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COMPLAINT.

IN CHANCERY OF NEW JERSEY.

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

The complainant, Clara Seddon, of Atlantic City, 10
in the County of Atlantic and State of New Jersey,
respectfully shows that:

1. On or about September 15, 1913, complainant
purchased from South End Realty Company, all
that certain tract or parcel of land situate in At-
lantic City, Atlantic County, New Jersey, bounded
and described as follows:

BEGINNING at a point in the West line of
Ocean Avenue, 350 feet South of the Southerly 20
line of Pacific Avenue and extends thence (1)
Southwardly in the West line of Pacific Avenue,
51.4 feet; thence (2) Westwardly and parallel
with Pacific Avenue, 50 feet; thence (3) North-
wardly and parallel with Ocean Avenue, 51.4
feet; thence (4) Eastwardly and parallel with
Pacific Avenue, 50 feet to the West line of
Ocean Avenue at the place of beginning.

2. The purchase price of said land and real es- 30
tate was \$19,500, which upon adjustments of insur-
ance, water and sewer rents, interest and taxes, was
reduced to \$19,295.91, of which the sum of \$2795.91
was paid in cash and the balance was secured by
three mortgages of \$10,000, \$2,000 and \$4,500 re-
spectively.

3. Said sum of \$2795.91 was made up in part by moneys raised on promissory notes of complainant, endorsed by Joseph Pickard, the father of complainant.
4. In order to indemnify and save harmless the said Joseph Pickard by reason of his endorsement of said notes, it was agreed that title to said lands and real estate be taken in said Joseph Pickard and
10 retained by him until such time as complainant should pay and satisfy said notes, and also pay to him, the said Joseph Pickard, such moneys as he should expend upon said lands and real estate.
5. Title to said lands and real estate was taken in said Joseph Pickard in accordance with said agreement.
6. Said notes have been fully paid and satisfied
20 by complainant and are now in her hands ready to be produced in this Honorable Court.
7. Said Joseph Pickard advanced for complainant the sum of \$4500 to pay and satisfy a mortgage for said sum and advanced certain other moneys for repairs to and the carrying charges of said lands and real estate, so that on or about October 6, 1919, when an accounting was had between them, it was ascertained that said Joseph Pickard had advanced
30 and expended for the benefit of complainant the sum of \$6000, which complainant then undertook and agreed to pay to said Joseph Pickard, and did at that time pay to him the sum of \$500 on account thereof and has, between said October 6, 1919, and the present time paid to said Joseph Pickard the sum of \$5282.39 on account of the amount due him as aforesaid.

8. Since said accounting said Joseph Pickard had advanced and paid for the benefit of complainant the sum of \$2000 on account of said \$10,000 mortgage, and the amount due him is therefore increased that amount.

9. Said Joseph Pickard died on or about March 9, 1922, intestate, leaving him surviving Annie Pickard, his widow, Clara Seddon (complainant), Frederick Pickard, Edna Gotwols, Annie M. Sites, Emily Newton, Oliver Pickard, John Pickard, children, and Christiana Pickard, the widow, and Frederick Pickard, 2nd, Joseph Pickard, 2nd and William Pickard, the children of his deceased son, James E. Pickard, and only heirs-at-law. 10

10. At the time of his death said Joseph Pickard was domiciled in the City and County of Philadelphia, State of Pennsylvania, and letters of administration upon his estate were duly issued in said County of Philadelphia, to Kensington Trust Company. 20

11. Complainant has tendered herself to said Kensington Trust Company, administrator, etc., as aforesaid, as ready and willing to make further payments on account of the amount due its intestate's estate, but said administrator declined to accept and receive said payments; complainant thereupon requested said administrator to take out ancillary letters of administration in the County of Atlantic, State of New Jersey, where the above mentioned and described lands and real estate are situate, so that she might file her bill for relief in this Honorable Court, which said request was not complied with. 30

12. On August 30, 1922, complainant made application to the surrogate of the County of Atlantic for the appointment of an administrator of the estate of said Joseph Pickard, deceased, and the said surrogate by an order dated August 30, 1922, granted letters of administration upon the estate of said Joseph Pickard, deceased, to Guarantee Trust Company, a corporation of New Jersey.

10 13. Said Guarantee Trust Company has duly qualified as such administrator.

14. Complainant tenders herself as ready, willing and able to pay to said Guarantee Trust Company, administrator of the estate of Joseph Pickard, deceased, or to the said heirs at law of said Joseph Pickard, deceased, such sum as shall be found to be due and owing by her for moneys advanced and paid by the said Joseph Pickard, in his lifetime, for and toward the upkeep, repairs, carrying charges, liquidation of encumbrances and preservation of the above mentioned and described lands and real estate, so as aforesaid held in trust by said Joseph Pickard for complainant.

Complainant is without adequate remedy in the courts of law, and therefore prays:

30 1. That Annie Pickard, Frederick Pickard, Edna Gotwals, Annie M. Sites, Emily Newton, Oliver Pickard, John Pickard, Christiana Pickard, Frederick Pickard, 2nd, Joseph Pickard, 2nd, William Pickard and Guarantee Trust Company, administrator of the estate of Joseph Pickard, deceased, who are the defendants to this suit, may answer this bill of complaint, and each statement therein made.

2. That an account may be taken of the amount due by complainant for moneys paid and advanced by Joseph Pickard, in his lifetime, for and toward the upkeep, repairs, carrying charges, liquidation of encumbrances and preservation of the lands and real estate hereinabove mentioned and described, and credit given to complainant for all moneys paid to said Joseph Pickard on account of said moneys so paid and advanced.

10

3. That when said balance is ascertained and paid by complainant to such person or persons as this Honorable Court shall find entitled to receive the same, that said defendants or one of them may be decreed to great and convey, by a good and sufficient deed the lands and real estate hereinabove mentioned and described.

4. 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.

20

C. C. SHINN,
*Solicitor and Counsel with
Complainant.*

30

ANSWER.

(Filed Mar. 3, 1923.)

IN CHANCERY OF NEW JERSEY.

10

Between

CLARA SEDDON,

Complainant,

and

ANNIE PICKARD, *et als.,**Defendants.*

Answer.

20

The defendants, Annie Pickard, Frederick Pickard, Edna Gotwals, Annie M. Sites, Emily Newton, Oliver Pickard, John Pickard, Christiana Pickard, Frederick Pickard, 2nd, Joseph Pickard, 2nd, and William Pickard, answering the bill of complaint in the above matter, say:

30 1. The allegation that the complainant purchased the property referred to in paragraph 1 of the complaint is denied and these defendants say that said property was purchased by Joseph Pickard, the father of the complainant.

2. The allegations of paragraph 2 are neither admitted nor denied, as these defendants have no definite knowledge of the exact amount paid for said property.

3. The allegations of paragraph 3 are denied and these defendants say that whatever money was paid for said property was advanced and paid by Joseph Pickard.

4. The allegations of paragraph 4 are denied and these defendants say that said property was purchased by Joseph Pickard and title taken in his own name without any agreement, either verbal or in writing, that the complainant had any equitable or beneficial interest in said property. 10

5. It is admitted that title to said lands and real estate was taken in the name of Joseph Pickard but it is denied that there was any agreement, as set forth in paragraph 4 of said complaint.

6. Any money paid by the complainant to Joseph Pickard or for his use and benefit was paid as rental for the use and occupation of said property and not on account of the purchase price thereof. 20

7. The allegations of paragraph 7 are denied and these defendants state that all moneys paid for the purchase price of said property or to remove liens or encumbrances thereon were paid by Joseph Pickard and any moneys paid by the complainant were for rental for the use and occupation of said property.

8. These defendants make the same answer to paragraph 8 as previously made to paragraph 7 of the complaint. 30

9. The allegations of paragraph 9 are admitted.

10. The allegations of paragraph 10 are admitted.

11. The allegations of paragraph 11 are admitted.

12. The allegations of paragraph 12 are admitted.

13. The allegations of paragraph 13 are admitted.

10 14. These defendants say that the complainant is not entitled to the property referred to and that the sum which she offers to pay, together with the encumbrances on said property, is only one-half of the value thereof, and that the complainant has no valid claim or lawful claim to the title to said property, and has no writing signed by said Joseph Pickard recognizing her claim or that she has any beneficial interest therein, and that the claim as stated by the complainant is barred by the statute of frauds.

20 These defendants pray to be hence dismissed, with their reasonable costs in this behalf sustained.

JOSEPH BECK TYLER,
Attorney for Defendants.

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

10	Between CLARA SEDDON, <i>Complainant,</i> and ANNIE PICKARD, <i>et als.,</i> <i>Defendants.</i>	} On Bill, &c. Conclusions.
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For complainant: MR. C. C. SHINN.

For defendants: MR. JOSEPH BECK TYLER.

20

INGERSOLL, V. C.:

Without restating the testimony, I am convinced that the motion to dismiss the bill must be denied and that the complainant is entitled to the relief prayed for. A reference to a Master will be advised to state an account.

30 Determined: March 31st, 1924.

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

Between CLARA SEDDON, <i>Complainant,</i> and ANNIE PICKARD, <i>et als.,</i> <i>Defendants.</i>	}	On Bill, etc. Final Decree.	10
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This cause coming on to be heard in the presence of C. C. Shinn, solicitor of the complainant, Clara Seddon, and Joseph Beck Tyler, solicitor of the defendants, Annie Pickard, Frederick Pickard, Edna Gotwals, Annie M. Sites, Emily Newton, Oliver Pickard, John Pickard, Christiana Pickard, Frederick Pickard, 2nd, Joseph Pickard, 2nd, and William Pickard. 20

And the Court having examined the pleadings and taken proofs orally and in open court, and having heard and considered the arguments of counsel and being satisfied that Joseph Pickard held title to the lands and premises hereinafter described in trust 30 for said complainant, and orally agreed to convey to said complainant upon her reimbursing him for the amounts which he had advanced for the benefit of said complainant; that before complainant had completed her payments to the said Joseph Pickard, the said Joseph Pickard died on or about March 9, 1922, leaving him surviving as his next of kin and

heirs at law, the said complainant and said defendants; that said complainant in pursuance of said agreement duly entered upon said lands and premises and took possession thereof;

And it further appearing by the report of William Frank Sooy, the special master, to whom was referred by order dated May 14, 1924, the above stated matter to ascertain and determine from an accounting to be had between the parties in interest
10 hereto, what sum is due from the complainant to the other heirs at law of Joseph Pickard, deceased; that complainant and said Joseph Pickard had an accounting on or about October 6, 1919, as a result of which accounting it was ascertained that complainant owed to the said Joseph Pickard at that time the sum of \$6,000 on account of moneys so as aforesaid advanced by him for the benefit of complainant; that complainant paid to the said Joseph Pickard in his lifetime, the sum of \$4920.00 leaving
20 a balance due him at the time of his death, amounting to \$1080.00 on account of the principal; with interest amounting to the sum of \$731.53, said interest being calculated as of February 18, 1925, the date of said Master's report, making a total indebtedness of complainant to the estate of said Joseph Pickard at the time of the date of said Master's report, the sum of \$1811.52; that since the death of the said Joseph Pickard there have been advanced out of the funds of the estate of said Joseph Pickard, deceased, for the benefit of said complainant,
30 by way of taxes, insurance, interest and the payment on account of the principal of a mortgage against said lands and premises, amounting to the sum of \$6106.51, upon which there is due interest amounting to \$1328.71, said interest being calculated as of said February 18, 1925, making a total amount of principal and interest due from complainant for

said advancements the sum of \$7435.22, and in addition thereto there was advanced for interest, taxes and fire insurance, the sum of \$615.17, upon which, by stipulation of counsel for all the parties in interest, no interest was to be charged, making the total amount due from complainant to defendants, the sum of \$9861.92, with interest thereon from February 18, 1925.

And it further appearing that said defendants have refused and still refuse to deliver to said complainant, a deed for said lands and premises; and the Court being of the opinion that said complainant is entitled to the specific performance of said contract as prayed. 10

It is on this 24th day of November, 1925, ordered, adjudged and decreed that the said defendant, Guarantee Trust Company, a corporation, etc., administrator of the estate of Joseph Pickard, deceased, within 30 days after the service upon it of a true but uncertified copy of this decree and upon payment to it of the sum of \$9861.92 with lawful interest thereon, from 2/18/25, execute and acknowledge in due form of law and deliver to the said complainant, Clara Seddon, a good and sufficient deed of conveyance for all those certain lands and premises situate in Atlantic City, Atlantic County, New Jersey, bounded and described as follows: BEGINNING at a point in the West line of Ocean Avenue, 350 feet South of the Southerly line of Pacific Avenue and extends thence (1) Southwardly in the West line of Pacific Avenue, 51.4 feet; thence (2) Westwardly and parallel with Pacific Avenue, 50 feet; thence (3) Northwardly and parallel with Ocean Avenue, 51.4 feet; thence (4) Eastwardly and parallel with Pacific Avenue, 50 feet to the West line of Ocean Avenue, at the place of beginning. 20 30

It is further ordered that the said defendants herein pay to said complainant, Clara Seddon, the cost of this suit to be taxed, including a counsel fee of one hundred dollars, which is hereby allowed to said complainant; and that in default of the payment of said taxed costs within 30 days after the service upon said defendants of true but uncertified copies of this decree and of said taxed costs, execution issue against the goods and chattels, lands, 10 tenements, hereditaments and real estate of the said defendant, Annie Pickard, Frederick Pickard, Edna Gotwals, Annie M. Sites, Emily Newton, Oliver Pickard, John Pickard, Christiana Pickard, Frederick Pickard, 2nd, and William Pickard and Joseph Pickard, 2nd, and Guarantee Trust Com-
pany, a corporation, etc., administrator of the estate of Joseph Pickard, deceased, to make said costs according to the directions of this Court.

Respectfully advised:

20

E. R. WALKER,
C.

ROBERT H. INGERSOLL,
V. C.

30

*Notice of Appeal to Court of Errors
and Appeals* 15

NOTICE OF APPEAL TO COURT OF
ERRORS AND APPEALS.

IN CHANCERY OF NEW JERSEY.

10

Between
CLARA SEDDON,
Complainant,
and
ANNIE PICKARD, *et als.*,
Defendants. } On Bill, Etc.
Notice of Appeal to
Court of Errors
and Appeals.

20

Take notice that the defendants, Annie Pickard, Frederick Pickard, Edna Gotwals, Anna M. Sites, Emily Newton, Oliver Pickard, John Pickard, Christianna Pickard, Frederick Pickard, second, Joseph Pickard, second, and William Pickard appeal from the final decree made in the above entitled cause and especially that part thereof which provides that the Guarantee Trust Company, a corporation, etc., administrators of the Estate of Joseph Pickard, the deceased—shall execute and deliver to the complainant a deed in fee simple for the property therein described.

30

JOSEPH BECK TYLER,
Solicitor for Defendants.

erick Pickard, second, Joseph Pickard, second and William Pickard, the appellants in the above entitled cause respectfully shows:

1. Your petitioners are aggrieved by the final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, dated the twenty-fourth day of November, 1925, wherein Clara Seddon was complainant and your petitioners were defendants, to wit:

10

(a) The said decree erroneously required your petitioners to make conveyance of the property therein described to the complainant.

(b) The testimony of the complainant was erroneously admitted as to transactions and conversations with Joseph Pickard the deceased, through whom both the plaintiff and the defendants claim title.

(c) The claim of the complainant that title was taken by Joseph Pickard for the use and benefit of the complainant is not supported by the proofs.

20

(d) There can be no resulting trusts for the reason that the whole consideration was not paid by the complainant.

(e) Because the complainant is attempting to enforce an expressed agreement contrary to the Statute of Frauds.

(f) That the agreement of October, 1919, of the complainant to purchase the property for eighteen thousand dollars wiped out all previous agreements.

30

2. Your petitioners, therefore, appeal from the said decree and each and every part thereof for the reasons above stated.

Your petitioners pray that the said decree of the Chancellor may be reversed, set aside and for nothing holden and that your petitioners may have such

other and further relief in the premises as to this Honorable Court shall seem meet.

JOSEPH BECK TYLER,
*Solicitor for Defendants-
Appellants.*

[ENDORSED]

10 Service hereof is acknowledged this
11th day of December, 1925.
Solicitor for Complainant-
Respondent.

ANSWER TO PETITION OF APPEAL.

20 NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

CLARA SEDDON,

*Complainant-
Appellee,*

and

30 ANNIE PICKARD, *et als.,*

*Defendants-
Appellants.*

} On Appeal from the
Court of Chancery.
Answer to Petition of
Appeal.

The answer of Clara Seddon, the above-named appellee, to the petition of Anna Pickard, *et als.*, the above-named appellant.

This appellee, not admitting the truth of all or any of the matters in the said petition on appeal contained, for answer thereto nevertheless, admits that a decree was on the 24th day of November, 1925, made and entered in the Court of Chancery of New Jersey, in the above-entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, this appellee begs leave to refer thereto when the same shall be produced.

10

This appellee is advised and believes that the said decree is agreeable to equity; and she prays that the same may be affirmed with costs to be taxed in favor of this appellee.

C. C. SHINN,
*Solicitor and of Counsel with
Appellee.*

20

30

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

10

Between

CLARA SEDDON,

Complainant,

and

ANNIE PICKARD, *et als.*,*Defendants.*On Bill, &c.
Final Hearing.

20

Atlantic City, N. J., October 2, 1923.

TESTIMONY

before HON. R. H. INGERSOLL, Vice-Chancellor.

30 APPEARANCES:

For the complainant, C. C. SHINN, Esq., and W.

ELMER BROWN, JR., Esq.

For the defendants, JOSEPH BECK TYLER, Esq.

EUGENE R. COLLOTTY, sworn for complainants.

Direct examination.

By Mr. Brown:

Q. Mr. Collotty, what is your business?

A. Real estate.

10

Q. Where do you conduct that business?

A. At present at the Chelsea National Bank Building.

Q. In Atlantic City?

A. Atlantic City.

Q. Were you in the real estate business in Atlantic City in 1913?

A. At number six South South Carolina Avenue at that time.

Q. Do you know Clara Seddon?

20

A. I do.

Q. Were you instrumental in having her purchase a property on Ocean Avenue in Atlantic City about September fifteenth, 1913?

A. I was, yes.

Q. That property was owned by whom at that time, if you know?

A. It was owned by a company which Clarence Busch—I done business with a man by the name of Jolly and he represented Clarence Busch. Clarence Busch seemed to be the owner although it was in a company's name.

30

Q. Do you know the name of the company?

A. I can't just recall the name.

Q. Would you know the name if it was repeated?

A. I would, yes.

Q. Was it the South End Realty Company?

A. That is right, yes. I talked very little about the company.

Q. The negotiations in behalf of the owner of the property were had with whom?

A. Mr. Jolly.

Q. Mr. Jolly was whom?

A. He represented the South End Realty Company.

Q. Was he a real estate agent?

10 A. Yes, he was.

Q. Were the terms of the purchase discussed with anyone else for this company?

A. Nobody done any business with us but Mrs. Seddon.

Q. How did Mr. Busch come into it? You have mentioned his name?

20 A. Mr. Busch was the one who had control of the mortgage there, I think the second mortgage, and whatever business we done, Mr. Jolly would always say to me "Mr. Busch will have to be consulted in this matter to see"—the place was bought on easy payment, they didn't take title right away, the payments were very small, of course, the way it was sold, we had to have someone advise us whether or not the conditions would be taken as Mrs. Seddon wanted to pay for the hotel and Mr. Jolly would always refer to Mr. Busch in speaking about the terms.

30 Q. Do you recall the purchase price agreed to be paid?

A. It was to be twenty thousand dollars and I think it was finally settled on \$19,500; \$20,000 was the contract price first.

Q. Do you know whether or not there was any settlement had between the South End Realty Company and Mrs. Seddon? Do you know of your own

knowledge? Were you present at such a settlement?

A. I was not, no.

Q. Do you know whether or not the South End Realty Company, after making this agreement, subsequently conveyed it, and, if so, to whom?

A. Well, there was some—Mrs. Seddon had some—I done business with Mrs. Seddon in another matter before that and there was some talk about her not taking title, she thought she would get someone else to take title and she decided to have her father hold the title for her. 10

Mr. Tyler: I object to that.

The Court: Yes, that is not responsive.

Mr. Tyler: Ask to have that stricken out.

The Court: It may be done. 20

Q. Do you know whether or not the South End Realty Company made a conveyance of this property and, if so, to whom?

A. I know they made a conveyance because I got the commission afterwards.

Q. Do you know to whom they made the conveyance?

A. It was made to Mrs. Seddon's father.

Q. Do you know his name? 30

A. Two or three years now; Pickard.

Mr. Tyler: It is admitted Joseph Pickard took title and held it at the time of his death.

Q. Did you have any conversation with Mr. Pickard subsequently to his having taken title to this property?

A. I talked to Mr. Pickard several times before and after that.

Q. Before and after the taking of the title?

A. Yes up in his place. I was in his place of business in Philadelphia to see him.

Q. Do you recall any of the conversations which you had with him prior to his taking title to this property which had to do with this property?

10 A. Yes, I was trying to refinance the matter. He said he was interested in helping his daughter out, the only interest he had and that was all the money he advanced her. I was trying to refinance the property and get more mortgages on it than what was on it, the third mortgage was an instalment mortgage and we were trying to borrow fifteen thousand dollars on it, was ten thousand on it then first. Of course I talked to him about it several times.

20 Q. That was before the settlement was made on the agreement between Seddon and South End Realty Company?

A. Before and afterwards.

Q. Did you have any conversation with him wherein he discussed the status of the title to this property and what he proposed to be done with it?

A. Yes.

Q. What conversation did you have?

30 A. Well, he made it very plain to me that he was holding title for his daughter and as soon as she repaid him back the money he had advanced to her it would be placed back in her name.

Q. About when did you have your last conversation with him about this property?

A. Oh, it was quite a little while before he died, because I was away from here for a few years and I hadn't seen Mrs. Seddon for five years; I guess

it was before that. Oh, it has been—I was away from here for six years.

Q. Was it before you left Atlantic City?

A. Yes, before I left Atlantic City.

Q. What was the occasion—where did that conversation take place?

A. Last time I talked to him was in his place in Philadelphia.

Q. Did you ever have a conversation with him in your office?

10

A. Oh, yes; he was to see me.

Q. What was the occasion of his coming to see you?

A. Well, it was about refinancing the property, wanted to know how I was making out for mortgages.

Q. Do you know how the cash money was provided for at the time of the settlement?

Mr. Tyler: That is objected to. He says he was not present at the settlement; don't know what happened. 20

A. No, I wasn't present at the settlement.

The Court: He may know without being present. He can say if he knew how the cash money was secured. I will permit the question if he can answer it.

30

A. I wasn't present at the settlement because I only, never did recognize anyone else but Mrs. Seddon as the purchaser of the property, any money I would know was paid I would consider —

Mr. Tyler: I object as not responsive.

The Court: No, let that be stricken.

Q. Did you know anything of any note transaction between Mrs. Seddon and her father?

A. No, only what I was told.

Q. You have no personal knowledge of it?

A. No.

Q. Who told you of it?

A. Mrs. Seddon.

10 Q. Did you ever have conversation with Mr. Pickard about it?

A. No; I don't believe that question was ever brought up.

Cross-examination.

By Mr. Tyler:

20 Q. When was the last conversation, about how long ago, that you had with Mr. Joseph Pickard?

A. That was in his Philadelphia place of business, I can't just recall how long ago it has been.

Q. Well, was it—you say you have been away for six years?

A. Yes.

Q. And it was before that time?

A. Yes.

Q. About how long before that time?

A. I couldn't tell you that.

30 Q. His conversations with you were principally in regard to refinancing the property, were they not?

A. All the talk I ever had with Mr. Pickard was about that, yes.

Q. He was seeing you about replacing the mortgages?

A. No, he wanted to know how I was making out, me placing the mortgages for his daughter, not for him, no.

Q. But it was all in regard to placing the mortgages?

A. Yes.

Q. You were interested, you mean, in refinancing the property, getting mortgages on it?

A. Yes.

Q. Mr. Pickard held title to the property? 10

A. Yes.

Q. And he was the one that you talked to about it?

A. Held title for his daughter; he told me that.

Q. I didn't ask you that. That is what he told me. You asked me what he said. I am telling what he told me.

Mr. Tyler: Move to have that stricken out; it is not responsive. 20

The Court: Yes; it is not responsive.

Q. Mr. Pickard is the one you had to see about refinancing or placing the mortgages on the property, wasn't it?

A. No; Mrs. Seddon.

Q. You did go to see Mr. Pickard?

A. Yes.

Q. Why did you go to see him? 30

A. Because Mrs. Seddon told me to go up to see him and tell him how I was making out.

Q. She sent you to Mr. Pickard?

A. Yes.

Q. You don't know anything about what happened within the last six or seven years, do you?

A. No; I am not familiar with that.

MRS. CLARA SEDDON, sworn for complainant.

Direct examination.

By Mr. Brown:

Q. Where do you live, Mrs. Seddon?

A. I am living at St. Charles Place just now.

10 Q. You will have to speak up.

A. 100 St. Charles Place.

The Court: Atlantic City?

A. Yes.

Q. You were the daughter of Joseph Pickard, now deceased?

A. Yes, sir.

20 Q. About September the fifteenth, 1913, did you take up negotiation for the purchase of a property on South Ocean Avenue?

A. Yes, sir.

Q. Known as what?

A. It wasn't known, didn't have a name at that time; I named it the Belden.

Q. Belden?

A. Yes.

Q. And you first took up the negotiations for that property with whom?

A. Mr. Collotty and Mr. Jolly.

30 Q. Did you finally make an agreement for the purchase of the property?

A. Yes, sir.

Q. Through them?

A. I made agreement at the time I took it.

Q. I say through them you finally made an agreement for the purchase of the property?

A. Through Jolly's office, yes.

Q. Do you know where that agreement now is?

A. I do not.

Q. Was the agreement in writing?

A. No, it was typewritten, formal agreement like they make up.

Q. Have you made a search for the agreement wherever you thought it might be?

A. Yes, I have.

Q. Have you made search at your home among your various papers and personal belongings? 10

A. Yes, sir.

Q. Have you been able to find it?

A. No, sir.

Q. Have you made that search recently?

A. Yes, I have been on the lookout for it, I think I turned it over to my father, I think I turned the agreement over to him with the other papers when he took title.

Mr. Brown: Can you tell me, Mr. Tyler, whether any such paper has been found among the effects of Mr. Pickard? 20

Mr. Tyler: I haven't seen it.

Q. What was the purchase price agreed to be paid by you?

A. \$19,500.

Q. You mean \$19,500?

A. Yes, sir. 30

Q. Did you, after making that agreement, finally meet with the owner of the property for settlement?

A. Yes.

Q. Where did you meet?

A. Guarantee Trust Building, I think. You mean for this final settlement?

Q. Where did you meet for the final settlement?

A. In Jolly's office.

Q. Did you finally go to the office of the South Jersey Title and Finance Company?

A. Yes, with Mr. Jolly.

Q. With Mr. Jolly?

A. And my father.

Q. Was the statement of settlement made up there at that time?

A. Yes.

10 Q. I show you what purports to be a statement of settlement on the paper of South Jersey Title and Finance Company and ask you if that is the settlement statement that was made up at that time?

A. Yes, sir.

(Paper marked C1 for identification.)

20 Q. At the time of making this settlement was your father, Joseph Pickard, present?

A. Yes, sir.

Q. Did he go over the figures with you?

A. Yes, sir.

Q. Do you know how much money was paid by—how much money was paid in cash to make the settlement?

A. There was to be three thousand dollars in the settlement and adjustment of the taxes and one thing another made it come a little under the three
30 thousand.

Q. And that money was provided for in what way?

A. By me.

Mr. Tyler: I object. I think we are reaching a very critical stage. The fact is that this plaintiff now purports to testify as to transactions with

the decedent and I contend that she is not qualified to testify as to transactions with the decedent, how the money was provided to pay for title taken by the decedent.

Mr. Brown: If your Honor please, I don't understand that there is any such rule of law as that. She certainly is precluded from testifying, I realize, as to any conversations concerning the transaction that she may have had with the deceased.

10

The Court: I think the present question is admissible; whether it goes any further or not is a different proposition entirely; the present question is admissible.

Mr. Tyler: I object to that because it goes into a relationship between her and her father as to how the money was provided.

20

The Court: I have no reason to know that. It may develop so. If it does then, of course, it will have to be then considered, but there is nothing in the question to indicate that that would permit me to overrule the question. I will permit the question.

Mr. Tyler: May it please the Court, I think it has this bearing, this title was taken by the father. Now then if it is an attempt to show why it was taken by the father or what went to pay for the father's title, it is a transaction with the father.

30

The Court: I will permit this present question to remain.

Q. Where did you get the money from?

Mr. Tyler: Objected to.

The Court: How does that have any relevancy at the present time?

Mr. Brown: If your Honor please, I want to show, as I said before, that there were certain promissory notes made. The testimony will disclose that those notes were made. The first note was
10 made at the time of this settlement, the proceeds of which, this cash money, was paid in making the settlement and that that constituted the first financial interest which the father had in this property, which was simply as an endorser on Mrs. Seddon's notes.

The Court: You are anticipating the defense, are you not? The testimony now is that she furnished this money. Why, at this stage of the proceeding,
20 go into it, where she obtained it? As it now stands she furnished the money.

Q. Did the South End Realty Company, the owner of this property, make conveyance of the property to you?

A. No. To my father.

Q. They made conveyance to your father?

A. Yes.

Q. After making the conveyance to your father
30 what, if anything, did you have to do with the property?

A. Why I just had everything to do with it.

Q. Well, did you —

Mr. Brown: If your Honor please, might I have the privilege of withdrawing this witness for the purpose of putting Miss Mitchell on the stand? She

is very busy down in the title company office and I would like to get her back.

(Witness temporarily withdrawn.)

MISS BESSIE MITCHELL, sworn for complainant.

Direct examination.

10

By Mr. Brown:

Q. Miss Mitchell, you are at the present time an officer of the Atlantic Guaranty and Title Insurance Company, are you not?

A. Yes, sir.

Q. And were you on September fifteenth, 1913, connected with the South Jersey Title and Finance Company?

20

A. Yes, sir.

Q. In what capacity?

A. Assistant secretary.

Q. I show you files of the South Jersey Title and Finance Company number 3285 and ask you whether or not you had anything to do with the transaction as represented by that file?

A. That is my writing and I took in the order.

Q. You took in the order for what?

A. For insurance of the title.

30

Q. Who made the final settlement, if you can tell, from that file?

A. I did.

Q. You are now referring to a sheet of that file marked "revised statement" is that in your handwriting?

A. Yes, sir.

Q. I show you a paper which has been marked C1 for identification and ask you whether or not that is a copy of the paper which you have referred to in the file and is it in your handwriting, the copy?

A. Yes, sir.

(Paper from file marked C2 for identification.)

10 Q. This paper, the yellow sheet in the file marked "fire insurance" and dated September 29, 1913, is that in your handwriting?

A. Yes, sir.

Q. Do you have any personal recollection of this transaction?

A. I do not.

20 Q. The statement of settlement which you have referred to refers to a settlement between South End Realty Company, seller and Clara Seddon, purchaser, that being in your handwriting; there appears to be another statement of settlement in type-writing between South End Realty Company, seller, and Joseph Pickard, purchaser; do you know anything about those two statements?

A. No, I do not.

Q. Will you refer to them and tell us whether or not the figures are the same on both?

A. They are.

Q. Were the two statements similar in every respect excepting the name of the purchaser?

30 A. Yes, sir.

The Court: Does your file show any assignment of an agreement made by Mrs. Seddon and the South End Realty Company or any authorization to make the deed to Pickard?

A. It does not.

No cross-examination.

ERNEST A. LORD, sworn for complainant.

Direct examination.

By Mr. Brown:

Q. Mr. Lord, you are the secretary and treasurer of the South Jersey Title and Finance Company?

A. Secretary.

10

Q. I show you what purports to be a file of the South Jersey Title and Finance Company marked number 3285, marked C2 for identification, and ask you whether or not you identify that as the contents of one of the files of that company?

A. Yes, sir.

Q. That file was produced by you here this morning?

A. Yes, sir.

Q. Do you have any personal knowledge of the transaction represented by that file?

20

A. Only in so far as the settlement certificate is concerned, showing the exceptions to the title.

Q. What connection did you have with that?

A. When the settlement certificate was issued as of its date, September ninth, 1913, the papers were referred to me for me to remove certain exceptions shown thereon which appeared to be against the title and I recommended the removal upon certain papers being furnished.

30

Q. You didn't come in direct contact with the parties and the settlement?

A. No, sir.

Mr. Brown: I offer in evidence the file of the South Jersey Title and Finance Company, as well as the statement of settlement which was in the

possession and produced and offered by the complainant.

(Papers admitted and marked Exhibits C1 and 2.)

MRS. CLARA SEDDON, resumed.

10 Direct examination.

By Mr. Brown:

Q. Have you ever been in possession of the property?

A. Yes, sir.

Q. Since when?

A. Practically ever since the time of settlement.

20 Q. How soon after the settlement was it that you actually occupied the property?

A. I was in the property when the settlement was made.

Q. You were occupying the property at the time the settlement was made?

A. Yes.

Q. Did you continue to occupy it after the settlement?

A. Yes, and I rented it every year, if I could, rented it.

30 Mr. Tyler: I object. I object to anything that involves the transaction and occupancy of this property which may relate to any transaction with the decedent. Decedent had title to it in 1913, now any occupancy would be under some arrangement with the decedent and involves a transaction with him, and I object.

The Court: I will strike out the last clause "I rented it."

Q. I show you what appears to be a receipt dated October sixth, 1919, and ask you in whose handwriting that is?

A. My father's—this is mine—that is all of my father's writing there.

Q. From whom did you receive that paper?

A. Through the mail from my father with a letter. 10

Q. I show you what appears to be a letter dated October 7, 1919, and ask you if that is the letter to which you refer?

A. Yes, sir.

Q. And did that letter come with that receipt in the mail to you?

A. Yes, sir.

Q. In whose handwriting is that letter?

A. My father's. 20

(Letter and receipt offered and admitted in evidence, marked Exhibits C3 and 4.)

Q. I show you a paper on the heading "Belden," dated 1920 and ask you in whose handwriting that it?

A. My father's.

Q. Where did you get it?

A. He sent it to me. 30

Q. Did you receive that in the mail?

A. Yes, sir.

Mr. Brown: I offer this paper in evidence.

(Paper received in evidence and marked Exhibit C5.)

Q. I show you another paper on the heading Belden, it has some figures on the face of it, with some writing on the back; in whose handwriting are the figures?

A. My father's.

Q. In whose handwriting is the writing on the back?

A. My father's.

10 Q. Did this second paper come with the one that I showed you or just preceding it?

A. At the same time?

Q. Yes.

A. I couldn't say; I don't remember.

Q. Do you know what bearing this latter paper has on the first?

A. I think it was the figuring of the mortgages.

Q. You don't know?

A. I don't remember.

20 Q. I show you another paper dated June eighteenth and ask you in whose handwriting that is?

A. My father's.

Q. Where did you get that?

A. He gave it to me.

(Paper offered and received in evidence, marked Exhibit C6.)

30 Q. I show you five checks dated August 7, 1919, January 30, 1920, March 2, 1920, July 14, 1920, and August 6, 1920, and ask you in whose checks they are and in whose handwriting they are?

A. Mine.

Q. They appear to be made to the order of Joseph Pickard; will you examine the endorsement on the back and tell me whether or not—that is not correct—four of those checks seem to be payable to the order of Joseph Pickard, will you examine them

on the back and tell me whether or not they have been endorsed by your father?

A. Yes.

Q. Is that his signature on the back?

A. It is.

(Four checks offered and received in evidence marked Exhibits C7 to 9 inclusive.)

Q. The fifth check is made out to the order of Sarah S. Klemmer; do you know whether or not that is one of the checks which is referred to in the paper marked C6?

A. I think this was payment for some taxes—insurance.

Q. Who is Sarah S. Klemmer?

A. My daughter.

Q. And that was given to her for what?

A. To pay some insurance.

Q. Insurance on this property?

A. Yes.

(Check received in evidence and marked Exhibit C11.)

Q. I show you a letter marked "Wildwood, December 12, 1921," and ask you in whose handwriting that is?

A. My father's.

Q. Did you receive that in the mail?

A. Yes, sir.

Q. I show you another paper and ask you in whose handwriting that is?

A. My father's.

Q. Did these two papers come to you at the same time?

A. This came to me about the time I got the re-

ceipt and the letter in regards to the property saying that he would pay everything up by the end of the year or shortly after, I can't just remember.

(Letter and paper referred to received in evidence and marked Exhibits C12 and 13.)

Q. I show you a check dated September 15, 1921, to the order of Water Department for \$55; whose
10 check is that?

A. Mine.

Q. That is to pay water rent on what property?

A. 136 Ocean Avenue, Belden Hotel.

(Check offered in evidence.)

Mr. Tyler: I don't know how far we are going with this, but I object to transactions of this kind. Now these transactions appear to have been either
20 paid for the father—the father held title—and I don't see how any carrying charges on this property, until she first establishes her right by competent evidence, can be material, and I object to a series of transactions which were probably done for the father; certainly the inference is that.

Mr. Brown: Not when taken together, if your Honor please, I think when taken with the other writings that have been introduced in evidence, the
30 statement, and so forth, of carrying charges that were given by the father to the daughter, it shows and has a bearing upon the agreement which was claimed in the bill to have existed between the father and the daughter with respect to the title to this property and the carrying of the property until such time as the daughter might take it off his hands.

Mr. Tyler: That is just my objection, the bill sets up an express agreement with the father—which has not yet been proved and until we find that there is such an agreement, then I think these various things must be transactions with the father, can't be anything else, they are paying water rent on the father's property, certainly dealing with the father.

The Court: I think I will admit them at the present time subject to being stricken out if they are not found to be evidential eventually. I will permit them at the present time with that condition. 10

(Check admitted and marked Exhibit C14.)

Q. I now show you ten checks made to the order of Joseph Pickard, whose checks are they?

A. Mine.

Q. Will you look on the back of them and tell me who has endorsed them? 20

A. My father.

Q. And those checks are all made in the year 1921, are they not?

A. Yes.

Q. With the exception of the two which I now show you, made in 1922?

A. 1922; they were the last two.

(Checks received in evidence and marked Exhibit C15.) 30

Q. I show you another paper on the letter head of Joseph Pickard and ask you in whose handwriting the figures and notations on that paper are made, if you know?

A. My father.

Q. Do you recall how you came in possession of that paper?

A. No, I do not. I know it was sent to me.

(Paper received in evidence and marked Exhibit C16.)

Q. I show you a letter dated Lawndale, dated December 30, 1921, addressed to you and ask you in
10 whose handwriting that is, if you know?

A. My father.

Q. Did you receive that in the mail?

A. Yes, sir.

(Letter received in evidence and marked Exhibit C17.)

Q. Since your father's death who has paid the carrying charges on this property?

20 A. I have. I think there was one payment soon after he died that went up to the trust company and they paid but since then I have paid it.

Cross-examination.

By Mr. Tyler:

Q. Mrs. Seddon, the money that was paid for this property was all raised on your father's note or
30 notes, wasn't it?

A. No, there was about \$2500 of it I had paid.

Q. That is you had paid money before you turned the property over to your father, isn't that true?

A. I had paid.

Q. And then the money at the settlement was either paid by your father or raised on his notes, wasn't it?

A. I raised that at the bank and he was my endorser.

Q. You didn't answer my question; it was raised on your father's notes, wasn't it?

A. Well, it wasn't, no; it wasn't my father's note, no.

Q. Didn't your father endorse all those notes?

A. He endorsed my note, yes.

Q. And the money that was raised before settlement was gotten on his endorsement? 10

A. No; only five hundred dollars of it.

Q. What?

A. Only five hundred of it.

Q. There was only a balance of \$253.90 paid at the settlement, isn't that true?

A. Yes.

Q. And that money was paid by Mr. Pickard, wasn't it?

A. The money had already been paid by me.

Q. I am not asking what was paid prior to settlement, but what was paid at the settlement, money at the settlement, balance due then was paid by Mr. Pickard, wasn't it? 20

A. I don't recall. I don't know what you mean. I had paid three thousand dollars when I had title.

Q. All the payments made in reduction of the various mortgages was paid by Mr. Pickard, wasn't it?

A. No; they were paid by me.

Q. Well, you may have actually turned over the money, but didn't he advance the money or pay the money, didn't you get the money from him? 30

A. No.

Q. You had him endorse several notes for you, didn't you?

A. He endorsed a note for me, yes, one note.

Q. How much?

A. I think it was six hundred, six hundred and fifty. The note is there. You have it.

Q. Don't you know, Mrs. Seddon, that the payments made on the mortgages were made by him, by Mr. Pickard, your father?

A. Certainly.

Q. They were, weren't they?

A. Yes, because he got the money from the hotel to pay them with, the proceeds.

10 Q. In other words you collected the rents of the hotel, didn't you?

A. Yes.

Q. And you remitted them to him?

A. Yes.

Q. And the payments that were made for interest on the mortgages to Mr. Nixon were made by Mr. Pickard, weren't they?

A. Yes, until his death.

20 Q. And the taxes that were paid from time to time were paid by Mr. Pickard, that is true, isn't it?

A. Oh, yes, certainly.

Q. In other words, Mr. Pickard paid off one mortgage of how much? How much was that mortgage that he paid off?

A. I couldn't tell you; I don't remember.

Q. Wasn't it forty-five hundred dollars?

A. I think it was.

30 Q. Didn't he pay two thousand on the first mortgage, reduce that?

A. Yes.

Q. Now that money he kept account of, didn't he, from time to time?

A. Yes.

Q. And he sent you statements of it, didn't he?

A. Yes.

Q. Likewise, when you collected the rents, you kept account of that, didn't you?

A. That accounts for the six thousand dollars equity he has in it.

Q. Never mind that, you kept account of the rents, didn't you?

A. No, I didn't keep account.

Q. You just sent them up to Mr. Pickard?

A. I just turned it over to him as I got it.

Q. In other words, you were managing the hotel 10 down here, either yourself, or renting it, weren't you?

A. What say?

Q. You were either renting it or running it yourself?

A. I ran it when I couldn't rent it, yes.

Q. And Mr. Pickard paid the bills and you remitted the rent to him?

A. Yes.

Q. And that continued for, up until practically 20 the time of his death, didn't it?

A. No, up until three years ago.

Q. He died in 1922, didn't he?

A. Yes.

Q. Is that right?

A. Yes.

Q. Now this agreement, in the first place you had about decided that you couldn't keep it up, hadn't you, or going to give it up?

A. No.

Q. You had made some payments on it then got your father to take the title for it, didn't you?

A. Yes. I gave my father title for endorsing my note, to secure him on the note, that he would be secured until the notes was paid off.

Mr. Tyler: I ask that be stricken out.

The Court: Let it be stricken as not responsive.

Q. You never during your father's life time, which was nine years, nearly nine years after this title was taken in his name, you never took any proceeding to reclaim it, did you?

A. No.

Q. Isn't it true that since your father's death that the Kensington Trust Company have paid
10 charges against this property?

A. I said there one-half year's interest or something like that.

Q. That is on the mortgage?

A. Yes. I was in Florida at the time.

Q. Beg pardon?

A. I was away at the time.

Re-direct examination.

20

By Mr. Brown:

Q. Mrs. Seddon, I show you five promissory notes and ask whether or not those are the notes to which you referred in answer to Mr. Tyler's questions?

A. Yes, sir; for the balance of the money.

Q. Those notes were paid by whom?

A. By me.

Q. Is that how the notes came into your possession?
30

A. That is how they came into my possession.

Mr. Tyler: I want to interpose an objection because the question of who paid the father's notes or notes on which he was endorser is a transaction with the father.

The Court: I will admit the testimony that she paid the particular notes on which she is the maker; I will admit that.

Mr. Brown: If your Honor please, there is one of these notes in which she appears as the maker, the other four Joseph Pickard appears as the maker. However, we were precluded from showing this testimony on direct, Mr. Tyler opened it up on cross-examination. Now it doesn't seem to me that in view of the fact that he has cross-examined on these notes —

10

The Court: I will admit them.

(Notes admitted and marked Exhibit C18.)

Q. Mrs. Seddon, do you know why it was that your father took title to this property?

20

Mr. Tyler: Objected to.

The Court: How can that be admissible?

Mr. Brown: If your Honor please, because Mr. Tyler asked on cross-examination whether or not Mr. Pickard had not taken the property and the title to the property because she had thrown up the agreement.

30

The Court: And she said no. Sustain the objection.

Mr. Brown: Having opened up that subject?

The Court: He hasn't opened it up. I will sustain the objection.

MRS. SARAH KLEMMER, sworn for complainant.

Direct examination.

By Mr. Brown:

Q. Mrs. Klemmer, you are the daughter of Mrs. Clara Seddon, the complainant in this suit?

10 A. I am.

Q. Were you present or do you know the property known as the Hotel Belden on Ocean Avenue in Atlantic City?

A. I do.

Q. Did you ever occupy that property with your mother?

A. Yes, I did.

Q. Did you ever hear any conversation between your mother and your grandfather, Joseph Pickard, with reference to this property?

A. Yes, I heard a great many conversations between them in regard to the property.

Q. Do you recall any conversation in particular?

A. Well, I recall the whole transaction of the buying of the property because I was not married at the time and was my mother's—well, I took care of a great deal of her business for her.

Q. Do you recall the time in 1913 when your mother made the agreement to buy the property?

30 A. Yes, I do; she made the agreement to buy the property —

The Court: No question.

Q. Were you present at the time of the settlement in the office of the South Jersey Title and Finance Company?

A. I was not present at the actual settlement but I know the particulars.

Q. Do you remember when that settlement was had?

A. Well, the records say that it was —

Q. You remember the occasion of the settlement?

A. Yes, I do.

Q. Did you at any time hear your grandfather, Joseph Pickard, discuss that settlement and the way in which it was arranged?

10

A. Yes, my mother bought the property —

Mr. Tyler: The answer is only yes.

The Court: She has answered the question.

Q. What did you hear him say about it?

A. Well, my mother bought the property —

The Court: The question is what your grandfather said about it. 20

Q. About the settlement?

A. Well, he said that he would help her in her difficulty and endorse her note, so that she could pay the amount required in order to assume title, and he didn't want to take the title himself, but my mother insisted.

Mr. Tyler: I object. It is not a question what he wanted; it is a question what he said. 30

A. That is what he said, he didn't want to take it and again my mother insisted that he take the title because to protect him for endorsing her note until she should return the money that that note covered, and then there was no reason to, at the time that this took place —

Mr. Tyler: I object to what the reason was.

The Court: Yes, question is what was said.

Q. Did you hear any discussion between your grandfather and your mother with reference to who should take the title to this property?

10 A. Yes, my mother wanted my grandfather to take the title to protect himself and my grandfather said he didn't think it was necessary, that she should take it, and she said no, on account of my father not behaving just exactly as he should, in case of a sale of the property, there might be some obstinacy on his part in signing the papers of sale as a husband would have to and my mother said in that case she thought that my grandfather should take title to protect the money that he was endorsing her note for.

20 Q. Then after this settlement and title had been conveyed to your grandfather, did you have any conversation with him or did you hear any conversation between him and anyone else with reference to this property and how the property was being provided for and taken care of?

A. I don't remember hearing any conversation between my grandfather and anyone else except my mother and myself.

Q. Did your grandfather have a conversation with you and your mother about it?

30 A. Yes.

Q. What was the nature of the conversation?

A. Well, my grandfather was perfectly willing to turn the property over to my mother at any time that suited.

Mr. Tyler: I object, as not responsive and not relevant.

The Court: Yes, let it be stricken.

Q. What conversation do you recall that occurred between your grandfather and your mother or between your grandfather and you about this property after the settlement?

A. Well, I recall that conversation in which he told her that he would return the title to her at any time which suited her convenience and when she was in a position to pay the amount of money that he had involved in it. 10

Q. Do you recall anything else that was said by him with reference to this property?

A. That was the trend of the general conversation at that time. There were several of them but they were all about in the same vein.

Q. Was there any discussion at the time of that statement about the price at which the property should be taken off his hands by your mother?

A. Not at that time, no. That happened in 1919. 20

Q. 1919?

A. That came up, yes.

Q. What was that conversation?

A. My grandfather said that the affairs had become so involved and so mixed up that he couldn't make head nor tail of them and that he figured that if he got eighteen thousand dollars out of the property it would let him out and he would be willing to sell the property and felt that he must sell it, as he didn't want to be bothered with it any more, 30 as he was getting old, and didn't want to be bothered with it and he would sell it for eighteen thousand dollars and my mother said, "Well, father, would you sell it to me for eighteen thousand dollars?" And he said, "Why certainly, any one; it is for sale at that price." And then she said, "Well, then, I will take it."

Q. How was the figure of eighteen thousand dollars arrived at, do you know?

A. Well, he arrived at it; my mother never kept any account of the money that she paid him or the money that the hotel brought in or the money that he paid out; she left that accounting entirely up to her father.

Q. No, but he, did he say how he arrived at the figure of eighteen thousand dollars?

10 A. He didn't say how he arrived at it. He just said that he would be willing to accept that as letting him out.

Q. Then at the time of that conversation did your mother say anything?

A. My mother gave him a check immediately for five hundred dollars.

Q. Do you know whether or not that payment of five hundred dollars is represented by this receipt which has been marked C3?

20 A. I imagine that is because that is about the date on which the conversation took place.

Q. That is about the date when the conversation took place?

A. Yes.

Q. Do you recall any other conversations that took place between your grandfather and yourself, your mother or anyone else, with reference to this property?

30 A. I don't just recall any conversations now.

Q. Was there ever anything said by your grandfather in your presence as to the amount of cash which he had invested in the property?

A. Well, he figured that he had about six thousand dollars invested because there was a mortgage of ten thousand dollars and another mortgage of two, and if he was willing to sell at eighteen

thousand that would leave him with six thousand equity in it.

Q. Do you know whether or not at the time of that conversation your father had any statement with him of the carrying charges, and so forth, on the property?

A. I don't think he had them at the time the conversation took place, but I think he sent them to my mother shortly afterwards.

Q. Did you see that statement?

10

A. Yes.

Q. I show you Exhibit C5 and ask you if you recognize that as the statement which was received?

A. Yes. This looks like the paper that was received at that time.

Q. Do you know whether or not subsequent to the time of the giving of that statement and the payment of that five hundred dollars your grandfather made any payment on account of either of the mortgages then existing?

20

A. Yes, he did. There was a ten thousand dollar mortgage, first mortgage, which my grandfather had had renewed and when he placed it again he didn't understand that he was getting an instalment mortgage and I forget the date, he was called upon to pay two thousand dollars and he paid that off and notified my mother that he had paid that off, leaving a balance of eight thousand dollars due on the mortgage, leaving a balance of eight thousand on the first mortgage.

30

Q. Do you know who it was that paid the carrying charges on the property after the settlement which has been marked C5, I just showed you, and the payment of the five hundred dollars evidenced by the receipt?

A. My grandfather paid some of the carrying charges and my mother paid others.

Q. Who was in possession of the property after that time?

A. It was rented. It was rented.

Q. After 1919?

A. Yes, it was rented to, I don't know the name of the tenant, but it was rented, but my mother was in nominal possession of it because she collected the rents and had to do with the renting of it.

10 Q. And did your mother also pay the carrying charges?

A. She paid a great many of them, yes.

Q. And you were living with your mother up until what time, when were you married?

A. 1915.

Q. Were you living with her continuously up until when?

A. Up until I was married.

Q. And then you were with your mother off and on after that time?

20 A. Well, I came down here to visit her.

Q. Where have you lived since your marriage?

A. 1410 North Fifteenth Street, Philadelphia.

Q. That is where your grandfather lived? Your grandfather lived in Philadelphia too?

A. My grandfather lived in Lawndale.

Q. That is a suburb of Philadelphia?

A. Yes.

Cross-examination.

30 By Mr. Tyler:

Q. How much did this property rent for in 1919?

A. I don't know.

Q. How much did it rent for in 1920?

A. I haven't any idea.

Q. Know what it rented for at any time?

A. Yes, I think while my grandfather was renting it, I think I heard one year he rented it for

\$1700 and I think another year, I can't be positive about this, but I think it only brought fifteen hundred dollars.

Q. That was sometime ago?

A. Yes.

Q. And that was before your mother had made arrangement to buy it for eighteen thousand?

A. Yes.

Q. When was it your mother made arrangement to buy it for eighteen thousand?

10

A. In October, 1919.

Q. How was she to pay for it?

A. She paid the five hundred dollars immediately and she was to pay him five hundred dollars more, I think on the fifth of January, which she did.

Q. But she didn't have any agreement of sale?

A. No, no written agreement of sale, no.

Q. Wasn't anything in writing in regard to her buying the property and her father selling it?

A. It was all an oral agreement.

20

Q. All oral?

A. Except —

Q. Since then there was an agreement prepared to have the heirs sign and buy for eighteen thousand five hundred, wasn't there?

A. My mother said that she would be willing to pay the heirs eighteen thousand five hundred rather than to have all this bother taking it into court.

Q. There was an agreement prepared to sell it for eighteen thousand five hundred?

30

A. Yes, and they all signed but one.

Q. All signed but one?

A. Yes.

Q. And your mother signed it?

A. Yes.

Mr. Brown: It seems to me, if your Honor please, that is immaterial and is not evidential of any contract. It was a proposition of settlement and the courts have repeatedly held —

The Court: There is nothing to appear at the present time it is a proposition of settlement between the parties.

10 Mr. Brown: Only that this witness has said that she preferred to do that than to go into court.

Mr. Tyler: I appreciate that. It is not offered to force it in any way, simply backs up the story that she claims an agreement with the father to buy it for about that price.

Q. After that you say he paid two thousand dollars on account of the first mortgage?

20 A. Yes.

Q. That is your grandfather?

A. Yes.

Q. And the agreement by which your mother was to buy it from your grandfather was made in October, 1919?

A. Yes.

Q. He didn't buy it until the spring, 1922, did he?

A. March, 1922.

30 Q. That was two years and a half after this agreement was made?

A. Yes.

Q. And your mother never consummated that agreement or took title to the property, did she?

A. There was no set time to take title to the property; she was to take title —

Q. My question is, she never did take title to it, never consummated the agreement, did she?

A. I think the agreement was consummated when she gave him the check for five hundred dollars in the beginning.

Q. I understand that but she has never made any final settlement with him, has she?

A. There was no date set for final settlement, that was to be at her convenience.

The Court: Did she?

10

A. No, she never has.

Q. He told your mother that he was going to sell the property, didn't he?

A. He said he would have to sell it.

Q. He said he would have to sell it?

A. Yes.

Q. You say she asked him then whether she could buy it?

A. Not until he said he would sell it for eighteen thousand dollars. 20

Q. And then she asked him whether she could buy it, didn't she?

A. She said would he be willing to take eighteen thousand dollars from her and he said yes, from anybody, that is the price I want.

Q. Now then that settled all the difficulties, didn't it?

A. Well, we presumed it did.

Q. You presumed at that time all your difficulties, all disputes were settled and your mother was buying it for eighteen thousand dollars; isn't that true? 30

A. Yes.

Q. You say it was in pursuance of that agreement that she gave this check for five hundred dollars?

A. Immediately a check for five hundred.

Q. Was there some dispute, some conversation with your mother about the accounts for the rents and payments, and so forth, being rather involved, just prior to that?

A. Well, as I said before, my mother didn't keep an account of what rents had been sent to my grandfather, nor what payments she had made, she had made all during the course of these years, she had paid a great many bills for repairs to the property; she never kept any account of that, she just sent
10 checks.

Q. Yes, I understand.

A. And that was all left to my grandfather to keep account of and the bookkeeping was rather involved.

Q. Your grandfather at that time was a pretty old man, wasn't he?

A. I think he was—you mean when he died?

Q. Yes.

20 A. I think he was about seventy-five when he died; I am not sure, but at that time he wasn't that old.

Q. Just prior to your mother agreeing with him to buy the property for eighteen thousand dollars he had discussed these accounts with your mother, hadn't he, and said that they were rather involved?

A. He said they were all mixed up and he couldn't make head nor tail of them and felt if he got eighteen thousand dollars out of it that would let him out of any money that he had involved in it.

30 Q. And then he said he was going to sell it?

A. Yes.

Q. He told your mother that?

A. Yes.

Q. And she told him that she would buy it?

A. She said she would take it at that price.

Q. Both parties were satisfied with that arrangement, is that true?

- A. Both were satisfied.
Q. That was to wipe it all —
A. That was to wipe out all previous agreements, any bills, carrying charges, anything else, that was to be a clean slate from then on, eighteen thousand dollars was to take the property.
-

MRS. ELIZABETH GASON, sworn for complainant.

10

Direct examination.

By Mr. Brown:

Q. Mrs. Gason, you are a daughter of Mrs. Clara Seddon, are you not?

A. I am.

Q. You are now married?

A. I am a widow.

20

Q. Did you live at home with your mother up until the time of your marriage?

A. Until the time I was married.

Q. And that was when?

A. It was in June, 1914.

Q. Are you living with your mother now?

A. I am.

Q. And have been since when?

A. Since my husband died; that is four years ago.

Q. Do you remember the time in 1913 when your mother agreed to purchase the Belden on South Ocean Avenue?

30

A. I was in Philadelphia at that time. I wasn't in Atlantic City.

Q. You don't remember that occasion?

A. No.

Q. Do you remember or were you present, do you have any personal knowledge of the settlement which was had by reason of an agreement on the part of your mother to buy that property?

A. Not with the first purchase.

Q. Did you at any time hear any conversation between your mother and your grandfather, Joseph Pickard, with reference to this property?

A. In the summer of 1921.

10 Q. In the summer of 1921?

A. Yes.

Q. And what conversation do you refer to? Just tell us what the conversation was?

A. It was at the time after my mother had agreed to take it back from him, he asked if she couldn't possibly raise the six thousand dollars he had in it. She said no, she only had three and would he be willing to take a third mortgage. He said no, so they arranged with Mr. Devine, the real estate agent, to see if he could raise the mortgage to fifteen thousand dollars instead of twelve that was then on it, and that would have let my grandfather out. Mr. Devine took it up with the building and loan and they would only advance twelve thousand dollars.

20

Q. Would only advance what?

A. Twelve thousand dollars, so my grandfather said, "Well, we will let it go until spring," and before that spring he died.

30

Q. Do you know what—or did your grandfather say in your presence what the six thousand dollars represented?

A. My mother questioned the six thousand dollars and asked him how he got six thousand dollars in it. He said well during the two years that he had handled the rents that it went back about fifteen hundred dollars and that he didn't feel that

he should lose, that he felt my mother should stand for that.

Q. That is fifteen hundred of the six thousand; how was the other forty-five hundred made up, if you know?

A. He paid; there was a third mortgage to Mr. Busch of forty some hundred dollars.

Q. Forty-five hundred dollars?

A. I am not just exactly sure.

Q. Then was anything said in your presence by your grandfather, in conversation with you or your mother or with anyone else as to the amount which your mother should settle with him for? 10

A. No, except the eighteen thousand dollars; he felt he should have eighteen thousand dollars to cover the mortgages and his share.

Q. And the mortgages then existing were how much?

A. Were twelve and—no, ten and two. 20

Q. And subsequently do you know whether or not your grandfather paid either of those mortgages or anything on account of either of them?

A. Yes, he paid two thousand dollars off on the ten thousand mortgage after this conversation in 1921.

Q. Did you overhear any other conversation between your grandfather, your mother or anyone else with reference to this property?

A. I just overheard my grandfather say to my aunt that he wished mother could take it off his hands; that it worried him. 30

Q. Do you know whether or not your mother paid anything to your grandfather on account of the eighteen thousand dollars?

A. She paid a thousand dollars—I mean five hundred dollars on two different occasions, one in Sep-

tember and one after we went south, I think in December or January.

Q. What year, if you know?

A. Well, if it was December, would be 1921.

Q. Sure of that?

A. I am not positive of that; it was when we had the conversation in the summer, it was September.

Q. You say you went back to live with your mother after the death of your husband about four
10 years ago? Do you remember the month?

A. August first.

Q. August first, 1919?

A. 1919.

Q. Do you know how long after that it was that your mother made the, or approximately how long after that that your mother made the first payment on account of the eighteen thousand dollars? Do you remember.

A. About three years.

20 Q. After you went back?

A. After I went back, two years probably; I don't just remember.

Q. Was that payment represented by a receipt?

A. The check was given on a Sunday and he mailed her the check the next day after he got home.

Q. You mean he mailed her the receipt?

A. Receipt for the check.

Q. Did you read the receipt?

A. I did.

30 Q. Is that it?

A. That is it.

Q. I am referring to Exhibit C3. Do you know whether there was any letter came from your grandfather to your mother with that receipt?

A. There was a letter.

Q. I am directing your attention now to Exhibit

C4 and ask you whether you recognize that as the letter?

A. That is the letter.

Q. Shortly after the making of that payment, as represented by those two exhibits, C3 and C4, do I understand that you and your mother went south?

A. We did.

Q. And where did you go in the south?

A. To Daytona, Florida.

Q. From there do I understand the second payment of five hundred dollars was made? 10

A. From Daytona.

Q. Have you any—do you recall any other conversation that took place in your presence or with you on the part of your grandfather with reference to this property?

A. He had one conversation with me alone.

Q. Where was that?

A. That was at 924 Pacific Avenue, our home.

Q. That is where you were living? 20

A. That is where we were living for the summer.

Q. What was that conversation about?

A. He asked me if I wouldn't please try to help mother figure out some way to raise the six thousand dollars.

Q. What reply did you make to that or what else was said about that?

A. I said it was in Mr. Devine's hands and he was doing all he could to raise the mortgage, that mother didn't have only three thousand cash, could only raise three thousand cash. 30

Q. Did that conversation take place at or about the time that you have testified your grandfather asked your mother to make settlement?

A. Yes, it was during the time he was visiting us there on the same week, during the same week.

Q. He was then visiting you and your mother for a period of about a week?

A. About a week.

Q. Was anything said that you now recall having to do with this property by your grandfather at any time?

A. I never saw my grandfather after that.

Q. Then do I understand that these conversations took place the summer previous to his death?

10 A. Summer previous to his death. He also said he wanted the six thousand dollars right then as he wanted to buy a cottage in Wildwood or Somers Point, and he would like to pay cash for it.

Q. I think you testified a while back that he subsequently said let it go over until spring?

A. After we had notice from Mr. Devine that he couldn't get but twelve thousand dollars on it.

Q. And he died before that spring came around?

A. He died in March, I believe.

20

Cross-examination.

By Mr. Tyler:

Q. Did you hear your grandfather tell your mother that he was going to sell the property?

A. He said if she didn't take it off his hands right then it would have to be sold.

30 Q. That was at the time that he told her he was going to sell it for how much, do you recall?

A. For eighteen thousand dollars.

Q. And she asked him if he would sell it to her for that?

A. She said, "Will you let me have it back for that?"

Q. For eighteen thousand dollars?

A. And he said "surely, anyone."

Q. He said anyone could have it for that?

A. Yes.

Q. That was in October, 1919?

A. I couldn't recall the date.

Q. What?

A. I don't recall the date.

Q. Where did that conversation take place?

A. I am not sure of that.

Q. Who was present?

A. My sister and her husband; my mother and I, 10
and probably others, but I don't remember.

Q. Did he say whether he had been trying to sell
it or had any offers for it?

A. No, he didn't say. He first asked her to try
to sell it and she said she would rather not, she
would rather take it back and lose the fifteen hun-
dred dollars which she would be losing.

Q. She would rather take it back and lose what?

A. She figured she would be losing fifteen hun-
dred dollars by taking it back at eighteen thousand 20
dollars.

Q. Result of that conversation was that she
agreed to buy it for eighteen thousand dollars?

A. Eighteen thousand dollars.

Q. Did you understand at that time that that
wiped out all previous understandings and agree-
ments of every kind and cleaned up all disputes
in regard to accounts?

A. No, I didn't understand that.

Q. Didn't you hear them discuss that?

30

A. No.

(Recess taken to 1.30 P. M.)

AFTERNOON SESSION.

(Trial of the cause resumed at 1.30 P. M.)

MRS. ELIZABETH GASON, resumed.

Direct examination.

10 By Mr. Brown:

Q. Mrs. Gason, this morning you testified concerning a figure of eighteen thousand dollars that was discussed between your grandfather and your mother; do you know how that figure of eighteen thousand dollars was arrived at?

A. No, only mother asked for an accounting of the six thousand dollars that grandpop claimed to have in it and he said that his son Oliver had been
20 the bookkeeper and the accounts were so balled up he didn't think he could furnish an accurate accounting, but he thought approximately six thousand dollars would cover it.

Q. Do you know how the six thousand dollars was made up?

A. Well, the two years he rented it he said the property went back about fifteen hundred dollars in debt and with the mortgages he had paid off would amount to six thousand dollars.

30 Re-cross examination.

By Mr. Tyler:

Q. Have you talked to anyone about this since you have left the stand?

A. No, sir.

Q. Didn't discuss the latter part of your testimony since you left the stand this morning?

A. No, sir.

Q. With no one whatever?

A. No, sir.

Q. You said this morning, as I understood it, that your grandfather said he was going to sell the property and would sell it to anyone who would give eighteen thousand dollars for it; that is true, isn't it?

10

A. Provided my mother didn't take it up.

Q. He said he would sell it to anyone who would give eighteen thousand dollars?

A. Yes.

Q. And she said, "Will you sell it to me for that amount?"

A. She didn't say, "sell" she said "would you let me have it back for eighteen?"

Q. And she agreed to take it back for eighteen thousand dollars?

20

A. Eighteen thousand dollars.

Q. He agreed to sell it to her for eighteen thousand dollars?

A. Yes.

Q. And that was two years and a half before he died?

A. I don't recollect the date.

Q. About that time?

A. About that.

Q. So that she had approximately two years and a half to carry that out before he died, if she had so desired, didn't she?

30

A. Yes.

MICHAEL A. DEVINE, sworn for complainant.

Direct examination.

By Mr. Brown:

Q. Mr. Devine, you are in the real estate and insurance business in Atlantic City, are you not?

A. Yes.

10 Q. With your office in the Law building?

A. Yes.

Q. Do you know the property known as the Hotel Belden on Ocean Avenue?

A. Yes.

Q. Do you know Mrs. Clara Seddon?

A. I do.

Q. Did Mrs. Seddon or anyone else ever take up with you the question of negotiating a mortgage loan on the property, Hotel Belden?

20 A. Yes.

Q. About when was that?

A. In the summer of 1921.

Q. And the application was for a loan of how much?

A. Fifteen thousand.

Q. Who made the application to you?

A. Mrs. Seddon.

Q. Did you endeavor to negotiate such a loan?

A. I did.

30 Q. Did you succeed in having approved any application for a loan of that amount or a lesser sum?

A. Not for that amount, no.

Q. Did you for a lesser sum?

A. I had the Atlantic Coast Building Association consider favorably a loan of twelve thousand or twelve thousand five hundred, I don't remember, just either one of the two amounts.

Q. Was that loan ever negotiated finally settled for?

A. No.

Q. What became of the application for mortgage loan after you had secured the approval of the loan of twelve thousand dollars?

A. This was during the summer of 1921 and Mrs. Seddon was going to Florida in the fall and I wrote to her in Florida stating that I was unable to secure fifteen thousand dollars but had an approval for twelve or twelve thousand five hundred, and she notified me to not accept the twelve or twelve five and not to consider or not to push the loan any further until she returned, so I dropped the matter there and did nothing with it.

Q. And haven't done anything since?

A. Nothing since, no.

No cross-examination.

20

MRS. SARAH KLEMMER, recalled.

Direct examination.

By Mr. Brown:

Q. Since giving your testimony this morning, have you recalled an incident when you went to the bank here in Atlantic City to negotiate the endorsement of a promissory note?

A. Yes, I went with —

Q. With your mother?

Mr. Tyler: Objected to as leading.

30

The Court: Yes, it is quite leading but I think I will permit it to save time.

Q. Will you tell the Court, please, what took place there and what the nature of the transaction at the bank was?

10 A. My mother went to the bank and borrowed, I think it was eight hundred dollars on a note which my grandfather endorsed, but the bank required her to leave, I think it was two hundred dollars of that amount on deposit, and the other amount that was left was the money that was used to make the settlement with the South Jersey.

Q. Was your grandfather present at that transaction?

A. My grandfather was not present, just my mother and I.

Cross-examination.

20

By Mr. Tyler:

Q. When was that?

A. That was just before the settlement was made to the South Jersey Realty Company.

Q. Just before it was made?

A. Yes, that was to get the money to make the settlement.

30 Q. And that was gotten on your grandfather's endorsement?

A. On my mother's note endorsed by my grandfather, yes.

Q. Now that is all you know about that, isn't it? You know that the money gotten to make the settlement, about eight hundred dollars, whatever it was, was gotten on your grandfather's endorsement of your mother's note?

A. Yes.

Q. And that was for the purpose of making settlement?

A. That was for the purpose of producing enough money to make up the amount necessary to secure title.

(Complainant rests.)

Mr. Tyler: May it please the Court, the defendants are not going to offer any proofs, and I move to dismiss the bill for the following reasons: The only proof of payment of purchase money is by complainant herself. Her case depends on her own testimony and under the statute she is disqualified. Previous objection to her testimony was held until the proofs were in and the case now shows recovery is based entirely on her own testimony. 10

Complainant now admits Joseph Pickard took title to secure him for payment to her or secure him, 20 which is the same thing. That absolutely contradicts her testimony that she paid the money to secure the title to this property.

This bill alleges an express agreement which has not been proved within the statute of frauds. There is no resulting trust because it was taken by consent. Whatever arrangement was made was expressly agreed upon. There is no question of fraud, but question is whether the express agreement that he should take title to secure himself for money 30 which he advanced, secured or paid is within the statute of frauds; I claim it is. An express trust must be proven within the statute of frauds and this has not been so proven.

Now any other rights or agreements by their own proof were wiped out by an agreement made in October, 1919, to purchase the property for \$18,000.

They had two and a half years to perform prior to the death of Mr. Pickard. Now whether that agreement is enforceable or not, we are not concerned with because of the fact that it was due entirely to her own fault and her own delay that it was not enforced in the lifetime, if such agreement existed.

For those reasons I submit the bill must be dismissed.

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

CLARA SEDDON,
Complainant-Appellee,

v.

ANNIE PICKARD, *et al.,*
Defendants-Appellants.

BRIEF FOR APPELLANTS.

STATEMENT OF FACTS.

The bill of complaint was filed by Clara Seddon, a daughter of Joseph Pickard, to enforce a resulting trust and pay the balance due to the heirs of Joseph Pickard for property purchased by him in his lifetime and of which he died seized.

The property involved what is known as the Bel-den Hotel on Ocean Avenue, Atlantic City, New Jersey, of which Joseph Pickard, the father, died seized on March ninth, 1922, intestate, leaving him surviving the complainant and seven children and three grandchildren who are made parties defendant to this bill. The property in question was purchased by Joseph Pickard on September fifteenth, 1913, about nine years prior to his death and held in his name continuously up to the time of his death.

The complainant alleges that she advanced a part of the purchase price and the title was taken in the name of her father to secure him for moneys which he had paid for the purpose of making settlement and prays that an account may be taken of the amount due to Joseph Pickard and tendering herself ready to pay said amount when so determined.

A decree was made requiring the administrator of the estate of Joseph Pickard to make conveyance of the property to the complainant upon payment of the sum of ninety-eight hundred sixty-one dollars and ninety-two cents, with lawful interest thereon from February eighteenth, 1925. No decree was made against the heirs at law of said Joseph Pickard except as to costs.

At the close of the complainant's case the defendants offered no proofs and moved to dismiss the bill. This motion was denied and decree entered in favor of the complainant.

An appeal is taken for the following principal reasons:

1. The decree erroneously required the Guarantee Trust Company, administrator of the estate of Joseph Pickard, deceased, to convey the property to complainant.
2. Complainant's claim to title is only supported by her own testimony and the other party to the transaction, Joseph Pickard, her father, is deceased and her testimony as to any transactions with him was improperly admitted.
3. There can be no resulting trust for the reason that the whole consideration was not paid by the complainant and it was found, as a matter of fact,

that there was a balance of ninety-eight hundred sixty-one dollars and ninety-two cents due to the father for money which he advanced either in the purchase, paying off encumbrances or for upkeep of this property.

4. The complainant then set up an express verbal contract to purchase which was admitted contrary to the statute of frauds and which contract, if found to exist, would not only be barred by the statute of frauds but wipe out all previous agreements.

This property was purchased from the South End Realty Company and the complainant (page 28) was allowed to testify that she conducted all of the negotiations and made the agreement for purchase and (page 29) was allowed to testify as to the purchase price paid for the property and (page 30) about the settlement being made with her father and that she provided the money for the purchase price and (page 32) that she had the conveyance made to her father.

This testimony is the gist of the complaint and was taken as a basis for a decree establishing a resulting trust in favor of the complainant. There is no other proof of any kind as to the negotiations for purchase, who furnished the purchase price, or why title was taken in the name of Joseph Pickard. It is urged that this constituted such a transaction with the deceased as to bar the complainant's testimony under the statute of frauds even though the suit in this case was against the heirs of Joseph Pickard and that the complainant was disqualified to testify.

This case clearly shows the iniquity of a recovery based upon her testimony as no suit was brought from the time the property was purchased in 1913

to the time that the bill of complaint was filed in 1923, ten years having elapsed, and the person holding title to the property having died.

CITATIONS.

In *Greenwood v. Henry*, 28 Atlantic, 1052 (bottom page 1054) it was said:

“The precise question arose in *Colfax v. Colfax*, 32 New Jersey Equity, 206—an exactly similar case—and it was decided by Chancellor Runyon that the heir was sued in a representative capacity and that the complainant, who stood precisely as does the complainant here, was not a competent witness, unless made so by the action of the defendant. The same rule was laid down by the Supreme Court in a very recent case of *Joss v. Mohn*, 26 Atlantic 987.”

Also, in the recent case of *Turner v. Spicer*, 110 Atlantic, page 41 (Foster V. C.) it was held (Syllabus):

“In a suit by the executor and sole devisee of decedent seeking to compel defendants to convey to him real estate, title to which decedent had placed in defendants’ names, held under evidence act, Section 4, testimony by defendants that decedent took title in their names for fear a second mortgagee might resort to the property if title was in her name, is inadmissible.”

Also, in *Hunt v. Hendrickson*, 116 Atlantic, page 496, the Court of Errors and Appeals held:

“An action under Heirs and Devisees Act, Section 1, is against a devisee in a representa-

tive capacity, and under Evidence Act, Section 4, complainant may not give testimony as to transactions with the decedent unless the representative offers testimony in relation thereto."

The foregoing cases are cited for the purpose of showing that a suit against heirs or devisees based upon any transactions or agreement with decedent is subject to Section 4 of the Evidence Act which provides as follows:

"In all civil actions any party thereto may be sworn and examined as a witness, notwithstanding any party thereto may sue or be sued in a representative capacity; provided, this section shall not extend to permit testimony to be given by any party to the action as to any transaction with or statement by any testator or intestate represented in said action, unless the representative offers himself as a witness on his own behalf, and testifies to any transaction with or statement by his testator or intestate, in which event the other party may be a witness on his own behalf as to all transactions with or statements by such testator or intestate—2 Compiled Statutes, page 2218."

The complainant, however, was permitted to testify in this case as to transactions with the decedent upon the theory that she could tell what she said or did with regard to the title to the decedent's property and was permitted to testify that she paid the consideration for the conveyance and to give her reasons for placing the title to the property in her father's name. This testimony was received over the objection of the defendants and at the close of

the case, a motion was made to dismiss the bill for the reason first above stated.

In support of the objection to this testimony, the following cases are submitted:

In *VanWagenen v. Bonnet, et al*, 70 Atlantic, 143, the Court of Errors and Appeals said:

“The test laid down in our decisions in ascertaining what is a “Transaction with” the decedent about which the other party to it cannot testify is the inquiry whether, in case the witness testified falsely, the decedent, if living could contradict it of his own knowledge. *Smith v. Burnett*, 35 New Jersey Equity, 314, 322; *Woolverton v. VanSyckle*, 57 N. J. Law, 393; 31 Atlantic, 603; *Provost v. Robinson*, 58 N. J. Law 222; 33 Atlantic 204; *Dickerson v. Payne*, 66 N. J. Law 35; 48 Atlantic, 528.”

Also, in *Campbell v. Akarman*, 83 Atlantic, 881, the Court of Errors and Appeals said:

“In the comparatively recent adjudication of *Van Wagenen v. Bonnet, et al.*, 74 N. J. Equity, 843, 70 Atlantic, 143, 18 L. R. A. (N. S.) 400, this Court speaking by Mr. Justice Parker said: ‘The test laid down in our decisions in ascertaining what is (transactions with) the decedent about which the other party cannot testify is the inquiry whether in case the witness testified falsely, the decedent, if living, could contradict it of his own knowledge.’

“That the question hereunder consideration if subjected to that test would fall under the prohibition of the act to us seems indubitable, and the judgment below, for that reason, must be reversed.”

The foregoing citations show that suit being against the defendants as heirs of Joseph Pickard, who held title to the Belden Hotel at time of his death, are protected by Section 4 of the Evidence Act and that the complainant is barred from testifying to any matter in connection with the title to said hotel which the decedent, if living, could, of his own knowledge, contradict.

The decedent, of course, could of his own knowledge testify who paid the consideration for the purchase of the Belden Hotel to which he took title and could testify as to the reasons therefor. The decedent also could testify as to the receipt of rents, payment of expenses, interest on mortgages, payment of taxes, and all these matters which the complainant testified to, if he was living. Necessity for the rule cannot be more clearly demonstrated than in this case for the reason that a complainant, if testifying falsely, could swear that she paid the consideration for the property and there would be no living person to deny it.

The other witnesses only covered unimportant matters such as proof of settlement, production of settlement sheet, but none of them had any knowledge as to who paid the consideration. In fact, none of them were present at the settlement with the exception of the complainant and the title officers, who had no knowledge as to who was putting up the purchase money.

The mere production of the note which complainant claimed to pay does not establish payment of the purchase price without her additional testimony to that effect. In fact, the note endorsed by the decedent may have been given for some other purpose which decedent could explain if living.

A resulting trust only arises where there is competent evidence that one person has paid the whole

consideration for property and title held in another and this situation must have arisen at the inception of the title and not afterwards. This question usually arises where both parties are living and the application of Section 4 of the Evidence Act is not involved but the bill of complaint in this case sets out that the father, Joseph Pickard, either endorsed the notes of complainant, paid off the mortgages on the property or made other advances upon which there was admittedly due the sum of fifty-two hundred eighty-two dollars and thirty-nine cents and which on the accounting required by the Court in this case was found to be the sum of ninety-eight hundred sixty-one dollars and ninety-two cents.

SUBSEQUENT AGREEMENT TO PURCHASE.

Another reason for reversal is that the complainant set up an express agreement to purchase the property for eighteen thousand dollars, which agreement is not in writing and wiped out all previous agreements, if any.

The testimony of the two daughters of the complainant, Mrs. Klemmer and Mrs. Gason, was merely as to the subsequent conversations with the decedent in which he expressed the willingness to let the complainant have the property for that amount and expressly for the purpose of reimbursing him for all of the money which he had invested in the purchase of the property and payment of carrying charges and satisfaction of encumbrance thereon. This does not indicate a resulting trust but ownership which he claimed during his lifetime. The effect of their testimony was that the decedent owned the property. In fact, they testified that he had told the mother that he intended to sell the property and

she asked the price and whether he would sell it to her for that amount (pages 51 and 52) also (pages 60, 61 and 64). The testimony of the daughter does not, in any way, establish either an implied or resulting trust. The most forceful effect of their testimony is that the father wanted to get rid of the property and get out the money which he had invested and advised the complainant that he intended to sell it. This certainly does not indicate that he held title for complainant. Thereupon she asked if she might buy it and they agreed upon a purchase price. The whole testimony was merely that he wanted to get out of the property the money which he had invested in it.

It is also submitted that all of the exhibits produced and identified by the complainant, except so far as they speak for themselves, are prohibited by Section 4 of the Evidence Act. None of the proofs offered are of any value standing by themselves and required the complainant's testimony to identify them and state for what purpose they were given. Also, the testimony of the complainant as to the original purchase price, the amount that she paid thereon, and the loss sustained by the decedent in the payment he made on account of the mortgages and her efforts to get some one to take a mortgage on the property are transactions with the decedent under the text above laid down and which he could deny if living. Also, the testimony of complainant as to payment on account of the property and the issuing of a check for five hundred dollars, alleged to be paid on account of the purchase price are forbidden under the above text and the alleged receipt of October sixth, 1919, for five hundred dollars is of no value without her additional testimony explaining what it is for and which could have been denied

by the decedent, if living. It might have been for rent.

The facts are that the complainant had an agreement for the purchase of the property for nineteen thousand five hundred dollars and had paid fifteen hundred dollars on account of the agreement then she found that she could not keep it and thereupon got her father to put up the balance of the purchase price and take title. Thereafter the father made payments on account of the mortgage aggregating sixty-five hundred dollars, paid all taxes, insurance, interest on mortgage, repairs, etc., and received the rent from the property, by the complainant's own testimony. A trust, if it arises at all, must be at the time title is taken and if only a part of the consideration was paid to the complainant, a trust does not result in her favor.

It is certainly not very credible to the complainant's claim that she waited from 1913 to 1923 before taking any action. By the complainant's own proofs in October, 1919, she agreed to buy the property from the decedent for eighteen thousand dollars and there was then due to the decedent at least six thousand dollars, being all the equity between the amount then due on the mortgages and the amount of the purchase price which she agreed to pay. It certainly does not indicate that she paid the purchase price for the property even after she had been privileged to testify as to who paid the consideration. It is submitted that a resulting trust never arises out of a contract or agreement between the parties but by implication of law from the fact that the consideration was paid by one party and it would be a fraud for the other party to claim title for his own use and benefit under those circumstances.

The cases cited above lay down the rule that where there is an express agreement, a resulting trust will not arise. A resulting trust is where no consideration is paid by the party holding the title, which is not at all the present case. Here the money and assets of the decedent were used to acquire the title after the complainant had defaulted.

The bill of complaint sets out in paragraphs four and five that there was an express understanding in the agreement between the parties that the decedent take title to the property until such time as the complainant should pay and satisfy the notes and reimburse him for money which he had expended. The complainant then claims that she has performed her part of the agreement and is ready to pay the balance of the purchase price to the heirs and devisees. The bill of complaint is one for specific performance and not of resulting trust because it is based upon an express agreement to convey and not on the theory that the consideration was paid by the complainant. This view is also consistent with the complainant's proofs that the decedent agreed to convey the property for eighteen thousand dollars in October, 1919.

The bill is filed on the theory of a resulting trust and the proofs, except as to the complainant's testimony as to transactions with the decedent, is to the effect that she agrees to buy the property by a subsequent parol agreement with the decedent, thereby setting up a new contract.

In 1917 B, *L. R. A. Burns v. Fidelity Real Estate Co.*, 52 Minn. 31, in discussing the effect of the Statute of Frauds upon a written agreement modified by subsequent parol agreement, which contract is required by the statute to be in writing, it was said, at page 149:

“The oral modification being invalid, it cannot, of course, form the basis of an action. It

was contended in one case involving a sale of brick in payment of which the vendor was to receive two lots and the balance in cash, that upon an oral modification made after the delivery of part of the brick, that he was to receive one of the lots in question and the balance in cash for the brick then delivered, the original contract remained intact and that a suit to enforce a conveyance of the lot and recover the balance of the purchase was a suit on the original contract from which the vendor had merely waived or dropped out the provision as to the conveyance of the other lot. After stating that this is not true in fact, as the vendee claimed and recovered under the new oral agreement a larger money judgment than he would be entitled to under the original contract, the Court continues: 'It is very clear that the suit is not on the original contract, but upon a new contract made out by incorporating therewith certain oral stipulations varying its terms. If counsel means by 'dropped out' that some of the provisions of the original contract were 'cut off' or 'dropped out' by the subsequent oral agreement of the parties, the Statute of Frauds is still in the way, for it makes no difference whether the modification consists in adding to or subtracting from the terms of the contract. In either case the terms are altered and the contract is a new one.'

The Court further states that the facts alleged and found may show a good reason for the vendor not having performed, and may state a cause of action for damages for the breach of a contract by the defendant, or for compensation in money for the bricks which the vendor delivered, 'but they do not make out a case entitling him

to specific performance.' In other words, he is not entitled to specific performance of the original contract because he himself or his assignor has not performed and he is not entitled to specific performance of the new one because it is void under the statute."

The substance of the foregoing decision is that there can be a novation even though the novation is unenforceable by reason of the Statute of Frauds and if there is a novation and a new contract made, then the old contract can no longer be enforced.

In *Morecraft v. Allen*, 75 Atlantic, 920 and 78 Law, 729, the Court of Errors and Appeals said (Syllabus):

"Where the parties to an existing agreement found themselves unable to agree upon the amount due thereunder, it was competent for them to adjust their differences by another contract, whereby the one obligated herself to pay to the other a fixed sum of money in settlement of their mutual accounts. Held, that the later contract, under the doctrine of novation, was substituted for the earlier contract, and the rights of the parties were controlled by its terms; the earlier contract being thereby extinguished."

It is submitted that the decree should be reversed for the reason that the proofs, without complainant's testimony, are entirely insufficient. Aside from her testimony there is no evidence that the complainant paid the consideration for the property nor is there any explanation therefor.

Further, that practically all of the consideration was paid by the decedent and there can be no result-

ing trust where the whole consideration is not paid by the person claiming the benefit of the trust.

Further, that the complainant's proofs set up a new and separate oral agreement for the purchase of the property which is barred by the Statute of Frauds.

Further, there is no justification for a decree against the administrator as this case is not like a contract of sale being made by the decedent which acts as a conversion of real estate into personalty. In this case there was no contract of sale except the alleged oral agreement to sell for eighteen thousand dollars, which is unenforceable under the Statute of Frauds and is not set forth in the bill of complaint.

JOSEPH BECK TYLER,

Solicitor and Counsel for Defendants.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between
CLARA SEDDON,
Complainant-Respondent,
and
ANNIE PICKARD, *et als.,*
Defendants-Appellants.

ON BILL, &c.

ON APPEAL FROM CHANCERY.

BRIEF OF COMPLAINANT-RESPONDENT.

STATEMENT OF FACTS.

It is well to note at the outset that the only testimony given at the hearing or trial of this cause, was offered by complainant. Defendants offered no testimony, so that complainant's evidence is not contradicted and must be regarded as true.

The testimony discloses that about September, 1913, complainant, Clara Seddon, approached Mr.

Eugene Colloty, a real estate agent of Atlantic City, with reference to the purchase by her of the property which is the subject of this litigation (p. 21, ll. 22 to 25; p. 22, ll. 11 to 14; and p. 28, ll. 27 to 30).

Mr. Colloty testified that he undertook the negotiation for this purchase and succeeded in bringing about an agreement between complainant and the South End Realty Company then owner of the property, whereby the latter agreed to convey to complainant said property for a consideration of \$19,500.00; said agreement provided that payments on account of the purchase price of said property should be at first made in small installments until the sum of \$3,000.00 had been paid, at which time final settlement under the agreement was to be had between the parties (p. 21, l. 22 to p. 23, l. 26; p. 28, l. 18 to p. 29, l. 30).

It was further disclosed that on September 15th, 1913, a settlement was had at the offices of the South Jersey Title and Finance Company, when there was present, representatives of the South End Realty Company, Mrs. Seddon, the complainant-respondent herein, Mr. Joseph Pickard, father of complainant, and Miss Elizabeth M. Mitchell, assistant secretary of the South Jersey Title and Finance Company, who made up the statement of settlement (p. 29, l. 31 to p. 30, l. 23; p. 33, l. 14 to bottom of p. 34; all of p. 35).

The statement of settlement as prepared by Miss Mitchell in her handwriting, and identified by her, was offered in evidence and marked Exhibit "C1" (Printed Exhibits, page 1).

Reference to this exhibit will disclose that it is entitled "statement of settlement between South

End Realty Company, seller, and Clara Seddon, purchaser.”

Further examination of the statement shows an entry thereon as a credit, the following—“paid on a/c—\$2542.01.” Later in said statement there will be noted the following entry—“deposited by Seddon—\$273.87.”

These entries on said statement corroborate complainant when she testified that she had paid from her own moneys and before conveyance of the property, the sum of \$3,000.00, less adjustments on account of the purchase price.

Testimony of complainant further discloses that she had not sufficient moneys with which to make the final payment at the time of final settlement, and that her father came to her rescue by loaning his credit (p. 24, ll. 6 to 12; p. 43, ll. 1 to 13 and ll. 34 to 36; p. 46, ll. 23 to 31; p. 49, ll. 23 to 26; and p. 69, l. 29 to p. 70, l. 36). By the accommodation use of his name on promissory notes which were discounted at the bank, Mrs. Seddon secured the necessary cash.

These notes were subsequently paid by Mrs. Seddon, are now in her possession, and were offered in evidence in this case and marked Exhibit “C18” (printed exhibits at pages 32 and 33).

The testimony then discloses that the actual conveyance of the record title to the property was made to Joseph Pickard (p. 23, ll. 27 to 31; p. 32, ll. 23 to 28).

It was testified to by Mrs. Klemmer, daughter of complainant, and Mr. Colloty, that the conveyance was so made for the purpose of securing to said Joseph Pickard, the re-payment of the amount for which he was liable on said promissory notes as well as any other moneys that he might thereafter

advance on account of the carrying charges, etc., on said property (p. 49, l. 23 to p. 50, l. 19; and p. 24, l. 28 to 32).

It was also testified, that another reason for making said conveyance in that manner, was to make it possible to make future conveyance thereof if desired, without any obstruction or hindrance on the part of the complainant's husband, with whom she was then having domestic difficulties (p. 50, ll. 8 to 19).

Mr. Colloty also testified that said Joseph Pickard some six or seven years ago, and after the conveyance had been made, had told him that he was holding said property for his daughter, and that he was anxious that she should have it (p. 24, l. 28 to p. 25, l. 4; and p. 27, l. 14).

The testimony then discloses that for several years thereafter and up until the latter part of 1919, said Joseph Pickard managed said property, receiving all the income therefrom, and making payment of all charges incident thereto (p. 43, l. 26 to p. 45, l. 26; p. 53, ll. 31 to 37; p. 58, ll. 1 to 30).

Said property during that time had been rented to tenants, and the money paid by said tenants as rent, was collected by complainant and forwarded by her check to her father, and each year her father rendered to her statements of the moneys so received and paid out.

Four of these said statements have been offered in evidence and are marked Exhibits "C5, 6, 13 and 16" (printed exhibits, pp. 8, 9 and 30).

Certain checks of the complainant herein, made to the order of Joseph Pickard and endorsed by him, were also offered as evidence of payments made by her to her father on account of said property (Exhibits C7, 8, 9 and 10).

The testimony discloses that some time in the latter part of the summer of 1919, during a conference between complainant and her father, concerning the property in question, her father said to her, that he had arrived at an age in life when the management of this property was burdensome to him, that the accounts which were required to be kept in connection with its management had become involved so as to be almost beyond his understanding, and that he desired to be relieved of that burden, and that in order that this might be accomplished it would be necessary to dispose of the property unless complainant took it off his hands (p. 51, ll. 20 to 37; and p. 61, ll. 29 to 31).

A discussion was then had as to the amounts which said Joseph Pickard had invested in said property. In this connection he cited the fact that during the years previous to the conference, as near as he could tell, there had been a loss in connection with the management of the property, meaning that he had paid out on account of the carrying charges about \$1500.00 more than had been received therefore in rent (p. 60, l. 33 to p. 61, l. 5).

He, of course, insisted that this loss should be borne by complainant and not by him, so that in order that he would get out of the property all of his investment, it would be necessary that settlement should be made with him on the basis of \$18,000.00 (p. 66, ll. 12 to 30).

It is apparent, and the testimony is that the figure of \$18,000.00 was arrived at in the following manner:

Original consideration price	\$19,500.00
Deduct amount paid by Clara Seddon on account of purchase price.....	3,000.00
	<hr/>
Balance	\$16,500.00

Amount of computed loss arising from
 difference between income and ex-
 penses 1,500.00

Total\$18,000.00

The testimony further discloses that said Joseph Pickard agreed at that time to make conveyance of the title of the property to complainant upon settlement with him on the basis of said latter figure (it is urged by defendants that at this point the testimony discloses there was made a new, distinct and separate contract between complainant and said Joseph Pickard, for the sale and purchase of said property, but as to this complainant cannot agree and further reference to this question will be discussed subsequently herein (p. 51, l. 24 to p. 52, l. 16; p. 57, l. 13 to bottom of p. 58; and p. 64, l. 25 to p. 65, l. 31.)

It was also testified to that both complainant and Mr. Pickard being in agreement as to the amount involved, she, the complainant, then and there gave to him her check for the sum of \$500.00 (p. 52, l. 15), said check is dated October seventh, 1919, and when offered in evidence in this cause was marked Exhibit "C9" (printed exhibits at page 10).

By letter dated October seventh (Exhibit "C4," Mr. Pickard mentions the receipt of this payment in the following words—"inclosed find receipt for the \$500.00 which you gave me on Sunday" (printed exhibits at page 7). Said receipt referred to (Exhibit "C3," printed exhibits at page 11) reads:

"October 6, 1919.

Received from Clara Seddon.....
 Five Hundred 00/100.....
 On account of hotel.
 \$500.00

JOSEPH PICKARD."

It was also agreed at this conference between complainant and Mr. Pickard, that the amount of his actual investment in the property was \$6,000.00. There was at that time existing as encumbrances against the property, two mortgages in the sums of \$10,000.00 and \$2,000.00, the total of which represented \$12,000.00 of the figure of \$18,000.00 agreed upon (p. 51, l. 24 to p. 53, l. 2; p. 60, l. 33 to p. 61, l. 20; p. 66, ll. 10 to 30).

It appears that Mr. Pickard had paid off a third mortgage, which had previously existed on the property in the sum of \$4500.00. This amount together with the loss of \$1500.00, previously herein referred to, made up the \$6,000.00 remaining or the amount of the investment of said Pickard.

It is significant to note on the statement given by said Pickard to complainant, and in his handwriting, dated 1920 (Exhibit "C5," printed exhibits at page 8) the following item:

"Interest on \$6,000.00.....\$360.00"

This indicates that the year following said conference said Pickard charged complainant-respondent interest on the amount of his investment.

Subsequently said Pickard was called upon to pay the sum of \$2,000.00 on account of the principal (\$10,000.00) of the first mortgage so that the payment of this item increased his investment to the sum of \$8,000.00 (p. 53, ll. 20 to 30; p. 61, ll. 21 to 26).

Subsequently and during the summer of 1921 complainant and said Pickard had another conference, when he inquired of complainant if she was in a position to make settlement with him on the basis which had been agreed upon. She informed him that she was not, and that she had only the sum of \$3,000.00 to pay on account of the \$6,000.00 which

was then due him. It was then agreed that complainant should endeavor to arrange a mortgage loan on said property in the sum of \$15,000.00, which was to take care of the two mortgages then existing totaling \$12,000.00 and the deficiency of \$3,000.00 on account of the amount due said Pickard (p. 60, ll. 14 to 25). (It should be borne in mind that it was not until after this time that said Pickard paid the sum of \$2,000.00 on account of the first mortgage.)

Mrs. Seddon, the complainant, then went to Mr. Michael A. Devine, to whom she made application for said mortgage loan (p. 60, ll. 14 to 25).

Mr. Devine testified that he endeavored to negotiate said loan, but was unable to get an advance of more than \$12,000.00, which amount had been approved by the Atlantic Coast Building and Loan Association. This he reported to Mrs. Seddon who then withdrew the application (p. 68, l. 17 to p. 69, l. 17).

The testimony is that upon receiving this report from Mr. Devine and when complainant made this fact known to said Pickard, he agreed that the settlement with him should be delayed until the following spring (p. 60, ll. 26 to 30).

In the meantime and before the spring of 1922, said Pickard died (p. 45, ll. 23 and 24; p. 60, ll. 28 and 29).

A letter of said Pickard to complainant-respondent exhibited in this cause (Exhibit C17, printed exhibits at page 31), indicates that there must have been some understanding existing between said Pickard and complainant with reference to this property, because in said letter there is particular reference to an item of \$500.00 and to payment of the \$2,000.00 on account of the first mortgage.

The defendants herein seem to have taken some consolation from the testimony of Mrs. Klemmer who they urge testified that during the conference between complainant and her said father, the latter part of the summer or early fall of 1919, said Pickard announced to complainant that he proposed to sell the property for \$18,000.00, and that then complainant inquired if he would sell it to her for that figure, and he said he would.

Complainant urges that the testimony of Mrs. Klemmer when taken as a whole does not warrant the conclusion that there was any separate and distinct agreement made at this time for the purchase of this property. Perhaps a single statement taken from her testimony if construed literally might be said to mean that, but when considered as a whole and in conjunction with all the testimony in this case, it can only be concluded that the witness intended to say as was testified to by other witnesses, that said Pickard desired to be relieved of the management of the property and would feel obliged to insist upon its sale unless Mrs. Seddon agreed to take the property from him on the basis of the figure named.

Certainly all the oral testimony introduced, as well as the documentary exhibits, indicated that from the time of the settlement in 1913, there was an understanding between complainant and her father that he was to hold the title to the property for a two-fold purpose, that of securing payment of all his investment in the property, and to avoid obstruction on the part of complainant's husband to subsequent conveyance thereof if desired.

POINT 1.

IT IS URGED THAT IN VIEW OF THE ABOVE FACTS, A RESULTING TRUST ARISES IN FAVOR OF COMPLAINANT, THE TRUST BEING IN THE NATURE OF A MORTGAGE.

In 39 Cyc., page 146, it is said:

“Where the purchase money is loaned or paid by one person for the benefit of another, and a conveyance is made to the lender or payer to secure his re-payment or reimbursement, a resulting trust arises in favor of the person in whose behalf the money is loaned or paid, the trust being in the nature of a mortgage which the person to whom the money was loaned has a right to redeem and compel a conveyance of the property; and if the vendor sells the property he must account to the borrower for the money realized therefrom.”

The case of *Howell v. Howell*, 15 N. J. Equity, page 75, seems to be on all fours with the case at bar. In the *Howell* case a farm was purchased by two sons for their own use, they paid all the purchase money that they could raise, and in order to enable them to pay the balance, their father mortgaged his own farm, and to secure himself for such advance took the title for the farm in his own name. During the lifetime of the father the sons treated the mortgage debt as their own, paid the interest on it and also enjoyed the farm purchased as their own, the father disclaiming all interest in or control over it. The father afterwards died intestate as to the farm so purchased but by will made before the purchase he devised his own farm to the two sons charged with the payment of all his debts. The two sons filed a

bill in this Court against the other heirs of their father, praying that the farm be declared to be held by the heirs of the father in trust for them. The Court said:

“Although it is necessary to create the trust that the funds should be paid by the *cestui que* trust at the time of the purchase, yet they may be supplied by a third person, or even by the nominal purchaser on credit. Page v. Page, 8 N. Hamp. 187; Runnells v. Jackson, 1 Howard (Miss.) 358.

So the trust will result, though a part of the money be paid in cash, and a note given for the residue. Lounsberry v. Purdy, 16 Barb. S. C. 380.

The heirs-at-law of Lewis Howell, the father, who are made defendants, will be declared to be trustees, as to their respective shares, for the complainants, and will be decreed to convey their respective shares to them. As the land mortgaged by the father is devised to the complainants subject to all the debts of the estate of the testator, it would seem that the interests of all the heirs are sufficiently protected against any prejudice from the debt incurred by the testator in aid of the complainants. But to guard against any possible contingency it will be proper so to frame the decree as to require the conveyance to be made to the complainants subject to the payment of the mortgage debt, or after that debt shall have been satisfied by the complainants, and the estate discharged therefrom.”

Another case in point is that of *Mershon v. Duer*, 40 N. J. Equity, page 333. It was there proven that the title to the house and lot was taken in 1852 in the name of one Rose, but the consideration was paid by

one Duer, who with his family continually occupied the premises thereafter until his death, and paid the taxes thereon, and all the improvements and repairs without accounting for the rents to Rose, or being called on by Rose to do so. Rose, at the request of Duer, afterwards conveyed the premises to Mershon who was Duer's daughter by a former wife. The decree was unanimously affirmed by the Court of Errors and Appeals for the reason given by Vice-Chancellor Bird, in part as follows:

"I think we have in these undisputed facts all the elements of a resulting trust. At the same time and in the same transaction it was agreed that Rose should take the title in his name, and should raise the consideration money by a loan on the property, which Duer was to pay, and which he did pay. He paid for all repairs and for all taxes and for improvements upon the property. He rented portions of it and collected the rents. He accounted to no one, nor did anyone ever call him to an account or claim the right to do so. I have been governed by what I understand to be the reason and spirit of the following cases: *Cutler v. Tuttle*, 4 C. E. Gr. 549; *Howell v. Howell*, 2 McCart. 75; *Stevens v. Wilson*, 3 C. E. Gr. 447; *Wheeler v. Kirtland*, 8 C. E. Gr. 13; *Havens v. Bliss*, 11 C. E. Gr. 363.

I think the complainant is entitled to dower in the lands described in the bill, and will so advise. She is entitled to costs."

Where land is bought by one man with the money of another, an implied or resulting trust arises. *Johnson v. Dougherty*, 18 N. J. Equity, 406; *Third National Bank v. Cary*, 39 N. J. Equity, 25.

In *Stratton v. Dialogue*, 16 N. J. Equity, 70, it was held that where land is in fact paid for with the

funds of a company, there is a resulting trust in favor of the company, although the deed is made absolute to a third party and appears on its face to be for his own use and benefit, and such party taking the title becomes a trustee for the creditors and stockholders, and the trust will be enforced for their benefit at the instance of a receiver.

In *McKee v. Griggs*, 51 N. J. Equity, 178, the Court held that where a person advances money for encumbrances on the land of another, taking title in fee thereto in his own name and such person has been for many years a personal friend of the owner and he advised her as to her business affairs and the value of the property was largely in excess of the amount paid to remove the encumbrances, he must be held to have acted as her trustee and the deed must be construed a mortgage to secure him for the money paid out by him in paying off the encumbrances.

This Court held in *Reeves v. Evans*, 34 Atlantic, 477, that where there was a common understanding between the grantor, the grantee and a married woman who paid the purchase price for the conveyance, that the title was to be put in the grantee so that said married woman could dispose of the same without control of her husband, the grantee took the property in trust for her.

In *Andreas v. Andreas*, 84 N. J. Equity, 373, affirmed in 85 N. J. Equity, 210, it was held that a resulting trust is one arising by implication of law as where a man pays the purchase price of lands and has the deed made in the name of a stranger.

It was also held in *Sayre v. Lemberger*, 112 Atlantic, 490, that where conveyance is made to another than the one paying the consideration, the law implies a resulting trust in favor of him and those claiming under him.

See also *Asam v. Asam*, 86 Atlantic, 71, *Baker v. Baker*, 75 N. J. Equity, 305, *Thomas v. Thomas*, 79 N. J. Equity, 461.

POINT 2.

THE STATUTE OF FRAUDS DOES NOT APPLY.

Section three of "An Act for the prevention of frauds and perjuries." Volume 2, Compiled Statutes 2611, reads as follows:

"That all declarations and creations of trust or confidence of or in any lands, tenements or hereditaments, shall be manifested and proved by some writing, signed by the party, who is or shall be by law enabled to declare such trust, or by his or her last will in writing, or else they shall be utterly void and of no effect; provided always, that where any conveyance hath been made, or shall be made of any lands, tenements or hereditaments, by which a trust or confidence shall or may arise or result by implication or construction of law, or be transferred or extinguished by act or operation of law, such trust or confidence shall be of the like force and effect, as the same would have been if this act had not been made."

In the case of *Baker v. Baker*, *supra*, Vice Chancellor Emory at the beginning of his opinion says:

"On the proofs I conclude—first, that the original purchase of the Springfield farm from Mr. Pitcher was made by the contributions of all of the children to the purchase-money, and that although the title was taken in the name of Ben-

jamin Baker, one of the children, there was, as between Benjamin and his brothers and sisters, a resulting trust, arising from this original contribution of the purchase-money. Such resulting trust as between the grantee and third person, arises by implication and operation of law, and *is expressly excepted from the operation of the statute requiring written evidence of a trust.* Gen. Stat. p. 1603-3; *Johnson v. Dougherty* (Chancellor Green, 1867), 18 N. J. Eq. (3 C. E. Gr.) 406; *Cutler v. Tuttle* (Court of Errors and Appeals, 1868), 19 N. J. Equity (4 C. E. Gr.) 549, 558."

And examination of the *proviso* clause in the section of the statute above quoted ought to be sufficient authority it seems, for the contention that the sort of trust here created is not required to be in writing.

POINT 3.

A RESULTING TRUST MAY BE PROVEN BY PAROLE.

It has been held that parole proof of oral admissions of a trustee is admissible even after his death to prove a resulting trust.

Midmer v. Midmer, 26 N. J. Equity, 299; 27 N. J. Equity, 538.

It has also been held that although the statute of frauds declares "that all declarations or creations of trust or confidence" shall be "in writing" that resulting trust may be proven by parole. *Baldwin v. Johnson*, 1 N. J. Equity, 441. *Hutchinson v. Timball*, 3 N. J. Equity, 357; *Baker v. Baker*, *supra*; *Thomas v. Thomas*, 79 N. J. Equity, 461.

It has also been held that although a resulting

trust arises, if at all, when a deed is taken preceding and subsequent events may be considered as throwing light on the situation at such time. *Phillips v. Phillips*, 81 N. J. Equity, 459.

POINT 4.

There is abundant proof in support of the averments of the bill.

It is contended by defendants that the complainant-respondent's case "Depends on her testimony and under the statute she is disqualified."

If this contention is tenable, it follows that the testimony of all witnesses except complainant must be disregarded as well as all documentary proof submitted. Complainant, of course, insists that the statutory prohibitions against her testimony arising by reason of the death of her father has not been violated.

The testimony of complainant-respondent, on direct examination, was confined to identifying exhibits and the handwriting of her father, Joseph Pickard, which in no wise violates the provisions of Section 4 of the Evidence Act; if cross-examination resulted in a recital of conversations or transactions with the decedent, such recital must be laid at the door of the defendants.

An examination of the bill and of the testimony warrants the conclusion that such an agreement or understanding as did exist between complainant and her father at the time title passed in final settlement with the South End Realty Company amounted to a resulting trust in favor of complainant, said trust being in the nature of a mortgage.

This point has been covered heretofore in this brief and an examination of the cases cited will dis-

close that in each instance there was, at the time of the transaction giving rise to the trust, a common understanding or agreement between the parties.

Defendants further contend that "all rights or agreements by their own proofs (meaning complainant's) were wiped out by an agreement made in October, 1919, to purchase the property for \$18,000.00."

As has been previously urged in this brief, a consideration of all the evidence in this case does not warrant the conclusion that there was a new, separate and distinct agreement made between complainant and her father, as is alleged, but does prove that at the time alleged an accounting was had between them which showed that complainant's father should be settled with on a basis of \$18,000.00 in order to completely reimburse him for the amount of money which he had advanced or loaned to complainant, and that it was only in case that complainant did not then agree to settle with him on that basis that he would be compelled to insist upon a sale of the property in order to let him out.

Defendants also in this connection urge that complainant is estopped from now exerting her right because of her laches in not making said settlement within the two and a half years which elapsed between the time of said account and the date of the death of her father.

It will be recalled that it was testified to in this case that in the summer of 1921, complainant's father inquired of her if it was not possible for her to then make settlement on the basis agreed upon, and because complainant was not in position to make settlement it was agreed that an effort should be made to arrange a mortgage loan on the property which would enable the settlement to be made. Failing in this effort it was then suggested by complain-

ant's father that the matter could rest until the following spring and before that time the complainant's father died.

Under these circumstances, which are uncontradicted, it certainly cannot be said that complainant's rights in this case should be foreclosed because of negligence on her part.

It is therefore urged and submitted that the decree appealed from be affirmed.

Respectfully submitted,

C. C. SHINN,

*Solicitor for and of Counsel
with Complainant.*

WM. ELMER BROWN, JR.,

Of Counsel.

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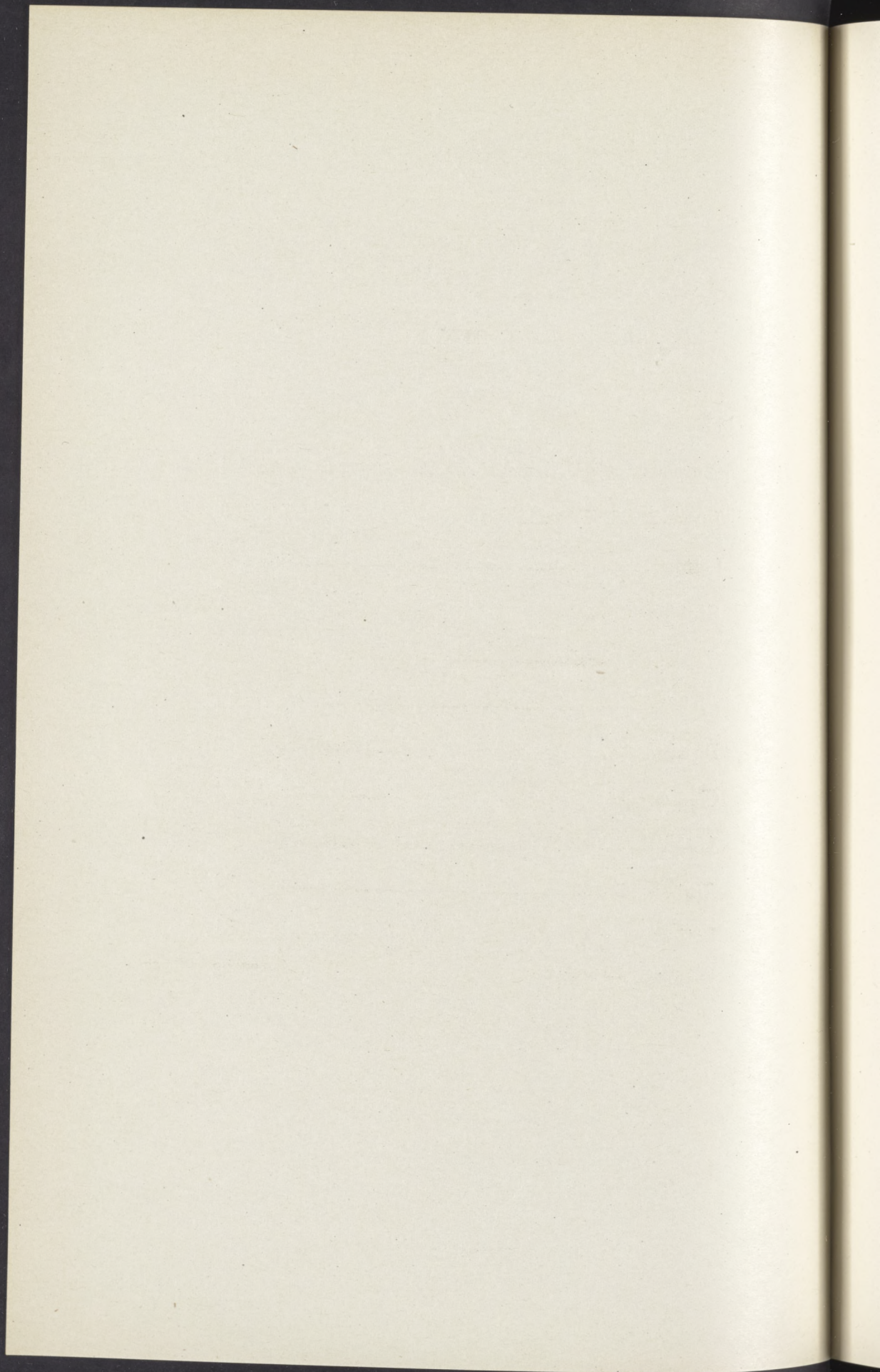


EXHIBIT C1.

SOUTH JERSEY TITLE AND FINANCE
COMPANY

ATLANTIC CITY, NEW JERSEY.
STATEMENT OF SETTLEMENT

Between SOUTH END REALTY CO., Seller and
CLARA SEDDON, Purchaser. 10
as of 9/15/13 191.

Under Application No. 3285—affecting premises situate

	Revised Statement.	
Consideration	19,500.00	
Insurance—8000—Agreed	78.13	
“ —4000—Agreed	19.46	
Water supply \$50.40 to 8/1/14.	44.10	
Interest in \$4500 from 9/15/13 to 9/19—	3.00	
Sewerage \$20.74 to 4/20/14	12.39	20
1st Mtg.	10,000.00	
Int. from 5/6/13 to 9/15/13	220.00	
2nd Mtg.	2,000.00	
Interest from 4/29/13 to 9/15/13—	45.34	
3rd Mtg.	4,500.00	
Taxes \$300.00 gtom 5/20	195.83	
Paid on a/c	2,542.01	
Balance due Silber	253.90	
	<hr/>	
	\$19,657.08	19,657.08 30
Due Silber—	\$253.90	
Policy	35.00	
Rec. Deed & mtg.	6.50	
	<hr/>	
	\$295.40	

Due	
Deposited by	
Seddon	273.87

\$24.53 Due from Sedden.

The above statement is hereby approved and settlement thereunder authorized.

10

EXHIBIT C2.

SOUTH JERSEY TITLE AND FINANCE
COMPANY

Atlantic City, New Jersey

STATEMENT OF SETTLEMENT

Between South End Realty Company, Seller and
Joseph Pichard Purchaser

as of Sept. 15, 1913 191 (9/29/13)

20 Under Application No. 3285 affecting premises situate West line of Ocean Avenue 400 feet 2½ inches from Southwest corner of Pacific and Ocean Avenues; West 50 feet by South 51 ft. 4¾ inches.

Consideration	19,500.00
Insurance—\$8000.00—agreed	78.13
Insurance— 4000.00— “	19.46
Water @ \$50.40 to 8/1/14—	44.10
Sewerage @ \$20.74 to 4/20/14—	12.39
30 Interest on \$4500.00 Mortgage from 9/15/13 to 9/19/13	3.00

19,657.08

1st Mortgage	10,000.00
Interest from 5/6/13 to 9/15	220.00
2nd Mortgage—	2,000.00

Exhibits

8

Interest from 4/29/13 to 9/15	45.34
Purchase Money Mortgage	4,500.00
Taxes @ \$300.00 from 5/20	95.83
Paid on a/c	2,542.01
Balance due seller	253.90

19,657.08

Amount deposited by Purchaser \$295.40

Balance due Seller \$253.90

Policy 35.00

Recording deed and

mortgage 6.50

\$295.40

The above statement is hereby approved and settlement thereunder authorized

[ENDORSED]

SOUTH JERSEY

TITLE AND FINANCE COMPANY

Marine Trust Company Building

Atlantic City, N. J.

STATEMENT OF SETTLEMENT

Between

20

EXHIBIT C2.

SOUTH JERSEY

TITLE AND FINANCE COMPANY

Atlantic City, N. J.

Marine Trust Company Building

30

Number

3309

Dollars

\$2,000.00

THIS POLICY OF INSURANCE witnesseth that
the SOUTH JERSEY TITLE AND FINANCE

COMPANY in consideration of the payment of its charges for the insuring of the title to the land hereinafter described, hereby covenants that it will insure, indemnify and keep harmless Joseph Pickard, of the City and County of Philadelphia, State of Pennsylvania and all persons or corporations to whom this Policy may be transferred with the assent of this Company evidenced by the signature of its proper officer endorsed thereon, against all loss or damage not exceeding the sum of Two thousand dollars which the Insured shall sustain, by reason of defects in the title of the Insured estate, mortgage, or interest described in Schedule A, hereto annexed, or because of liens, or incumbrances charging the same at the date of this Policy [unless some other date be mentioned in Schedule A, and then at the last mentioned date]; saving the estates, defects, objections, liens, or incumbrances excepted in Schedule B, or by the conditions of this Policy hereto annexed and hereby incorporated into and made part of this contract. The loss and the amount to be ascertained in the manner provided in the said conditions, and to be payable upon compliance by the Insured with the stipulations of said conditions, and not otherwise.

This Policy is issued upon an application numbered 3285—Block #20—, and it is agreed by all persons or corporations claiming under it to be a warranty of the facts therein stated.

30 IN WITNESS WHEREOF, the SOUTH JERSEY TITLE AND FINANCE COMPANY has caused its corporate seal to be hereunto affixed and these presents signed by its President, attested by its Secretary and approved by its Title Officer, this

Seventh day of October, in the year of our Lord one thousand nine hundred and thirteen.

Joseph Thompson, President
Ernest A. Lord, Secretary
Geo. A. Bourgeois, Title Officer

Reorganized 1903

SCHEDULE A.

1. The estate or interest of the Party Insured covered by this Policy. 10

Estate in Fee Simple.

2. How title is vested in the Party Insured.

Deed—South End Realty Company, a corporation of New York, to Insured,

Dated Sept. 12, 1913,

Recorded Oct. 7, 1913,

Book 516, page 300;

3. Description of Premises.

Situate in the City of Atlantic City, County of Atlantic and State of New Jersey, bounded and described as follows: BEGINNING on the Westerly side of Ocean Avenue four hundred feet two and one-half inches Southwardly from the Southwesterly corner of Pacific and Ocean Avenues, thence extending 20

(1) Westwardly, parallel with Pacific Avenue, fifty feet;

(2) Southwardly, and parallel with Ocean Avenue, fifty-one feet four and three-quarters inches;

(3) Eastwardly, and parallel with Pacific Avenue, fifty feet to the Westerly side of Ocean Avenue; 30

(4) Northwardly, along the same, fifty-one feet four and three-quarters inches to place of beginning.

SCHEDULE B.

Showing estates, defects, or objections to title, and liens, charges and incumbrances thereon, which do, or may now exist and against which the Company does not agree to guarantee or indemnify.

- (1) Rights of way, public or private. (2) Variations in lines and deficiency in quantity of ground. (3) Taxes and municipal claims for the current year. (4) Mechanics' lien claims not filed, nor of record, in the office of the County Clerk in and for the County of Atlantic. (5) Tenancy of the present occupants.
- 10 (6) Restrictive covenants as imposed by George T. Lippincott and wife, in deed to Roland Conrow, dated Mar. 15, 1903, recorded in Book 285, page 325.
- (7) Mortgage—James A. Cathcart, widower, to Conrad Schwoerer, dated May 6, 1909, recorded June 17, 1909 in Book 102, page 319; To secure \$10,000.00, payable within two years from date. Interest 6%.
- 20 (8) Mortgage—James A. Cathcart, widower, to John R. Minnick, John W. Hodges and Harry Corsie, Trustees of Trinity Chapter No. 38, R. A. M. of Atlantic City, dated Oct. 29, 1909, recorded Nov. 1, 1909 in Book 104, page 422; To secure \$2,000.00, payable at any time within three years from date. Interest 6%.
- 30 (9) Mortgage—Joseph Pickard to South End Realty Company, dated Sept. 19, 1913, recorded Oct. 7, 1913 in Book 140, page 438; To secure \$4500.00, payable \$500.00 on Aug. 1, 1914. In each and every year thereafter beginning with 1915, \$500.00 each July 15th and \$500.00 each Aug. 15th, until paid. A greater amount can be paid off the principal at any time in sums of not

less than \$100. In default of any installment of principal, upon maturity thereof, the whole principal sum shall become due. Interest 6%. Liability to assessment for municipal improvements such as grading, paving, curbing, gutter and sidewalk done or being done.

EXHIBIT C4.

10

JOSEPH PICKARD

Philadelphia, Oct. 7th, 1919.

MRS. CLARA SEDDON.

Dear Daughter

Just a line to let you know that instead of writing to *Mr. Brucker* I found him and his wife waiting for me when I got home on Sunday night. So I told him that we were not going to rent the hotel any more and that I expected him to vacate when his time was up on Nov. 1st. So I think he will do so without any further notice so if I were you I would not trouble him until that time. Inclosed find Receipt for the five hundred dollars which you gave me on Sunday. Hoping this will find you well as it leaves me at present

20

from your Father,
JOSEPH PICKARD.

30

EXHIBIT C5.

10/2/23L.

EXHIBIT D2.

11/14/24m.

THE BELDEN

136 Ocean Avenue
Atlantic City, N. J.
Mrs. W. H. Seddon

10	(Hotel Belden)	1920
	Carrying Charges	
	Feb 1st Water	1660xR4
	March 19th Insurance	96-94R5
	April 20th Sewerage	27.45R6
	May 1st Interest 2d Mortg	6000
	“ 6 “ 1st “	30000
	“ 18 Piano	4000
	June 7th Taxes	429-54xR7
20	Aug 1st water	61 88xR8
	Nov 21st Insurance	144-68xR9
		<hr/>
		1177-09
	Amount to be Paid.	360-00
		<hr/>
	1st mortgage 300.00	1537.09
	2d “ 60.00	
		<hr/>
30	Interest on \$6000	360-00
		<hr/>
		1897 09
	to come of	10 45
		<hr/>
		1886.64
	Credit	807-39
		<hr/>
		1079.25

Exhibits

9

[ENDORSED]
In Chancery of New Jersey
Between

Clara Seddon
Complt

and

Annie Pickard et als
Dfdts

W. F. Sooy
Special Master

10

EXHIBIT C6.

10/2/23L.

EXHIBIT D1.

11/14/24m.
June 18th

20

Canceled Checks for 1921 to date

Jan 24th Horace F. Nixon	192-90R1
April 29th " " "	96-44√
May 3d Atlantic City Sewerage Co	27-45R2
" 4th Horace F. Nixon	300-√
" " J G Hammer	60-√
" 26 Lewis F Mathis	285-57R3

\$962-36 30

[ENDORSED]
Mr. Wheeler
c/o Sasser Realty Co
5th St & Central Ave
St. Petersburg
St. James

10

Exhibits

In Chancery of New Jersey
Between

Clara Seddon

Complt

and

Annie Pickard et als

Dfdts

W. F. Sooy
Special Master

10

EXHIBIT C1.

11/14/24m

EXHIBIT C9.

No. Atlantic City, N. J. Oct 7 1919
20 ATLANTIC CITY NATIONAL BANK 55-139
Pay to the order of Joseph Pickard
Five Hundred 00/100 Dollars
\$500.00 500— Clara Seddon

[ENDORSED]

Pay Ninth National Bank, Phila.
or Order.

Joseph Pickard

Pay to the order of

30 Federal Reserve Bank of Philadelphia
Prior endorsements guaranteed.

3-33 Oct 7 1919 3-33

Ninth National Bank, Philadelphia

3-4 Pay to the order of 3-4

any bank, banker or trust co.

Prior endorsements guaranteed

Exhibits

11

Federal Reserve Bank of Philadelphia
In Chancery of New Jersey
Between

Clara Seddon

Complt

and

Annie Pickard et als

Dfdts

W. F. Sooy
Special Master
(Perforated)

10

A C N B

10 8 19

EXHIBIT C2.

11/14/24m.

EXHIBIT C3.

20

10/2/23L.

Oct 6th 1919

RECEIVED from Clara Seddon

Five hundred 00/100 Dollars

on acct of Hotel
\$500.00

Joseph Pickard

[ENDORSED]

In Chancery of New Jersey

30

Between

Clara Seddon

Complt

and

Annie Pickard et als

Dfdts

W. F. Sooy
Special Master

EXHIBIT C10.

EXHIBIT C3.

11/14/24m.

Atlanta Ga.

MERCHANTS BANK

Daytona, Fla. Jan. 30-1920

10 Pay to the order of Jos. Pickard \$500.xx/100
 Five Hundred xx/100 Dollars
 No. Clara Seddon

[ENDORSED]

Joseph Pickard

Pay to the order of

Any Bank, Banker or Trust Co.

Prior endorsements guaranteed

Feb 26 1920

20

Federal Reserve Bank

64-14 of Atlanta 64-14

Pay to the order of

Any Bank, Banker or Trust Co.

Prior endorsements guaranteed

Feb 20 1920

The Central National Bank

3-26 Philadelphia, Pa. 3-26

A. D. Swade Cashier

Pay to the order of

30

Any Bank, Banker or Trust Co.

All prior endorsements guaranteed

Feb 25 1920

Jacksonville Fla.

Federal Reserve Bank

Jacksonville Fla.

Pay to the order of

Central National Bank of Phila.

All prior endorsements guaranteed
Ninth National Bank
3-33 Philadelphia, Pa. 3-33
John G. Sonneborn, Cashier
(Perforated)
In Chancery of New Jersey
Between
Clara Seddon
Complt 10
and
Annie Pickard et als
Dfdts
W. F. Sooy
Special Master

EXHIBIT C8.

EXHIBIT C4. 20

11/14/24m.
Atlantic City, N. J. July 14 1920
Pay to the order of Joseph Pickard \$200/xx
Two Hundred /100 Dollars
Clara Seddon
TO ATLANTIC CITY NATIONAL BANK
55-139 Atlantic City, N. J.

[ENDORSED] 30
Joseph Pickard
Pay to the order of
Federal Reserve Bank of Philadelphia
Prior endorsements guaranteed.
3-33 Jul 15 1920 3-33
Ninth National Bank, Philadelphia
3-4 Pay to the order of 3-4

14

Exhibits

Any Bank, Banker or Trust Co.
Prior endorsements guaranteed.
Federal Reserve Bank of Philadelphia
(Perforated)

A C N

7 16

In Chancery of New Jersey

Between

Clara Seddon

Complt

10

and

Annie Pickard et als

Dfdts

W. F. Sooy
Special Master

EXHIBIT C7.

20

10/2/23L.

EXHIBIT C5.

11/14/24m.

Atlantic City, N. J. Aug 6 1920

ATLANTIC CITY NATIONAL BANK 55-139

Pay to the order of Joseph Pickard

Five Hundred Dollars

\$500./00

Clara Seddon

30

[ENDORSED]

Joseph Pickard

Pay to the order of

Federal Reserve Bank of Philadelphia

Prior endorsements guaranteed.

3-33

Aug 10 1920

3-33

Exhibits

15

Ninth National Bank, Philadelphia
3-4 Pay to the order of 3-4
Any Bank, Banker or Trust Co.
Prior endorsements guaranteed.
Federal Reserve Bank of Philadelphia
(Perforated)
A C
8 1

In Chancery of New Jersey
Between
Clara Seddon
Complt
and
Annie Pickard et als
Dfdts
W. F. Sooy
Special Master

10

EXHIBIT C6.

20

11/14/24m.
MERCHANTS BANK
Daytona, Fla. Jan 7 1921
Pay to the order of Joseph Pickard \$300.00
Three Hundred 00/100 Dollars
No. Clara Seddon

[ENDORSED]
Joseph Pickard
Pay to the order of
Federal Reserve Bank of Philadelphia
Prior endorsements guaranteed.
3-33 Feb 11 1921 3-33
Ninth National Bank, Philadelphia
3-4 Pay to the order of 3-4

30

Exhibits

Any Bank, Banker or Trust Co.
 Prior endorsements guaranteed,
 Federal Reserve Bank of Philadelphia
 Pay to the order of
 Any Bank, Banker or Trust Co.
 Prior endorsements guaranteed
 Feb 14 1921

10 Jacksonville Branch
 Federal Reserve Bank of Atlanta
 63-19 Jacksonville Fla. 63-19
 (Perforated)
 M B
 8 16 21

In Chancery of New Jersey
 Between

Clara Seddon

Complt

and

Annie Pickard et als

20

Dfdts

W. F. Sooy
 Special Master

EXHIBIT C15.

10/2/23L.

30

EXHIBIT C7.

11/14/24m.

MERCHANTS BANK

Daytona, Fla. Jan 15 1921

Pay to the order of Joseph Pickard \$200.00

Two Hundred Dollars

No.

Clara Seddon

Exhibits

17

[ENDORSED]

Joseph Pickard

Pay to the order of

Federal Reserve Bank of Philadelphia

Prior endorsements guaranteed,

3-33 Feb 11 1921 3-33

Ninth National Bank, Philadelphia

3-4 Pay to the order of 3-4

Any Bank, Banker or Trust Co.

Prior endorsements guaranteed,

10

Federal Reserve Bank of Philadelphia

Pay to the order of

Any Bank, Banker or Trust Co.

Prior endorsements guaranteed

Feb 14 1921

Jacksonville Branch

Federal Reserve Bank of Atlanta

63-19 Jacksonville Fla. 63-19

(Perforated)

M B

20

7 16 21

In Chancery of New Jersey

Between

Clara Seddon

Complt

and

Annie Pickard et als

Dfdts

W. F. Sooy

Special Master

30

EXHIBIT C8.

11/14/24m.

MERCHANTS BANK

Daytona, Fla. Jan 17 1921

Pay to the order of Joseph Pickard \$200.00

Two Hundred Dollars

10 No.

Clara Seddon

[ENDORSED]

Joseph Pickard

Pay to the order of

Federal Reserve Bank of Philadelphia

Prior endorsements guaranteed,

3-33 Jan 22 1921 3-33

Ninth National Bank, Philadelphia

Pay to the order of

20

Any Bank, Banker or Trust Co.

Prior endorsements guaranteed,

Federal Reserve Bank of Philadelphia

Pay to the order of

Any Bank, Banker or Trust Co.

Prior endorsements guaranteed

Jan 24 1921

Jacksonville Branch

Federal Reserve Bank of Atlanta

30

63-19 Jacksonville Fla. 63-19

(Perforated)

M B

1 21 26

In Chancery of New Jersey

Between

Clara Seddon

Complt

Exhibits

19

and
Annie Pickard et als
Dfdts
W. F. Sooy
Special Master

EXHIBIT C9.

10

11/14/24m.
THE FIRST NATIONAL BANK
of Daytona
U. S. Government Control
Daytona, Fla. Apr 5 1921 No.
Pay to the order of Joseph Pickard \$500/00
Five Hundred 00/100 Dollars
Clara Seddon

[ENDORSED]

20

Joseph Pickard
Pay to the Order of
Federal Reserve Bank of Philadelphia
Prior endorsements guaranteed
3-33 Apr 12 1921 3-33
The Ninth National Bank, Philadelphia
3-4 Pay to the order of 3-4
Any Bank, Banker or Trust Co.
Prior endorsements guaranteed
Federal Reserve Bank of Philadelphia
Pay to the order of
Any Bank, Banker or Trust Co.
Prior endorsements guaranteed
Apr 14 1921
Jacksonville Branch
Federal Reserve Bank of Atlanta
63-19 Jacksonville Fla. 63-19

30

20

Exhibits

(Perforated)

PAID

4 15 11

In Chancery of New Jersey

Between

Clara Seddon

Complt

and

Annie Pickard et als

Dfdts

10

W. F. Sooy
Special Master

EXHIBIT C10.

11/14/24m.

THE FIRST NATIONAL BANK

of Daytona

20

Daytona, Fla. June 20 1921 No.

U. S. Government Control

Pay to the order of Joseph Pickard

\$20.00

Twenty Dollars

Clara Seddon

[ENDORSED]

Joseph Pickard

Pay to the order of

30

Federal Reserve Bank of Philadelphia

Prior endorsements guaranteed

3-33

Jun 27 1921

3-33

Ninth National Bank, Philadelphia

3-4

Pay to the order of

3-4

Any Bank, Banker or Trust Co.

Prior endorsements guaranteed

Exhibits

21

Federal Reserve Bank of Philadelphia
Pay to the order of
Any Bank, Banker or Trust Co.
Prior endorsements guaranteed
Jun 29 1921

Jacksonville Branch
Federal Reserve Bank of Atlanta
63-19 Jacksonville, Fla. 63-19

Pay to the order of
Any Bank, Banker or Trust Co. 10
All Prior Endorsements Guarantee
3-4 Jun 27 1921 3-4

Federal Reserve Bank
of Philadelphia, Pa.

Dyer, Cashier
(Perforated)

PAID

6 30 21

In Chancery of New Jersey
Between

20

Clara Seddon

Complt

and

Annie Pickard et als

Dfdts

W. F. Sooy
Special Master

EXHIBIT C11.

30

11/14/24m.

No. Atlantic City, N. J. July 9 1921

ATLANTIC CITY NATIONAL BANK 55-139

Pay to the order of Joseph Pickard

Five Hundred /100 Dollars

\$500.00/xx

Clara Seddon

Exhibits

[ENDORSED]

Joseph Pickard

Pay to the order of

Federal Reserve Bank of Philadelphia

Prior endorsements guaranteed

3-33 Jul 16 1921 3-33

Ninth National Bank, Philadelphia

3-4 Pay to the order of 3-4

Any Bank, Banker or Trust Co.

Prior endorsements guaranteed

10

Federal Reserve Bank of Philadelphia

(Perforated)

A C N B

7 12 21

In Chancery of New Jersey

Between

Clara Seddon

Complt

and

20

Annie Pickard et als

Dfdts

W. F. Sooy

Special Master

EXHIBIT C12.

11/14/24m.

30 No.

Atlantic City, N. J. Aug 8 1921

ATLANTIC CITY NATIONAL BANK 55-139

Pay to the order of Jos Pickard

Five Hundred /100 Dollars

\$500/100

Clara Seddon

Exhibits

23

[ENDORSED]	
Jos. Pickard	
Pay to the order of	
Federal Reserve Bank of Philadelphia	
Prior endorsements guaranteed	
3-33 Aug 10 1921 3-33	
The Ninth National Bank, Philadelphia	
3-4 Pay to the order of 3-4	
Any Bank, Banker or Trust Co.	
Prior endorsements guaranteed	10
Federal Reserve Bank of Philadelphia	
Pay to the order of	
Any Bank, Banker or Trust Co.	
All prior endorsements guaranteed.	
3-4 Aug 10 1921 3-4	
Federal Reserve Bank of Philadelphia	
Pa.	
Wm. A. Dyer, Cashier.	
(Perforated)	
A C N B	20
In Chancery of New Jersey	
Between	
Clara Seddon	
Complt	
and	
Annie Pickard et als	
Dfdts	
W. F. Sooy	
Special Master	30

EXHIBIT C13.

11/14/24m.

MERCHANTS BANK

Daytona, Fla. Nov 20 1921

Pay to the order of Joseph Pickard \$500/00

Five Hundred Dollars

No.

Clara Seddon

10

[ENDORSED]

Joseph Pickard

Pay to the order of

Any Bank, Banker or Trust Co.

Prior endorsements guaranteed

Dec 5 1921

Jacksonville Branch

Federal Reserve Bank of Atlanta

63-19 Jacksonville, Fla. 63-19

Pay to the order of

Any Bank or Trust Company

Prior endorsements guaranteed

Dec. 3 1921

Corn Exchange National Bank

Philadelphia, Pa.

3-18 A. M. Matthews, Cashier 3-18

Pay to the order of

National Bank

Philadelphia, Pa.

All prior endorsements guaranteed

55-453 Dec. 2 1921 55-453

The Marine National Bank

Wildwood, N. J.

G. G. Eldredge, Cashier.

30

Exhibits

25

(Perforated)
M B
12 7 21
In Chancery of New Jersey
Between
Clara Seddon
Complt

and
Annie Pickard et als

Dfdts 10

W. F. Sooy
Special Master

EXHIBIT C14.

1 1/14/24m.
MERCHANTS BANK

Number 20

Daytona, Florida, Jan 10 1922
Pay to the order of Jas. Pickard \$250.00
Two Hundred & Fifty 00/100 Dollars
Clara Seddon

[ENDORSED]

Joseph Pickard
Pay to the order of
Any Bank, Banker or Trust Co.
Prior endorsements guaranteed 30
Jan 20 1922
Jacksonville Branch
Federal Reserve Bank of Atlanta
63-19 Jacksonville, Fla. 63-19
Pay to the order of
Federal Reserve Bank of Philadelphia

- Prior endorsements guaranteed
 3-33 Jan 18 1922 3-33
 The Ninth National Bank,
 Philadelphia
- 3-4 Pay to the order of 3-4
 Any Bank, Banker or Trust Co.
 Prior endorsements guaranteed
 Federal Reserve Bank of Philadelphia
 Pay to the order of
 10 Any Bank, Banker or Trust Co.
 All prior Endorsements Guaranteed.
 3-4 Jan 18 1922 3-4
 Federal Reserve Bank
 of Philadelphia, Pa.
 Wm. A. Dyer, Cashier
 (Perforated)
 M B
 1 23 22
- 20 In Chancery of New Jersey
 Between
 Clara Seddon
 Complt
 and
 Annie Pickard et als
 Dfdts
 W. F. Sooy
 Special Master
-
- 30 EXHIBIT C15.
 11/14/24m.
 MERCHANTS BANK
 Number
 Daytona, Florida, Jan. 18th 1922
 Pay to the order of Jas Pickard \$250.00
 Two Hundred & Fifty 00/100 Dollars
 Clara Seddon

Exhibits

27

[ENDORSED]

Jos Pickard

Pay to the order of

Any Bank, Banker or Trust Co.

Prior endorsements guaranteed

Jan 20 1922

Jacksonville Branch

Federal Reserve Bank of Atlanta

63-19 Jacksonville, Fla. 63-19

Pay to the order of

10

Federal Reserve Bank of Philadelphia

Prior endorsements guaranteed

3-33 Jan. 18, 1922 3-33

Ninth National Bank, Philadelphia

3-4 Pay to the order of 3-4

Any Bank, Banker or Trust Co.

Prior endorsements guaranteed

Federal Reserve Bank of Philadelphia

Pay to the order of

Any Bank, Banker or Trust Co.

20

All prior endorsements guaranteed.

3-4 Jan 18 1922 3-4

Federal Reserve Bank

of Philadelphia, Pa.

Wm. A. Dyer, Cashier

(Perforated)

M B

1 23 22

In Chancery of New Jersey

Between

30

Clara Seddon

Complt

and

Annie Pickard et als

Dfdts

W. F. Sooy

Special Master

EXHIBIT C11.

10/2/22L.

EXHIBIT C17.

11/14/24m.

10

MERCHANTS BANK

Daytona, Fla. Mar 2 1920

Pay to the order of Sara S. Klemmer \$107.39/100

One Hundred & Seven 39/100 Dollars

No.

Clara Seddon

[ENDORSED]

Sara S. Klemmer

Pay to the order of

Any Bank, Banker or Trust Co.

20

All prior endorsements guaranteed

63-4 Mar 18 1920 63-4

The Barnett National Bank

Jacksonville, Fla.

C. S. Lengle, Cashier

Pay Market Street National Bank

or order

Endorsements guaranteed

Continental-Equitable Title & Trust Co.

Pay any Bank, Banker or Trust Company

30

or order

Prior endorsements guaranteed

3-40 Mar 15 1920 3-40

Market Street National Bank

Philadelphia, Pa.

Fred. F. Spellissy, Cashier

Exhibits

29

(Perforated)

M B

3 19 20

In Chancery of New Jersey

Between

Clara Seddon

Complt

and

Annie Pickard et als

Dfdts

10

W. F. Sooy
Special Master

EXHIBIT C12.

Wildwood, Dec. 12th, 1921.

Dear Daughter letter Recd pleased to know that you
are feeling well. We are so unsettled I dont know
just what we shall do yet but will let you know if
Bessie is with you remember us to her. 20

My wife is having trouble with eyes we may have
to go back to Philadelphia for the winter.

hoping this will find you all well

I am your Loving

Father.

112 E. Montgomery Ave. Wildwood.

30

EXHIBIT C16.

10/2/23L.

EXHIBIT D3.

11/14/24m.

JOSEPH PICKARD
MANUFACTURER OF

10

PILE WIRES OF EVERY DESCRIPTION

Velvets a Specialty

also PICKARD'S Improved Spring Steel Heedles
and Lingos

Office and Works: 178 West York Street

Philadelphia,

191

	Interest on \$3000 Sept 15th	\$90.00
	“ “ 2d Mortgage Oct 4th	60.00
	“ “ 1st “ “ 6th	300.00
20	“ “ Insurance 18	164.40
	“ “ Taxes Dec 17	277.70
	Insurance March 6th	109.60
	March 18	90.00
	“ “ on Bond & Mortgage	
		<hr/> 1091.70

[ENDORSED]

30

In Chancery of New Jersey
Between

Clara Seddon,

Complt

and

Annie Pickard et als

Defts.

W. F. Sooy

Special Master

EXHIBIT C17.

Lawndale, Dec. 30th, 1921.

MRS CLARA SEDDON

My Dear Daughter

I am writing you a few lines hoping they will find you well and prosperous—and informing you that we have returned to Lawndale for the winter as we had no means of heating the cottage at Wildwood and could not stay there during the winter so I guess you will not see us till you come this way in the Spring. In your letter of Nov. 18th you said you would send me \$500.00 more by Dec. 15th but have not as yet received it. If you have not sent it of when you get this address your letter to 6319 Palmettos St. Lawndale I am enclosing you a letter which I received a few days ago for you to read and return to me it is a puzzle to me as I dont recall any agreement to pay of \$2000 dollars of the mortgage as stated in the letter and of course have made no provision for paying it but I shall have to write him and get him to hold her of until we can arrrange the matter. 10 20

Write me as soon as you can and let me know what you think of the matter maybe you can suggest something.

Sorry to say that my wife is not a bit well she is having trouble with her eyes in fact she is almost blind. Personally I am first rate feeling fine as I hope this will find you all. 30

I think that is about all at this time.

From your Loving Father.

My wife wished to be remembered.

Happy New Year.

EXHIBIT C18.

\$750.00 Atlantic City, N. J. May 4, 1914.
 Two Months after date I promise to pay
 to the order of CLARA SEDDON at the
 EQUITABLE TRUST COMPANY
 SEVEN HUNDRED AND FIFTY 00/100 Dollars
 without defalcation. Value Received.
 10 No. 4367 Due July 6 JOSEPH PICKARD
 [ENDORSED]
 Clara Seddon.

EXHIBIT C18.

\$375.00 Atlantic City, N. J. May 10, 1915.
 One Month after date I promise to pay
 to the order of CLARA SEDDON at the
 20 EQUITABLE TRUST COMPANY
 THREE HUNDRED AND SEVENTY-FIVE
 00/100 Dollars.
 without defalcation. Value received.
 JOSEPH PICKARD.
 No. 9479 Due June 10 178 W. York St. Phila.
 Address.

[ENDORSED]
 CLARA SEDDON.

30

EXHIBIT C18.

\$325.00 Atlantic City, N. J. June 10th, 1915.
 One Month after date I Promise to pay
 to the order of CLARA SEDDON at the
 EQUITABLE TRUST COMPANY

THREE HUNDRED AND TWENTY-FIVE and
 00/100 Dollars.
 without defalcation. Value received.
 JOSEPH PICKARD.
 No. 9893 Due July 12

[ENDORSED]
 CLARA SEDDON.

EXHIBIT C18.

10

\$325.00 Atlantic City, N. J., June 10th, 1915.
 Two Months after date I promise to pay
 to the order of CLARA SEDDON at the
 EQUITABLE TRUST COMPANY
 Three Hundred and Twenty-five 00/100Dollars
 without defalcation. Value Received.
 No..... Due..... JOSEPH PICKARD

[ENDORSED]
 Clara Seddon.

EXHIBIT C18.

20

\$. Atlantic City, N. J. July 14, 1915
 Thirty Days after date I promise to pay
 to the order of JOSEPH PICKARD at the
 EQUITABLE TRUST COMPANY
 Two Hundred.....DOLLARS
 without defalcation. Value Received.
 No..... Due Aug. 13 CLARA SEDDON
 47249

[ENDORSED]
 JOSEPH PICKARD

30

