or a year? How old are you? A 35.

Q This deed was made seventeen years ago, so that you must have been 17 or 18 at that time. You don't mean to tell me you can't remember how long you had been there in the property before the deed was made? A I moved out there when I was 13 years old.

Q Then you had been living in this property and your father had, and all the family had, for three or four years before he bought it? A I guess we had, yes.

Q Your father had owned this property once before, hadn't he? A I guess he did, yes.

Q Who took care of the correspondence and mail of Henry C. Griffin & Company at or about the time when the property was placed in John's name? A John did part of it, and I did part of it, and Erastus.

Q Where was that work done? A Home.

Q When that work was being done, was your father present? A Yes.

Q Was John present? A Yes, at times.

Q Was Erastus present? A At times.

Q Who else was there? A That is about all that was there when we were doing the business.

Q During that time when your brothers and your father and yourself were present around the house, were there any discussions regarding these affairs; was there any talk? A Oh, they talked several times about business, because my father did most of his business at home.

Q Was John in the business? A John wasn't in the business at the time, no.

Q He was not? A No.

Q Now, do you remember after mother died a conversation between John and Clara with

*Emma Lieb, cross.*

reference to the house? A What do you mean "in reference to the house"?

Q Well, you remember your mother died? A Yes.

Q And Clara was living with John in the house? A Yes.

Q And do you remember whether or not there was any talk in connection with the house between Clara and John? A Well, John did mention to my sister about selling the house. 10

Q When was that? A Shortly after my mother died.

Q Who was present? A I was there, my sister and my brother John.

Q What was said? A John said to my sister, "Suppose we sell this house and go get an apartment in New York?" and my sister said, "No, I am satisfied right here and this is my home, and as long as I live I am going to live here." 20

Q What did John say to that? A "All right;" he was perfectly satisfied that she should stay in the house.

Q Were you present at the office of Mr. Kiernan when there was a conference there in connection with your sister's estate? A Yes.

Q You were there? A Yes, sir. 30

Q Do you recall any discussion in reference to the property? A I remember John saying, "You got your share in everything else and you will get your share in that," in the house.

*Cross examination by Mr. Kiernan.*

Q At the time this deed was made to John C. Griffin, you were about 17 or 18 years old?

The Court: That is obvious. 40

*John C. Griffin, direct.*

Q I want you to give us the exact words that your father ever said to you or anyone in your presence, before May, 1909, with reference to this deed to John C. Griffin? A He said in the presence of my mother and sister, that he had put the house in John's name for protection, and in case he failed in business, then he would have his home.

*By the Court.*

Q Who was present when he said that? A My mother and sister.

Q None of your brothers? A I can't recall whether John was present or not, but my mother and sister were there when my father was talking about it.

Q Your father was in good health at that time? A Very good health.

Q He didn't have any serious illness until his last illness? A No.

Q He was an active man and took care of his affairs? A Very active.

COMPLAINANT RESTS.

30 JOHN C. GRIFFIN, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

*Direct examination by Mr. Kiernan.*

Q Mr. Griffin, you are the defendant in this case, aren't you? A I am.

Q How old are you now? A Forty-two.

Q You are married? A Yes.

40 Q You were married when? A 1925.

*John C. Griffin, direct.*

Q And at the time you were married was your sister Clara living? A No.

Q Around May, 1909, who was living at the home? A My mother, father, Emma, Clara, John and Erastus.

Q Erastus? A Erastus and John, yes.

Q Edward and Frank were not living at home? A Ed. was married in 1909; he was away at that time. 10

Q In connection with your father, you conducted a millwright business in New York, didn't you? A Henry C. Griffin & Company, partnership, yes, sir.

*By the Court.*

Q After his death, you say you conducted that with him at that time? A Yes, sir, a partnership, Henry C. Griffin, Erastus Griffin and John C. Griffin. 20

Q In 1909? A In 1909, yes.

Q The making of this deed to you, do you recall the circumstances of it? A Simply said he was making the deed out in my name; he said "That house belongs to you, and I want you to make a home for your mother and sister as long as they live." 30

Q When did he tell you that? A When?

Q Yes. A Right after he made the deed.

Q Did you have any talks further with him about it? A Nothing until just before he died.

Q What did he say then? A He said he made a will and he left the business, one-third to my mother, one-third to Erastus, and one-third to myself, I asked him about the house; he said "The house belongs to you."

Q He said it belonged to you? A He said "The house belongs to you." 40

*John C. Griffin, cross.*

Q Who was the family lawyer? A Patrick H. Gilhooly.

Q Did you know Mr. Rickert at all? A Yes, from seeing him; I saw him several times.

Q After your father's death, when the will was read at home, who was present? A All the family.

Q All of you were present? A Yes.

Q And when the will was read, what discussions, if any, took place between the family? A Well, there was a hot discussion, because there was only—

Q In reference to the house? A Nothing said about the house until Frank brought the question up; he said "What about the house?"

Q Then what was said then? A My mother said, "The house belongs to John."

Q Your mother lived in the house? A Yes.

Q Until the time of her death? A The time of her death.

Q At the time you came down to my office last year, 1925, was that in reference to Clara Griffin's estate? A In reference to the estate of Clara Griffin.

Q At any time, from the time of your father's death in 1913, did any of your brothers and sisters ever make any demands upon you for the property? A No.

Q No demands? A Not until 1925.

Q That was at the time— A At the meeting in your office.

*Cross examination by Mr. Gordon.*

Q Clara lived in the house up to 1925? A That's right.

Q So you and she kept the house together? A She kept house for me, yes, sir.

*John C. Griffin, cross.*

Q And father said to you to take care of this property as long as mother was alive, and the house was yours? A That's what she said; that's what he said.

Q Why did Henry C. Griffin & Company pay the bills? A Why? Because it was part of the money due my mother; she had a one-third interest in the business, and out of this one-third interest she got so much a week, and the balance went to pay the taxes and interest and expenses for the house; she paid no rent for the house. 10

Q You were charging her share of the business against the house? A Certainly, as long as she lived there, because she paid no rent.

Q Do you think she should pay rent? A She didn't.

Q You were charging your mother rent? A No, she never paid any rent. 20

Q Why should Henry C. Griffin & Company pay for the house if it was your house? A They were paying it to provide a home for my mother.

Q But you were to provide a home for your mother? A Why?

Q Isn't that the reason you said father gave the property to you? A No; he said to keep a home for mother.

Q Who was to keep it? A I was. 30

Q Did you keep the home by paying the taxes and mortgage installments and— A No; why should I?

*By the Court.*

Q What did you think he meant when he said that? A To keep out of trouble; to keep a home for mother and sister.

Q Suppose the company hadn't paid these taxes? Who would pay them? A I would have to pay them. 40

*John C. Griffin, cross.*

Q The obligation was primarily upon you to keep the house going and pay the taxes? A There was an agreement entered into between the three boys, when the business was turned into a corporation, that they should pay the expenses as long as my mother lived.

10 Q This agreement here? A Yes.

Q So that it was your mother and the company who were keeping the home, and not you? A They paid the taxes.

Q That you would have had to pay? A Yes.

Q If they didn't? A Yes.

Q What did you do? A I paid board.

Q To whom? A To my mother.

Q You paid board— A And I paid other expenses.

20 Q What board did you pay? A Around fifteen, twenty or twenty-five dollars a week.

Q Around fifteen, twenty or twenty-five dollars a week? A Yes, sir.

Q Mr. Griffin, did you ever refer to this property as your property? A Refer to it? I had no occasion to.

30 Q Do you recall—didn't you testify in a case as a witness in a suit brought by the Elmora Realty Company, a corporation, against you in ejectment in connection with this property? A I was the defendant in that case.

Q And testified? A Yes.

Q And didn't you in that case, refer to that property as "our property?" A Not that I know of.

Q Didn't you? A Not that I know of.

40 Q Don't you recall being asked this question on that trial, by your attorney, Mr. Kiernan, the present solicitor in this case, on June 22, 1922; do you recall Mr. Kiernan asking you this ques-

*John C. Griffin, cross.*

tion: "This tree, which appears to be almost opposite or parallel to the front porch, is that inside of that fence line? Ans. That is inside of this line." Do you remember that? A I don't remember it.

Q You don't remember that? A No.

Q Will you deny it was asked? A No. 10

Q Do you remember this question being asked: "On your side?" and you making the answer, "On our side." A I may have said it.

Q Well, did you? A I don't recall.

Q Will you deny you made that answer? A How can I deny it?

Q What? A I don't know.

Q Do you remember this question being asked by Mr. Kiernan: "This lilac bush, the large bush represented there, is that on the inside?" and you making the answer, "That is the inside"? A I may have said it. 20

Q Well, don't you know? A No.

Q Do you recall this question and answer: "That is towards your property? Ans. Towards our property"? A "Our" there might mean myself and sister.

*By the Court.*

Q Did you make the answer? A I don't recall. 30

Q You don't remember? A No.

Q Will you deny that that answer was made?

A I don't deny it.

Q And at that time you were not married, in 1922? A No, sir.

Q You were living in this house? A I was living with my sister at that time.

Q And if you said "our side" it meant the property of your family, didn't it? A Not necessarily, no. 40

*John C. Griffin, cross.*

Q At that time your mother was dead? A Yes.

Q Your mother and father were dead? A Yes.

Q In 1922? A 1922.

10 Q Who paid the water rent for this property?  
A Henry C. Griffin & Company.

Q Who paid the telephone bills? A My mother.

Q Are you sure about that? A Yes.

Q Quite sure? A Some of them.

Q I show you a batch of checks, and ask you if you recognize those as checks made by H. C. Griffin & Company to the New York Telephone Company? A Yes.

Q Your signature is on there? A Yes.

20 Q Were those in payment of bills for telephone service of the premises in connection with this home? A Yes.

Q You didn't pay for it, did you? A No.

Q It was H. C. Griffin & Company? A Yes.

Q Was it charged against your account? A No.

Q Were any checks issued by this company affecting these premises charged against your account? A No.

30 Q None? A No.

Q Did you pay anything to your mother by way of support individually? A I did.

Q Did the H. C. Griffin pay her checks? A They paid her every week, yes.

Q Who paid the doctor's bill in 1918? A For who?

Q Dr. Shangle? A Henry C. Griffin & Company.

Q And who did Dr. Shangle attend in 1918?

40 A My mother.

*John C. Griffin, cross.*

Q You didn't pay for that? A No.

Q And who paid the Elizabeth General Hospital? A I don't know.

Q Well, I show you a check and ask you if it will refresh your recollection? A Henry C. Griffin & Company.

Q The company? A Yes. 10

Q Was that charged to your account? A No.

Q Who paid the gas bills for this property?

A All expenses pertaining to the house were paid by H. C. Griffin & Company.

Q Who paid the garage charged in connection with the maintenance of the car? A I paid that.

Q You paid it? A I paid that; the garage belongs to me. 20

Q I show you two checks, made to the Central Garage, and ask you whose checks these are?

A That's got nothing to do—

*By the Court.*

Q Answer the question. Whose checks are those checks? A Those were checks paid for a car—

Q Whose checks are those checks? A Henry C. Griffin & Company. 30

Q What car were those issued on? A For a car belonging to H. C. Griffin and Company.

Q New York City? A Yes.

Q Not the house? A That house didn't have a car.

Q Is it a pleasure or business car? A A business car.

Q Not a pleasure car? A A pleasure car it is, yes. 40

Q Where was it kept? A In New York.

*John C. Griffin, cross.*

*By the Court.*

Q You said you paid your mother moneys for support? A Yes.

Q And then you say the company paid it? A They paid her expenses.

10 Q Which is true? A I paid board there as long as my mother lived, every week.

Q Did you pay it personally, or through Henry C. Griffin & Company? A Personally, out of my salary; in addition to the money she got from Henry C. Griffin & Company.

Q Who paid the Hobbs mortgage off? A Henry C. Griffin & Company.

Q In full? A In full.

20 Q Then you mortgaged the property yourself? A I did.

Q And received the proceeds of the loan? A I did.

Q Have you paid any rent in connection with this property? A Why should I?

*By the Court.*

Q Answer the question. A No.

30 Q How old are you? A Forty-two.

Q In 1909 what were you doing? A I was working for the United States Express Company, I believe.

Q Then it is not a fact that you were in business with your father in 1909, is it? A Every evening I took care of all his bookkeeping.

Q I am talking— A I was a partner, yes.

Q In 1909? A Yes.

40 Q And you were working for the express company? A Yes, and at night I kept all the books.

Q You didn't work in the daytime for the company? A No; at night.

*John C. Griffin, re-direct.*

Q You received a salary? A No.

Q You didn't receive any? A I didn't receive a nickel from Henry C. Griffin & Company.

Q You took care of the books? A I took care of the books.

Q Were there regular articles of co-partnership? A Yes. 10

Q Written? A Yes.

Q Whom between? A Henry C. Griffin, Erastus Griffin and John C. Griffin.

Q When were they dated? A I don't recall.

*By the Court.*

Q Where are they? A I don't know where they are now.

Q In 1909, who was working in the daytime with your father? A Erastus. 20

Q Who else? A That's all.

*Re-direct examination by Mr. Kiernan.*

Q Out of that \$25,000 mortgage did you pay any assessment on the—

The Court: What mortgage?

Mr. Kiernan: The recent mortgage in 1922. 30

The Court: You said a \$25,000 mortgage.

Q \$5,000 mortgage. Is that the assessment you paid, did you pay \$1,365; did you pay this assessment? A I paid the assessment for paying.

The Court: Answer the question.

Q Who paid the bill? A I paid the bill. 40

*John C. Griffin, re-cross.*

Q I show you a check signed by you; is that your signature? A That is my signature.

Mr. Kiernan: I offer that in evidence.

Said paper, being an assessment bill of the City of Elizabeth, is marked "Exhibit D. 1."

10 Q The check for \$1,000 made by you to your sister Clara, what was that for? A It was given to her out of this mortgage loan.

Q For what? A To take care of herself.

Q Was she sick at that time? A She was sick at that time; yes, sir.

Q How long had she been ill? A Since my mother's death; she had always been sickly.

Q Did Clara run the house after your mother's death? A She took care of the house, yes.

20 Q Did you contribute moneys for the rent of the house after your mother's death? A I did.

*Re-cross examination by Mr. Gordon.*

Q You say you paid the entire assessment itself as represented by this bill? A Except the first item of \$293.

Q That was paid by Griffin & Company? A That was paid by Griffin & Company.

30 Q That was after—

*By the Court.*

Q Why did you testify you paid the assessment? A I just happened to recall they paid the first item.

Q You had it before you and you could see? A I didn't see that first item there.

40 Q When Clara was sick, who took care of the house? A I took care of the house.

*John C. Griffin, re-cross.*

Q Did she do any shopping of any kind? A  
When she was able she did, yes.

Q She didn't get around very much? A She  
was able to walk.

Q But not down to the stores? A Yes.

Q She was? A Yes.

Q And she made extensive purchases? A 10  
Yes.

Q Why did you have occasion to give her a  
thousand dollars from the proceeds of this mort-  
gage loan? A Why?

Q Yes. A If anything should happen to me,  
she would have something to fall back on.

Q Did you recognize any obligations to her?  
A No.

Q Were you sick at that time? A No.

Q Was Clara sick at that time? A She 20  
wasn't feeling so good.

Q But you gave her a thousand dollars? A  
Yes.

*By the Court.*

Q You say you contributed to the running of  
the household after your mother's death? A I  
paid all expenses.

The Court: Strike it out. 30

A I did.

Q You were living there? A I was living  
there.

Q What contribution did you make; did you  
pay your sister's board? A I gave her thirty-  
five to fifty dollars every week.

Q To your sister? A To my sister to run  
the house.

Q And she ran it for the benefit of herself  
and yourself? A Yes. 40

*John C. Griffin, re-direct—re-cross.*

Q During all that time, that is, from the time of your mother's death until your sister's death, who paid the taxes and assessments on this property? A I did.

Q Out of this thirty-five to fifty dollars a week? A No, that was on the outside of that.

10

*Re-direct examination by Mr. Kiernan.*

Q The ejectment suit was a suit brought against you for the adverse possession of ten feet alongside the property conveyed by the Rickert deed? A It was.

Q And Mrs. Lieb testified in that case for you, didn't she? A She did.

Q You were being sued as the owner of the ten feet? A I was.

20

Q As a claimant of the ten feet by adverse possession? A Yes.

Q Your sister Clara testified for you, too, didn't she? A She did.

*Re-cross examination by Mr. Gordon.*

Q She didn't say anything in her testimony that the property was yours, did she? A I don't recall.

Q In 1922 you were getting \$4,000 a year, weren't you? A I don't remember now.

30

Q How much were you getting from Henry C. Griffin & Company? A I don't know.

*By the Court.*

Q You can't remember four years ago? A No, because our salary went up and down according to how much money was made; I should judge it would be in the neighborhood of that.

DEFENDANTS REST.

40

*Frank E. Griffin—Bertram B. Miller, direct.*

FRANK E. GRIFFIN, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

*Direct examination by Mr. Gordon.*

Q Mr. Griffin, you are one of the complainants in this suit? A Yes. 10

Q And the Frank Griffin referred to as one of the complainants? A Yes, sir.

Q Were you ever present at any conversation between your mother and John where your mother said, "That house is John's house"? A No.

Q You were not present then? A No.

Q Did you ever hear your mother say that? A I did not. 20

Q Was it ever said in your presence? A It was not. 20

Q In 1909, who was associated with your father in the business of Henry C. Griffin & Company? A Erastus P. Griffin and William Griffin.

Q Was John in the business? A He was not.

Mr. Kiernan: No questions.

---

30

BERTRAM B. MILLER, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

*Direct examination by Mr. Gordon.*

Q Mr. Miller—

Mr. Kiernan: His qualifications are conceded. 40

*Bertram B. Miller, cross.*

Q Are you familiar with the property 549 Wyoming avenue, corner of Springfield avenue?

A I am.

Q Seventy feet front? A Yes.

Q And 170 feet in depth, with three street frontages? A Yes, sir.

10 Q What is the fair and reasonable market value of that property at the present time? A \$14,000.

Q Can you tell us what is the fair and reasonable rental value of that property during the year 1925? A About \$75 a month.

Q What kind of a property is it? A It is a very old house, not in particularly good repair, located in a very desirable section.

20 Q What type of house? A Gable roof; slate roof; frame, nine or ten rooms, very big rooms.

*By the Court.*

Q Do you know what its value was in 1909?

A It would be more or less of a guess, but I should say less than half of its present value.

*Cross examination by Mr. Kiernan.*

30 Q In 1909, that was quite a country district up there, wasn't it? A Yes, sir.

Q It has since boomed up as the Elmora section of the City of Elizabeth? A Yes.

Q It has been built up quite a good deal? A That's right.

Q Considerably? A Yes.

Q In 1909 a fair valuation would have been about \$6,000? A About seven, I should say.

Q Not more than seven? A I don't think so.

*Bertram B. Miller, re-direct—re-cross.*

*Re-direct examination by Mr. Gordon.*

Q The greater value of that property today is the land element? A Yes.

*Re-cross examination by Mr. Kiernan.*

Q And that is peculiarly so in the last four or five years, isn't it? A Yes.

10

COMPLAINANTS REST.

It is agreed, that on March 7, 1913, thirty-three shares of stock were issued to Josephine Griffin of H. C. Griffin & Company; that on March 7, 1913, there were eighteen shares issued to Erastus P. Griffin; on the same date to John C. Griffin, thirteen shares; on the same date to Edward W. Griffin, thirteen shares; on the same date to William J. Griffin, thirteen shares; on the same date to Frank E. Griffin, nine shares; on the same date to Frank L. Griffin, one share.

20

The capital stock of the company is \$10,000, divided into shares of \$100 each, all fully paid and non-assessable common shares of stock.

The Court: Is Mary E. E. Griffin the same person as Emma Lieb?

Mr. Kiernan: Yes, sir.

30

Mr. Gordon: Yes, sir.

BOTH SIDES REST.

40

*Opinion of Vice-Chancellor.*

Filed Oct 31. 1928

**OPINION.**

BUCHANAN, V.-C.

10 The bill is filed by complainants, as heirs at law of the wife of Henry C. Griffin, deceased, to establish a resulting trust with respect to the premises No. 649 Wyoming avenue, Elizabeth, N. J. Title to the property was taken in the name of the defendant John C. Griffin, another son of Henry C. Griffin; the money for the purchase was paid by Henry C. Griffin—John C. Griffin paid no consideration whatever.

20 This transaction occurred in 1909. Henry C. Griffin died in 1913. By his will he left all his property, except his business, to his wife. She died in 1921, intestate, leaving complainants and defendant (and another unmarried daughter now deceased) as her heirs at law.

Complainants contend that Henry C. Griffin never intended that his son John should be the beneficial owner that the equitable title was in Henry C. Griffin at his death, passed to his widow as devisee, and to her heirs at law at her death. The defendant contends that the transaction was a gift to him by his father.

30 There is no doubt in my mind from all the evidence that the complainants' story is the true one, and that of the defendant John, false. The property was the home of the father and of all the children. It was so maintained by the father until his death in 1913. It is inherently improbable that the father would have placed the title to such property in the name of any one child, except with the idea and intent of a trust for the benefit of his wife and all the children. The defendant gave no explanation or  
40 reason why his father should have made such a

*Opinion of Vice-Chancellor.*

gift to him to the exclusion of the others; and no such reason or explanation can be gleaned from any of the evidence. Defendant himself testified that his father asked him to make a home for his mother and sisters as long as they lived. Yet he did not do even that.

The difficulty is however that it appears from the testimony of complainants themselves that the intent of Henry C. Griffin was to put the property out of the reach of creditors. Erastus testified that his father said "he was going to put the house in John's name to keep it safe for my mother in case anything should happen to the business which he was in at the time." And again: "He said he was going to put the house in John's name because he wanted a home for my mother as long as she lived; in case anything happened to the business they couldn't touch the home." And the daughter Emma testified "Well, that was when my father started in business and he felt as though to protect his home he would put it in John's name, because John had nothing to do with the business at that time, and to protect his home he would put it in John's name." And again: "He said in the presence of my mother and sister, that he had put the house in John's name for protection, and in case he failed in business then he would have his home."

By complainants' own showing, therefore, the conveyance was made by the father with intent to hinder and defraud possible future creditors. In such a case it is well established that equity will not decree a reconveyance either to the grantor, or the grantor's heirs—even though no creditors have in fact been affected. See *Hillebrand v. Willig*, 64 N. J. Eq. 249—a case prac-

10

20

30

40

*Opinion of Vice-Chancellor.*

tically upon all fours with the present case. There is no difference in principle between the situation where the grantor takes title and himself makes the fraudulent conveyance and the situation where he causes the conveyance to be made direct to the fraudulent grantee.

10 The present complainants are of course guilty of no fraud; but in respect to their claim in and to this property, they stand in the shoes of their father.

The refusal of relief to complainants in this suit is due to no merit on the part of defendant. His conduct towards his brothers and sisters is equitably reprehensible—even aside from his false testimony. So far as he is concerned, it is regrettable that decree cannot be awarded  
20 against him under the established principles of this court. Under all the circumstances of the case, the decree of dismissal will be with costs and counsel fee to complainants against defendant.

30

40

**FINAL DECREE.**

Filed November 5, 1928.

IN CHANCERY OF NEW JERSEY.

58—672.

10

*Between*EMMA LIEB, *et al.*,*Complainants,**and*JOHN C. GRIFFIN, *et al.*,*Defendants.**On Bill, &c.**Final Decree.*

This cause coming on to be heard at a regular 20  
 term of the Court of Chancery, held at the Court  
 House, in the City of Elizabeth, in the presence  
 of Frank A. English and Francis A. Gordon, of  
 counsel with the complainants, and J. A. Kier-  
 nan, of counsel with the defendants, and the  
 pleadings and proofs having been read and the  
 arguments of the respective counsel having been  
 heard and considered, and the Court having duly  
 considered the said pleadings, proofs and argu- 30  
 ments, and it appearing to the Court that the  
 complainants are not entitled to the relief sought  
 and prayed by them in their bill of complaint:

It is on this first day of November, nineteen  
 hundred and twenty-eight, by his Honor, Edwin  
 R. Walker, Chancellor of the State of New Jer-  
 sey, ORDERED, ADJUDGED and DECREED that the  
 complainants' bill be and the same is hereby dis-  
 missed and that the defendant pay to the com-  
 plainants their costs of this suit to be taxed to-  
 gether with a counsel fee of five hundred dollars; 40

*Final Decree.*

and it is further ORDERED that the defendant pay the counsel fee above mentioned together with the complainants' costs as taxed within thirty days after service upon him of a copy of this decree and of the taxed bill of costs, and in default thereof an execution issue.

10

E. R. WALKER,  
C.

Respectfully advised,

MALCOLM G. BUCHANAN,  
V.-C.

20

30

40

## NOTICE OF APPEAL.

Filed Dec 31, 1928

IN CHANCERY OF NEW JERSEY.

*Between*EMMA LIEB, *et al.*,*Complainants,**and*JOHN C. GRIFFIN, *et al.*,*Defendants.**Notice of  
Appeal.*

10

From decree advised by Honorable Malcolm Buchanan, Vice-Chancellor.

Emma Lieb, Edward W. Griffin, Erastus P. Griffin, Frank E. Griffin and William J. Griffin, the above-named complainants, hereby appeal from the final decree filed in this cause and dated the first day of November, 1928, and from every part thereof to the Court of Errors and Appeals in the last resort in all causes.

20

FRANK A. ENGLISH,  
Solicitor of Complainants.

Dated, December 4, 1928.

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

30

FRANK A. ENGLISH,  
FRANCIS A. GORDON,  
Of Counsel.

40

**PETITION OF APPEAL.**  
*Filed December 31, 1928*  
**NEW JERSEY COURT OF ERRORS  
 AND APPEALS.**

10	<p style="text-align: center;"><i>Between</i></p> <p style="text-align: center;">EMMA LIEB, <i>et al.</i>,  <i>Complainants-Appellants,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">JOHN C. GRIFFIN, <i>et al.</i>,  <i>Defendants-Respondents.</i></p>	<p style="text-align: center;">} <i>On Appeal          from          Chancery.</i></p> <p style="text-align: center;">} <i>Petition of          Appeal.</i></p>
----	--	---

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

20     The petition of Emma Lieb, Edward W. Griffin, Erastus P. Griffin, Frank E. Griffin and William J. Griffin, appellants, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the first day of November, 1928, in that said decree recites and adjudges that the complainants-appellants are not entitled to the relief sought and prayed for

30     by them in their bill of complaint, and doth decree that the complainant-appellants' bill be dismissed, and your petitioners appeal from the said decree and from every part thereof on the ground that the same is erroneous, for that the Chancellor should have recited and adjudged that the complainants-appellants are entitled to the relief sought and prayed for by them in their bill of complaint, and should have decreed that

40     the defendants-respondents herein hold the title to the lands and premises mentioned and de-

*Petition of Appeal.*

scribed in the complaint in trust for themselves and the complainants-appellants, according to their respective interests, and that the rights of all the parties in this suit in and to the lands mentioned and described in the bill of complaint should have been fixed and settled, and that the defendant, John C. Griffin, should have been directed to pay off the mortgage on the premises described in the bill of complaint herein or that his interest in said premises be credited against said mortgage and that the said John C. Griffin should have been directed to pay the balance of said mortgage to the complainants-appellants. 10

Your petitioners, therefore, pray that the said final decree may be reversed, rescinded and for nothing holden, and that your petitioners may have such further relief as shall be meet. 20

Dated, December 5, 1928.

FRANK A. ENGLISH,  
FRANCIS A. GORDON,  
Of Counsel with Appellants.

**ANSWER TO PETITION OF APPEAL.**

*Filed Jan 12, 1929*  
The answer of John C. Griffin and Beatrice C. Griffin, the above named appellees, to the Petition of Appeal of Emma Lieb and others, the above named appellants:

These appellees not admitting the truth of all or any of the matters contained in the said Petition of Appeal and in answer thereto, nevertheless, admitting that an order of Final Decree was, on the first day of November, 1928, made and entered in the Court of Chancery, as in the Petition of Appeal is stated in the above entitled cause as mentioned in said petition and therein set forth; but as to the substance and form thereof, these appellees pray to refer thereto, when the same shall be produced;

And these appellees are advised and believe that the said decree or order is agreeable to law and equity and pray that the same may be affirmed, with cost to be adjudged to these appellees.

J. A. KIERNAN,  
Sol'r and of Counsel with Respondents.

*Exhibit C. 1.*

**EXHIBIT C. 1.**

Christian Rickert et ux :  
 To :  
 John C. Griffin : THIS INDEN-  
 TURE Made the seventeenth day of *nine* in the  
 10 year One thousand nine hundred and nine, be-  
 tween Christian Rickert and Martha B. Rickert  
 his wife of the City of Bayonne, County of Hud-  
 son and State of New Jersey party of the first  
 part and John C. Griffin of Elmora in the City of  
 Elizabeth and County of Union, State of New  
 Jersey party of the second part.

WITNESSETH, that the said party of the  
 first part for and in consideration of the sum  
 of One dollar lawful money of the United States  
 20 of America, to them in hand paid by the said  
 party of the second part at or before the enseal-  
 ing and delivery of these presents, the receipt  
 whereof is hereby acknowledged and the said  
 party of the *second* part his heirs, executors and  
 administrators forever released and discharged  
 from the same by these presents have granted,  
 bargained, sold, aliened remised, released, con-  
 veyed and confirmed and by these presents do  
 grant, bargain, sell, alien, remise, release, con-  
 30 vey and confirm unto the said party of the second  
 part and to his heirs and assigns forever, ALL  
 that certain tract or parcel of land and premises  
 hereinafter particularly described, situate, lying  
 and being in the Township of Union, in the  
 County of Union, and State of New Jersey, and  
 which is more particularly laid down, designated  
 on a certain map entitled "Block number Four  
 (4) of a Map of Elmora, Union County, New  
 Jersey, belonging to Williard J. Crawford, and  
 40 James Parmelee" (now on file in the office of

*Exhibit C. 1.*

the Clerk of County of Union) as Lot Number One (1) as laid down on said map.

Being the same premises conveyed to said Christian Rickert by Josephine Griffin and Henry C. Griffin by deed dated July 21st, 1903 and recorded in the Union County Clerk's office on November 28th, 1903 in Book 423 of Deeds for said County pages 478 etc. Subject however to all encumbrances whatsoever now a lien on the aforesaid premises. 10

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, dower and right of dower, property, possession, claim and demand whatsoever as well in law as in equity of the said party of the first part, of, in or to the above described premises and every part and parcel thereof, with the appurtenances TO have and to hold, all and singular the above mentioned and described premises together with the appurtenances unto the said party of the second part his heirs and assigns to his and their own proper use, benefit and behoof forever. 20

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written. 30

Christian Rickert (L. S.)

Martha B. Rickert (L. S.)

Signed, sealed and delivered :  
in the presence of :  
Max L. Solinsky

*Exhibit C. 1.*

STATE OF NEW JERSEY, }  
 HUDSON COUNTY. } ss.

10 Be it remembered that on this seventeenth day  
 of May in the year one thousand nine hundred  
 and nine, before me, the subscriber, a Master in  
 Chancery of New Jersey personally appeared  
 Christian Rickert and Martha B. Rickert his  
 wife, who I am satisfied are the grantors in the  
 within Indenture named and I having first made  
 known to them the contents thereof, they did  
 thereupon acknowledge that they signed, sealed  
 and delivered the same as their voluntary act  
 and deed for the uses and purposes therein ex-  
 pressed, and the said Martha B. Rickert being by  
 me privately examined separate and apart from  
 her said husband did further to me acknowledge  
 20 that she signed, sealed and delivered the same as  
 her voluntary act and deed freely, without any  
 fear, threats or compulsion of or from her said  
 husband.

Max L. Solinsky  
 Master in Chancery of New Jersey.

Rec'd May 18th, 1909.

At 3.10 P. M. No. 23419.

30

40

*Exhibit C. 2.*

**EXHIBIT C. 2.**

I, HENRY C. GRIFFIN, of 19 Wyoming Avenue, in the City of Elizabeth, in the County of Union and State of New Jersey, being of sound mind, memory and understanding do make and publish this my last will and testament in manner following, that is to say: 10

FIRST: I order all my just debts and funeral expenses to be paid as soon as conveniently can be done after my deceased.

SECOND: I hereby nominate and appoint my sons, John C. Griffin and Erastus P. Griffin, to be the executors of this my last will and testament, and I do hereby authorize and empower them to make sale at public or private sale of any part of my estate not herein specifically devised and to give good and sufficient conveyances for the same. 20

THIRD: I give, devise and bequeath all my estate both real and personal, of whatsoever kind and wheresoever the same may be situated, to my beloved wife, Josephine Griffin, to have and to hold to her and to her heirs and assigns forever.

FOURTH: The partnership business conducted by me under the name of Henry C. Griffin & Co. and located at Nos. 143 & 145 Varick Street, New York City, is owned at the present time entirely by myself. My said sons are interested in the business to the extent of receiving a weekly salary for their services. The stock, machinery and property of the partnership is owned by me and in the name of Henry C. Griffin & Co., but my said two sons have been in partnership with me for several years and are each entitled to one-third of the partnership assets. 30

*Exhibit C. 2.*

In case of my death I order and direct that my said sons shall continue the business without being required to account in court for the same, and to account only to my said wife, Josephine Griffin, and if she desires to continue her interest in the business after my decease, my sons shall  
 10 pay to her one-third of the profits of the business during such continuance, but she shall not be considered liable as a partner of the firm. If she should desire to close out her interest in the business after my decease, an appraisement shall be made and my sons shall pay to her the value of the one-third part or interest in the same. In case my sons shall not desire to continue the business, they are authorized under the second section of my will to make sale of my share or interest in  
 20 the business and pay the proceeds of such sale over to my said wife.

IN WITNESS WHEREOF I Have hereunto set my hand and seal this twenty-fourth day of November, Nineteen hundred and eleven.

Henry C. Griffin (L. S.)

Signed, sealed, published and declared by the said Henry C. Griffin, the testator, to be his last  
 30 will and testament, in our presence, and we in his presence, and at his request and in the presence of each other, have hereunto subscribed our names as witnesses.

Patrick H. Gilhooly, 1003 No. Broad St., Elizabeth, N. J.

Gertrude L. Norris 514 Westfield Ave., Elizabeth, N. J.

*Exhibit C. 3.*

LAST WILL AND TESTAMENT

of

HENRY C. GRIFFIN.

Dated Nov. 24, 1911.

10

**EXHIBIT C. 3.**

MEMORANDUM OF AGREEMENT made this 7th day of March, 1913, between HENRY C. GRIFFIN & CO., INC., a corporation organized under the laws of the State of New York, party of the first part, and JOHN C. GRIFFIN, ERASTUS P. GRIFFIN and JOSEPHINE GRIFFIN, parties of the second part.

20

WITNESSETH:

In consideration of the sum of One Dollar (\$1.00) by each of the parties hereto to the other in hand paid, receipt of which is hereby acknowledged, and other good and valuable considerations, the party of the first part agrees as follows:

1. That it will pay off and discharge the mortgage for Two Thousand Dollars (\$2,000) and interest upon the premises known as No. 19 Wyoming Avenue, in the City of Elizabeth and State of New Jersey.

30

2. That it will pay to Josephine Griffin the sum of Six Hundred Dollars (\$600.).

3. That it will pay to Josephine Griffin Thirty-five Dollars (\$35.) per week, and the further sum of Three Hundred Dollars (\$300.) per year.

4. That it will pay to Clara A. Griffin and Mary E. E. Griffin the sum of One Hundred Fifty Dollars (\$150) each per year.

40

*Exhibit C. 3.*

IN WITNESS WHEREOF, the party of the first part has caused this instrument to be executed by its Vice-President thereunto duly authorized and its Corporate Seal to be hereunto affixed and attested by its Secretary the day and year first above written.

10

HENRY C. GRIFFIN &amp; CO., INC.,

By John C. Griffin,  
President

Attest:	(L. s.)
(SEAL) Secretary	(L. s.)
William Jay Griffin	(L. s.)

20

WE, THE UNDERSIGNED, as Stockholders of the HENRY C. GRIFFIN & CO., INC. hereby consent to the within agreement.

Dated March 7th, 1913.

Josephine Griffin  
John C. Griffin  
Erastus P. Griffin  
William Jay Griffin  
Frank E. Griffin  
Edward W. Griffin

30

40

## STIPULATION AS TO EXHIBITS.

NEW JERSEY COURT OF ERRORS  
AND APPEALS.*Between*EMMA LIEB, *et al.*,  
*Complainants-Appellants,*  
*and*JOHN C. GRIFFIN, *et al.*,  
*Defendants-Respondents.**Stipulation  
as to  
Exhibits.*

10

It is hereby stipulated and agreed that complainants' Exhibit 4, consists of eleven checks which represent payments to Anna M. Hobbs, on account of the principal and interest on the mortgage in this suit and are checks drawn on the account of H. C. Griffin & Co., Inc., signed by John C. Griffin, president and are as follows:

20

Number	Name of Bank	Date	Amount
3387	The Greenwich Bank	June 16, 1914	\$ 60.00
4201	The Greenwich Bank	June 28, 1915	60.00
4844	The Greenwich Bank	Jan. 13, 1916	60.00
5805	The Greenwich Bank	Dec. 18, 1916	60.00
5311	The Greenwich Bank	June 22, 1916	60.00
6370	The Greenwich Bank	June 3, 1917	60.00
6780	The Greenwich Bank	Dec. 11, 1917	60.00
7402	The Greenwich Bank	June 14, 1918	60.00
12	The Ridgewood National	July 31, 1918	500.00
7486	The Greenwich Bank	Aug. 15, 1918	1,000.00
89	The Ridgewood National	Sept. 9 1918	14.08

30

Complainants' Exhibit 5 consists of six checks which represent payments to City of Elizabeth, N. J., made in connection with taxes and assessments affecting the premises in question and are checks drawn on the account of H. C. Griffin &

40

*Stipulation as to Exhibits.*

Co., Inc., signed by John C. Griffin, president and are as follows:

Number	Name of Bank	Date	Amount
9776	The Greenwich Bank	Dec. 3, 1920	\$ 293.00
237	The Ridgewood National	Nov. 26, 1918	95.88
6767	The Greenwich Bank	Dec. 2, 1917	97.82
5777	The Greenwich Bank	Dec. 9, 1916	93.53
4759	The Greenwich Bank	Dec. 8, 1915	89.24
872	The Ridgewood National	May 11, 1920	134.26

Exhibit D. 1 consists of an assessment bill of the City of Elizabeth, in the sum of one thousand, three hundred and sixty-five (\$1,365.00) dollars for paving premises described in the bill of complaint.

FRANK A. ENGLISH,  
Solicitor and of Counsel for Complainants.

J. A. KIERNAN,  
Solicitor and of Counsel for Defendants.

30

40

## New Jersey Court of Errors and Appeals

*Between*

EMMA LIEB, EDWARD W.  
GRIFFIN, ERASTUS P. GRIF-  
FIN, FRANK E. GRIFFIN and  
WILLIAM J. GRIFFIN,  
*Complainants-Appellants,*

*and*

JOHN C. GRIFFIN and BEATRICE  
C. GRIFFIN,  
*Defendants-Respondents.*

*On Bill, &c.*

*On Appeal  
from Court of  
Chancery.*

### BRIEF FOR COMPLAINANTS-APPELLANTS.

#### Statement.

A bill was filed by the complainants, the heirs at law and surviving kin of Josephine Griffin, deceased (the wife of Henry C. Griffin, deceased), against the defendants, wherein prayer is made that a resulting trust be established in favor of the said complainants and defendants, with respect to premises known as No. 649 Wyoming avenue, Elizabeth, New Jersey. The title to said property was taken in the name of the defendant, John C. Griffin, (one of the sons of said Henry C. Griffin), but the purchase price for the same was entirely paid by the said Henry C. Griffin. The complainants allege that the latter retained the equitable title to the premises in question, and that the same passed to his widow as devisee.

The defendants, by their answer, admit that the premises in question were conveyed by the grantors Christian Rickert and Martha B. Rick-

ert, to the defendant, John C. Griffin, at the request of said Henry C. Griffin, on May 17, 1909; that the purchase price for the same was paid by the said Henry C. Griffin; that Henry C. Griffin died on February 16, 1913 and by his will he devised all his property, real or personal, (except his interest in the business of Henry C. Griffin & Company), to his wife, Josephine Griffin; that the premises, at the time of the conveyance, were subject to a mortgage of \$2,500., and that said mortgage was paid out of the receipts of Henry C. Griffin & Company; that Josephine Griffin died April 15, 1921, leaving the complainants, a daughter Clara Griffin (now deceased) and the defendant, John C. Griffin, as her only heirs and next of kin; that the defendant, John C. Griffin, executed a bond and mortgage upon said premises on April 21, 1922 to Elizabeth Horre and Marie Elizabeth Goebe, executrices, and George W. Horre, William H. Horre and Julius Horre, executors of William Horre, deceased, for the sum of \$5,000; that Clara A. Griffin died unmarried and intestate on May 7, 1925, leaving as her only heirs the complainants and the defendant, John C. Griffin; that defendant, John C. Griffin, married Beatrice Carpenter on June 4, 1925; that demands were made by the complainants of the defendants to convey the premises above mentioned to someone who would hold the same for the benefit of himself and the complainants according to their respective interests; and that defendants refused to comply with said request. The defendants deny that the conveyance was made to John C. Griffin with the understanding and agreement that he was to hold the premises for the said Henry C. Griffin.

The learned Vice-Chancellor, on the facts of the case, held (Case, pp. 40-41):

“Complainants contend that Henry C. Griffin never intended that his son John should be the beneficial owner that the equitable title was in Henry C. Griffin at his death, passed to his widow as devisee, and to her heirs at law at her death. The defendant contends that the transaction was a gift to him by his father.

“There is no doubt in my mind from all the evidence that the complainants’ story is the true one, and that of the defendant John, false. The property was the home of the father and of all the children. It was so maintained by the father until his death in 1913. It is inherently improbable that the father would have placed the title to such property in the name of any one child, except with the idea and intent of a trust for the benefit of his wife and all the children. The defendant gave no explanation or reason why his father should have made such a gift to him to the exclusion of the others; and no such reason or explanation can be gleaned from any of the evidence. Defendant himself testified that his father asked him to make a home for his mother and sisters as long as they lived. Yet he did not do even that.”

The lower court dismissed the complainants’ bill, on the ground that the conveyance was made by the father with the intent to hinder and defraud possible future creditors. It is respectfully submitted that the Chancellor’s decree based on this point, was erroneous.

## I.

The conveyance was not made to the defendant, John C. Griffin, to hinder, delay or defraud existing, subsequent or possible future creditors.

The father, Henry C. Griffin, at the time he caused the conveyance from the Rickerts to be placed in the name of his son, (the defendant John C. Griffin), in 1909, was already established in a millwright contracting business under the firm name of Henry C. Griffin & Company (Case, p. 10).

The father was not engaging in a new business which might prove hazardous, but was in a business with which he was familiar and which he was already conducting.

*At the time of the conveyance in question, he had no creditors to whom he owed money* (Case, p. 14). This testimony is given by Erastus P. Griffin, who was a partner in business with his father in the above-mentioned company, and who was familiar with the business affairs (Case, p. 14).

Nor did any creditor ever appear after the father's death to make any claim against the estate. The burden of bringing forth such evidence is upon the defendants, and failure to carry such burden raises the presumption that such evidence does not exist.

The learned Vice-Chancellor, in his opinion, based his ruling on the case of *Hildebrand v. Willig*, 64 N. J. Eq., 249. While that case is apparently similar, it differs from the case at bar in a number of vital respects. In the *Willig* case, Vice-Chancellor Gray held that where the *grantor*, in anticipation of his entering upon a *new* business, conveyed to a grantee for the

purpose of preventing its application to the payment of the grantor's possible debts in case financial misfortune should result from the venture, the conveyance was obnoxious to the statute of frauds, as made with an intent to hinder creditors. That was a suit brought by the heirs of the grantor *to set aside* a conveyance made in contemplation of financial misfortune which did not occur. There were neither existing nor subsequent creditors, but as the conveyance was *conceived and born in fraud*, the Court held that as to the *fraud intender*, and those standing in his place, it was immaterial whether the fraud intent was accomplished.

In the Willig case the conveyance was made from the grantor (the fraud intender) to his son-in-law. In the case at bar, the property was *never* in the name of Henry C. Griffin, the person paying the purchase price at the time the conveyance was made in the defendant, John C. Griffin's name. There is a marked distinction in the situation, insofar as creditors are concerned, between making a conveyance of property once in the name of an individual, where creditors have a right to rely and do extend further credit to the individual upon the belief that he is still the owner of the property, and the situation where the property was never in the name of the person creating the trust.

In the Willig case the evidence was clear and positive that the grantor intended to defraud future creditors at the time he executed the deed to his son-in-law. From the answer filed by the defendants in the Willig case (see 64 N. J. Eq., at pages 252-253), it is disclosed that Hildebrand, the grantor, was one of the stockholders in the Swedesboro Glass Works, a New

Jersey corporation, and became an endorser upon the commercial paper of that corporation. Fearing that he might become liable on such paper, he placed the title to his property in Willig so that the same might be placed beyond the reach of creditors. Hildebrand even stated to a disinterested witness: "I went into the glass business at Swedesboro and I did not want to make any of my property liable for any misfortune that might happen to the firm and I made it over to Henry Willig, my son-in-law, and now I want it back."

In the case at bar, however, Henry C. Griffin was already established in business in partnership with his son Erastus P. Griffin, a business which proved to be a success, due in a large measure to his early management of the same. The evidence does not disclose any circumstances which might indicate a motive on the part of Henry C. Griffin to defraud his possible future creditors. Nor does there appear any circumstances in connection with his business that might lead him to place the property in the name of another, as was the situation in the Willig case; in *Brower v. Brower*, 98 N. J. Eq., 218; and in *Washington National Bank v. Beatty*, 77 N. J. Eq., p. 252. In the latter case the defendant, fearing an action for libel, conveyed all his property to his son.

In *Brower v. Brower (supra)*, a bill was filed to establish a resulting trust on certain property which was conveyed to the defendant, Clifford H. Brower, by deed dated February 3, 1920, on the ground that the purchase price of the property was paid to the grantors by Trevone H. Brower, the father of the defendant. Trevone H. Brower had since died. The complainant was the widow of said Trevone H. Brower.

Trevone H. Brower entered into possession of the premises in question and carried on a business conducted in the name of "Brower Sisters." At page 221 the Court held:

"It appears from the testimony, and in fact, is admitted by all parties that *at the time of the conveyance of the property in question to Clifford H. Brower, the defendant, his father had a number of judgments in the Supreme Court standing against him,* these judgments representing a considerable amount of indebtedness incurred in a former business in which he had failed. It is claimed by the complainant that the title to the property in question was vested in the defendant for the purpose of defeating the lien of these judgments \* \* \*

"The evidence in this case is overwhelming, and conclusive to the effect that the conveyance of the land here involved was made to the defendant for the purpose of defrauding the creditors of Trevone H. Brower, and this with the knowledge and approval of the complainant. She participated in the attempted fraud and cannot now be relieved from it. *Besson v. Eveland*, 26 N. J. Eq., 469; *Geroso v. De Maio*, 75 N. J. Eq., 410; *Gould v. Hurley*, 75 N. J. Eq., 512.

"With respect to the real estate here involved, the complainant does not come into equity with clean hands, and the bill, so far as it claims a resulting trust in the land mentioned, or any lien thereon or interest therein on behalf of the complainant, will be dismissed." (Italics our own.)

Nor are there any of the badges of fraud enumerated in *Moore v. Rowe*, 35 N. J. Eq., 90, attached to the circumstances in the case at bar. In that case the Court said:

"In Bump on Fraud. Con., the transfer of all the debtor's property is declared a badge of fraud; so also, the existence of indebtedness and the pendency of a suit; also,

the taking of an absolute deed as security for money, for it is calculated to make creditors believe that no part of the property is subject to their demands, when, in fact, it is otherwise; also, the circumstances of looseness or incorrectness in stating the consideration of the conveyance, or in determining the value of the property conveyed. Bump on Fraud. Cons., ch. 3, 4; Garr v. Hill, 1 Stock. 210; Knight v. Packer, 1 Beas., 214; Sayre v. Fredericks, 1 C. E. Gr., 205; Tantum v. Green, 6 C. E. Gr., 364."

The evidence does not disclose that Henry C. Griffin parted with any of the property of the business. Since it is not shown by the defendants that the property was paid for with partnership assets, it must be assumed that the money used was his own. The liabilities that might accrue to creditors of the partnership would be partnership liabilities, and their claims would first be satisfied out of the partnership assets. Therefore, there would only be a *contingent* liability attached to Henry C. Griffin's *own* property, if any claims of the partnership could not be satisfied out of the partnership property. On such contingent liability the Court has held, in *Conway v. Raphal*, 5 A. R. 1265 that:

"It is, therefore, enough for this court to say that *the contingent liability* of an accommodation indorser, before dishonor, does not make him a debtor so that the holder of the paper can invalidate a voluntary conveyance made by him when there was no actual fraud in the transaction. \* \* \*

"Vice-Chancellor Stevens followed this case (*Severs v. Dodson*) in *National State Bank of Elizabeth v. Foster*, 91 N. J. Eq., 334, 116 A 682, saying:

"The case comes within the rule laid down by the Court of Errors and Appeals in *Severs v. Dodson*, 53 N. J. Eq., 633 (34 A-7, 51 Am. St. Rep. 641); for *the evidence*

*fails to show actual fraud*, and according to the opinion in that case, we are not at liberty, in a case circumstanced like the present, to infer constructive fraud merely from the fact of a voluntary conveyance.

\* \* \*

“In *Bouquet v. Heyman*, 50 N. J. Eq., 114, 24 A. 266, the defendant made a note payable in fourteen months, and more than six months before the date of making said note conveyed his property to his wife. The Court held that the creditor seeking to set aside the conveyance was not an existing creditor at the time of the conveyance and therefore, in the absence of actual fraud, the conveyance could not be set aside. Vice-Chancellor Van Fleet says, at page 116 (24 A. 267):

“The case is destitute of all evidence tending to prove actual fraud. *There is not enough to support even a moderately strong suspicion that the parties, in making the deeds, were instigated by a fraudulent motive.* The deeds show on their face that they were voluntary; each purports to have been founded on a nominal consideration of one dollar; both were executed \* \* \* to change the title from the husband to his wife, and they were also both placed on record on the day of their execution. A person intending to commit fraud, by obtaining credit on the faith of property that he does not own, does not usually make public the fact that he is not its owner. To do so would, as is obvious, serve rather to defeat than aid him in the execution of his property to his wife, and immediately after he has done so, makes the fact public by placing the deeds on record; it should, as it seems to me, be held that his conduct furnishes evidence of rectitude of intention rather than of a purpose to commit a fraud. Actual fraud cannot be presumed, but must be proved.” (Italics our own).

## II.

Defendants failed to bear the burden of proof of showing actual fraud on the part of Henry C. Griffin.

The courts of this state having repeatedly held that fraud is never presumed, but must be proven by clear and positive evidence. *Firemen's Fund Insurance Co. v. Nicholson*, 6 A. R., 1082; *Keller v. Linsenmeyer*, 5 A. R., 1333; *Feickert v. Feickert*, 98 N. J. Eq., 444; *Carpenter v. Carpenter's Executors*, 27 N. J. Eq., 502; *Bouquet v. Heyman* (*supra*).

In the leading case of *Hagerman v. Buchanan*, Ct. of E. A., 1889, 45 N. J. Eq., 292, the complainants were judgment creditors of the defendant and sought to set aside two conveyances made by the defendant to his wife, on the grounds the said conveyances were made without consideration and in fraud of creditors. The conveyances were made on July 17, 1883, but the debt upon which the complainant's judgment is founded was not incurred until more than three years later.

The advisory master held on these facts, that the said defendant transferred the title to the lands in question to his wife in view of future indebtedness, and with the intent to place it beyond the reach of his creditors in case the business in which he was about to embark should prove unsuccessful and that such action on his part was a fraud upon his creditors to whom he became indebted subsequent to the transfer of the property to his wife.

The Court of Errors and Appeals *reversed* the decree based upon such advisory master's report, holding, (at pages 297-298):

"The rule which has been recognized is, that a voluntary settlement can be attacked by a subsequent creditor only upon the ground of the existence of an actual intent in the mind of the parties at the time of the execution of the conveyance to hinder, delay or defraud creditors by means of the deed. In the case of *Ridgway v. Underwood*, 4 Wash. C. C. 129, Judge Washington, after stating that he had examined the numerous cases which related to the operation of the statute (13 Eliz.), remarked, that, with entire satisfaction to himself, he had reached the following result: 'A voluntary deed by a person indebted at the time to any amount is fraudulent and void as to such prior creditors, merely upon the ground that he was so indebted. *But as to subsequent creditors the deed is not void for that reason, because it does not necessarily or even rationally follow that the conveyance was fraudulently made with intent to hinder or delay creditors who became such long after the deed was made.* But if the case presents other circumstances from which fraud can legally be inferred, the voluntary conveyance will be avoided in favor of a subsequent creditor.' This case was cited with approval by Chancellor Green in his opinion in the case of *Beeckman v. Montgomery*, 1 McCart, 106.

"In the case of *Reade v. Livingston*, 3 Johns. Ch. 481, Chancellor Kent, after an elaborate view of the authorities, came to the conclusion, also, that in respect to pre-existing creditors, a voluntary conveyance was fraudulent as a legal inference, and ought to be so far as it concerned existing debts, but that as to subsequent debts there was no such necessary legal presumption, and there must be proof of fraud in fact. Indebtedness existing at the time, although not amounting

to insolvency, must be such as to warrant that conclusion. The view of the learned Chancellor was that, while fraud would be imputed to the voluntary grantor so far as the grant affected pre-existing debts, yet that the fact of the existence of such debts, and their relative amount in comparison with the property of the grantor remaining, were, as to debts subsequently arising, only facts which were important in determining whether there was an actual intent at the time of the conveyance to hinder and delay creditors. The doctrine of this case, so far as it dealt with the attitude of a voluntary grantor toward prior creditors, was adopted by this court in the case of *Haston v. Castner*, 4 Stew. Eq., 697. \* \* \*

“By reason of these recognitions of cases in which the distinction above mentioned has been formulated, and by reason of the rational grounds upon which such a distinction rests, *I regard the complainant in this case as having the burden of showing that, at the time the conveyance was made, there existed an actual intent to hinder and delay creditors.*”

At page 299, the Court said:

“The rule laid down by Chancellor Kent and Judge Washington is not only simple, but equitable.

“A conclusive presumption against a voluntary conveyance should be raised in respect to those debts which it may be presumed were incurred upon the faith of the ownership of the property conveyed.

“It is therefore inequitable that the debtor should be permitted to give away such property at the expense of a pre-existing creditor, whether the intention be good or otherwise. But as to creditors who become such *without any possible inducement arising from such ownership*, no such conclusive presumption should arise. No equitable consideration requires it; and, besides, if such a rule be adopted, no settlement could be made which

would not be adopted, no settlement could be made which would not be at the mercy of the grantor during his lifetime. The power to incur debts would be a power to subject the property to a liability for their payment at any time. So, as already remarked, equitable considerations, as well as the weight of authority, are in favor of the rule that an actual intent to defraud, arising from all the circumstances surrounding the transaction, must be proved before a voluntary conveyance will be decreed void at the suit of a subsequent creditor."

On page 302, the Court further said:

"Now, it is true that the fact that a person has entered into a hazardous business, or engaged in a speculative enterprise, at or soon after the execution of a voluntary conveyance, is strong evidence of a fraudulent intent. It evinces a desire to reap the benefit for himself if successful, and escape responsibility if unlucky. Nevertheless, each case must stand upon its own footing, and no legal rule can be adopted as to the quantity of proof or the particular complexity of facts which will annul a conveyance upon this ground. *The character of the business, the degree of pecuniary hazard incurred, the amount of property remaining in the grantor, the value of the property conveyed, the acts and words occurring coincidentally with the transaction, are to be viewed together in solving the question of fraudulent intent.*

"Now, viewing these transactions together, I do not think such an intent has been proved. I think that Mr. Hagerman inquired as he says he did, particularly about the business of Farr & Co., and that he tried to be careful not to involve himself in a precarious business \* \* \*

"*He undoubtedly wished to place his wife in a position of security, as she had frequently requested. But this is the object of every settlement. She had no security for the \$600. Taking into consideration the fact*

that he says that he had \$1,800 in bank and a lot worth \$600, that the voluntary elements in the conveyance are so small, and *that he seems to have been led to believe that the business he afterwards engaged in was entirely safe, I do not think it proved that the conveyance to his wife was induced by a fraudulent intent to hinder and delay creditors.*" (Italics our own.)

In the case at bar, to disentitle the complainants from any relief in a court of equity, *defendants have the burden of proving actual fraud*, since they stand in the place of subsequent creditors attacking a conveyance as fraudulent, complainants having proved that there were no existing creditors at the time the conveyance was made.

In *Kinsey v. Feller*, Ct. of E. A. 1901, 64 Eq., 367, it appears that the defendant was owner of three tracts of land in North Plainfield. The first two tracts were originally conveyed to the defendant, George Feller in 1879 and 1880 and they were conveyed in 1881 to Mrs. Feller through an intermediate person. The conveyance of the third tract was made directly to Mrs. Feller in 1885. The defendant, George Feller, at the time these conveyances were made, was solvent and free from debt. A creditor's bill was brought and prayer made that the said real estate be declared to be answerable for payment of judgments of the complainant so that the same might be sold under execution as the property of the defendant, George Feller. The Court held that the conveyances to Mrs. Feller were not induced by any fraudulent intent to hinder or delay fraudulent creditors. At page 368, the Court said:

"And if the evidence does not lead to the conviction that there was *a present purpose to contract future indebtedness*, the

payment of which was to be evaded, or hindered, or some other fraudulent design to the injury of the creditors or purchasers, then the conveyance will stand."

The pleadings and evidence in the case at bar show that not only was actual fraud failed to be proven by the defendants, but the same was failed to be raised as a defense, the defendant, John C. Griffin, solely contending that the transaction was a gift to him by his father. But on this point the Vice-Chancellor found, as a matter of fact, that the complainants' story was true and that of the defendants false.

### III.

**Complainants come into court of equity with clean hands.**

The testimony on the part of the complainants shows that the conveyance of the property in question was made to the defendant, John C. Griffin, to keep it safe for the mother, Josephine Griffin, so that she would always have a home.

The money used in the purchase of the property by Henry C. Griffin, doubtless represents part of his life savings. He was getting on in years. The natural bent of people in such circumstances is not to be overlooked. He doubtless labored hard and stinted and strived so that he could secure a home for his family and leave them well provided for, should death seek him out first. He wanted his wife to have a haven in which to spend her declining years. It is reasonable to suppose that a part of his savings were devoted to this single purpose. And this was merely the recognition on his part of the obligations and duties of a husband and father.

Can it be said, then, that such conduct is "offensive to the dictates of natural justice" so that he would be remediless in a court of equity? None can say that the father—in whose place the complainants now stand—were he alive, and came into the court of equity to enforce his trust, entered with unclean hands. Surely, the father's conduct was not wanting in "good faith, honesty and righteous dealing."

The record plainly discloses that the complainants have "openly, frankly, without reservation or evasion, yielded to the Chancellor that full measure of confidence and truth that is prerequisite to assertion and exercise of chancery powers." *Gluck v. Rynda Development Co.*, 99 N. J. Eq., 788.

The property was placed in the name of the son, John, because of the arrangement between the father and the son that the property was to be held for the father and disposed of as the father should direct. In *Baldwin v. Campfield*, 8 N. J. Eq., 891, Justice Elmer said, at page 904:

"A resulting trust has its origin in the natural presumption, in the absence of all rebutting circumstances, that he who supplies the money means the purchase to be for his own benefit, rather than for that of another, and that the conveyance in the name of the latter is a *matter of convenience and arrangement between the parties*, for other collateral purposes." (Italics our own.)

At page 897 the Court said:

"If Baldwin concocted that conveyance (referring to a deed delivered February 7, 1838) to defraud his creditors, it is "even-handed justice that presents the poisoned chalice to his own lips." It is hardly compatible with the principles upon which a court of equity administers justice, to hunt

up some technical rule to protect a party against the consequences of his own fraud."

The fact that Henry C. Griffin sought to have his wife and family well provided for, cannot be said to be the "poisoned chalice" which would have been applied to his own lips, were he living, or should be applied to the lips of those who stand in his stead.

There was no obligation upon Henry C. Griffin to keep every cent that he had earned and saved, intact for the use of future creditors of the partnership business in which he was engaged.

In *Mellon v. Mulvey*, 23 N. J. Eq., p. 198, the Court held that:

"A voluntary conveyance made by a solvent debtor is good against subsequent debts, if made in good faith and without intention of contracting debts designed not to be paid."

Henry C. Griffin had the conveyance made to his son John, in good faith and without any intention of hindering, delaying or defrauding creditors, which proved to be the exact situation because he always paid all of his creditors and none appeared after his death to make any claim against the estate. Had he any present intention of contracting debts designed not to be paid, he would have certainly manifested such intention in his acts between the years 1909, the date of the conveyance, and 1913, the time of his death.

In the syllabus of *Coffin v. Mess*, 30 N. J. Eq., 211, the Court held:

"Payment by the grantor of all his debts existing at the time he makes the voluntary conveyance, *repels* the idea that he thereby intended to defraud his creditors."

In *Beeckman v. Montgomery*, 14 N. J. Eq., p. 106, at page 112, the Court held:

“Where at the time of the conveyance the grantor is *free from debt*, and there are no circumstances showing that the deed was made with a view to future indebtedness, the deed can be avoided by subsequent creditors only upon proof of actual fraud.”

The complainants respectfully contend that their testimony to the effect that the property was to be placed in John's name, “*to keep it safe for my mother in case anything should happen to the business in which he was in at the time*” and “*he said he was going to put the house in John's name because he wanted a home for my mother as long as she lived; in case anything happened to the business they couldn't touch the home;*” does not indicate any fraudulent intent on the part of Henry C. Griffin at the time the conveyance was made in the name of his son, John. On the contrary, it shows that his main concern at the time was the providing of a home for his wife and family. It is possible that he—being a man well on in years—vaguely feared the taking away of the home. His assertions to his children at the time this conveyance was made, shows the fear to be of an uncertain and indefinite nature. The evidence discloses that there was no cause to express such fear.

The fact that Henry C. Griffin did not expect a reconveyance to himself at any time, indicates most emphatically an honest intention to make a settlement upon his wife rather than an intention to defraud, hinder or delay possible future creditors, with a demand for reconveyance to himself after the possibility of debts, judgments, etc. have been blown away.

It is respectfully submitted that while the law requires that one should be astute in ferreting out evidence of fraud, yet the law will not presume actual fraud (*Carpenter v. Carpenter's Executors, supra*) and the testimony of the complainants as above stated is not proof of actual fraud or fraudulent intent, taking into consideration all the other circumstances surrounding the conveyance in question.

In view of the findings of the learned Chancellor on the material fact in issue, the complainants respectfully pray that the decree dismissing complainants' bill be set aside and that the relief prayed for in said bill be granted.

Respectfully submitted,

FRANK A. ENGLISH and  
FRANCIS A. GORDON,  
Solicitors for and of Counsel  
with Complainants-Appellants.



40  
New Jersey Court of Errors and Appeals

Between

EMMA LIEB, *et al.*,  
*Complainants-Appellants,*

and

JOHN C. GRIFFIN, *et al.*,  
*Defendants-Respondents.*

On Bill, etc.  
On Appeal from  
Court of  
Chancery

**BRIEF FOR DEFENDANTS-  
RESPONDENTS.**

**Statement.**

This was an action begun in the Court of Chancery, by Emma Lieb and others as complainants, against John C. Griffin. All the parties to the ac-

tion are the sons and daughters of Henry C. Griffin, deceased, and the action was brought by the complainants against the defendant for the purpose of having a resulting trust decreed in their favor. This relief was denied the complainants, and their bill was dismissed, and this appeal taken by the complainants below.

On May 17, 1909, a certain deed was made and executed by Christian Rickert and wife to the defendant, John C. Griffin (Case, p. 48). This deed conveyed a certain tract of land situate in the Township of Union, which is now known as Elmora, in the City of Elizabeth, Union County, N. J. As hereinbefore stated, John C. Griffin is a son of Henry C. Griffin, and it was, and is admitted that the consideration for the above deed was paid by Henry C. Griffin, father of said John C. Griffin. The deed is absolute, and grants and conveys the said land absolutely to the grantee, to have and to hold to his own use and benefit, without restrictions of any kind.

An examination of the printed case will show that from the time of the making of the deed, May 17, 1909, down to the filing of the bill of complaint in the action below on August 13, 1925, a period of more than 16 years, no claims or demands, adverse to the rights of the said John C. Griffin, were ever made upon him, either by the said Henry C. Griffin in his lifetime, Josephine Griffin, widow of Henry C. Griffin, and mother of John C. Griffin, or by any of the complainants, themselves.

Henry C. Griffin died February 6, 1913, leaving a last will, devising his real estate to his widow, Josephine Griffin (Case, p. 51). All of the complainants and the defendant, with Mrs. Josephine Griffin, survived the said Henry C. Griffin together with another daughter, Clara Griffin, who died in

1925. Josephine Griffin died intestate April 15, 1921.

The bill of complaint in the action below, was filed by the complainants August 13, 1925, and the object of the same was to have it decreed that the defendant, John C. Griffin, held the title of said real property in trust for himself and complainants, in other words, to have a resulting trust decreed. The defendant, John C. Griffin, filed answer to the same to the bill on August 27, 1925, claiming the ownership of said property by absolute gift, and the matter came on for hearing before Vice-Chancellor BUCHANAN, at Elizabeth, on May 27th, 1926, and, as a result of said hearing, the Vice-Chancellor denied the complainants the relief which they sought; the reasons appearing in his opinion (Case, p. 40), and a decree of dismissal of the bill was duly entered November 5, 1928; and afterwards this appeal was prosecuted by the complainants below.

It is maintained on the part of John C. Griffin and wife, the defendants-respondents, that the Final Decree appealed from, should be affirmed for the reasons:

First, that the proof offered by the complainants below was insufficient to sustain their claim;

Second, that the proof adduced and offered by the complainants at the hearing was actually against their claim;

Third, that the proofs and facts show that the complainants were guilty of laches.

## POINT I.

**The proof offered below by the complainants was insufficient.**

As the bill of complaint in this cause was filed below for the purpose of having a resulting trust decreed in favor of the complainants, and the matter relates to the execution of an absolute deed of conveyance to the defendant, John C. Griffin, the consideration for the same having been paid by his father, Henry C. Griffin, it is stated at the outset, that the only facts or matters concerning the execution of the deed, which can be considered, are such facts and circumstances as took place before the making of the deed, or at the time of the making, or immediately thereafter, so as to be part of the transaction. The authority for this will be found fully set forth in the case of *Read v. Huff*, 40 N. J. E. 229, which case, with others, will be taken up later.

The evidence offered on the part of the complainants relating to the Rickert deed, was that of Erastus P. Griffin, and on direct examination he said:

“Q. Now, at the time when that property was put in the name of John C. Griffin, do you recall what transpired between your father and John, and any other members of the family in connection with the property? A. Several things said about it.

"Q. What? A. One thing particular said, that he was going to put the house in John's name to keep it safe for my mother in case anything should happen to the business which he was in at that time.

"Q. Who was in? A. My father was in" (Case, p. 11).

And on cross examination he further testified as follows:

"Q. Just what did your father say to you at the time that he told you about putting the property in John's name? A. He said he was going to put the house in John's name, because he wanted a home for our mother as long as she lived, in case anything happened to the business they couldn't touch the home. I told him 'It suits me. I had no objection'" (Case, p. 19).

Also, Emma Lieb, daughter, and another of the complainants, testified as follows:

"Q. Do you recall how the Wyoming Avenue property involved in this suit was placed in the name of your brother John? A. Yes, sir.

"Q. Please tell us what happened at or about that time? A. Well, that was when my father started in business, and he felt as though to protect his home he would put it in John's name, because John had nothing to do with the business at that time, and to protect his home he would put it in John's name" (Case, p. 20).

On cross examination she further testified as follows:

"Q. I want you to give us the exact words that your father ever said to you or anyone in your presence, before May, 1909, with reference to this deed to John C. Griffin? A. He said in the presence of my mother and sister, that he had put the house in John's name for

protection, and in case he failed in business, then he would have his home" (Case, p. 24).

The above is the only evidence offered on the part of the complainants below, concerning anything done or said by Henry C. Griffin, before, or at the time he had Christian Rickert make the deed to John C. Griffin, son of Henry C. Griffin.

An examination of the above evidence, even giving it the most favorable kind of view, shows that such evidence is far indeed from creating any resulting trust, or a trust of any kind. Aside from other matters, which render the aforesaid evidence of no value, and which will be taken up later, it is plainly evident that there is nothing in this evidence indicating any intention on the part of the said Henry C. Griffin to create a trust. There is no expression attributed to the said Henry C. Griffin by which he expressed any intention of having his son, John C. Griffin, hold the aforesaid premises in trust for anyone.

John C. Griffin being the son of Henry C. Griffin, who caused the aforesaid deed to be made to him, the situation we are now dealing with is that of a deed made or caused to be made by a parent to a child. A long line of cases in this State upholds the doctrine that in such a case the presumption is that an advancement or settlement was intended, and a resulting trust will not arise, unless the presumption that the transaction was intended to be a gift be overcome by proof. There is no such proof in this case, and an examination of the complainants' proof, as above cited, shows nothing to establish a resulting trust. In order to overcome

the execution and effect of a solemn instrument as a deed, the proof offered to overcome the effect of such an instrument, must be positive, and of such a kind as to leave no reasonable doubt in the mind.

The leading case in this State upholding the doctrine that no resulting trust arises from the fact of a deed of conveyance having been made by and through a parent to a child is that of *Read v. Huff*, 40 N. J. E. 233, and from this there is cited:

“But where the parties hold to each other the relation of parent and child, or husband and wife, a contrary rule prevails. Where a parent or husband pays the consideration of the purchase of lands, and has the conveyance made to a child or wife, no resulting trust will arise from the payment of the consideration. In such cases the presumption is that an advancement or settlement was intended, and a resulting trust will not arise unless the presumption that the transaction was intended to be a gift be overcome by proof. Hill on Trustees, 97, 98; 1 Lead. Cas. in Eq. 216, 217, 345; *Peer v. Peer*, 3 Stock. 432; *Persons v. Persons*, 10 C. E. Gr. 250.

“The proof which shall raise a resulting trust, or rebut the presumption of a gift or settlement in the case of a child or wife, must be of facts antecedent to or contemporaneous with the purchase, or else immediately afterwards, so as to be, in fact, part of the same transaction; a resulting trust cannot be raised from matters arising *ex post facto*. 1 Lead. Cas. in Eq. 223; *Cutler v. Tuttle*, 4 C. E. Gr. 549. It is also well settled that the proof which shall rebut the presumption of a gift in favor of a child or wife, shall be equally satisfactory and

explicit with the proof required to establish a resulting trust; the circumstances relied on must be convincing, and leave no reasonable doubt as to the intention of the party. *Peer v. Peer, supra.*"

*Read v. Huff, supra*, p. 234;

*Peer v. Peer*, 11 N. J. E. 432, at p. 439;

*Howell v. Howell*, 15 N. J. E. 75, at p. 77;

*Wheeler v. Kirtland*, 23 N. J. E. 13, at p. 21.

The foregoing cases precede *Read v. Huff, supra*, and the doctrine therein set forth, is and has been the settled law of this State, and has been followed all the way down.

*Leslie v. Leslie*, 53 N. J. E. 275, at p. 281;

*Hallenback v. Rogers*, 57 N. J. E. 199, aff'd.

58 N. J. E. 580 (mother to daughter);

*Prisco v. Prisco*, 90 N. J. E. 289 (father to son, and one of the latest Court of Errors cases, following the long line of cases above stated).

## POINT II.

**The proof offered by complainants below was actually against them.**

From the citations of the evidence adduced on the part of the complainants below, through Erastus P. Griffin (Case, pp. 11, 19) and Emma

Lieb (Case, p. 20), it will be seen that the intention of Henry C. Griffin in having the property put in the name of his son John C. Griffin, was to hold the same intact, in case he, the said Henry C. Griffin had business troubles.

This evidence is strongly referred to in the opinion filed by Vice-Chancellor BUCHANAN (Case, p. 40), and after considering this evidence and the case of *Hildebrand v. Willig*, 64 N. J. E. 249, and the other cases bearing upon the same, Vice-Chancellor BUCHANAN was forced to the conclusion that the complainants by their own showing, indicated that the Rickert conveyance was caused to be made by the father with intent to hinder and defraud possible future creditors. In such a case, it is well established that equity will not decree a reconveyance, either to the grantor, or the grantor's heirs, even though no creditors have in fact been affected.

"Where a grantor, in anticipation of his entering upon a new business, conveys land to a grantee for the purpose of preventing its application to payment of the grantor's possible debts in case financial misfortune should result from the venture, the conveyance is obnoxious to the statute of frauds, as made with an intent to hinder creditors.

"4. *Such a conveyance is invalid as against the creditors of the grantor, but is valid as between the grantor and grantee and their heirs-at-law.*

"5. *A court of equity will not aid the heirs-at-law of such a grantor to declare such a deed to be a nullity, nor will it direct a reconveyance to them. It will leave the title to the land where the intending fraud-doers place it.*

"6. Where it is shown that a conveyance was made with such an intent, the Court will

not be induced to lend its aid because it is proven that the feared misfortune did not in fact happen. The Court will say to applicants for relief in such a case, 'it is no ground for relief, that although you intended to cheat creditors if occasion should require, the expected occasion did not happen and your preparation to defraud creditors was therefore unnecessary.'"

*Hildebrand v. Willig*, 64 N. J. Eq., p. 249.

The doctrine of *Hildebrand v. Willig*, *supra*, set forth as above by Vice-Chancellor BUCHANAN, and followed by him, is the settled law of this State, and there is a long line of cases preceding and succeeding *Hildebrand v. Willig*, that follow the same line of thought, and which are cited as follows:

*Tantum v. Miller and wife*, 11 N. J. E., p. 551;

*Lockerson v. Stillwell*, 13 N. J. E., pp. 357-358;

*Eyre v. Eyre, et als.*, 19 N. J. E., p. 42;

*Gardner, et als. v. Short*, 19 N. J. E., p. 341;

*Ruckman v. Ruckman*, 32 N. J. E., p. 259;

*Schenck v. Hart*, 32 N. J. E. 774, at p. 781;

*Fretz v. Roth*, 70 N. J. E. 764, at p. 770;

*Cutler v. Tuttle*, 19 N. J. E. 549, at p. 562;

*Geroso v. De Maio*, 75 N. J. Eq., p. 410;

*Semenowich v. Melnyk*, 93 N. J. Eq. 615, at p. 619;

*Brower v. Brower*, 98 N. J. E. 218.

In *Hildebrand v. Willig, supra*, and in most of the other cases herein cited, the matter of the conveyance being made to hinder and defraud creditors, was set up as a special defense. In the case at bar, we have the evidence produced on the part of the complainants themselves, showing that the Rickert deed was made to keep the property in question free from the claims of creditors, or possible creditors of the said Henry C. Griffin. It is not necessary to dwell at length upon the case of the complainants, for a reference to the aforesaid cases shows that Vice-Chancellor BUCHANAN could do nothing else but advise a dismissal of the bill of complaint.

### POINT III.

#### ***Ex post facto* acts cannot be considered.**

In the case of *Read v. Huff, supra*, it is clearly and concisely stated by Justice DEPUE in his opinion (40 N. J. E., at p. 234) that the proof which shall raise a resulting trust, or rebut the presumption of a gift or settlement in the case of a child or wife, *must be of facts antecedent to or contemporaneous with the purchase or else immediately afterwards, so as to be, in fact part of the same transaction; a resulting trust cannot be raised from matters arising ex post facto.*

All of the cases cited in Point I refer to the same

doctrine. Its meaning, plainly interpreted, is to the effect that only such evidence can be considered as relates to matters and things prior to, or at the time of the purchase, or immediately afterwards. This last statement in putting it so strongly as "immediately afterwards, so as to be, in fact," "part of the same transaction," must mean only matters and things that happened and took place at the time of the making of the deed.

The only evidence in this whole case relating to what took place before or at the time of the making of the deed from Christian Rickert to John C. Griffin, is to be found in the evidence of Erastus P. Griffin, and Emma Lieb, hereinbefore cited, together with the evidence of John C. Griffin himself (Case, p. 25).

All of the other evidence in the case concerns matters and things which occurred after the death of Henry C. Griffin in 1913, a period of more than four years after the making of the deed. Besides, these acts and doings from 1913 on, as is plainly evident, were not the acts of Henry C. Griffin. He is the only one who could create a resulting trust. The memorandum of agreement between the sons of Henry C. Griffin (Exhibit C-3, Case, p. 53) is dated March 7, 1913; Complainants' Exhibit 4, consists of a number of checks, concerning payments of interest on a mortgage, and the earliest dated of these checks is June 16, 1914; Complainants' Exhibit 5, consisting of 6 checks in payment of taxes, and the earliest dated of these is December 8, 1915. Referring to *Read v. Huff, supra*, these exhibits concerning matters occurring three and four years after the death of Henry C. Griffin, are plainly *ex post facto* acts. With the exception of the few citations from the evidence of Erastus P. Griffin, Emma Lieb and John C. Griffin, most of the other evidence in the case referred to matters

and things happening after the death of Henry C. Griffin, father of John C. Griffin, and the other parties to the action.

#### POINT IV.

**Complainants below were guilty of fatal laches.**

Henry C. Griffin, father of John C. Griffin, the defendant, paid the consideration, and caused the deed of the property in this action to be made by Christian Rickert and wife, to the said John C. Griffin. This deed is dated and executed May 17, 1909, and duly recorded in the Union County Register's Office May 18, 1909. Erastus P. Griffin knew of the making of this deed in 1909 (Case, pp. 11, 19), and Emma Lieb also knew of the same in 1909 (Case, p. 20).

Henry C. Griffin died February 6, 1913, leaving a last will dated November 24, 1911 (Case, p. 51). This will was drawn by Judge Patrick H. Gilhooly, a well known lawyer of this state, and now deceased, who was the legal advisor of Henry C. Griffin. This will simply gives and devises his real and personal property to his widow, Josephine Griffin, and sets forth matters and details as to the carrying on and uses of his business establishment in New York City.

Absolutely nothing is contained in this will relating to any direction, or limiting the possession and ownership of John C. Griffin in the property which his father, Henry C. Griffin, caused to be conveyed to him on May 17, 1909, and surely, if the said Henry C. Griffin had intended that anyone else should have a claim upon this property, he would have referred to the same in his last will. He was careful to detail what should be done with his business, and surely if he had intended anyone else to share in the property owned by John C. Griffin, he would have said so in his will. While such a direction would not have been binding upon his son, John C. Griffin, being an *ex post facto* act, still it would have been an indication of the intentions of the said Henry C. Griffin, and the fact that there is no such statement in the will, must mean that he intended to let the deed stand just as he had caused it to be made.

As a lawyer, Judge Gilhooly had to inquire of Henry C. Griffin at the time of the making of the will, what real and personal property he owned, so as to have the will drawn properly. Mr. Griffin must have told him about the deed to the Elmore property being in the name of his son, John C. Griffin, and as a lawyer, Judge Gilhooly would be obliged to tell him that that property would not pass under the will, unless a conveyance of the same was made to the said Henry C. Griffin before his death. The fact that no such deed of conveyance was made, leads to the conclusion that Henry C. Griffin must have told Judge Gilhooly to let the matter stand as it was.

The rights, if any, of Josephine Griffin, widow of Henry C. Griffin, and mother of the parties in this action, became fixed upon the probating of

the will of Henry C. Griffin in February, 1913. Mrs. Josephine Griffin died in 1921, and there is not a line of evidence showing that from 1913 to 1921 she ever made any claim or demand upon the said John C. Griffin requesting a conveyance to her of the property in question. Judge Gilhooly was her lawyer, and the lawyer of the estate, and there is nothing in the case showing that Judge Gilhooly ever made a demand upon John C. Griffin. In fact, there is nothing showing a demand by anyone upon John C. Griffin from the time the deed was made in May, 1909, until the filing of the bill of complaint on August 13, 1925, a period of more than 16 years.

Surely, if these parties had any rights in this property, they ought to have moved, and have done something before they did, for when this case came on for a hearing, all who could have given any explanation of the matter were dead. As stated, Mrs. Josephine Griffin's rights, if any, became fixed after the death of her husband, Henry C. Griffin, in February, 1913; from that time on nothing was done by Mrs. Griffin, and during the period elapsing until her death in 1921, Christian Rickert, the maker of the deed, died; Judge Gilhooly also died; Mrs. Griffin herself died in 1921, and Clara Griffin, the eldest daughter, who always lived at home, died in 1925. Some of these witnesses could have shed a great deal of light upon the transaction. The complainants were all of age at the time the deed was made in 1909, and if they believed that they and their mother had some rights in the property, they should have taken some steps to have asserted their rights, and should never have waited sixteen years before doing so.

The complainants in this action have slept upon their rights, if they ever had any, and by doing so,

have deprived themselves and the defendant of testimony which might have explained the whole transaction. As a result, it must strike a fair and impartial mind that the evidence produced in this cause is not only against the claim of the claimants, but is of such a character that hardly any court could accept the same as against an absolute deed of conveyance. The cases in this State relating to parties being guilty of laches are numerous. There are cases where parties have lost the testimony of one witness by death, and have been adjudged guilty of laches.

In the present case, the parties suffered four material witnesses to die, the principal of these being Judge Gilhooly, who died in July, 1918. Only a few of the cases relating to laches will be cited:

*McCartin v. Traphagen*, 43 N. J. E. 233;

*Lutgen v. Lutgen*, 64 N. J. E. 773;

*Ten Broech v. Jackson*, 71 N. J. E. 582,  
affd. 73 N. J. E. 734;

*Dunham v. Adams*, 82 N. J. E. 265, 85 N. J. E., 165.

### **Replies to Brief of Complainants-Appellants.**

In reply to the matters stated in the brief of complainants-appellants, Point I admits the force of *Hildebrand v. Willig*, heretofore cited, but tries to evade the same by setting up matter which was

not testified to at the hearing, and which, if testified, would not change the situation. A plain reading of the evidence of Erastus P. Griffin and Emma Lieb heretofore set forth, shows plainly what the intention of Henry C. Griffin was in placing the property in the name of his son, John C. Griffin.

Point II of this brief travels in on a new line, and states that the burden of proof was on the defendants to show fraud on the part of Henry C. Griffin. This is not so, the burden of proof is on the complainants to show that a resulting trust was established, and this utterly failed. Their bill of complaint was filed for the purpose of showing a resulting trust, and all the cases cited in this point are concerned with attacks made by creditors on alleged fraudulent conveyances.

On their own showing, complainants below brought out the facts that Henry C. Griffin caused the conveyance to be made to his son, John C. Griffin, to avoid future business troubles. On the evidence adduced by the complainants below, the learned Vice-Chancellor who heard the case could not advise a decree for complainants, as their own case showed that they were not entitled to any equitable relief.

Again in this point, complainants seem to think that defendants had to prove fraud, but complainants' own case showed the fraud and they brought it out themselves. The learned Vice-Chancellor could not ignore this testimony, and very properly decided that the complainants were not entitled to relief.

Referring to the matters set up in Point III in the brief of complainants-appellants, there is nothing set forth in this point which changes the situation. There is nothing to go by in this case re-

garding the making of the conveyance, except the testimony taken at the hearing, which testimony has been previously referred to. Debts or no debts, the plain meaning and intention, as evidenced by the oral testimony referred to, is so clear that no extended discussion of it is required.

~~Even at the close of their brief, complainants, appellants do not pray for a reversal of the decree, and a direction of a decree in their favor, but ask that the decree of dismissal be set aside to the extent that a new hearing be granted. This is somewhat novel, and~~ **A** dozen hearings would not change the situation, seeing that the complainants have waited sixteen years, and, as heretofore stated, all the witnesses who could shed any light on this transaction are dead, leaving the defendants below as helpless as the complainants,

**It is respectfully submitted that the decree of dismissal should be affirmed, with costs.**

J. A. KIERNAN,  
Solicitor for and of Counsel  
with Defendants-Respondents.

Handwritten lines, possibly a signature or a set of initials, consisting of several horizontal strokes.



