

New Jersey Court of Errors and Appeals

Between

JAMES V. HERRON, Executor of
the Last Will and Testament
of DANIEL. F. CAMPBELL,
Deceased,

Complainant-Respondent,

and

CATHERINE CAMPBELL,

Defendant-Appellant.

On Appeal from
Decree in
Chancery.

BRIEF OF COMPLAINT-RESPONDENT

The complainant-respondent respectfully submits to the Court that the decree entered in the above entitled cause should be affirmed for the following reasons:

1. The evidence showed that there was never any physical delivery of the deed.

(A.) The deed remained at the home of the grantor and in his possession.

(a.) The deed was kept in a storeroom at the home of the grantor, and among his papers.

The answer of the defendant admitted that Daniel F. Campbell, the grantor, resided and made his home at, from the year 1911 until the date of his death, which was

August 23rd, 1928, and which period included the period between the date of the deed and the date of his death, the lands and premises where the evidence showed that the deed was kept from its date to the date of the said grantor's death. Also, the uncontradicted evidence showed that the grantor operated the farm and resided in the house thereon, in a room in which house the said deed was kept, from the date of the deed until his death, and there does not appear from the evidence to be any contention that such was not the fact. The contention of the defendant appeared to be, on the other hand, that, while the grantor resided at and operated the farm where the deed remained, she also resided at said farm, and had a room set apart for her in the house thereon, in which room the deed was kept among other papers belonging to her.

The evidence, however, overwhelmingly refutes this contention of the defendant. Rebecca Sutts, a witness for the complainant, who resided in one-half of the house which was the home of the grantor, testified that she resided there for a period of four years and ten months, and that she moved away in October, 1928, shortly after the death of the grantor. (State of the Case, page 46, line 11.) She also testified that she had seen the deed three or four times, and that the last time that she had seen it was three or four days before the death of the grantor. (State of the Case, page 39, line 28.) She also testified that the grantor first showed her the deed in the spring of 1924, (State of the Case, page 46, line 32), and that she saw it again in the year 1928. (State of the Case, page 47, line 7.) She also testified to the circumstances under which she saw the deed shortly prior to the death of the grantor;

“A. I went upstairs one day to his room, and he was out of the room; he was a very sick man then; and I went on through to his part in his room.

Q. Had he been sick?

A. He was sick in bed at that time; he was

between two doors; I don't know which room he were going in, and I took hold of him and told him to go back in the room. I put him back into bed; and then he said to me, "Bec, I got something to tell you," he says, "I have a deed in the other part on my mother's name; my mother's name is on it; and he said, "And I would like to have it." So I goes and searches for this deed and brings it out to him, and he said, "That's what I want;" and he said, "Now, you can put it back, and Jimmie Herron will take care of it;" but he told me before that, that in his will,—"

(State of the Case, page 40, line 11).

Rebecca Sutts also testified;

"Q. This room in which the deed was kept, what kind of a room was it, bedroom?

A. No, a junk hole.

Q. More or less of a store-room?

A. Yes.

Q. What was it?

A. I had an old bureau up there and an old stand, and several baskets up there, and glass jars that I used for canning.

Q. It wasn't a room of Mrs. Campbell's, was it?

A. No, Mrs. Campbell never had a room there.

Q. Never had one?

A. No.

Q. Was there a bed in the room?

A. No."

(State of the Case, page 43, line 4).

Rebecca Sutts again testified that the deed was kept among other papers of the grantor, that the furniture in

the room did not belong to the defendant, that the defendant never had any furniture there, and that the defendant never had a room there during the five years the witness resided there. (State of the Case, page 48, line 1).

Rebecca Sutts further testified;

“Q. Mrs. Sutts, I am not clear whether you testified on direct examination to this, but was there a bureau in the room in which the deed was kept?

A. There was an old bureau, a stand, but it belonged to me.

Q. There was no bed?

A. No bed, no.

Q. During the five years, more or less, that you lived in the other side of Daniel Campbell's homestead, did Catherine Campbell ever live there or have a room set apart for her?

A. No, Mrs. Campbell never stayed but two nights; that was the two nights before Dan died.”
(State of the Case, page 136, line 19).

William Burke, a witness for the complainant, who had been a friend of the grantor for many years, testified that he had worked for the grantor during several periods, the last of which periods was for about five years before the grantor's death. (State of the Case, page 54, line 19). This witness also described the room in which the deed was kept;

“Q. What room did Mrs. Campbell get those papers from?

A. A room that was over the kitchen on the second floor, a back room.

Q. What furniture was in that room?

A. Well, it was what I would call a couple of small stands or bureaus; a lot of boxes there, and

empty jars, and five or six or seven boxes of dynamite and fuse cords and ignition caps.

Q. You were up in the room at the time she took the papers out?

A. Yes, sir."

(State of the Case, page 64, line 17).

Jordan Williams, a witness for the complainant, testified that he tilled the farm of the grantor on shares during the years 1927 and 1928, and that the defendant never lived on the farm during the time that he was there. (State of the Case, page 78, line 14).

George A. Gravatt, a witness for the complainant, testified that he tilled the farm in question for the grantor in the years 1924 and 1925, and this witness also testified that he had seen the defendant come there, but that she did not live there. (State of the Case, page 81, line 35).

Hugh Sutts, a witness for the complainant, testified that he lived on the farm of the grantor between 1923 and the time the grantor died, and that the defendant did not live there nor have a room set apart for herself at any time during that period. (State of the Case, page 138, line 9).

Margaret Morris, a daughter of the defendant, who was a witness for the defendant, admitted that, during the period between 1923 and the time the grantor died, the defendant did not stay at the farm and never slept there overnight. (State of the Case, page 109, line 14).

This witness admitted that she was never in the room in question after the year 1923. (State of the Case, page 113, line 19). This witness also admitted that she did not know what other papers the defendant had in the room in question, (State of the Case, page 98, line 25), and that she did not know what other papers the defendant had in the bureau. (State of the Case, page 99, line 10).

This witness also admitted that she had no knowledge of the keeping of the deed by the defendant in the back room except from what the defendant told her. (State of the Case, page 113, line 1).

Thomas J. Morris, the son-in-law of the defendant, who went with the defendant on the occasion when the deed was obtained from the farm at the home of the grantor after the grantor's death, admitted that the insurance policies which were found with the deed were made out to the grantor. (State of the Case, page 131, line 19).

2. The evidence showed that the deed was not intended to operate as a then present conveyance.

(A.) The deed remained under the control of the grantor from the time of its execution until his death.

As has been shown above, the deed remained at the home of the grantor, in a room which was used as a store-room and not for living purposes, and remained among the papers of the grantor. In addition to the above, the attention of the Court is directed to the fact that, in the early spring of the year 1928, the deed was seen by the witness, Rebecca Sutts, on an occasion when she was attending the grantor in a search among his papers for another document which he desired to find.

Rebecca Sutts testified;

“Q. When was the next time you saw it?

A. The next time I saw the deed he were looking for a release and mortgage, a fellow was going to buy his farm down in the country, and he wanted this paper, and we had to search for it to find it.”

(State of the Case, page 47, line 7).

(B.) No change in the operation, management or control of the property occurred at the

time of the date of the deed or thereafter during the lifetime of the grantor.

Rebecca Sutts, a witness for the complainant, who resided in a portion of the house on the farm of the grantor for a period of nearly five years before his death, testified that she rented of the grantor and paid the rent to him. (State of the Case, page 43, line 19).

Harry F. Satterthwaite, a witness for the complainant, testified that he held a mortgage upon the farm described in the deed, and that this mortgage was placed about February 19, 1927, which was approximately five years after the date of the said deed, and that the mortgage was placed by the grantor. (State of the Case, page 53, line 3). This witness also testified that the said mortgage was for the principal sum of \$2,000. (State of the Case, page 53, line 33).

Joseph R. Malone, a witness for the complainant, testified that he was an insurance man, that the insurance on the farm of the grantor was carried in the grantor's name from the year 1918 to the date of the hearing in this cause, that the grantor placed such insurance with the witness, and paid the premiums for the same. (State of the Case, page 74, line 3). This witness also testified that some out-buildings on the farm of the grantor burned in the year 1925, and that he delivered to the grantor a check made to the order of the grantor for \$1,600, the amount of the loss. (State of the Case, page 74, line 17).

Harry Colkitt, the Tax Receiver and Treasurer of Bordentown Township, a witness for the complainant, testified that the property in question was assessed in the name of the grantor in 1929 (the year 1919 appearing at this point in the testimony is evidently an error of the stenographer or printer). (State of the Case, page 75, line 34), and (State of the Case, page 76, line 27). This witness also testified that the property was never assessed in the name of the defendant, and that the grantor

paid the taxes since the witness took office in 1926. (State of the Case, page 76, line 8).

Jordan Williams, a witness for the complainant, testified that he tilled the farm of the grantor on shares during the years '27 and '28, and that he had a contract with the grantor. (State of the Case, page 78, line 13). This witness also testified that he and the grantor signed a contract with the Campbell Soup Company for the raising and selling of tomatoes to that company. (State of the Case, page 78, line 29), also (State of the Case, page 79, line 10).

George A. Gravatt, a witness for the complainant, testified that he farmed the farm in question for the grantor during the years 1924 and 1925, that he dealt with the grantor as the owner of the farm, and that he had a contract with the grantor to till the farm on shares. (State of the Case, page 80, line 35).

Margaret Morris, a daughter of the defendant who testified for the defendant, admitted that the barns upon the farm burned after the date of the execution of the deed, that the grantor received \$1500 because of this and that the defendant did not make any claim to the grantor for that money. (State of the Case, page 114, line 10).

Howard V. Dickey, who executed a contract with the defendant for the purchase of lots upon another tract of land, which was not a part of the farm in question, a deed for which tract of land had been executed by the grantor to the defendant but had admittedly never been delivered, and which deed is not in question in this suit, testified that at the time he signed the contract of purchase with the defendant and paid a deposit of \$25 upon the purchase price of said lots, he paid this deposit to the grantor instead of to the defendant. (State of the Case, page 117, line 8).

A number of the facts in the present case are closely similar to the facts in *Rennebaum et al vs. Rennebaum*, 78 N. J. Eq. 427, 79 Atl. 309, in which case Leaming,

V.-C., in arriving at the conclusion that the deed therein was not intended to presently operate as a conveyance, called attention to the fact that the deed was at no time removed from the grantor's control, that no change in the operation or management of the property occurred, that the grantor continued to pay all charges and taxes as before the deed, and that the insurance policies on the dwelling were not transferred, or new insurance taken in the name of the grantee.

Certain of the facts in the present case are also similar to some of the facts in the case of *Rommell vs. Happe et als.*, 93 N. J. Eq. 383, 115 Atl. 906, in which case Fielder, V.-C., in concluding that the evidence showed that the deed in that case was not delivered or intended to take effect in the grantor's lifetime, called attention to the fact that the grantor made no delivery of the deed to anyone and did not part with its possession or control from the time of its execution to the date of his death, that it was a private paper, always kept by him with other private papers in a private place, that by no act or word had he indicated an intention to part with control of it and make it effective as a conveyance, and that he undoubtedly retained the right to destroy it and make other disposition of real estate by deed or will.

(C.) The defendant did not know of the existence of the deed until after the death of the grantor.

There was no evidence that the deed in question was ever in the hands of the defendant from the time of its date until after the death of the grantor. The evidence strongly indicates that the defendant did not even know of the existence of the deed until after the grantor's death.

Rebecca Sutts, a witness for the complainant, testified:

“A. She came down one time and said she wanted to fix up his affairs.

Q. Can you give the Court an idea as to when that was? Was it near his death, or three or four weeks before?

A. Maybe three, and maybe four weeks, something like that.

Q. When did he die?

A. The 23rd of August.

Q. What year?

A. '28, I think.

Q. What was the conversation you had with Mrs. Campbell at that time?

A. She said she came down to fix his affairs.

Q. To fix his affairs?

A. She wanted to look after his affairs, and he told her he would fix up his own affairs.

Q. That was his answer?

A. Yes, sir.

Q. You were there at the time?

A. Yes, I heard the conversation.

Q. Then what else was said?

A. She told me then, if Dan wasn't careful he would lose all he had, *lose his farm and everything,—etc.*

Q. What else?

A. I said, “Well, Dan paid me off and he paid Jackie Richardson off, and he paid some other bills off; but he's got a \$2,000 mortgage on this farm.

Q. What does she say?

A. She was very much surprised about it to think he had this mortgage.

Q. Did she indicate whether that was the first time she knew about the mortgage?

A. She told me it was the first she knew about it.

Q. Did she ask you who held the mortgage?

A. Yes.

Q. Did you tell her?

A. I told her Mary Satterthwaite."

(State of the Case, page 41, line 24).

William P. Burke, a witness for the complainant testified:

"Q. Well, did Mrs. Campbell ever have a conversation with you out on the road leading to the farm just before Daniel Campbell died?

A. Yes, a small one.

Q. What was the substance of that conversation?

A. A couple of days before his death she asked me if I knew anything about Dan's papers, or *how he had it fixed*. I told her "No," I didn't think it was my business to ask him; I told her I thought it was her business to ask him, and she said she would. I don't know whether she did."

(State of the Case, page 56, line 7).

The witness William P. Burke further testified;

"Q. After his death, were you in the house at the time Mr. Morris and Catherine Campbell came there?

A. Yes, sir.

Q. Will you tell the Court what happened?

A. Well, they came down there and they simply went through the house, which consisted of three rooms, one down and two up.

Q. You mean his side of the house?

A. I mean Mr. Campbell's side.

Q. That's the side we are talking about; and they got some papers that hung on a piece of bent wire on the wall?

A. They got several pieces of paper off that.

Q. What floor was that?

A. The first floor, in the kitchen. They continued on upstairs in the small back room there; and that consisted of two bureaus or washstands, I don't know what you call them, and a lot of other stuff around there, and they found some more papers there, and Mrs. Campbell and I were talking; just what we were talking about I don't know; but anyway, Mr. Morris spoke up and said, "*Well, we have what we want, we have no time to fool, let's be going.*" That's as far as I know; and they went.

Q. Did you know what it was that Mr. Morris had found?

A. I couldn't say what he had found, no.

Q. Did he have a paper in his hand?

A. He didn't have a paper, he had papers, more than one.

Q. Did they ask you to take them through the house?

A. I can't say they asked me; but they went through the house, *and they asked me where Dan's papers were.* I saw a lot of things laying around the room. I said, "As far as I know, that's all I know."

Q. Can you fix the day when this took place?

A. *This took place the day after Dan was buried in the morning.*"

(State of the Case, page 56, line 18).

Thomas J. Morris, the son-in-law of the defendant, a witness for the defendant, testified:

“Q. Where she got the deed from were there any letters addressed to her?

A. There were some papers, but I’m not quite positive what they were.

Q. Who took those papers?

A. I did.

Q. Was Mrs. Campbell with you at the time?

A. Yes, sir.

Q. At whose direction did you take them?

A. Mrs. Campbell’s.

Q. What did you do with all the papers you got in that room?

A. Why, I brought them back to my home, our home, 13 West Front Street, and the deed for the farm, observing it had not been recorded, I brought it to Mount Holly and had it recorded.

Q. Did you show the deed to Mrs. Campbell, that had not been recorded.

A. Yes.

Q. Did you know why it hadn’t been recorded?

A. No, excepting—

Q. *Well, did she so state at that time why she had not recorded it?*

A. *I don’t recall it.”*

(State of the Case, page 130, line 19).

The witness, Thomas J. Morris, also testified, in answer to a question by the Court, that the insurance policies which he found with the deed were made out to the grantor. (State of the Case, page 131, line 20).

This witness, Thomas J. Morris, also testified, in ref-

erence to the discovery of the deed on the day after the grantor's burial:

“Q. When you got there—Why did Mrs. Campbell go there?”

A. To get—Her son had just been buried; it was the day after he had been buried. She felt we had waited long enough to go down and we should go down to the farm and see about her papers and affairs in general down there.

Q. Now, when you first went into the house you first looked over the first floor, didn't you?

A. Yes.

Q. Why?

A. Because papers were strewn around in that place, and I couldn't help but see them. I went for the purpose of getting her deed and any papers that were of importance to her.

Q. She told you where the deed was, didn't she, or didn't she know?

A. Sure she knew.

Q. Why didn't you, then, go right to the place where the deed was?

A. Because I went in the house and examined the papers just as they were; they were the first papers I had met with as I went in the house, and it struck me rather peculiar that they should be strewn around as they were in that kitchen.

Q. You were concerned above all about the deed?

A. I was.

Q. And when you finally found the deed you exclaimed “Mother, at last we found what we were looking for!”

A. That statement was made by me not after

I found the deed, but after I felt there was nothing else there of importance to her.

Q. Immediately upon your finding the deed?

A. Not immediately upon my finding the deed.

Q. What necessity was there for looking through the papers on the first floor?

A. *Because I didn't know what was there belonging to my mother-in-law.*

Q. Did she tell you she had other papers besides a deed?

A. No.

Q. Some letters?

A. No.

Q. You thought you would make a general examination of the whole house?

A. Of just what papers I saw.

Q. Well, what would make you think she had papers all over the house?

A. *Why, in the first place, there had been some rumors of a will, and I thought a will might be there. I didn't know where it might be.*

Q. *That's the reason you went down, to see if you could get hold of the will?*

A. *To see if there was a will.*

Q. You knew that Catherine Campbell had been to the house before Daniel Campbell died, didn't you?

A. Yes.

Q. You knew she would be in a position to know where her papers were, if she had any there, didn't you?

A. Yes, and she was in a position to know, and the reason—

Q. Did she tell you she knew where her papers were?

A. She went right upstairs and picked out a box and handed it to me.

Q. Then you didn't look in the kitchen?

A. I did, yes.

Q. Did she come upstairs and get the box upstairs before you started to look around the kitchen?

A. We didn't look around the kitchen very long.

By the Court:

Q. Answer the question. Did she come upstairs before you started to look around the kitchen?

A. She was going upstairs while I was looking around the kitchen, and she preceded me upstairs.

Q. Then why were you looking around the kitchen while she was going upstairs to get the deed?

A. Because there were papers in the kitchen.

Q. If you saw a lot of loose papers around the kitchen you wouldn't think they belonged to Mrs. Campbell, would you? Would you, if they were in the home where Daniel Campbell lived?

A. I really thought at that time that everything there was Catherine Campbell's, because I had no official notice of anything to the contrary.

Q. Who picked the deed out of the papers?

A. After the box was handed to me I guess I picked it out.

Q. As a matter of fact you did find the deed, didn't you?

A. Yes, I did; the deed with box was handed to me.

Q. By your mother-in-law?

A. By my mother-in-law, yes.

Q. You were standing alongside of her at the time she got the box out of the bureau?

A. She preceded me and had the box in her hand. She went upstairs first."

(State of the Case, page 131, line 30).

(D.) The grantor did not intend the deed to operate as a then present conveyance.

The actions of the grantor, and his statements to others, indicated very strongly that he did not intend the deed to be delivered to the defendant or to operate as a then present conveyance of the property in question.

The witness, Rebecca Sutts, testified to an occurrence which took place on the last occasion prior to the death of the grantor when she saw the deed:

"A. He was sick in bed at that time; he was between two doors; I don't know which room he were going in, and I took hold of him and told him to go back into the room. I put him back into bed; and then he said to me, "*Bec, I got something to tell you,*" he says, "*I have a deed in the other part on my mother's name; my mother's name is on it;*" and he said "*And I would like to have it.*" So I goes and searches for this deed and brings it out to him, and he said, "*That's what I want;*" and he said, "*Now you can put it back. and Jimmie Herron will take care of it;*" and he told me before that, that in his will—"

(State of the Case, page 40, line 15).

There would seem to be no reason for the grantor arising from his sick bed and attempting to go into the other part of his house in order to get this deed, or having the

witness get the deed for him, except that he desired to be certain that the deed was still in its accustomed place, and that it had not been taken away by anyone. This reason is borne out by the fact that, after the deed was brought to him by the witness, he told the witness to put it back, and that "Jimmie Herron," who was the executor under his will and who is the present complainant, would take care of it. It appears from the testimony, and was admitted by the defendant, that the grantor caused another deed from himself to the defendant, conveying a separate piece of property, and which other deed is not in question in this suit, to be drawn, and that he executed this other deed, and that it was never delivered. The testimony of the complainant, who was called as a witness by the defendant, was that the grantor instructed him to retain the last mentioned deed until such time as he wished it, and that he retained it up to the death of the grantor. (State of the Case, page 88, line 14). So that, when the grantor told the witness, Rebecca Sutts, that the complainant would take care of the deed for the farm, the only reasonable conclusion appears to be that the grantor intended that the complainant would retain this deed in accordance with the grantor's instructions concerning the other deed, which shows beyond doubt, that the grantor did not intend the deed for the farm to be delivered to the defendant or to operate as a then present conveyance.

Amos M. Waln, who drafted and was one of the witnesses to the execution of the will of the grantor, and who had a conversation with the grantor concerning the drafting of his will about a week or ten days before his death, testified:

"A. * * * And at that time, I asked him particularly the location of the bungalow and the description of it and the lots, for the purpose of distinguishing it from the other property which he owned. I asked him if he owned other property

on the same road, and he said "*Nothing except the farm and this bungalow on the lots;*" that he owned another lot, but that was on the main highway, not on the same road."

(State of the Case, page 71, line 35).

David T. Sprague, a witness for the defendant, testified:

"Q. Have you ever had a conversation with Mr. Campbell concerning this farm he lived on?

A. Yes.

Q. When?

A. In the early part of 1923.

Q. What did he tell you at that time?

A. We were sitting on the porch; I just came home from the hospital; we was talking about deeds and one thing and another, *and he told me I was foolish I didn't have a will made; he said he has signed one and he left his mother all right; he said I was foolish I didn't have one. I didn't think I needed one.*

Q. Did he say anything about making a deed to his mother for the farm?

A. Yes.

Q. What?

A. He said he had made out a deed to his mother and left his mother all right.

Q. Did he tell you why he had made a deed to her?

A. No, sir, only he said he had borrowed money off her when he was on the farm and he hadn't never paid her that, and he was going to leave her fixed at that time so she would be all right if anything happened to him."

(State of the case, page 119, line 34).

This witness, David T. Sprague, further testified:

“Q. He told you that he had it so fixed up that when he died his mother would be taken care of?

A. Yes, sir.

Q. *He told you he had made a will?*

A. Yes, sir.

Q. Not a deed?

A. *He said he had made a will.*

Q. He never said he made a deed?

A. Well, a will, and deeded the place to her.

Q. *Deeded the place in the will to his mother?*

A. *Yes, sir.*”

(State of the Case, page 121, line 27).

The testimony last above set forth shows that the grantor did not intend the document which he mentioned to the witness to operate as a then present conveyance of the land, but, on the other hand, that he intended it to take effect only at his death. Such a deed, being in the nature of a testamentary devise, is void because contravening the statute of wills. *Rommell vs. Happe et als.*, 93 N. J. Eq. 383, 115 Atl. 906.

It appears quite clear that the grantor did not intend the deed in question to operate as a then final absolute transfer of title to the grantee, and if he did not so intend, there was no delivery of the deed.

Abbe vs. Donohue et als. (1919), (Ct. of Err. and App. of N. J.), 90 N. J. Eq. 597, 107 Atl. 431.

Schlicher vs. Keller et als., (Ct. of Err. and App. of N. J.), 67 N. J. Eq. 635, 61 Atl. 434.

Watson et als. vs. Magill (1916), (Ct. of Err. and App. of N. J.), 85 N. J. Eq. 592, 97 Atl. 43.

Some reference is made, in the brief of the defendant, to the alleged fact that the deed in question was made by the grantor for the purpose of defrauding his creditors, although the defendant denies that such was the grantor's

purpose. Such an allegation is not an issue in this cause. In the first place, it is not within the issues made by the pleadings; in the second place, the evidence fails to show that any person whom the grantor intended to defraud ever became a creditor of the grantor, and in the third place, the conveyance of the property was never completed by the delivery of the deed.

3. The evidence amply justified a conclusion that, if the loan which was the alleged consideration for the deed ever existed, it was repaid before the date of the deed.

(a.) The grantor was in a financial condition to have repaid the loan, which was the alleged consideration for the deed, many times before the date of the deed.

Rebecca Sutts, a witness for the complainant, testified that the grantor repaid to her the sum of \$400 which she had loaned him, and that he had also repaid to John Richardson a loan which Richardson had made to him. (State of the Case, page 42, line 12). This witness also testified that she purchased land of the grantor in the year 1918 and paid him \$350 for it. (State of the Case, page 43, line 27), also (State of the Case, page 136, line 32).

Margaret Morris, a daughter of the defendant, and a witness for the defendant, testified that the grantor lived on the Fillman Farm for ten years, and then he bought the Peter Hughes farm, which was the farm which the deed in question purports to convey, that the grantor paid \$4,000 for the Hughes farm, and had a \$2,000 mortgage on it, (State of the Case, page 94, line 17), and that only \$2,000 cash was required to buy the said Peter Hughes farm (State of the Case, page 107, line 29). This witness also testified that she knew that the grantor had, while he resided on the Fillman Farm, sold a small piece of land and house which was a part of that farm, to John Rich-

ardson for \$500. (State of the Case, page 106, line 32). This witness also admitted that she knew that the grantor had also owned a house on Anderson Street, in Trenton, which he sold. (State of the Case, page 114, line 4).

John Richardson, a witness for the complainant, testified concerning the purchase from the grantor of a small piece of land and a house, which was a portion of the Fillman Farm, and for which the sum of \$500 was paid to the grantor. (State of the Case, page 142, line 8).

The witness, John Richardson, also testified that, at the time the grantor sold the Fillman Farm, which was shortly prior to his purchase of the Peter Hughes farm on which he lived at the time of his death, he received a total of \$7,500 from the sale of the Fillman Farm and the personal property thereon, (State of the Case, page 140, line 31), and this witness also gave the name of the purchaser of the Fillman Farm, and the price for which the farm, alone, was sold. (State of the Case, page 142, line 1).

David T. Sprague, a witness for the defendant, testified that he purchased a piece of land from the grantor in the year 1923, and that he paid the grantor \$250 for it. (State of the Case, page 122, line 8). This witness also testified that persons named Morris purchased two acres of land from the grantor and paid him \$400 for the same.

Edward Inman, a witness for the complainant, testified that he purchased a piece of land from the grantor in 1917 and paid the grantor \$150 for the same. (State of the Case, page 142, line 32).

Elmer Dwier, a witness for the complainant, testified that he purchased a piece of land from the grantor in 1917 and paid the grantor \$200 for the same. (State of the Case, page 143, line 22). This witness also testified that the grantor sold a piece of land to Joseph Hines, but the witness did not know the price which the grantor received for the same. (State of the Case, page 143, line 27).

George Lippencott, a witness for the complainant, testified that he purchased a piece of land from the grantor in 1917 and paid the grantor \$227 for the same. (State of the Case, page 144, line 15).

Sebastian Kirsch, a witness for the complainant, testified that he purchased a farm located in Ocean County of the grantor in July, 1921, that the purchase price of said farm was \$2,600, that he paid \$1,000 in cash, and gave a mortgage for \$1,600, (State of the Case, page 145, line 9), and that when he paid the mortgage, which took place in the summer of 1928, he paid the grantor the sum of \$1,800 for the principal and interest of the mortgage. (State of the Case, page 145, line 27).

The attention of the Court is also called to the fact that the witness, Margaret Morris, admitted that, although the father of the grantor left no will, and although the defendant received the sum of \$2,400 from the sale of a farm owned by the father of the grantor at his death, the defendant did not pay any share of the proceeds of the sale of this farm to the grantor. (State of the Case, page 102, line 8).

The above testimony shows that the grantor, after the time when it is claimed by the defendant that the greater portion of the alleged loans were made and prior to the date of the deed in question, had received, from the sale of the Fillman Farm, the personal property thereon, and other parcels of land sold by him a total sum amounting to more than \$10,000, not including any sums received by him from the sale of the house on Anderson Street, in Trenton, or from the sale of land to Joseph Hines, the amount received by the grantor from which sales was not shown. It seems extremely unlikely that, if the alleged loans were ever made, the defendant never demanded payment of the grantor, and that the grantor never repaid her, when he had received the total of sums from the sale of various parcels of land several times the total amount of the alleged loans, particularly as the testimony shows

that he repaid to Rebecca Sutts and John Richardson sums which had been loaned by them to him.

(B.) The grantor, after the time that the greater part of the alleged loan was made, and before the execution of the deed, made a present to his sister, with whom the defendant resided, of a greater value than twice the amount of the alleged loan.

Margaret Morris, a daughter of the defendant, and a sister of the grantor, who testified as a witness for the defendant, testified that she had another sister who died in 1914, and who left an estate of more than \$15,000, (State of the Case, page 112, line 4), that the grantor at the time of their sister's death gave the witness his share of their sister's estate amounting to at least \$6,000, and that the defendant did not ask the grantor to repay the alleged loan to her at that time. (State of the Case, page 112, line 20).

4. The court below did not err in excluding the testimony of the defendant concerning a transaction with the deceased grantor.

This suit is a suit between the complainant, the executor of the will of the deceased grantor, and the defendant. It is in no sense a proceeding for the probate of a will. The will of the deceased grantor had already been probated prior to the commencement of this suit. This suit is simply a proceeding to obtain a decree requiring a reconveyance to the complainant of the lands and premises described in a deed which the defendant caused to be placed on record a few days after the death of the grantor, and for other incidental relief. The complainant did not offer himself as a witness in his behalf. He only testified when he was called as a witness for the defendant. In

such a situation it seems quite clear that, under the statute, the defendant was not competent to testify to transactions with or statements by the deceased.

Adoue et als. vs. Spencer, (Ct. of Err. and App. of N. J.), 62 N. J. Eq. 782, 49 Atl. 10.

Rairdon vs. Sampson, (Ct. of Err. and App. of N. J.), 67 N. J. L. 346, 51 Atl. 696.

The complainant respectfully calls the attention of this Court to the fact that the Court below, in addition to hearing the testimony of the witnesses set forth in the State of the Case herein, had the opportunity to observe the demeanor of the respective witnesses and their manner of giving their testimony, which has considerable bearing upon the weight of their testimony, and as to the probability of the facts testified to by them.

The complainant respectfully submits that the defendant has not shown any proper ground for a reversal of the decree of the Chancellor in this cause, and that the said decree of the Chancellor should therefore be affirmed.

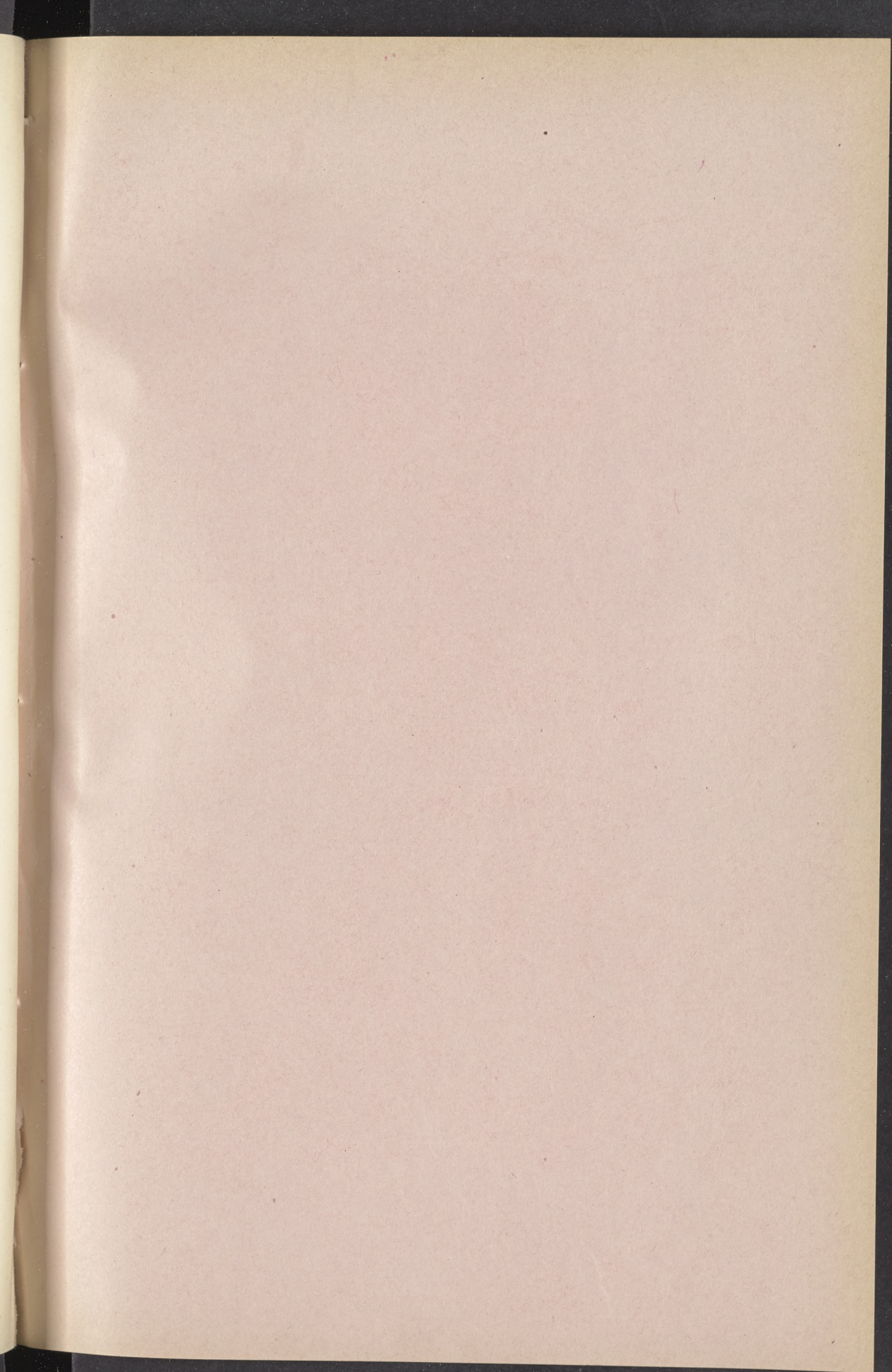
MICHAEL FELCONE,

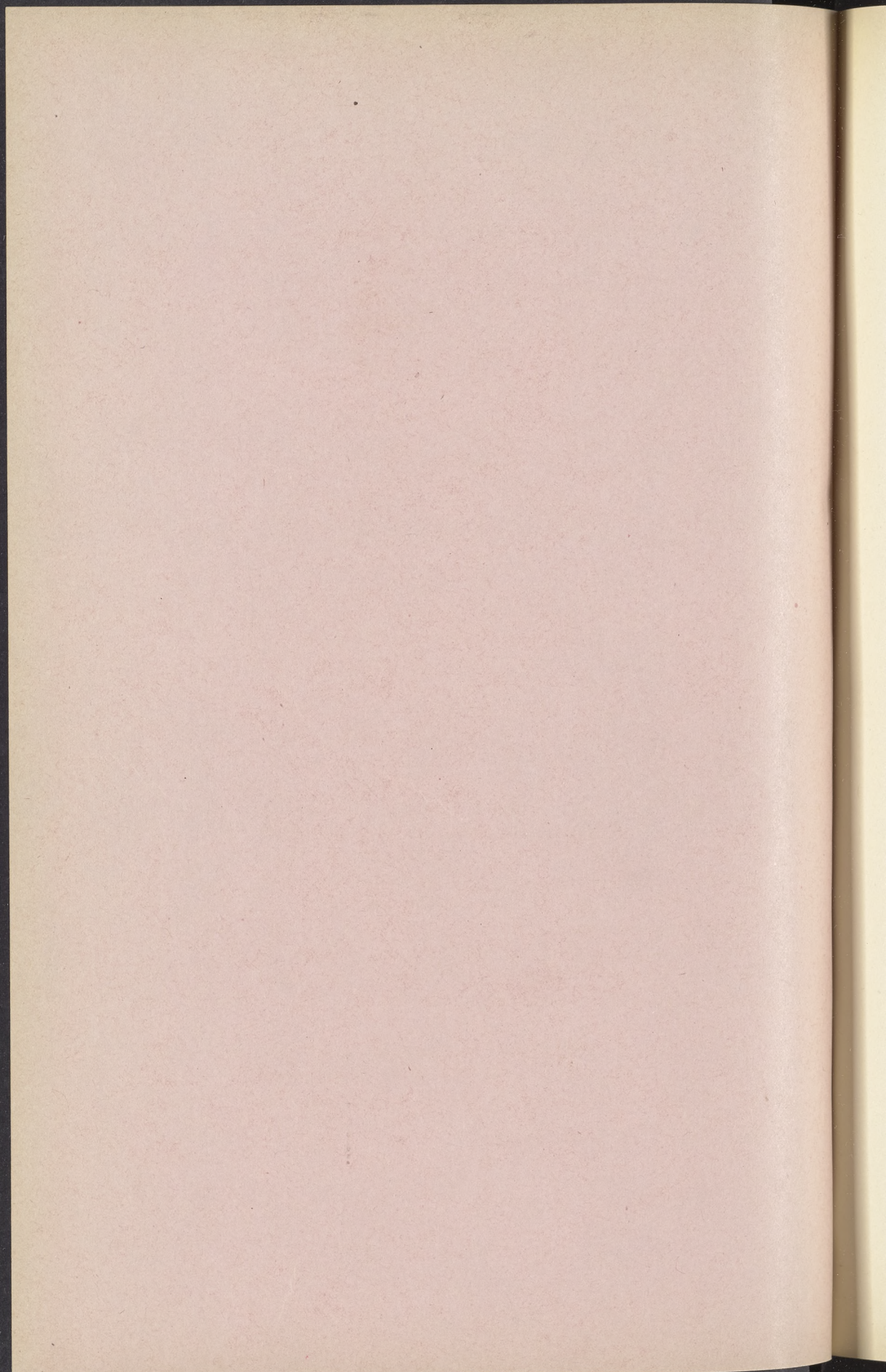
Solicitor for Complainant.

AMOS M. WALN,

Of Counsel with Complainant.







NEW JERSEY COURT OF ERRORS
AND APPEALS

Between

JAMES V. HERRON, Executor of
the Last Will and Testament
of Daniel F. Campbell, de-
ceased,

Complainant,

and

CATHERINE CAMPBELL,

Defendant.

On Appeal from
the Court of
Chancery.

On Petition of
Appeal.

10

BRIEF.

The complainant, James V. Herron, Executor of the last will and testament of Daniel F. Campbell, deceased, filed a bill in the Court of Chancery, to set aside a certain deed made by Daniel F. Campbell in his lifetime to his mother, Catherine Campbell, for premises situated in the County of Burlington and State of New Jersey, described in said bill of complaint, which deed was recorded in Book 473 of Deeds, page 104, in the Burlington County Clerk's office at Mount Holly, N. J. ²⁰

On March 20, 1923, Daniel F. Campbell, in his lifetime, signed and acknowledged a deed for the premises set forth in said bill of complaint and delivered the said deed to his mother, Catherine Campbell. The said bill of complaint states that the said deed was never delivered by Daniel F. Campbell to Catherine Campbell, but remained in the possession of the said Daniel F. Campbell continuously from and after the aforesaid date until his death. ³⁰

On August 20, 1928, Daniel F. Campbell made and executed a will, which is on file in the Burlington County Surrogate's office, in which he devised cer-

tain properties belonging to him to Emmaline McCue and to others set forth in said will; in which will he directed his executors to sell all of his real estate, except what he had devised to Emmaline McCue, and from the amount received from said sale certain bequests were made under the said will.

Daniel F. Campbell departed this life on August 23, 1928, and the will of Daniel F. Campbell was pro-
10 bated on December 19, 1928, by the Register of the Prerogative Court of the State of New Jersey.

On August 27, 1928, Catherine Campbell recorded the said deed for the premises set forth in said bill of complaint in the County Clerk's office of the County of Burlington in Book 718 of Deeds, page 445, &c.

The prayer of said bill sets forth that the deed so
20 made to Catherine Campbell by her son, Daniel F. Campbell, may be decreed to be null and void and of no effect and that Catherine Campbell may be required and directed by the Court of Chancery to convey the lands and premises to complainant free and clear of all encumbrances, done by her or anyone claiming of, from or under her.

Catherine Campbell filed answer to said bill, claiming it was a bona fide delivery for a considera-
30 tion and that she had been in possession of the said premises since receiving the said deed; that said premises are her property and not the property of Daniel F. Campbell, and did not belong to the said Daniel F. Campbell, and did not comprise any part of the estate of the said Daniel F. Campbell; and upon hearing on bill and answer before the Court of Chancery, Vice Chancellor Buchanan decided and

decreed that there was no delivery by Daniel F. Campbell to Catherine Campbell and decreed that Catherine Campbell should re-convey the premises to the Executors of Daniel F. Campbell, deceased.

Catherine Campbell therefore appeals from the decision of the Court of Chancery to this Honorable Court on the ground that the decree so entered by the Court of Chancery is erroneous, in that it sets forth that the said deed was never delivered by the said Daniel F. Campbell to the said Catherine Campbell and was never intended to be delivered by him as a deed inter-party, but says that the said deed was a bona fide deed for a bona fide consideration and that the said decree of the Court of Chancery should be set aside. ¹⁰

The testimony in this case shows:

That there was a bona fide consideration for the deed at the time the said deed was delivered by Daniel F. Campbell to his mother, Catherine Campbell, in his lifetime. ²⁰

Rebecca Sutts testified that about five years before Daniel F. Campbell died he told her that the property was made out in his mother's name, so if anybody ever came upon him they could not take his property.

State of the Case, p. 41, 10-26-52.

30

And again on page 12, she testified that he said the deed to the property was in his mother's name.

State of the Case, page 49, 6-7; p. 52, 15-21.

HARRY F. SATTERTHWAIT, another witness, testified that Mrs. Campbell told him she owned the farm and that she had paid the interest on the mortgage since his death.

State of the Case, p. 53, l. 17.

10 WILLIAM BURKE testified, on page 24, that Mrs. Morris and Mrs. Campbell came there and had a lot of papers and took them away after Dan's death. This testimony corroborates Mrs. Campbell that she kept her papers in a bureau drawer in a room which she kept at the property. Pages 56-57.

20 Mr. Burke testified for the complainant, on page 55, l. 10-30, that Dan Campbell spoke to him about putting the farm in his name and he told him to sign it over to his mother, as much as to say that Dan Campbell, in his lifetime, made a conveyance to defraud his creditors and put it in his mother's name. That is what the complainant attempted to prove by Burke, which, if true, would not benefit the complainant in this case. If Dan Campbell attempted to defraud his creditors, they certainly can't ask to be placed back in his name at this time.

We deny that any deed was placed in our hands for the purpose of defrauding creditors, but it was a bona fide consideration.

30

On page 64, l. 10-20, Mr. Burke testified that Mrs. Campbell got her papers from a room over the kitchen on the second floor, which was the back room; and Mrs. Campbell testified that this was the room in which she kept her papers.

JOHN RICHARDSON, another witness for complainant, testified, on page 66, l. 10-20, for the complainant that Daniel F. Campbell said, "I've got everything fixed; I've turned my will over to my mother or the deed," which was another attempt on their part to prove it was done to defraud creditors.

AMOS WALN, an attorney at law, drew the will for Daniel F. Campbell which was probated after his death, and testified on page 72, l. 10-20, in answer to this question, "You didn't put anything in the will concerning that farm, did you?" said "Not specifically mentioning the farm, no." This plainly shows that Daniel F. Campbell did not mention the farm, which is the subject matter of this suit, in his will. ¹⁰

HARRY COLKITT testified that the property had been assessed in Daniel F. Campbell's name, but he sent the tax bill to Catherine Campbell for the year 1929, but admitted that the County Clerk had sent him a certificate showing that the title to the property had been passed to Catherine Campbell. Page 75, l. 34. ²⁰

GEORGE WILLIAMS was called to show that he made a contract with Campbell for the tomatoes, but did admit that Mrs. Campbell furnished the tomato baskets for the year 1928 and that she furnished one hundred and fifty baskets in the month of August, 1928. State of the Case, p. 79-80. ³⁰

GEORGE GRAVATT, a witness for the complainant, testified he saw Mrs. Campbell around the house during the year 1923 and 1924, cleaning up the house, doing the laundry of her son, his washing, and saw her on the farm at different times. And that was

the substance of the testimony of the complainant to prove there was no delivery of this deed of Daniel F. Campbell in his lifetime to his mother, Catherine Campbell, on March 20, 1923. State of the Case, p. 82.

10 The defendant called James V. Herron, an attorney at law, and the complainant in this case, who said that in 1923 he had offices with Mr. Swaim at Bordentown and that Mr. Swaim was an attorney at law. That he drew the deed on March 20, 1923, as a stenographer in the office of Joseph S. Swaim, an attorney at law, and the deed was signed by Daniel F. Campbell at that time and witnessed and acknowledged before Joseph S. Swaim, an attorney at law, and that the signature on the deed was that of Daniel F. Campbell. That he represented Daniel F. Campbell in the year 1923 in different transactions, and that no one could force Daniel F. Campbell into doing anything he did not want to; he was a man with a mind 20 of his own, and a strong body, and he continued that way up until his death.

That in the year 1924 he made a deed to his mother for other property, which was kept in Mr. Herron's possession and was never delivered, but executed in his office, before him. That no one was with him at the time he executed the said deed. There was no influence on him to make the said 30 Daniel F. Campbell execute the said deed. State of the Case, p. 84-88.

CATHERINE CAMPBELL, the defendant, testified that she received One thousand dollars, Legion money from her husband's death and she bought the property known as the Fillman farm, or rather her son bought the property known as the Fillman farm,

but that she loaned him the money with which to purchase that farm as follows: "Did you loan your son any money to buy that farm?" Answer: "Yes, I did."

There was no objection until after the answer was made.

And that Daniel F. Campbell lived on the Fillman farm for nine or ten years.

10

That he purchased another farm, known as the Peter Hughes farm.

Then the Court restricted Mrs. Campbell from testifying to any other transactions with her son.

State of Case, p. 89-91.

MARGARET MORRIS, a sister of Daniel F. Campbell, and daughter of Catherine Campbell, testified that her mother obtained One thousand dollars from the Legion when her father died and that she gave that to Daniel F. Campbell to buy the Fillman farm. That he paid Fifteen hundred dollars for it and that her mother loaned him the Fifteen hundred dollars to buy the farm. That she saw her mother give him the money for that farm. That he got the stock for the Fillman farm from his mother's sale. This was about One thousand dollars' worth of stock and he did not pay his mother for this stock, but moved all of this stock to the Fillman farm where he lived.

Then he bought the Peter Hughes farm, where he lived at the time of his death. He paid \$4,000 for that farm, \$2,000 cash and \$2,000 on mortgage. That he was going to use his mother's money to buy

the Peter Hughes farm and that his mother lived with him on the Peter Hughes farm and on the Fillman farm. That she had furniture there, and that what furniture Daniel had there belonged to his mother. That her mother kept a bedroom furnished at the farm and that the furniture was still at the farm at the time of Daniel's death. That she went to the Hughes farm most every week for a long time to take care of the house, to take care of his laundry,
10 until she got so old she was unable to do it any longer, and that Daniel made a deed to his mother for the farm. Daniel told her that his mother's money had bought the Peter Hughes farm, and he told her he would pay it back to her, and the way he had to pay it back was to give a deed signed and sealed by Lawyer Swaim, of Bordentown, for the money that she had placed in the farm. He said his mother had helped him and he had never repaid her for the money she had loaned him, and that he would take
20 care of her by giving her a deed, and that he delivered the deed to his mother and she kept it in a bureau drawer in the back room, where she had other papers, in the room which she maintained at Daniel's farm. That after Daniel's death she went to the farm and got all of her papers, insurance papers, &c., which she had kept at his home. That she gave the value of all the property that Daniel Campbell had gotten from the sale, showing that her mother had given \$1,000 worth of stock and about \$1,500
30 in money, and that this property cost \$4,000 and he gave a \$2,000 mortgage which was still in force at his death, so that he had \$2,000 equity and the mother had given \$2,500 toward the purchase of a \$4,000 farm, an which there was a \$2,000 mortgage, which showed a bona fide consideration for the deed for the property when Daniel F. Campbell made the deed to his mother in 1923, so that the money she had

advanced to buy the Fillman farm was her money, and when her son sold it he received \$2,400 cash for it and used the money to purchase the Hughes farm.

State of the Case, p. 93-100.

She also testified on cross examination that he said "we'll buy the Peter Hughes farm" and she asked him to return her money when he sold the Fillman farm, and he said he would buy the Peter Hughes farm with that money. 10

State of the Case, p. 107, l. 10-30.

She also testified on cross examination that Dan said, "I deeded the farm to mother, she has always done a lot for me, I never gave her what she should have had. Now he said the farm is mother's." I said, "That is all right, you have done all you could."

State of the Case, p. 110, l. 6-20.

20

And on cross examination she testified that Dan said he had made a deed for the Piersonville tract, which deed as set forth above is still in possession of Mr. Herron.

State of the Case, p. 110, l. 20-35.

It was also shown on cross examination that Daniel got Fifteen hundred dollars when the buildings burned down, but Mrs. Morris testified that the insurance he received he used to rebuild the buildings on the farm, which buildings had burned. 30

State of the Case, p. 114, l. 10-35.

HOWARD V. DICKEY, a disinterested witness, testified that he knew Daniel F. Campbell in his lifetime and that he tried to buy property from Daniel F. Campbell on the 30th day of August, 1924, and that he wanted to buy some building lots from the Piersonville tract, which is the tract from which Dan made the deed to his mother, but never delivered the deed. This was still in Mr. Herron's possession. State of the Case, p. 116.

10

At that time Daniel had his mother sign a contract with Howard V. Dickey and Helen M. Dickey, his wife, for the purchase of lots 48 and 49, which agreement was offered in evidence, and that he paid Mrs. Campbell \$25.00 on the said property. He had a conversation with Dan Campbell at that time about the farm and told Mr. Dickey the farm belonged to his mother, and that his wife, Helen Dickey, was present at the time Daniel Campbell said the farm belonged to his mother. That he told him that the Piersonville tract, for which we have never received the deed, belonged to his mother and that he had his mother sign the contract for sale. State of the Case, p. 116-117.

20

Mrs. Dickey testified to the same facts, or counsel stipulated that Mrs. Dickey would have testified to the same set of facts that her husband testified to, and the affidavit concerning her testimony was offered in evidence and marked Exhibit D-4.

30

DAVID T. SPRAGUE, another witness for the defense, had known Daniel F. Campbell all his life and in the early part of 1923 had a conversation with him, and that he had made a deed to his mother for the farm, and that Daniel Campbell had borrowed money from his mother, and that he had never

paid her that money, and that he had left his mother fixed so that she would be all right if anything happened to him, and that he had made a deed to her, and on cross examination said he had it fixed up so his mother would be taken care of. That he had deeded the farm to his mother and he and Dan Campbell were always close friends and he told this on one visit he had made to Dan Campbell.

State of the Case, p. 120, l. 18-19, p. 122.

10

JOSEPH McGRAIN, another witness for the defense, testified that he had known Dan Campbell for 40 years and he knew his father before him, and that his mother had received \$1,000 from the Legion when Daniel Campbell's father died, and that Mrs. Campbell had a sale of the effects of her deceased husband, and that Daniel F. Campbell received all of the goods, horses, wagons, grains, chickens, chicken coops and purchased them at the sale, but never paid 20 the mother for them. That he moved all of these things to the Fillman farm where he lived, and that his mother moved to the Fillman farm when he moved there, that her money was in that farm. That Mrs. Campbell told him in 1923 that Daniel Campbell had made a deed to her for the farm and at that time he was a strong, hearty, robust man and could not be influenced by his mother or anyone else. That he always had a mind of his own.

30

And on cross examination Mr. McGrain testified that Mrs. Campbell told him she had given Dan the \$1,000 she had received from the Legion at the time of her husband's death and right after Dan had made the deed to his mother she told him she had received the deed. And in answer to the Court's question he said, "Dan Campbell had made a deed and gave the

deed for the farm to his mother and that Dan had straightened everything up for her and gave her a deed to the farm."

State of the Case, p. 123, l. 24-25.
p. 125, l. 4-6.
p. 126, l. 5-7.

10 THOMAS J. MORRIS testified that Mrs. Campbell lived at the farm, did work for Dan Campbell and that after his death she went to her room at her son's farm and got a lot of papers which she had there, among them the deed in question, insurance papers, &c. State of the Case, p. 128.

20 JOSEPH L. HAINES, a member of the Township Committee testified that he knew Dan Campbell in 1923, and testified as to his physical condition as being a strong and healthy man, and a man of mentality which could not be dominated by any person, that he had a mind of his own. And the Court said, "Is there any issue on that?" Counsel for the complainant said, "No, your Honor, I have no questions." State of the Case, p. 135.

30 These questions were asked to show that the son was not dominated by his mother and that the mother did not occupy a dominant, confidential position or was she a woman of strong memory and high mental powers and high intelligence to compel her son to make this deed to her, whereas the testimony shows that her son was not possessed of any mental weakness, but was a strong, domineering person, who dominated over his mother, rather than his mother dominating over him, and for the purpose of showing that the rule of independent advice did not apply and that the transaction was not a voluntary

gift, but a transfer for a valuable consideration, which was not improvident, but provident.

Counsel has admitted that was not at issue, but we have proven that issue and it is not rebutted by the other side.

Other witnesses were called to show that they had purchased property from Daniel Campbell.

JOHN RICHARDSON testified that he had purchased property, but that was some time around 1911, and did not affect this transaction. State of the Case, p. 141. ¹⁰

They called another man, Edward Inman, to testify that he bought land, but that was in 1917, 6 years prior to the date that Daniel Campbell made the deed to his mother, and does not affect this situation. State of the Case, p. 143. ²⁰

They called Elmer Dwier to testify that he purchased land from Daniel Campbell, but that was in 1917, and does not affect this case. State of the Case, p. 143.

George W. Lippincott testified that he bought a small piece of land back in 1920. State of the Case, p. 144.

Sebastian Kirsch testified that he bought a farm from Dan Campbell in 1921, in Ocean County, and paid him \$1,000 on the same. State of the Case, p. 145. ³⁰

This all goes to show that Catherine Campbell, the mother of Daniel F. Campbell, loaned him the money to purchase the Fillman farm, and the money

he received from the sale of the Fillman farm he placed on the farm, which is the matter in dispute. That he gave his mother the deed to this farm for the money that she had advanced to him, and these witnesses testified as to pieces of land that Daniel Campbell had sold to them. This does not affect this proposition, but shows that he had made money from the money his mother had given to him.

- 10 I submit that the complainant has not offered sufficient testimony to have the deed set aside and declared null and void in this case, as there must be clear evidence of the instrument's infirmity to require it to be set aside.

Douglas v. Spear

129 Atl. 128

97 Equity 25

Decree affirmed 134 A. 916

100 N. J. Eq. 314

20

Siebold vs. Siebold

115 Atl. 577

93 Equity 327

93 Equity 500

Morrison vs. Morrison

121 Atl. 133

94 Equity 646.

Affirmed, 101 Equity 133.

30

1. A deed direct from a husband to his wife passes an equitable estate in fee, and the wife is entitled to have the legal title from her husband's heirs.

2. To constitute delivery of a deed it is not necessary that it be actually handed over to the grantee,

but it must satisfactorily appear, circumstantially, at least, if not from acts and express words, or both, that the grantor intended to part with the deed and pass title.

Rommell vs. Happe et al, 93 Eq. 383.

The elementary principles governing the question of delivery of a deed are well settled. It is not necessary that there should be an actual handing over 10 of the instrument to constitute delivery. A deed may be delivered by words without acts, or by acts without words, or by both acts and words. A deed may be effectual to pass real estate though it be left in the custody of the grantor. It is necessary, however, that there should be something evincing the intent. It must satisfactorily appear if not from acts and express words, yet from circumstances, at least, that there was an intention to part with the deed and, of course, to pass the title. Crawford v. Bertholf, 1 N. 20 J. Eq., 458; Woodward v. Woodward, 8 N. J. Eq., 779; Cannon v. Cannon, 26 N. J. Eq., 316; Ruckman v. Ruckman, 33 N. J. Eq., 354; Hildebrand v. Willig, 64 N. J. Eq., 249; Rowley v. Bowyer, 75 N. J. Eq., 80; Abbe v. Donohue, 90 N. J. Eq., 597; Folly v. Vantuyl, 9 N. J. L., 153.

Rommell vs. Happe et al, 93 Eq., 386.

Where the evidence shows that the transaction is 30 understood, and there has been no fraud or overreaching produced, it should be protected in the retention of the consideration which has induced the contract.

Voorhees v. Christie
125 Atl. 14

Held on review of evidence at time of transaction was well in body, alert in mind, was advised by a member of the Bar the transaction was a lawful contract.

Voorhees v. Christie
125 Atl. 13

It is plain in this case, and the testimony shows, there was a bona fide consideration for this deed and
10 that Daniel F. Campbell understood the transaction at the time he made the transfer, that he went to a lawyer in Bordentown to have the deed executed, that he signed and acknowledged it before a lawyer and that the deceased in his lifetime made numerous statements that he had transferred the property to his mother and could not sell it without her consent. That the money paid by Mrs. Campbell was a fair value for the farm at the time it was sold to her and that his will is silent concerning the farm in ques-
20 tion, that he did not mention the farm in his will, or anything concerning the farm, which showed that he believed at the time he made his will that the farm belonged to his mother and that he fully comprehended the nature and consequences of his act and there was no fraud on the part of Mrs. Campbell in the purchase of the property.

That the transfer was made in consideration of a verbal promise to his mother that she would be taken
30 care of for the money she had advanced, and that she had paid sufficient money for the farm in question, which the testimony shows, and that when he made the transfer he made it in consideration of the money that his mother had given him and the consideration was not inadequate, and that the net result of the exchange did not make the transfer improvident.

The Court in this case refused to allow Mrs. Campbell to testify concerning the transaction with her son. Is this not a judicial inquiry to ascertain if the deed made by the deceased was a bona fide deed, free from fraud, and the act of the deceased free from domination?

Is it not the same as the probate or proceedings for the probate of a will where the instrument is before the Court and the witnesses testify as to statements and actions of the deceased? 10

The failure of the Court to allow Mrs. Campbell to testify as to the transactions between herself and her son was prejudicial to her interests and we contend was error. Our Courts have said:

Proceedings for the probate of a will is not a civil action, but a judicial inquiry to ascertain whether the instrument before the Court is the last will and testament of the deceased. Hence the statute does not apply. 20

Deazeys Case, 85 Atl. 176, cited in Fulper's estate
132 Atl. 845.

So that Section 4 of the Evidence Act is not applicable in this case, and Mrs. Campbell should have been allowed to testify concerning the conversations she had with her son affecting the transfer and as to the consideration she had paid to him for the property in question. 30

An Executor and Proponent of a will and the beneficiary thereof are competent to testify to transactions with the deceased evidencing testamentary capacity.

Grant v. Stanler
59 Atl. 890

Under the statute the interest is not a disqualification, and, if it could be said that he was suing or sued in a representative capacity, he, as such representative, had a right to tender himself as a witness, he is not a party sued or suing in a representative capacity, within the meaning of the statute.

Re: McLaughlin Will 59 Atl. 469

10 Hence our Courts have said that the beneficiary has the right to testify concerning transactions with the deceased, it being a judicial inquiry to ascertain if the will is a proper will. And if that is the law in this State concerning a will, why is it not the law concerning a deed, where a judicial inquiry is to ascertain if the deed made by the deceased was a bona fide deed free from fraud and for a bona fide consideration?

20 It is, therefore, contended that the Executors of Daniel F. Campbell, should not have a decree setting aside the deed made by Daniel F. Campbell to his mother, Catherine Campbell, on March 20, 1923, as Daniel F. Campbell had gone to a lawyer and had it explained to him by the lawyer, Joseph S. Swaim, who drew the deed, and had it signed in the presence of said lawyer, and the testimony through shows that Catherine Campbell advanced One thousand dollars of the Legion money to her son to buy the Fillman
30 Farm. That he bought over One thousand dollars' worth of farming implements for which he did not pay his mother and for which he owed her, and that she had advanced him Five hundred dollars in cash to buy the Fillman farm for which he paid Two thousand dollars cash, and that the deed was delivered to his mother and she kept it in the bureau drawer where she had kept it among her effects, and that

she had lived on the farm with her son and she had kept this deed in question there with other papers belonging to her. ¹⁰

The testimony shows that Mrs. Campbell advanced about Twenty-five hundred dollars to her son and that he sold the farm and received about Twenty-four hundred dollars, which money he used to purchase the Hughes farm, the subject matter of this suit. So that the money Catherine Campbell loaned her son to buy the Fillman farm, which he sold, was used by him to purchase the Hughes farm. That he recognized his mother as the owner of the farm, because when Mr. Dickey wanted to buy a piece of the property, on August 30, 1924, he had his mother make a contract of sale which showed that he acknowledged her as the owner of the property; and that he had told other people that his mother was the owner of the property. ²⁰

It plainly shows, from a review of this evidence, that there was a bona fide delivery and that when he made his will he made no mention whatever of the farm in question, and that Catherine Campbell got the deed and the other papers which she had kept at the farm after her son had died, and that a woman of her years, being infirm, would not know anything about having said deed recorded until she was advised to do so by her son-in-law, Mr. Morris, which she immediately did. ³⁰

There is testimony to show that Daniel F. Campbell told his sister, Mrs. Morris, that he had deeded the farm to his mother, that she had done so much for him, and that he had never given her what she should have and he said "The farm is mother's."

So that by an abundance of proof the complainants have failed to give sufficient testimony to have this deed set aside, as there is certainly no clear evidence of the instrument's infirmity to require it to be set aside.

We have sufficient consideration for the property, the drawing and execution of the deed before an attorney, the delivery of the deed to the mother, the retaining of the deed by the mother in her personal effects with her other papers, and no evidence that
10 the mother influenced the son to make this said deed, the same being a voluntary act on his part, and I respectfully submit that the decree of the Court of Chancery should be set aside.

ROBERT PEACOCK,
Solicitor for and of Counsel
with Defendant.