# INDEX

## EXHIBITS.

## BILL OF COMPLAINT.

(Filed July 14, 1937.)

## IN CHANCERY OF NEW JERSEY.

*To the Honorable Luther A. Campbell, Chancellor of the State of New Jersey:*

Complainant, Rutherford Thompson Teas, Executor of the Estate of Elizabeth M. Teas, respectfully shows:

1. He resides at River Forest, in the State of Illinois.

2. Complainant is executor of the estate of Elizabeth M. Teas, deceased, who died in the County of Atlantic, State of New Jersey, on or about July 21, 1929, and whose will was duly probated by the Surrogate of the County of Atlantic. Ever since the probate of said will and the issuing of letters to the complainant, he has conducted the administration of said estate and said estate is still in the process of administration and unsettled.

3. Complainant held as assets of said estate, together with other assets, two certain mortgages as follows: One for $5500.00 upon premises 126 Ashley Road, Upper Darby Township, Delaware County, Pennsylvania, and another for $5500.00, upon premises 118 Hampden Road, Upper Darby Township, Delaware County, Pennsylvania.

4. On or about December 23, 1929, Joseph H. Carr, then a member of the New Jersey Bar and with offices in the City and County of Camden, State of New Jersey, received into his possession, without the knowledge of the complainant, a check dated December 23, 1929, made by the Real Estate-Land Title and Trust Company to the order of Rutherford Thompson Teas, ancillary executor, in the sum of $5591.08, a true and correct copy of which check is attached hereto and marked Exhibit A, and on or about the 2nd day of January, 1930, the said Joseph H. Carr did also receive into his possession without the knowledge of the complainant, a check dated January 2, 1930, made by the Real Estate-Land Title and Trust Company to the order of estate of Elizabeth M. Teas, deceased, in the sum of $5605.10, a true and correct copy of which check is attached hereto and marked Exhibit B.

5. On the dates above named Joseph H. Carr was advising complainant with respect to the matters involved in said estate. Said checks were the sole and exclusive property of the complainant, and the said Joseph H. Carr had no right, title or interest therein. Notwithstanding these facts said Joseph H. Carr, as has now been discovered by this complainant, not only received into his possession said checks so belonging to this complainant, but without the knowledge, consent or authority of complainant endorsed the name of the payee as set forth in said check by his own name as attorney, presented said two checks to the Third National Bank and Trust Company, of Camden, N. J., and then said Third National Bank and Trust Company then and there

paid the full amount of said checks to the said Joseph H. Carr, the proceeds thereof being deposited in the private account of the said Joseph H. Carr in said bank.

6. Upon learning of the issuing of said two checks belonging to the complainant in his capacity as executor of the estate of Elizabeth M. Teas, he made formal demand upon the said Third National Bank and Trust Company for the payment thereof to him, which demand was embodied in a writing dated November 16, 1936, a true and correct copy of which is attached hereto and made a part hereof and marked Exhibit 2, and thereafter, on the 26th day of November, 1936, complainant brought suit in the New Jersey Supreme Court against the Third National Bank and Trust Company to recover the moneys represented by said two checks and interest, that is to say, the sum of $5591.08, with interest from December 23, 1929, and the sum of $5605.10, with interest from January 2, 1930, less credit of $4490.00 paid on account of such interest, which checks and the moneys representing said checks were the sole and exclusive property of complainant and received by the Third National Bank and Trust Company without accounting to complainant therefor.

7. Said defendant, Third National Bank and Trust Company, has filed an answer in said suit in the New Jersey Supreme Court with respect to each of said amounts so demanded by complainant, in which it pleads as a defense to each of the counts in said

New Jersey State Library

complaint the statute of limitations in the following language:

> "1. It says that the cause of action alleged in the first count of said complaint accrued more than six years prior to the commencement of the suit in the above entitled cause and is therefore barred by the statute of limitations, in such case made and provided."

While it is true that more than six years have expired since the said Third National Bank and Trust Company paid said moneys on said checks to said Joseph H. Carr, nevertheless complainant had no knowledge that said checks were issued or that they had been endorsed by the said Joseph H. Carr or that the amounts represented by said checks had been paid by the said Third National Bank and Trust Company to the said Joseph H. Carr or that the money had been deposited by the said Joseph H. Carr in his private bank account in said bank until more than six years after the payment was made by said bank to said Carr on the said checks.

8. Complainant has now learned and, therefore, charges that at the time of the issuing of the said two checks which belonged to the complainant, said Joseph H. Carr was both a director of and solicitor for the said Third National Bank and Trust Company and well known to said bank. Complainant, however, never had any transactions with the said bank, either personally or in a representative capacity, and at no time carried any checking or other account in the said bank. The banking business of

complainant was at all times conducted with and through the North Camden Trust Company, of Camden, New Jersey, where all of the funds of said estate were supposed to have been deposited.

9. Although one of said checks was payable to complainant, Rutherford Thompson Teas, Ancillary Executor, and the other check was made payable to the estate of Elizabeth M. Teas and both of said checks belonged to complainant, all of which was shown to the said defendant on the face of said checks, the said Third National Bank and Trust Company paid the moneys represented by said checks to the said Joseph H. Carr upon the purported endorsement of the payee by "Joseph H. Carr, Atty." Notwithstanding said fact, said bank paid said moneys to said Joseph H. Carr, the same were deposited in said bank in the personal account of Joseph H. Carr and used by the said Joseph H. Carr. At no time did complainant give to said Joseph H. Carr any power or authority or instruction or consent to endorse checks belonging to complainant and the said Joseph H. Carr was without any power or authority to place said endorsements upon said checks and the endorsement of the name of each payee on said checks was entirely unauthorized and illegal, and the Third National Bank and Trust Company unlawfully received said checks and unlawfully collected the proceeds thereof and this without any inquiry by the said bank of the complainant as to any alleged authority on the part of Joseph H. Carr to make said endorsements and collect and use said money. Said Third National Bank and Trust Company owed a duty to complainant to make inquiry with respect to any alleged au-

thority on the part of Joseph H. Carr as an attorney or otherwise to endorse and collect the said checks and not to receive such checks and pay the same to the said Carr without first having the consent and authority of complainant so to do. All of which actions and doings on the part of the said defendant are contrary to equity and good conscience and amount to a legal fraud against complainant, no matter how good the motives of said bank and its officers might have been in making said payment.

10. Complainant shows that the attempt to set up and use as a defense against the claim of complainant against said bank the statute of limitations is contrary to equity and good conscience, all of which matters and things are cognizable only in this court. Complainant, therefore, prays:

1. That Third National Bank and Trust Company, who is the defendant to this suit, may answer the bill of complaint and each statement therein made.

2. That this Court may permanently enjoin the defendant from using or in any way availing itself of the said defense by it pleaded in said cause, to wit, the plea of the statute of limitations.

3. That a writ of subpoena may issue, commanding said defendant to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

BLEAKLY, STOCKWELL & BURLING,
*Solicitors for and of Counsel with Complainant.*

State of New Jersey, }
County of Camden, } ss.

RUTHERFORD THOMPSON TEAS, of full age, being duly sworn according to law, on his oath deposes and says:

I reside at 138 Keystone Avenue, River Forest, State of Illinois, and have resided in the State of Illinois since November, 1929. Before moving to River Forest, I lived at 413 S. Lincoln St., Hinsdale, Ill., for approximately 4 years and Chicago for one year and before that lived in Phila., State of Pennsylvania.

In the month of December, 1929, and in the month of January, 1930, I resided at 747 Irving Park Blvd., Chicago, in the State of Illinois.

I am the complainant in the bill of complaint to which this affidavit is attached. I am familiar with the matters, facts and things set forth in said bill of complaint and said matters, facts and things stated in said bill are true. I am executor of the estate of my mother, Elizabeth M. Teas, who died on or about July 21, 1929, and whose will was duly probated by the Surrogate of the County of Atlantic, State of New Jersey. The administration of said estate is still open and unsettled and I am still engaged in the administration thereof. I am still executor under said will. In the early stages of the administration of said estate, it was necessary to take out ancillary letters in the County of Philadelphia, State of Pennsylvania, in order to administer certain assets of said estate within that jurisdiction. In said ancillary proceedings I was appointed ancillary

executor of the will of Elizabeth M. Teas. My father's name was John Teas. He died September 29, 1924 and his will was probated in Atlantic County, New Jersey. Elizabeth M. Teas, my mother, was executrix thereof.

On the twenty-sixth day of December, 1936, in my capacity as executor under the last will and testament of Elizabeth M. Teas, I brought suit in the New Jersey Supreme Court against the Third National Bank and Trust Company, of Camden, New Jersey, a true and correct copy of which complaint is attached hereto and made a part hereof and marked Exhibit 1. In and by said suit, as shown by said complaint, I seek to recover from the said defendant, Third National Bank and Trust Company, of Camden, N. J., the proceeds of two certain checks therein described, one of $5591.08, dated December 23, 1929, made by Real Estate-Land Title and Trust Company, of Philadelphia, to the order of Rutherford Thompson Teas, ancillary executor, and representing the amount of a mortgage of $5500.00, with interest, covering 126 Ashley Road, Upper Darby Township, Delaware County, Pennsylvania, and the other of which checks was dated January 2, 1930, made by Real Estate-Land Title and Trust Company to the order of "Estate of Elizabeth M. Teas, deceased," in the sum of $5605.10 and representing the amount of a certain mortgage, with interest, covering premises 118 Hampden Road, Upper Darby Township, Delaware County, Pennsylvania. Although said checks were made payable to me or the estate I represented as aforesaid, they were delivered to Joseph H. Carr at that time attorney for me in my capacity as executor of the estate of Eliza-

beth M. Teas and the said Joseph H. Carr instead of delivering the same to me, without authority and without my knowledge or consent, endorsed the name of the payee on the back of each check and then, as shown by said endorsements and the copies of the checks attached to said complaint and hereinabove referred to, deposited said two checks in his own private bank account in the said Third National Bank and Trust Company, of Camden, N. J., and which bank then and there paid the amounts represented by said checks to the said Carr. I at no time authorized said Joseph H. Carr to endorse my name as executor of said estate or the name of said estate on the back of either of said checks, or to deposit the same in his own private bank account then and there maintained by said Joseph H. Carr in the Third National Bank and Trust Company. I at no time for myself personally or for said estate opened or maintained a deposit or other account with the said Third National Bank and Trust Company. I did all of my banking during the period covered by the transaction aforesaid with the North Camden Trust Company, in the City of Camden, New Jersey, and deposited all moneys received from said estate in that bank alone. I never had any relations whatever with the said Third National Bank and Trust Company, nor was I ever notified by it or by any one representing it that said two checks or either of them had been presented to said bank with the names of the payee thereon endorsed by "Joseph H. Carr, Atty.," and deposited in the private deposit account of said Joseph H. Carr in said bank. In fact, I had no knowledge of the issuing of said two checks by the Real Estate Land Title and Trust

Company of Philadelphia to me as executor and to said estate until the month of November, 1936.

I, as executor of the estate of Elizabeth M. Teas, was the owner of both of said checks and of the amounts represented thereby. The check of $5891.08 represented the proceeds of a certain mortgage on 126 Ashley Road, Upper Darby, Delaware County, Pennsylvania, and the other represented the proceeds of a certain mortgage on 118 Hampden Road, Upper Darby, Delaware County, Pennsylvania. Both of said mortgages belonged to the estate of Elizabeth M. Teas and were in the possession of Joseph H. Carr for said estate, who had been employed by me as attorney to advise me with respect to the said estate. Said Joseph H. Carr sent to me in Chicago forms of two assignments of said two mortgages, with the request that I execute said assignments in favor of certain persons who were supposed to be buying those mortgages. I executed said two assignments and returned them to Mr. Carr in the month of December, 1929. Thereafter I was advised by the said Joseph H. Carr from time to time that the parties involved in said two mortgages had not been able to make settlement and explanations were given for such delay and in the meantime said Joseph H. Carr sent to me from time to time remittances purporting to represent interest paid to him upon each of said mortgages. Joseph H. Carr had been the attorney who settled my father's estate and he had been highly recommended to me as an attorney, both for his integrity and ability and I had every confidence in his integrity and when, therefore, he stated to me that settlements with respect to said two mortgages were delayed and gave his explanation there-

for, I accepted those statements as true and I had no reason to suspect any dishonesty on the part of said Carr until the last of May or the first of June of the year 1935. By that time I had become insistent upon some means being taken to put through the settlements covering said two mortgages and in the last of May or early in June, 1935, Mr. Carr sent word to me through a third party that he had gotten the money on the two mortgages in question and had used it personally. Even then I was not told that checks had been issued for the payment of said mortgages to my order as executor or to the order of the estate of Elizabeth M. Teas, or that any such checks had been presented to any bank for payment or that the Third National Bank and Trust Company of Camden, N. J., had paid such checks. As I have already stated, I have never had any transactions with such bank and it was only in the month of November, 1936, that my investigation, following this disclosure by Carr to me, disclosed that the two checks hereinabove mentioned and forming the basis of my suit in the New Jersey Supreme Court had been issued to me or to the estate I represented and had been unlawfully and without authority endorsed by the said Carr and paid by the said Third National Bank and Trust Company. Promptly upon making said discovery, I gave notice in writing to the Third National Bank and Trust Company, to wit, on November 16, 1936, a copy of which notice then served is attached hereto and made a part hereof and marked Exhibit 2. Following the filing of my suit in the New Jersey Supreme Court, the defendant therein filed an answer in which it did among other things set up as a defense to each count

of said complaint the statute of limitations and in the following language:

> "1. It says that the cause of action alleged in the first count of said complaint accrued more than six years prior to the commencement of the suit in the above entitled cause and is therefore barred by the statute of limitations, in such case made and provided."

The same defense and in the same language was set up in answer to the defense to the second count. A true and correct copy of said answer is attached hereto and made a part hereof and marked Exhibit 3.

I had no knowledge that I had a cause of action against the Third National Bank and Trust Company with respect to any moneys or checks or mortgages or otherwise until the month of November, 1936, and long after six years had expired from the dates of the payment of said two checks by the said defendant. I had no knowledge that the Third National Bank and Trust Company was in any way connected with any transaction involving me or the said Estate until the month of November, 1936. I had never received any notice of any kind from the said Third National Bank or anyone representing it, by way of inquiry or otherwise with respect to any alleged authority of Joseph H. Carr to endorse my name as executor upon checks or the name of the estate of Elizabeth M. Teas on checks. In fact, Joseph H. Carr was never by me given such authority and never with my consent or knowledge exercised any such authority. Not only did the Third National Bank and Trust Company and its officers and agents neglect and refuse to make any

inquiry of me with respect to any such alleged authority on the part of Joseph H. Carr to endorse checks and collect and use the moneys representing the same, but at the time of said transaction Joseph H. Carr was, as I have been reliably informed and therefore state to be a fact, both a director and the solicitor of the said Third National Bank and Trust Company. Inasmuch as I had no knowledge whatever that I possessed any right, claim or demand against the Third National Bank and Trust Company until more than six years after said checks were unlawfully paid by it to the said Joseph H. Carr, I could not and did not make any demand upon it within said six-year period. However, I did promptly upon discovering the issuing of said checks and the payment thereof to Joseph H. Carr not only make demand upon the said Third National Bank and Trust Company, in accordance with the notice to which I have referred, but I also promptly brought suit against the said Third National Bank and Trust Company after their refusal to comply with such demand.

RUTHERFORD THOMPSON TEAS.

Sworn to and subscribed before me this tenth day of July, A. D., 1937.

HENRY W. LEVERENTZ,
*Notary Public.*

My commission exp. Jan. 20, 1940.

EXHIBIT 1.

(Filed Jan. 2, 1937.)

THE STATE OF NEW JERSEY TO THIRD NATIONAL BANK AND TRUST COMPANY:

You are summoned to answer the annexed complaint of Rutherford Thompson Teas, executor under the Last Will and Testament of Elizabeth M. Teas, deceased, in an action at law in the New Jersey Supreme Court. And take notice that unless you file your answer to said complaint with the Clerk of the Supreme Court, at Trenton, New Jersey, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

WITNESS Thomas J. Brogan, Chief Justice of the Supreme Court, at Trenton, New Jersey, this 26th day of December, nineteen hundred and thirty-six.

Fred L. Bloodgood
Clerk.

Bleakly, Stockwell & Burling
Attorneys for Plaintiff.

*Bill of Complaint—Exhibit 1, Summons and Complaint*

COMPLAINT.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

| | |
|---|---|
| RUTHERFORD THOMPSON TEAS, Executor under the Last Will and Testament of ELIZABETH M. TEAS, deceased, *Plaintiff*, v. THIRD NATIONAL BANK AND TRUST COMPANY, *Defendant*. | Action at Law. Complaint. |

Plaintiff, Rutherford Thompson Teas, Executor under the Last Will and Testament of Elizabeth M. Teas, says that:

FIRST COUNT.

1. Plaintiff is a resident of Chicago, of the State of Illinois, but Elizabeth M. Teas, of whose Will plaintiff is executor, died a resident of Atlantic County, in the State of New Jersey. Defendant is a national bank organized and operating under the laws of the United States.

2. On or about the twenty-third day of December, 1929, The Real Estate-Land Title and Trust Company, a corporation of the State of Pennsylvania, located in Philadelphia, Pa., made and issued its certain check to the order of the plaintiff in the sum of $5591.08, payable at the Real Estate-Land Title and Trust Company, Philadelphia aforesaid, in payment of the purchase of a certain mortgage then owned by the plaintiff and then or thereafter delivered the said check to Joseph H. Carr for delivery to the plaintiff. A true and correct copy of said check with all the endorsements thereon is attached hereto and made a part hereof and marked Exhibit A.

3. Said check upon the issuing thereof by the said Real Estate Land Title and Trust Company became and thereafter remained the absolute property of the plaintiff.

4. The endorsement on the back of said check in the following language, to wit:

"Rutherford Thompson Teas
Ancillary Executor
Joseph H. Carr,
Atty.
Joseph H. Carr."

is not the endorsement of plaintiff and said alleged endorsement was placed thereon without any right, power or authority in the said Joseph H. Carr or any other person so to do and said endorsement was then and has at all times since been unlawful and

invalid and defendant by said alleged endorsement or otherwise never acquired any right, title or interest in said check or the moneys then due thereon.

5. Defendant obtained possession of said check and collected the sum of $5591.08 thereon without endorsement or transfer by plaintiff to the defendant or to any other person, and the defendant received and now holds the said sum of $5591.08 to the use and for the benefit of the plaintiff.

6. Plaintiff has never received any part of the proceeds of said check, either from the defendant or any other person or corporation.

7. Plaintiff now is and has at all times since the issuing of said check been the owner thereof and of the proceeds thereof.

8. Said Joseph H. Carr, then an attorney at law of New Jersey, paid to plaintiff certain moneys from time to time from the year 1929 to the year 1935, representing said payments to be interest due on the mortgage mentioned in paragraph 2. The full amount of $5591.08 is due to the plaintiff, together with interest thereon from December 23, 1929, less credits on interest as hereinafter stated.

SECOND COUNT:

1. Paragraph 1 of the First Count is here repeated as the first paragraph of this Count.

2. On or about the second day of January, 1930, The Real Estate-Land Title and Trust Company, a corporation of the State of Pennsylvania, located in Philadelphia, Pa., made and issued its certain check to the order of the plaintiff in the sum of $5605.10, payable at the Real Estate-Land Title and Trust Company, Philadelphia aforesaid, in payment of the purchase of a certain mortgage then owned by the plaintiff and then or thereafter delivered the said check to Joseph H. Carr for delivery to the plaintiff. A true and correct copy of said check with all the endorsements thereon is attached hereto and made a part hereof and marked Exhibit B.

3. Said check upon the issuing thereof by the said Real Estate-Land Title and Trust Company became and thereafter remained the absolute property of the plaintiff.

4. The endorsement on the back of said check in the following language, to wit:

"Estate Eliz. M. Teas dec'd
Joseph H. Carr
Atty
Joseph H. Carr"

is not the endorsement of plaintiff and said alleged endorsement was placed thereon without any right, power or authority in the said Joseph H. Carr or any other person so to do and said endorsement was then and has at all times since been unlawful and invalid and defendant by said alleged endorsement or otherwise never acquired any right, title or interest in said check or the moneys then due thereon.

*Bill of Complaint—Exhibit 1, Summons and Complaint*

5. Defendant obtained possession of said check and collected the sum of $5605.10 thereon without endorsement or transfer by plaintiff to the defendant or to any other person, and the defendant received and now holds the said sum of $5605.10 to the use and for the benefit of the plaintiff.

6. Plaintiff has never received any part of the proceeds of said check, either from the defendant or any other person or corporation.

7. Plaintiff now is and has at all times since the issuing of said check been the owner thereof and of the proceeds thereof.

8. Said Joseph H. Carr paid to plaintiff certain moneys from time to time from the year 1929 to the year 1935, representing said payments to be interest due on the mortgage mentioned in paragraph 2 of this Count. The full amount of $5605.10 is due to the plaintiff, together with interest thereon from January 2, 1930, less credit for interest as hereinafter stated.

Plaintiff demands:

On Count 1 the principal sum of $5591.08; and

On Count 2 the principal sum of $5605.10; together with lawful interest on said sums as hereinbefore stated, less credit of $4490.00 paid on account of such interest.

BLEAKLY, STOCKWELL AND BURLING,
*Attorneys for Plaintiff.*

EXHIBIT A.

Settlement Check:

J. N. Joline
T. and C. Bookkeeper
No. 97121 Payable through
the
Philadelphia Clear-
App. 819175 ing House

Philadelphia, Dec. 23, 1929

THE REAL ESTATE-LAND TITLE AND TRUST COMPANY

Pay to the order of Rutherford Thompson Teas, Ancillary Executor

Real Estate
Land T. & T. Co. $5591 and 08 Cts....Dollars
Asst. Mtge. Int. & Ack mt Bk 519 p 58 prems. 126 Ashley Rd. Del Co.

$5591.08/100 J. Martin Chas R. Bowen Manager
For Settlement Dept. President.

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ENDORSEMENTS:

Rutherford Thompson Teas
Ancillary Executor
Joseph H. Carr,
Atty
Joseph H. Carr
Pay to the order of

*Bill of Complaint—Exhibit 1, Summons and Complaint*

Corn Exchange National Bank & Trust Co.
Philadelphia, Pa.
Prior Endorsements Guaranteed
Dec. 27, 1929
Third National Bank & Trust Co.
55-692 Camden, N. J. 55-692
Wilbert H. Higbee, Cashier.
Received Payment
Through the
Dec 27 1929
Clearing House
Corn Exchange Nat. Bank & Trust Co., Phila.

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EXHIBIT B.

Settlement Check
J. N. Joline
T. and C. Bookkeeper
No. 97988 Payable through
the Philadelphia
App. 818814 Clearing House

Philadelphia, Jan. 2, 1930

THE REAL ESTATE LAND TITLE AND TRUST COMPANY.....
Pay to the order of
ESTATE ELIZ. M. TEAS, Dec'd.....
Real Estate
Land T. & T. Co. $5605 and 10 Cts.....Dollars
Asst. of mtge. 118 Hampden Rd .....
$5605.10 J. Martin Arthur A. Gietz
For Settlement Dept. Manager
President

ENDORSEMENTS:

Estate Eliz M. Teas, dec'd
Joseph H. Carr
Atty
Joseph H. Carr
Pay to the order
Corn Exchange National Bank & Trust Co.
Philadelphia, Pa.
Prior Endorsements Guaranteed
Jan. 8 1930
Third National Bank & Trust Co.
55-692 Camden, N. J. 55-692
Wilbert J. Higbee, Cashier.
Received Payment
Through The
Jan 8 1930
Clearing House
Corn Exchange Nat. Bank & Trust Co. Phila.

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EXHIBIT 2.

138 Keystone Avenue
River Forest, Illinois
November 16, 1936.

Third National Bank and Trust Company
Twenty-seventh and Westfield Avenue,
Camden, New Jersey.

Gentlemen:

I have recently come into possession of (1) photostat of original check, made and issued upon The

Real Estate-Land Title and Trust Company, at Philadelphia, December 23, 1929, to the order of Rutherford Thompson Teas, Anciallary Executor, (payable upon proper identification of payee) in the sum of $5591.08, endorsed "Rutherford Thompson Teas, Ancillary Executor, Joseph H. Carr, Atty. Joseph H. Carr", and stamped:

"Pay to the order of CORN EXCHANGE NATIONAL BANK & TRUST CO. Philadelphia, Pa. Prior Endorsements Guaranteed, Dec 27, 1929, THIRD NATIONAL BANK & TRUST CO 55-692 Camden, N. J., Wilbert J. Higbee, Cashier," and "RECEIVED PAYMENT Through CLEARING HOUSE CORN EXCHANGE NATIONAL BANK & TRUST CO., PHILA. Dec. 27, 1929."

And (2) photostat of original check made and issued upon The Real Estate-Land Title and Trust Company, at Philadelphia, January 2, 1930, to the order of Estate Eliz. M. Teas, Dec'd, (payable upon proper identification of payee) in the sum of $5605.10, endorsed "Estate Eliz. M. Teas, dec'd. Joseph H. Carr, Atty. Joseph H. Carr" and stamped:—

"Pay to the order of CORN EXCHANGE NATIONAL BANK & TRUST CO. Philadelphia, Pa. Prior Endorsements Guaranteed, Jan. 8, 1930, THIRD NATIONAL BANK & TRUST CO. 55-692 Camden, N. J. 55-692 Wilbert J. Higbee, Cashier," and "RECEIVED PAYMENT Through the CLEARING HOUSE CORN EXCHANGE NATIONAL BANK & TRUST CO. PHILA. Jan. 8, 1920."

Said endorsements were not made by me, or my agent, or any person authorized to make the

same for me. Said checks, and the moneys represented thereby, were and are the property of the Estate of Elizabeth M. Teas, Deceased, never having been legally transferred to any other person.

The moneys represented by said checks should be in your possession, since any disbursement thereof upon said endorsements would be improper, unlawful and fraudulent.

I hereby demand of you the sum of $11,196.18, plus lawful interest thereon as follows:

On the sum of $5,591.08 from December 27, 1929 and on the sum of $5,605.10 from January 8, 1930, less payments made on account thereof amounting to $4490.00.

Respectfully yours,
Rutherford Thompson Teas,
Executor Estate of Elizabeth M. Teas,
Deceased.

Bleakly, Stockwell & Burling
Attorneys,
West Jersey Trust Bldg.,
Camden, N. J.

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STATE OF NEW JERSEY }
COUNTY OF CAMDEN } ss.

ANNE M. COYLE, of full age, being duly sworn according to law, on her oath says:

That she is an employee of Bleakly, Stockwell & Burling, attorneys, of Camden, N. J., that on Tuesday, November 17, 1936, she served a demand, a true copy of which is attached hereto, on Third Na-

tional Bank and Trust Company, of Camden, N. J., by handing the same to W. J. Higbee, Cashier, personally, at the banking house of said Third National Bank and Trust Company, 27th and Westfield Avenue, Camden, New Jersey.

Anne M. Coyle.

Sworn to and subscribed before me this 17th day of November, A. D., 1936.

Ida M. Brodey
Notary Public of N. J.

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EXHIBIT NO. 3.

(Filed April 26, 1937.)

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

| | |
|---|---|
| RUTHERFORD THOMPSON TEAS, Executor under the Last Will and Testament of ELIZABETH M. TEAS, deceased, *Plaintiff*, vs. THIRD NATIONAL BANK AND TRUST COMPANY, *Defendant*. | Action at Law. Answer. |

Defendant, Third National Bank and Trust Company, answering the bill of complaint in this cause, respectfully says that:

FIRST COUNT

1. It admits that portion of paragraph one under the first count of the bill of complaint which states that: "Defendant is a national bank organized and operating under the laws of the United States," but has no knowledge or information with respect to the remaining allegations in said paragraph sufficient to form a belief and therefore neither affirms or denies the same but leaves the plaintiff to his proof.

2. It has no knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph two of the first count of the bill of complaint and therefore neither affirms nor denies the same, but leaves plaintiff to his proof.

3. It denies paragraphs 3, 4, 5, 6, 7, and 8 under the first count of the bill of complaint.

FIRST SEPARATE DEFENSE TO FIRST COUNT

1. It says that the cause of action alleged in the first count of said complaint accrued more than six years prior to the commencement of the suit in the above entitled cause and is therefore barred by the statute of limitations, in such case made and provided.

SECOND SEPARATE DEFENSE TO FIRST COUNT.

1. Plaintiff, by his actions, aided, assisted and permitted the delivery and negotiation of the check described in the complaint and had full knowledge of the transaction for which the check was payment and said plaintiff is guilty of negligence and is estopped and debarred from bringing this action.

THIRD SEPARATE DEFENSE TO FIRST COUNT.

1. Plaintiff has received payment in full satisfaction of the demand set up in the allegations under the first count of the bill of complaint and plaintiff is estopped from claiming any damage by reason of any matter or thing set forth in the complaint.

FOURTH SEPARATE DEFENSE TO FIRST COUNT.

1. Plaintiff, by his actions, aided, assisted and permitted the delivery and negotiation of the check described in the complaint and any loss by reason thereof falls upon the plaintiff and not this defendant and this defendant is not liable to the plaintiff because of any matter or thing alleged in the bill of complaint.

FIFTH SEPARATE DEFENSE TO FIRST COUNT.

1. Plaintiff unreasonably delayed the making of the claim set forth in his complaint herein and thereby deprived defendant of its rights with respect to such transaction and defendant has been seriously injured by said delay, and by reason thereof plaintiff is estopped and debarred from making such claim and bringing this action.

SIXTH SEPARATE DEFENSE TO FIRST COUNT.

1. The transaction involving the check referred to in the complaint, was in all respects ratified and affirmed by the acts and conduct of the plaintiff, and said plaintiff has ratified the endorsement of the check referred to and all acts in connection therewith, and is estopped and debarred from making any claim and bringing this action.

SEVENTH SEPARATE DEFENSE TO FIRST COUNT.

1. The plaintiff as executor of the estate of Elizabeth M. Teas, deceased, had certain duties to perform with respect to the administration of the assets of the estate of Elizabeth M. Teas, in connection with the transaction set forth in the bill of complaint, and has not used due diligence in the administration of the estate and has delayed an unreasonable length of time in making the claim set forth in the bill of complaint and has

been negligent and is therefore estopped and debarred from making such claim and bringing this action.

EIGHTH SEPARATE DEFENSE TO FIRST COUNT.

1. The plaintiff has no claim against defendant on account of any unauthorized or improper endorsement by payee of the check in question by reason of the fact that the designated payee did not assert, allege or claim against defendant any improper or unauthorized endorsement of the payee's name, and plaintiff is estopped and debarred from now making this claim and bringing this action.

NINTH SEPARATE DEFENSE TO FIRST COUNT.

1. On the days and at the times set forth in the complaint, Joseph H. Carr was an attorney at law in New Jersey and authorized to act as legal attorney for the Estate of Elizabeth M. Teas, for the plaintiff and for the ancillary executor of said estate, and as attorney in fact in the collection of said sum of $5591.08 from the Real Estate-Land Title and Trust Company, and authorized to receive said check to endorse the same and to distribute said fund.

2. On the days and times set forth in the complaint, Joseph H. Carr was solicitor of the Estate of Elizabeth M. Teas, of the plaintiff and of the

ancillary executor of said estate and authorized to represent the ancillary executor in the collection and disbursement of the sum of $5591.08 from the Real Estate-Land Title and Trust Company.

TENTH SEPARATE DEFENSE TO FIRST COUNT.

1. The endorsement of the check set forth in the complaint in the name of Rutherford Thompson Teas, ancillary executor, by Joseph H. Carr, attorney, was done by and with the authority actual, implied and apparent, of the said ancillary executor.

2. Said Joseph H. Carr had been authorized by said ancillary executor to act as his attorney in receiving and endorsing said check and for receiving the same by delivery from the Real Estate-Land Title and Trust Company.

3. Said Joseph H. Carr was authorized either by actual, implied or apparent authority to apply and distribute the funds received from the check described in the bill of complaint.

ELEVENTH SEPARATE DEFENSE TO FIRST COUNT.

1. Plaintiff had full knowledge of the payment of the check described in the complaint and of the entire transaction for which the check was payment and knew that the same had been delivered to Joseph H. Carr as solicitor for the ancillary ex-

ecutor and knew that said Joseph H. Carr was authorized to receive said check and collect said funds and to convert and apply the same, and plaintiff is estopped from bringing this action or making any claim with respect thereto.

TWELFTH SEPARATE DEFENSE TO FIRST COUNT.

1. The proceeds of the check referred to in the complaint were paid to and reached the property and authorized parties and the plaintiff suffered no damage by reason of any matter or thing set forth in the complaint.

THIRTEENTH SEPARATE DEFENSE TO FIRST COUNT.

1. The plaintiff has no claim against the defendant on account of any matter or thing alleged in the bill of complaint and plaintiff is estopped from making his present claim and is precluded from maintaining this suit.

SECOND COUNT.

1. Paragraph one of the answer to paragraph one of the first count in the bill of complaint for the sake of brevity is repeated here as the first paragraph of this count.

2. It has no knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph two of the second count of the

bill of complaint and therefore neither affirms nor denies the same, but leaves plaintiff to his proof.

3. It denies paragraphs 3, 4, 5, 6, 7, and 8 under the second count of the bill of complaint.

FIRST SEPARATE DEFENSE TO SECOND COUNT.

1. It says that the cause of action alleged in the first count of said complaint accrued more than six years prior to the commencement of the suit in the above-entitled cause and is therefore barred by the statute of limitations, in such case made and provided.

SECOND SEPARATE DEFENSE TO SECOND COUNT.

1. Plaintiff, by his actions, aided, assisted and permitted the delivery and negotiation of the check described in the complaint and had full knowledge of the transaction for which the check was payment and said plaintiff is guilty of negligence and is estopped and debarred from bringing this action.

THIRD SEPARATE DEFENSE TO SECOND COUNT.

1. Plaintiff has received payment in full satisfaction of the demand set up in the allegations under the first count of the bill of complaint and plaintiff is estopped from claiming any damage by reason of any matter or thing set forth in the complaint.

## FOURTH, FIFTH, SIXTH, SEVENTH, AND EIGHTH SEPARATE DEFENSES TO SECOND COUNT.

1. For the sake of brevity, the fourth, fifth, sixth, seventh and eighth separate defenses to first count are hereby made the fourth, fifth, sixth, seventh and eighth separate defenses to the second count as if repeated in full.

## NINTH SEPARATE DEFENSE TO SECOND COUNT.

1. On the days and at the times set forth in the complaint, Joseph H. Carr was an attorney at law in New Jersey and authorized to act as legal attorney, for the Estate of Elizabeth M. Teas, for the plaintiff, and for the ancillary executor of said estate, and as attorney in fact in the collection of said sum of $5605.10 from the Real Estate-Land Title and Trust Company and authorized to receive said check, to endorse the same and to distribute said funds.

2. On the days and times set forth in the complaint, Joseph H. Carr was solicitor, of the Estate of Elizabeth M. Teas, of the plaintiff and of the ancillary executor of said estate and authorized to represent the estate of Elizabeth M. Teas in the collection and disbursement of the sum of $5605.10 from the Real Estate-Land Title and Trust Company.

TENTH SEPARATE DEFENSE TO SECOND COUNT.

1. The endorsement of the check set forth in the complaint in the name of the Estate of Elizabeth M. Teas, deceased, by Joseph H. Carr, attorney, was done by and with the authority actual, implied and apparent of said estate of Elizabeth M. Teas, deceased.

2. Said Joseph H. Carr had been authorized by the estate of Elizabeth M. Teas to act as attorney in receiving and endorsing said check and for receiving the same by delivery from the Real Estate-Land Title and Trust Company.

3. That Joseph H. Carr was receiver by actual, implied or apparent authority to apply and distribute the funds received from the check described in the bill of complaint.

To the plaintiff, Rutherford Thompson Teas, Executor under the Last Will and Testament of Elizabeth M. Teas, deceased:

Please take notice that this defendant reserves the right to move at or before the trial to strike out all, or a part of, said complaint, upon the following grounds and laws:

A. Complainant does not set forth a legal cause of action.

B. This Court is without jurisdiction to try and

determine the issues raised under the complaint and each and every count thereof.

C. Plaintiff is without remedy for the things complained of in this court as against this defendant.

D. The cause of action alleged in the complaint is barred by the statute of limitations in such case made and provided.

HAROLD W. BENNETT
Attorney for Defendant.

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ORDER TO SHOW CAUSE.

(Filed April 26, 1937.)

IN CHANCERY OF NEW JERSEY.

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|---|---|
| Between:<br>RUTHERFORD THOMPSON TEAS, Executor of the Estate of ELIZABETH M. TEAS, Deceased,<br>*Complainant*,<br>and<br>THIRD NATIONAL BANK AND TRUST COMPANY,<br>*Defendant*. | On Bill, &c.<br>Order to Show Cause. |

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Complainant, Rutherford Thompson Teas, executor under the last will and testament of Elizabeth

M. Teas, having filed his bill of complaint in this court, with affidavit thereto attached, from which it appears that complainant was the owner of two certain checks to his order and to the order of said estate, one of $5591.08 and the other of $5605.10, that the endorsement of the name of the payee in each of said checks was made by one Joseph H. Carr, an attorney, without any right, power or authority so to do, and that thereupon the defendant, Third National Bank and Trust Company, of Camden, New Jersey, took into its possession said checks, collected the moneys due thereon and deposited the same in the personal deposit account of said Joseph H. Carr in the bank of the defendant and without inquiry from the complainant or notice to the complainant with respect to said checks and without any authority from complainant to so appropriate, collect and use said checks and the moneys represented thereby belonging to complainant; and it further appearing that complainant has instituted a suit at law in the New Jersey Supreme Court as plaintiff against the said Third National Bank and Trust Company for the recovery of the said moneys represented by the said checks of the complainant so taken and collected by the defendant, and that the defendant has set up as a defense to said cause of action in the said New Jersey Supreme Court the statute of limitations and in the following language:

> "It says that the cause of action alleged in the first count of said complaint accrued more than six years prior to the commencement of the suit in the above-entitled cause and is there-

fore barred by the statute of limitations, in such case made and provided."

and that the same defense was inserted as to the second count in said complaint, and setting forth that complainant did not discover the issuing of said checks or the payment thereof until more than six years after the date of such checks and the payment thereof, and praying for an injunction out of this Court to permanently enjoin the defendant from using or in any way availing itself of the said defense by it pleaded in said legal cause of action; and application for this purpose having been made by Bleakly, Stockwell & Burling, counsel for the complainant:

It is thereupon ORDERED on this 14th day of July, 1937, that the Third National Bank and Trust Company, of Camden, N. J., show cause before this Court at the Court House, in the City of Camden, on Monday, the 26 day of July, 1937, at the hour of ten o'clock in the forenoon, daylight saving time, or as soon thereafter as counsel can be heard thereon why a preliminary injunction should not issue restraining the defendant from interposing or in any way using or availing itself of the statute of limitations as a defense in said cause in the New Jersey Supreme Court until final hearing made in this Court under said Bill of Complaint:

It is further ordered that pending a hearing under this order to show cause, the defendant be and it is hereby restrained from interposing or in any way making use of said defense of the statute of limitations in said cause in the New Jersey Supreme Court.

It is further ordered that a true, but uncertified copy of this order and of the bill and affidavits attached thereto to show cause be served upon the defendant within days from the date hereof.

Respectfully advised,

F. B. DAVIS,
*V. C.*

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ANSWER.

(Filed Oct. 5, 1937.)

IN CHANCERY OF NEW JERSEY.

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Between:

RUTHERFORD THOMPSON TEAS, Executor under the Last Will and Testament of ELIZABETH M. TEAS, deceased,
*Complainant,*
and
THIRD NATIONAL BANK AND TRUST COMPANY,
*Defendant.*

On Bill for Injunction.
Answer.

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Defendant, Third National Bank and Trust Company, in answer to the bill of complaint filed in the above-entitled cause says that:

*Answer*

1. Defendant has insufficient information to form an opinion or belief with respect to the allegations set forth in paragraphs 1, 2, 3, and 4 of the bill of complaint and therefore neither affirms nor denies, but leaves the same to complainant's proof.

2. Defendant denies the allegations in paragraph 5 of the bill of complaint and alleges the truth to be that complainant, as executor of the estate of Elizabeth M. Teas, had full knowledge, or should have known, and was in such a position that he should and could have acquired knowledge by reason of his transactions with Joseph H. Carr, of the actions which Joseph H. Carr took with respect to the estate transactions and the checks mentioned in the bill of complaint and which checks were presented to the defendant, Third National Bank and Trust Company.

3. Defendant denies the allegations set forth in paragraph 6 of the bill of complaint and alleges the truth to be that the complainant failed to make formal demand or notify the defendant upon learning of the issuing of the two checks referred to in the bill of complaint, but delayed an unreasonable length of time to do so. Said complainant knew, or should have known, of the issuance of said checks by reason of the fact that said complainant executed assignments of two mortgages referred to in paragraph 3 of the bill of complaint, one on December 16, 1929, covering premises 126 Ashley Road, Upper Darby Township, Delaware County, Pennsylvania, and another on December 23rd, 1929, covering mortgage upon premises, 118 Hampton Road, Upper

Darby Township, Delaware County, Pennsylvania. True and correct copies of the aforesaid assignments are attached hereto and made a part hereof and marked Schedules A and B respectively.

Defendant admits receipt of demand dated November 16, 1936, and admits the institution of suit on November 26, 1936, in the New Jersey Supreme Court, but alleges that said demand was made and said suit was instituted more than six years after the date any cause of action may have arisen on the facts made the subject of the bill of complaint. It further alleges that complainant delayed an unreasonable length of time in taking these actions, notwithstanding knowledge of the actions of Joseph H. Carr in the administration of the estate of Elizabeth M. Teas.

4. Defendant admits that it has filed answer in the suit in the New Jersey Supreme Court pleading, giving as a defense the statute of limitations. Said defendant, however, denies the remaining allegations in paragraph 7 of the bill of complaint and alleges the truth to be that complainant had knowledge or should have known, and was in a position to have acquired knowledge of the facts set forth in paragraph 7 of the bill of complaint, if complainant had not been negligent and delayed an unreasonable length of time in taking any action or making any investigation which it was his duty to make as executor of the estate of Elizabeth M. Teas.

5. Defendant admits that at the time of the issuing of the two checks mentioned in the bill of complaint that Joseph H. Carr was both a director of

and solicitor for the defendant, and so far as the defendant knew, said Joseph H. Carr was highly regarded and had never taken any action or done anything which would lead the defendant or any of its agents to mistrust or to question his authority to make the endorsements in question.

To the remaining allegations of paragraph 8 of the bill of complaint, defendant does not have sufficient information to form a belief and leaves complainant to his proof.

7. Defendant denies the allegations set forth in paragraph 9 of the bill of complaint.

8. Defendant denies that the setting up and use of the defense of statute of limitations is contrary to any equity and good conscience under the circumstances of the present case, as the defendant has performed no fraudulent act upon the complainant and has done nothing to mislead the complainant or to prevent the complainant from bringing his suit within the time limit of the statute of limitations. The complainant has lost his right of action at law not by anything this defendant has done or procurred to be done, but by what the complainant has done himself and in equity and good conscience the complainant in this cause cannot complain in this court.

First Separate Defense.

Complainant by his actions aided, assisted and permitted the delivery and negotiation of the checks referred to in the bill of complaint and had full

knowledge of the transactions for which the checks were made payment, and said complainant has been negligent in making any complaint or bringing any suit and is estopped from obtaining any equitable relief in this court.

SECOND SEPARATE DEFENSE.

Complainant shows that he has received payment in full satisfaction of the demands set up in the complaint filed in the law action in the New Jersey Supreme Court and complainant is estopped from obtaining any relief in this court.

THIRD SEPARATE DEFENSE.

The complainant unreasonably delayed the making of the claim asserted in the law action in the New Jersey Supreme Court and referred to in the bill of complaint in this cause and thereby deprived defendant of its rights with respect to such transaction and defendant has been seriously injured by said delay and by reason of equity and good conscience, complainant is estopped from obtaining any relief in this court.

FOURTH SEPARATE DEFENSE.

The transaction involving the checks and the claims of the complainant in his suit at law of the New Jersey Supreme Court has been in all respects ratified and affirmed by the acts and conduct of the complainant and said complainant has ratified the endorsements of the checks referred to in this bill of complaint and all acts in connection therewith

and in equity and good conscience is estopped from obtaining any relief in this court enjoining the statutory defense.

FIFTH SEPARATE DEFENSE.

Complainant, as executor of the estate of Elizabeth M. Teas, deceased, had certain duties to perform with respect to the administration of the assets of the estate of Elizabeth M. Teas in connection with the transactions referred to in the bill of complaint and complainant has not used due diligence in the administration of the estate of Elizabeth M. Teas and has delayed an unreasonable length of time in making the claims referred to in the bill of complaint and in equity and good conscience cannot be heard at this time to complain or to receive relief from this Court.

SIXTH SEPARATE DEFENSE.

Complainant by reason of his actions and by reason of executing assignments, copies of which are marked Schedules A and B of this answer, cannot be heard to complain in this court; said complainant has not been prevented from bringing his suit at law within the time limit of the statute of limitations by reason of any act of the defendant, but rather by reason of what the complainant has done or procured to be done himself.

SEVENTH SEPARATE DEFENSE.

Defendant has performed no fraudulent act nor employed any means to mislead the complainant or

to hide from him the fact that any cause of action had arisen to him.

EIGHTH SEPARATE DEFENSE.

The defendant has not wrongfully caused the complainant to delay in prosecuting his action.

NINTH SEPARATE DEFENSE.

There is no duty owing by the defendant to the complainant to apprise the complainant of his rights. The complainant has made an election of his rights of action by the institution of a suit in the New Jersey Supreme Court and cannot be heard to complain in this court.

HAROLD W. BENNETT,
*Attorney for Defendant.*

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SCHEDULE A.

KNOW ALL MEN BY THESE PRESENTS, That I, Rutherford Thompson Teas, Ancillary Executor of the Will of Elizabeth M. Teas, deceased (acting in pursuance of Ancillary letters testamentary granted by the Register of Wills in and for the City and County of Philadelphia in the State of Pennsylvania, on the seventeenth day of August A. D. 1929), the said Elizabeth M. Teas being the assignee by Assignment of Mortgage bearing date the thirty-first day of October A. D. 1925, and re-

corded in the Office for recording Deeds in and for the County of Delaware and State of Pennsylvania in Assignment of Mortgage Book No. 73 page 521 &c., of Elizabeth M. Teas, Executrix of the Will of John Teas, deceased, (which said Will was probated before the surrogate of the County of Atlantic in the State of New Jersey and a certified copy of said Will and Letters Testamentary was filed in the Office of the Register of Wills for the County of Delaware in the State of Pennsylvania aforesaid on the Seventeenth day of February A. D. 1925) the said John Teas being the Assignee by Assignment of Mortgage bearing date the twenty-ninth day of May A. D. 1922, and recorded in the Office for Recording Deeds aforesaid in Assignment of Mortgage Book No. 56, page 590 &c., of The Land Title and Trust Company, assignee by Assignment of Mortgage bearing date the fifteenth day of March A. D. 1922 and recorded in the Office for recording Deeds aforesaid in Assignment of Mortgage Book No. 50, page 234 &c., of Bella Redmond, the Mortgagee named in the indenture of mortgage hereinafter mentioned, for and in consideration of the sum of five thousand Dollars, lawful money unto me paid by the City of Philadelphia, Trustee under the Will of Stephen Girard, deceased, at the time of the execution hereof, the receipt whereof is hereby acknowledged do hereby grant, bargain, sell, assign, transfer and set over unto the said The City of Philadelphia, Trustee as aforesaid, its Successors and assigns, all that certain Indenture of Mortgage given and executed by John Donlan to Bella Redmond bearing date the fifteenth day of March A. D.

1922, and recorded in the Office for Recording Deeds aforesaid in Mortgage Book No. 519, page 58 &c. to secure the payment of the sum of five thousand five hundred Dollars, since reduced to five Thousand Dollars, at the expiration of three years from the date thereof with interest as therein mentioned; and all that certain lot or piece of ground with the messuage of Tenement thereon erected, Situate at the Northwest corner of Ashby Road and Sansom Street, in the Township of Upper Darby, in the County of Delaware and State of Pennsylvania. Containing in front or breadth on the said Ashby Road thirty-two feet and extending of that width in length or depth Westward between parallel lines at right angles to the said Ashby Road, the South line thereof being along the North side of Sansom Street, seventy-one feet to the middle of a certain ten feet wide private driveway.

Also the Bond or Obligation in the said Indenture of Mortgage recited, and all moneys, principal and interest due and to grow due thereon, with the Warrant of Attorney to the said Obligation annexed, Together with all rights, remedies and Incidents thereunto belonging.

And All my right, title, interest, property, claim and demand in and to the same: To have, hold, receive and take, all and singular the hereditaments and premises hereby granted and assigned, or mentioned and intended so to be with the appurtenances unto the said the City of Philadelphia, Trustee as aforesaid, its Successors and assigns to and for its and their only proper use, benefit and behoof forever; subject nevertheless to the equity of redemp-

tion of said John Donlan, the Mortgagor in the said Indenture of Mortgage named, and his heirs and assigns therein.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 16th day of December A. D. 1929.

Rutherford Thompson Teas (SEAL)
Ancillary Executor of the Will of
Elizabeth M. Teas, deceased.

Sealed and Delivered in the presence of us:
Walter G. Matson
Burtt B. Clorr

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On the 16th day of December A. D. 1929, before me, the subscriber, a Notary Public of the Common wealth of Illinois, personally appeared the above named Rutherford Thompson Teas, Ancillary Executor as aforesaid, and acknowledged the above Deed-Poll of Assignment of Mortgage to be his act and deed, and desired the same might be recorded as such.

Witness my hand and Official seal.

Hattie Strauss (SEAL)
Notary Public,
My Commission expires Feb. 28, 1932.

I certify the address of the Assignee is 512 Lafayette Building, Philadelphia.

State of Illinois }
County of Cook } ss

I, Robert M. Sweitzer, County Clerk of the County of Cook, and also Clerk of the County Court of said County, same being a Court of Record, do hereby certify that, as County Clerk, I am the lawful custodian of the Official records of Notaries Public, of said County, and as County Clerk, am by the law of Illinois the duly authorized County Officer to issue certificates of Magistracy, that, Hattie Strauss, whose name is subscribed to the proof of acknowledgment of the annexed instrument in writing was at the time of taking such proof of acknowledgment, a Notary Public in and for Cook County, duly commissioned sworn and acting as such and authorized to take acknowledgments and proofs of Deeds or conveyances of lands, tenements or hereditaments in said State of Illinois, and to administer Oaths; all of which appears from the records and files in the County Clerk's Office; that I am well acquainted with the handwriting of the said Notary and verily believe that the signature to the said proof of acknowledgement is genuine. In Testimony Whereof, I have hereunto set my hand and affixed my official seal as County Clerk, same being the seal of the County of Cook, at my office as County Clerk, in the City of Chicago this 16 day of December A. D. 1929.

Robert M. Sweitzer (SEAL)
County Clerk

*Answer—Schedule B, Assignment of Mortgage*

In Witness Whereof, I have hereunto set my hand and affixed the seal of the County Court of Cook County, at my office as Clerk of the County Court, in the City of Chicago, this 16th day of December A. D. 1929.

Robert M. Sweitzer (SEAL)
Clerk of the County Court.
Harvey-Recorder.

Recorded December 28, 1929.

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SCHEDULE B.

KNOW ALL MEN BY THESE PRESENTS That I, Rutherford Thompson Teas of Ventnor, New Jersey, Ancillary Executor of the Estate of Elizabeth M. Teas, deceased, who was Assignee (by Assignment dated the Thirty-first day of October, A. D. 1925 and recorded at Media, Delaware County, Pennsylvania in Assignment of Mortgage Book #73 page 515 etc.,) of Elizabeth M. Teas, Executrix of the estate of John Teas, deceased, who was Assignee (by Assignment dated the second day of December A. D. 1922 and recorded as aforesaid in Assignment of Mortgage Book #56 page 316 etc.) of The Land Title and Trust Company which was assignee. By Assignment dated the Fifth day of September A. D. 1922 and recorded as aforesaid in Assignment of Mortgage Book #53 page 216 etc.) of Florence A. McClatchy the Mortgagee named in the Indenture of Mortgage hereinafter mentioned for and in consideration of the sum of five thousand,

five hundred dollars ($5,500.00) lawful money unto me paid by The Pennsylvania Company for Insurances on Lives and Granting Annuities, Trustee for Lucy Drexel Dahlgren under the will of Joseph W. Drexel deceased at the time of the execution hereof the receipt whereof is hereby acknowledged, Do hereby grant, bargain sell assign, transfer and set over unto the said The Pennsylvania Company for Insurances on Lives and Granting Annuities, Trustee as aforesaid, its successors and Assigns, ALL THAT CERTAIN Indenture of Mortgage given and executed by John Donlan to said Florence A. McClatchy, dated the Fifth day of September A. D. 1922 and recorded as aforesaid in Mortgage Book #539 page 97 etc., to secure the payment of the sum of five Thousand Five Hundred dollars ($5,500.00) with interest as therein mentioned AND ALSO All That Certain Lot or piece of ground with the Buildings and improvements thereon erected Situate on the Northwest corner of Hampden Road and Sansom Street in Upper Darby Township, Delaware County, Pennsylvania. Hereditaments and premises in said Indenture of Mortgage particularly described and granted or mentioned and intended so to be with the Appurtenances.

ALSO the bond or obligation in the said Indenture of Mortgage recited and all moneys principal and interest due and to grow due thereon, with the Warrant of Attorney to the said Obligation annexed. Together with all rights Remedies and incidents thereunto belonging. And all my estate right Title Interest, Property Claim and demand in and to the same:

*Answer—Schedule B, Assignment of Mortgage*

TO HAVE, Hold, receive and take all and singular the hereditaments and premises hereby granted and assigned or mentioned and intended so to be with the appurtenances unto said The Pennsylvania Company for Insurances on Lives and Granting Annuities Trustee as aforesaid its successors and Assigns to and for its and their only proper use, benefit and behoof forever; subject nevertheless to the equity of redemption of said John Donlan Mortgagor in the said Indenture of Mortgage named and his heirs and assigns therein.

IN WITNESS WHEREOF said Rutherford Thompson Teas, ancillary Executor as aforesaid has hereunto set his hand and seal this 23rd day of December A. D. 1929.

Rutherford Thompson Teas (SEAL)
Ancillary Executor of estate of
Elizabeth M. Teas, deceased.

Sealed and delivered in the presence of us:
Walter G. Madsen
Harry R. Rathburn

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On the 23rd day of December A. D. 1929 before me, personally appeared the above named Rutherford Thompson Teas, ancillary Executor as aforesaid, and acknowledged the above Deed Poll of Assignment of Mortgage to be his act and deed and desired the same might be recorded as such.

WITNESS my hand and Notarial seal.

Hattie Strauss (SEAL)
Notary Public,
My Commission Expires Feb. 28, 1932.

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State of Illinois }
County of Cook } ss.

I, Robert M. Sweitzer, County Clerk of the County of Cook, and also Clerk of the County Court of said, same being a court of Record, do hereby certify that as County Clerk I am the lawful custodian of the Official records of Notaries Public of said County, and as County Clerk am by the law of Illinois the duly authorized County Officer to issue Certificate of Magistracy, that Hattie Strauss whose name is subscribed to the proof of acknowledgment of the annexed instrument in writing was at the time of taking such proof of acknowledgment a Notary Public in and for Cook County, duly commissioned sworn and acting as such and authorized to take acknowledgments and proofs of deeds or conveyances of lands tenements or hereditaments in said State of Illinois and to administer oaths; all of which appears from the records and files in the County Clerk's office; that I am well acquainted with the handwriting of said Notary and verily believe that the signature to the said proof of acknowledgment is genuine.

*Answer—Schedule B, Assignment of Mortgage*

IN TESTIMONY WHEREOF I have set my hand and affixed my Official seal as County Clerk same being the seal of the County of Cook at my Office as County Clerk in the City of Chicago this 23rd day of Dec. A. D. 1929.

Robert M. Sweitzer (SEAL)
County Clerk

In Witness Whereof I have hereunto set my hand and affixed the seal of the County Court of Cooks County, at my Office as Clerk of the County Court, in the City of Chicago this 23rd day of December A. D. 1929.

Robert M. Sweitzer (SEAL)
Clerk of the County Court.
Harvey-Recorder.

Recorded January 11, 1930.

## REPLICATION.

(Filed Oct. 25, 1937.)

IN CHANCERY OF NEW JERSEY.

119-499.

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Between

RUTHERFORD THOMPSON TEAS, Executor under the last will and testament of ELIZABETH M. TEAS, deceased,

*Complainant,*

and

THIRD NATIONAL BANK AND TRUST COMPANY,

*Defendant.*

On Bill, &c. Replication.

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Complainant joins issue on the answer of the defendant in the above-entitled cause.

BLEAKLY, STOCKWELL & BURLING,

*Solicitors for Complainant.*

# TESTIMONY.

## IN CHANCERY OF NEW JERSEY.

119-499

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Between

RUTHERFORD THOMPSON TEAS, Executor of the Estate of ELIZABETH M. TEAS, deceased, *Complainant,*

and

THIRD NATIONAL BANK AND TRUST COMPANY, *Defendant.*

On Bill, etc.
Final Hearing.

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DAVIS, V. C.

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June 21st, 1938.

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BLEAKLY, STOCKWELL & BURLING, ESQS., by HENRY F. STOCKWELL, ESQ., and JAMES D. STOCKWELL, ESQ., for the complainant.

HAROLD W. BENNETT, ESQ., and WEIDNER TITZCK, ESQ., for the defendant.

Mr. Stockwell: Does your Honor wish an opening?

The Court: No, I have read both memorandums.

Mr. Stockwell: Then I will call as my first witness a gentleman from Philadelphia who wishes to leave.

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CLARKSON E. MCDOWELL, sworn.

By Mr. Stockwell:

Q. Where is your home?

A. Rutledge, Pa.

Q. Are you connected in any way with the Real Estate Land Title and Trust Company?

A. Auditor of the title insurance department, now the Land Title Bank and Trust Company.

Q. Have you, at my request, produced a file from your institution showing the issuing of two certain checks?

A. Yes, I have.

Q. I show you a check dated December 23, 1929, of the Real Estate Land Title and Trust Company, to the order of Rutherford Thompson Teas, ancillary executor, in the sum of $5,591.08, with certain endorsements. Is that the check which you have produced?

A. It is.

Mr. Bennett: May I see the check, please?

Q. Have you also produced the settlement statement from your file covering a transaction which is indicated by the language on that check?

A. That is right.

Q. Is this it?

A. Yes. This amount appears on the statement of settlement.

Q. Did that check ultimately come back to your bank for payment?

A. Yes, it was paid by us through the Philadelphia clearing house on December 27th, 1929, as shown by the stamp of the Corn Exchange National Bank and Trust Company.

Q. I note there appears on this check "Asst. Mtge., Int. and Ack," it looks like.

A. Assignment of mortgage, interest, and it looks like "Ack" and it represents the principal and interest then due on this mortgage, on this particular mortgage, being the consideration for the assignment.

Q. Please state the location of the property.

A. 126 Ashley Road, Delaware County, and it also gives a record of the mortgage which is being assigned, mortgage book 519/58.

Mr. Stockwell: I offer that in evidence, the check.

(Said paper offered in evidence and marked Exhibit C-1.)

Q. You refer to a settlement sheet of your bank covering this same transaction.

Mr. Bennett: I don't see where this statement is

particularly material, and I am also wondering whether this man has supervision of these statements.

Q. Is the man, or employee, of your bank who made this settlement any longer employed by that bank?

A. No, he is not.

Q. You have, at my request, brought your file on this transaction?

A. I have.

Q. Can you identify this statement as the statement which covers the settlement represented by the check now in evidence?

A. Yes, the checks are issued from the statement of settlement, and the application number on the check agrees with the application number on the statement, and the premises also appear on the statement as well as the parties to the assignment and the amount for which the check was issued.

Q. Does that agree with the check?

A. It does.

Mr. Stockwell: I offer it in evidence.

Mr. Bennett: I don't desire to clutter up the record with objections, but my objection is it is immaterial.

The Court: It will be admitted for such evidential value as it may appear to have.

Mr. Stockwell: I have asked that the file be produced in good faith, and we are offering it.

(Said paper offered in evidence and marked Exhibit C-2.)

Q. I show you a certified copy of assignment of mortgage and ask you whether or not the assignment, this assignment, represents the assignment of the particular mortgage on 126 Ashley Road, and covered by that check?

Mr. Bennett: May I ask if that is a certified copy or an exemplified copy?

Mr. Stockwell: Certified copy.

Mr. Bennett: I object then on the ground it should be exemplified.

Mr. Stockwell: You don't want it in?

Mr. Bennett: I didn't say that.

Mr. Stockwell: I am acting in good faith, and it is immaterial to us.

Mr. Bennett: I have exemplified copies, very frankly.

Mr. Stockwell: We will take your copy.

The Court: Is your copy any different from his?

Mr. Bennett: I am willing to substitute this.

Mr. Stockwell: I didn't want to go to the ex-

pense of an exemplification. For our purpose it is immaterial, but as a matter of good faith we felt bound to produce it.

Q. You will have to identify these exemplified copies.

A. The mortgage referred to in this copy agrees with our records, we show the mortgage being recorded in book 519, page 58, and the parties, likewise, agree with our records, which I have here.

Mr. Stockwell: I offer that in evidence.

(Said paper offered in evidence and marked Exhibit C-3.)

Q. Look at the second assignment and see whether that was received in connection with the settlement on another mortgage covering 118 Hampden Road.

A. Yes, it does.

Mr. Stockwell: I offer it in evidence.

(Said paper offered in evidence and marked Exhibit C-4.)

Q. I show you a check dated January 2nd, 1930, from the Real Estate Land Title and Trust Company to the estate of Elizabeth M. Teas, deceased, $5,605.10, and I ask you whether that check was issued by your bank covering a settlement for the assignment of a mortgage on 118 Hampden Road?

A. Yes, it was.

Mr. Stockwell: I offer that in evidence.

(Said paper offered in evidence and marked Exhibit C-5.)

Q. I show you what purports to be a statement of the Real Estate Land Title and Trust Company covering a settlement on 118 Hampden Road. Is that the statement which shows the settlement for this mortgage?

A. It does.

Mr. Stockwell: I offer it in evidence.

Mr. Bennett: Same objection, if the Court please.

The Court: All right. It will be admitted in evidence and if immaterial it will be disregarded.

(Said paper offered in evidence and marked Exhit C-6.)

Q. Was this second check ultimately returned to your bank and paid?

A. Yes, it was likewise paid through the Philadelphia clearing house, as shown by the stamp of the Corn Exchange National Bank and Trust Company, on January 8th, 1930.

Q. Have you prepared photostatic copies of these two checks, and of the endorsements on them, respectively?

A. Yes, sir.

Q. And of the two statements which have been placed in evidence?

A. Yes, I have those here.

Mr. Stockwell: The gentleman would like to remove the original checks.

The Court: I would like to see the originals.

Mr. Stockwell: And leave the photostatic copies.

The Court: There is no question as to the fact that this was written by Joseph H. Carr, or do you want that proven?

Mr. Bennett: I can't say that at the present time.

The Court: I think you had better hold the checks because you ought to prove the handwriting, if you are going to require proof.

Mr. Bennett: If your Honor will grant me a minute maybe I can settle that. At the present time we can't admit the signature.

The Court: You had better hold the checks until you prove them. Is there any objection to the photostats?

Mr. Bennett: Being substituted later, no, if your Honor please.

The Court: The photostatic copies can carry the same exhibit number as the originals.

Q. Mr. McDowell, do your records show, or do you yourself know, to whom those two checks,

Exhibits C-1 and C-5, were delivered to your bank, the particular individual?

A. I couldn't say. It was our custom when we issued checks to send them out by mail, accompanied with a letter, or hand them to the representative of the assignor or mortgagee, and so forth, who attends the settlement. These clerks no longer are in our employ and I can't tell how these checks were delivered. Apparently they were not mailed, I have no copies of letters sending the checks out by mail, so I say, apparently they were handed to some representative of the assignor at the time of settlement.

Cross-examination.

By Mr. Bennett:

Q. Do you know of your own knowledge to whom those checks were delivered?

A. I do not.

Mr. Stockwell: When?

Mr. Bennett: To whom they were delivered, I just asked him. That is all.

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WILBERT J. HIGBEE, sworn.

Mr. Stockwell: Will you stand aside, and I will call Mr. Teas. This is for the purpose of proving the signature on these checks, and I wish to call Mr. Teas later on.

The Court: All right.

(Witness withdrawn.)

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RUTHERFORD THOMPSON TEAS, sworn.

By Mr. Stockwell:

Q. Are you the complainant in this suit?
A. Yes, sir.
Q. And the complainant in a suit in the Supreme Court against the Third National Bank?
A. Yes, sir.
Q. Did you know Joseph H. Carr, an attorney in Camden?
A. Yes.
Q. Did you know his signature?
A. Yes, sir.
Q. Have you seen him write his name?
A. Yes, sir.
Q. Received letters from him?
A. Yes, sir.
Q. I show you two checks, marked C-1 and C-5 respectively, and the endorsements on those checks, and I ask you whether the signatures "Joseph H. Carr, Atty." and "Joseph H. Carr" on the back of each check, are the signatures of Joseph H. Carr in the handwriting of Joseph H. Carr?
A. They are.

Mr. Bennett: No questions.

WILBERT J. HIGBEE, recalled.

By Mr. Stockwell:

Q. Are you the cashier of the Third National Bank in Camden?

A. I am.

Q. The complete name of that is what?

A. Third National Bank and Trust Company, Camden.

Q. I left off part of the title, didn't I?

A. Yes.

Q. Were you an officer of that bank in 1929?

A. I was.

Q. Were you then cashier?

A. Yes, sir.

Q. And cashier at the present time?

A. Yes, sir.

Q. I show you a check dated December 23rd, 1929, marked Exhibit C-1, and I ask you whether that was presented to your bank?

A. I believe it was, yes, it bears the bank's stamp on the back, yes.

Q. To whose account was that credited in your bank?

A. Credited to Joseph H. Carr's account.

Q. Is there anything on the check to show when it was so credited?

A. Credited on December 27th, 1929. Pardon me just a minute. Yes, December 27th, 1929.

Q. I show you another check dated January 2nd, 1930, marked Exhibit C-5, and ask you if that check was also presented to your bank?

A. January 30th, isn't it? That bears the date of January 2nd.

Q. 1930.

A. That is right. That went through our bank on January 7th, 1930.

Q. To whose credit was that check placed in your bank?

A. Joseph H. Carr.

The Court: On what date?

The Witness: On January 7th, 1930.

Q. Were those two checks placed to the credit of Joseph H. Carr upon the endorsements appearing on the backs of those checks?

A. They were.

Q. Were the checks paid?

A. Yes. They have never been charged back to the account, so they are paid.

Q. Did the estate of Elizabeth M. Teas, deceased, have any account in your bank at that time?

A. No.

Q. Did Rutherford Thompson Teas, either as ancillary executor, or executor under the will of Elizabeth M. Teas, deceased, have an account in your bank?

A. No.

Q. At any time?

A. No.

Q. As far as you know did your bank ever have any relations with Rutherford Thompson Teas as executor, or other wise?

A. Not to the best of my knowledge, no.

Q. Upon these two checks being presented to your bank did you have personal knowledge of their presentation at that time?

A. I did not.

Q. Did you know of any notice at any time being given by your bank to Rutherford Thompson Teas as executor, or ancillary executor, or personally, with reference to these two checks?

A. I didn't get that question clearly.

(Question repeated.)

A. No.

Q. After the moneys were deposited, the checks were deposited, to the account of Joseph H. Carr, did you at any time advise Rutherford Thompson Teas personally, or in a representative capacity, that these two checks were issued?

A. No.

Q. And were paid?

Mr. Bennett: I object, immaterial, irrelevant and incompetent.

Mr. Stockwell: That is rather broad.

The Court: That is a stock objection, what is your real objection?

Mr. Bennett: My real objection is I don't think it makes any difference at all whether the bank had written to Mr. Teas or not along the line Mr. Stockwell is questioning.

Mr. Stockwell: Our theory of the case is there was at that time placed upon this bank, before the checks were paid, and again after the checks were paid, to make inquiry with respect to the authority of Joseph H. Carr to sign these endorsements.

Mr. Bennett: There was no duty. Mr. Carr had been depositing at the bank over a period of years, the same as other customers, and there was no constructive notice or direct notice of anything wrong on Carr's part, and if there was any duty at all it was on the part of the executor to follow this situation up and check up with the bank.

The Court: That is not embodied in this question, the objection you are now making. You may answer the question subject to objection and if it appears to be immaterial or irrelevant the question and answer will be disregarded.

(Question repeated.)

A. No.

Q. And after the moneys had been received, that is, in banking parlance, by the check being paid by the issuing bank, did you give any such notice to Mr. Teas?

A. No.

Q. Did you make any inquiry of Mr. Teas, or anybody else, with reference to any authority of Joseph H. Carr to sign the name of Mr. Teas?

Mr. Bennett: The same objection with reference to the last two questions.

The Witness: I did nothing at all about Mr. Teas.

The Court: The same ruling as on the previous question.

Q. At the time of the issuing of these two checks, and their payment, was Joseph H. Carr a director of your bank?

A. He was.

Q. Was he also solicitor of the bank?

A. He was.

Cross-examination.

By Mr. Bennett:

Q. Mr. Higbee, you didn't know personally that these checks had come through and been deposited at the Third National Bank and Trust Company for payment, did you?

A. No.

Q. You personally didn't know they had been paid over to Joe Carr's account, did you?

A. No.

Q. You had never met Mr. Teas before this situation arose, had you?

A. No.

Mr. Stockwell: What situation arose?

Mr. Bennett: With reference to these two checks. I will withdraw the question.

Q. When were you first notified these checks had been deposited at your bank?

A. I think we have a record of that there.

Q. Have you the notice there that was served on you?

A. Yes.

Mr. Stockwell: I omitted one question, and this brings it out. I had asked you to produce a certain notice, a demand served upon you in behalf of the complainant in this suit.

The Witness: Yes.

Mr. Stockwell: Do you have it there?

The Witness: Yes.

Mr. Stockwell: Will you produce it? A paper dated November 16th, 1936.

The Witness: Yes.

Mr. Stockwell: Signed "Rutherford Thompson Teas, executor of the estate of Elizabeth M. Teas, deceased"?

The Witness: Yes.

Mr. Stockwell: I offer that in evidence.

(Said paper offered in evidence and marked Exhibit C-7.)

Mr. Stockwell: Has your bank ever paid any part of the moneys represented by those two checks to

Rutherford Thompson Teas personally or in a representative capacity, or to the estate of Elizabeth M. Teas, deceased?

The Witness: Not to my knowledge.

Mr. Stockwell: You would know it?

The Witness: Not unless it was disbursed from Mr. Carr's account.

Mr. Stockwell: You wouldn't be paying it if it was disbursed by Mr. Carr?

The Witness: The bank has never paid it, no.

Q. Mr. Higbee, when you received this notice from Rutherford Thompson Teas, executor of the estate of Elizabeth M. Teas, being Exhibit C-7, was that the first knowledge you had with reference to those checks being deposited at the Third National Bank and Trust Company?

A. It was.

Mr. Stockwell: By "you" you mean Mr. Higbee personally?

Mr. Bennett: Yes.

Q. Had you ever received any communication from Mr. Teas previous to that?

A. No.

Q. Had you ever received any from his attorneys previous to that?

A. No.

Q. Mr. Stockwell, or anyone else?

A. No.

Q. That was the first knowledge you had of those two checks?

A. Yes, on November 16th, 1936.

Mr. Bennett: That is all.

Mr. Stockwell: That is all.

Mr. Stockwell: I take it Mr. McDowell, representing the Philadelphia bank, can depart?

The Court: I want to find out whether defendant's counsel is going to question the proof of the signature of Joseph H. Carr.

Mr. Bennett: This is all the proof you have in reference to the signature?

Mr. Stockwell: Yes.

Mr. Bennett: May I ask Mr. Teas some questions, then?

Mr. Stockwell: You will have your opportunity when Mr. Teas is put on the stand.

The Court: I want to determine whether Mr. McDowell is to stay here.

Mr. Bennett: I am trying to expedite matters, too.

The Court: I suppose this gentleman may know his signature, he ought to. Do you know the handwriting of Joseph H. Carr? Take a seat and I will find out. You may have an objection to these questions, both sides. I am trying to avoid keeping Mr. McDowell here, if there is no question about it.

Mr. Bennett: I will admit the signatures on the testimony that has been presented.

The Court: You may be excused, Mr. McDowell, and the photostatic copies will be used in place of the originals.

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RUTHERFORD THOMPSON TEAS, recalled.

Mr. Stockwell: A proper part of this proceeding is the record in the Supreme Court of a suit by Rutherford Thompson Teas, executor, etc., against the Third National Bank and Trust Company. A copy of the summons and complaint and answer, and I have told Mr. Bennett about it and he said it was unnecessary to produce the file down here. I have a copy of the summons and complaint attached to the bill of complaint.

Mr. Bennett: I am satisfied to agree the copies attached to the bill are copies of the original proceeding.

The Court: You waive the production of the originals?

Mr. Bennett: That is right.

By Mr. Stockwell:

Q. You are the executor under the will of Elizabeth M. Teas, deceased?
A. I am.

Mr. Stockwell: I have a short certificate. I don't know whether it is necessary but we are offering it, from the Surrogate of Atlantic County.

(Said paper offered in evidence and marked Exhibit C-8.)

Q. You were also appointed ancillary executor in Philadelphia?
A. Yes.
Q. For the same estate?
A. Yes.

Mr. Stockwell: I also produce that.

(Said paper offered in evidence and marked Exhibit C-9.)

Q. Mr. Teas, where is your home?
A. Cook County, Illinois.
Q. Where was your home in 1929 and 1930?
A. Same County, City of Chicago.
Q. Was Elizabeth M. Teas your mother?
A. Yes.
Q. Do you have a summer home in Ventnor?
A. No, it was her old home.

Q. Her old home?
A. Yes.
Q. She lived in Ventnor, did she?
A. Yes, sir.
Q. Did you spend a part of each summer down there?
A. Just to fix it up and rent it for the summer.
Q. I show you the originals of two checks marked C-1 and C-5 and these are photostatic copies of the same checks, and I want to know when you first saw the originals of those checks?
A. I first saw photostats of these checks in the fall of 1936.
Q. When did you first know that any such checks had been issued?
A. The fall of 1936, when I saw these.
Q. When did you first know that there was a banking institution called the Third National Bank and Trust Company of Camden?
A. When I saw these checks.
Q. Did you ever have any dealings with the Third National Bank and Trust Company of Camden?
A. Never.
Q. Did you have any account in that bank?
A. No.
Q. Did you have any dealings with the Real Estate Land Title and Trust Company?
A. No.
Q. Except as it appears by these two checks?
A. No, sir.
Q. Not to your knowledge?
A. No, sir.
Q. Didn't carry any account there?
A. No, sir.

Q. By the way, did the estate of Elizabeth M. Teas have an account in the City of Camden?

A. Yes.

Q. Where?

A. North Camden Trust.

Q. How long was that bank account continued?

A. Up to date, it is still there.

Q. When did it begin?

A. It began shortly after her death in 1929.

Q. Is that where all the moneys of the estate were kept?

A. Yes, sir.

Q. Or supposed to be kept?

A. Yes, sir.

Q. When did you first become acquainted with Joseph H. Carr?

A. In 1924, the fall of 1924.

Q. What business then did you have with him, or did he have with any relative of yours?

A. He was the attorney for my father's estate.

Q. His name was what?

A. Joseph H. Carr.

Q. Your father?

A. John Teas.

Q. When your mother died did you consult Mr. Carr with reference to your mother's estate, that is, Elizabeth M. Teas?

A. Yes, sir, immediately.

Q. I call your attention to the endorsement on these checks, Exhibit C-1 and Exhibit C-5, on one it reads "Rutherford Thompson Teas, ancillary executor, Joseph H. Carr, Atty." Did you ever orally, or by writing, authorize Mr. Carr to endorse your name to any check?

A. No.

Q. I call your attention to the second check, with the same endorsement on the back. Did you ever give Mr. Carr, either orally or written authority to endorse the name of the estate on that check?

A. No, sir.

Q. Or on any check, to your knowledge?

A. No, sir.

Q. Was the estate the owner of two certain mortgages, one on 126 Ashby Road, Delaware Township, or Delaware County, I guess it is, and the other 118 Hampten Road, over in Pennsylvania?

A. Yes.

Q. Are you familiar with those mortgages?

A. Yes, sir.

Q. Are they the mortgages which are referred to in the copies of two assignments which are now shown to you, they being marked Exhibits C-3 and C-4?

A. Yes, these are the assignments of the mortgages.

Q. Did you execute each one of those assignments?

A. Yes, sir.

Q. At whose request?

A. Joseph H. Carr's.

Q. And when you executed them what did you do with them?

A. I mailed them to him.

Q. Joseph H. Carr?

A. Yes, sir.

Q. Were the two mortgages which are represented by these checks and these assignments in the hands of Joseph H. Carr at the time you mailed these two assignments to him?

A. Yes.

Q. They weren't in your possession, anyhow?

A. No.

The Court: He said they were in his hands?

The Witness: Carr's hands.

Q. Had you left these mortgages, together with other mortgages, in the possession of Joseph H. Carr?

A. Yes, sir.

Q. How many mortgages, all told, were left in his possession, approximately?

A. I think it was eight. One of them was a ground rent.

Q. Did you, after the execution of the two assignments, send them promptly to Mr. Carr?

A. Yes, sir.

Q. They were executed, one in 1929 and the other in 1930, is that right?

A. Whenever the dates are they were executed at that time.

Q. Now, were you ever told by Mr. Carr after these papers were executed, or at any time, that checks had been issued to you by the Real Estate Land Title and Trust Company in payment of the consideration moneys for those two mortgages?

A. No.

Q. When did you first know that the moneys on these mortgages, the consideration moneys for these mortgages, had been collected? When did you know the moneys had been collected by Mr. Carr?

A. May 30th, 1935.

Q. What day?

A. May 30th, 1935 I learned he collected the money.

Q. Who told you that?

A. Mr. Scheflin told me.

Q. Albert Scheflin?

A. Yes, sir.

Q. An attorney in Camden?

A. Yes, sir.

Q. Where was it he told you this, Camden or Chicago?

A. Chicago.

Q. Had you ever known Mr. Scheflin before?

A. No.

Q. Had any dealings with him?

A. No, sir.

Q. Did Mr. Scheflin undertake to deliver to you a message from Mr. Carr?

A. Yes, sir.

Q. What was the message?

A. The message was, the gist of it was, Carr had collected the moneys and had appropriated them, had not turned them into the estate.

Q. Did he say anything to you as to how the moneys were collected?

A. No.

Q. Did you, following that interview, come to Camden?

A. Yes, I did.

Q. Did you meet Mr. Carr?

A. I did.

Q. Was Mr. Scheflin present?

A. Yes, sir.

Q. Did Mr. Carr at that time say to you he had collected the money due on these two mortgages?

A. Yes, sir.

Q. Did he say how he had collected the money?

A. No.

Q. Was anything said by anybody as to how he got the money?

A. No, sir.

Q. Did you at any time know how he got the money until the fall of 1936?

A. No, I did not.

Q. From whom did you then get information that checks had been issued by the Real Estate Land Title and Trust Company?

A. I got that information from Mr. Shields.

Q. Is he a member of the bar of Philadelphia?

A. Yes, sir.

Q. Is he the senior member of Shields, Clark, Brown and McCown?

A. I believe so.

Q. Did you consult him as a lawyer, or a friend of the family?

A. A friend of the family.

Q. Was he in any way particularly tied into your family?

A. Well, he and my brother went to college together, and they were very close, and they were in activities at Pennsylvania State College, they were both in the Alumni Association, in fact, officers there, the Alumni Association, and the advisory board, and so forth.

Q. In the fall of 1936 did you see Mr. Shields?

A. Yes, sir.

Q. And did you make any request of Mr. Shields to see what he could find out about the Carr transaction?

A. I asked his advice on the matter.

Q. Later on did he show you photostatic copies of a couple of checks, these two checks that have been placed in evidence?

A. Yes, sir.

Q. As soon as you found out about the issuing of those checks did you consult counsel in New Jersey?

A. Yes, sir, as soon as I could.

Q. Not to be modest about it, did you come to see me?

A. Yes, sir, immediately.

Q. On my advice was the notice and demand prepared and signed by you as executor of your mother's estate?

A. It was.

Q. Demand and notice to the Third National Bank and Trust Company?

A. Yes, sir.

Q. You did not serve it yourself?

A. No, sir.

Q. It has been put in evidence. It was received by the bank?

A. Yes, sir.

Q. I show you this paper, demand and notice, is that the paper you signed?

A. Yes, that is it.

Q. When Carr confessed to appropriating the proceeds of these mortgages did he offer to make restitution?

A. Yes, sir.

Q. Did he?

A. Not very much.

Q. During the time between the dates of these two checks, December, 1929, and January, 1930, and the time when Mr. Scheflin spoke to you in Chicago in 1935, had you any suggestion from Mr. Carr that these two mortgages had, in fact, been paid off?

A. Oh, no.

Q. In fact, did you have word from him to the contrary?

A. Yes, I was receiving interest from time to time, purported interest on these mortgages.

Q. And up to what time did you receive interest from Mr. Carr on these two mortgages?

A. May 13th, 1935.

The Court: Interest had been paid regularly on the mortgages up to that time?

The Witness: No, just from time to time, they had never been paid up to date. At times he would say he had gotten so much, been able to collect so much money. The last payment he deposited to our account was May 13th, 1935.

Q. Notwithstanding the fact you were in Chicago, did you conduct your business through the North Camden Trust Company?

A. Yes, sir.

Q. And received deposit slips for the checks deposited?

A. Yes, sir.

Q. Now, did Mr. Carr offer any explanation to you

as to why the mortgages, these two particular mortgages, were not paid off?

A. Well, he said they were in bad straits at that time, and, of course, we could readily believe that, times were pretty hard, it was the middle of the depression, and he said they weren't able to pay them off, and he was hoping all the time that they would. In fact, he told me it was pretty hard to get the interest from them, but he succeeded from time to time.

Q. I show you a letter dated December 6th, 1929, on the letterhead of Joseph H. Carr. Did you receive that letter?

A. Yes, sir.

Mr. Stockwell: I offer that in evidence.

(Said paper offered in evidence and marked Exhibit C-10.)

Q. I show you a letter dated October 16th, 1929, on the letterhead of Joseph H. Carr. Did you receive that letter?

A. Yes, I did.

Mr. Stockwell: I offer that in evidence.

(Said paper offered in evidence and marked Exhibit C-11.)

Q. I show you another letter dated October 24th, 1930, on the letterhead of Joseph H. Carr. Did you receive that letter?

A. Yes, sir.

Mr. Stockwell: I offer it in evidence.

Mr. Bennett: If your Honor please, with reference to this letter, I object to it on the basis it is not material to this issue, it deals with a property not in this proceeding at all. As I recall it, the property is $5,000.00 covering the principal and mortgage on 120 Glendale Road. Where that is I don't know, but it doesn't make much difference as far as the argument is concerned. The properties involved in this proceeding have no connection with this at all.

Mr. Stockwell: That is true, it shows the correspondence between this man and Joseph H. Carr, it doesn't relate to these two properties.

The Court: Does this refer to mortgages belonging to the estate?

The Witness: Yes, that was one of the mortgages.

The Court: It is possible it might have some bearing on the case, I don't know. What was done with the proceeds of another mortgage which he collected. I will admit it, subject to objection, and subject to being disregarded if immaterial.

(Said paper offered in evidence and marked Exhibit C-12.)

The Court: There is a possbility it might have some materiality.

Q. I show you a letter dated February 22nd, 1935, on the letterhead of Joseph H. Carr. Did you receive that letter?

A. Yes, sir.

Mr. Bennett: I have an objection to this.

Mr. Stockwell: I offer it in evidence.

Mr. Bennett: I object on the basis it is not competent as evidence, there is no mention made in this letter about any mortgage or any asset of this estate, it simply refers to the fact he was trying to get H. O. L. C. mortgages, it is something foreign to this issue.

Mr. Stockwell: I withdraw the offer.

Q. Did Mr. Carr, in any conversation with you, refer to the Home Owners' Loan Corporation?

A. I referred to it to him as a means of liquidating the estate and getting the mortgages paid off.

Q. Which mortgages, these two we are talking about?

A. This Glendale and Hampden Road mortgages.

Q. On February 22nd, 1935, these mortgages were outstanding, so far as you knew?

A. Yes.

Q. Correct?

A. That is right.

Q. And I take it this was an explanation to you why the mortgages had not been collected?

A. That was his reply to my question why he couldn't ——

Mr. Bennett: I object on the basis it calls for a conclusion.

Mr. Stockwell: He didn't complete his answer. May he complete it?

The Court: You are objecting?

Mr. Bennett: Yes, it calls for a conclusion.

The Court: He did start to answer it, but the question was leading.

Q. Tell me how Mr. Carr referred to the H. O. L. C. in this letter, if you know why he did it.

A. Because I suggested he get an H. O. L. C. mortgage on these, or on mortgages, and replace the present mortgages so we would be able to sell them and liquidate the estate, and that was his reply to the suggestion of mine.

Mr. Stockwell: May I read this?

(Counsel reads letter.)

Q. What loans are they?

A. The loans on these properties.

The Court: The two properties in Philadelphia representing the litigation here?

The Witness: Yes.

Mr. Stockwell: I renew the offer.

Mr. Bennett: My objection is still before the Court.

The Court: The letter will be admitted, subject to objection, and subject to being disregarded if immaterial. It may have some bearing.

(Said paper offered in evidence and marked Exhibt C-13.)

Mr. Stockwell: It is material, it shows why he wasn't getting the collection on these mortgages.

Q. I show you a letter dated March 14th, 1935, on the letterhead of Joseph H. Carr, and I ask you if you received that letter?
A. Yes, I did.

Mr. Bennett: I have an objection to this, too.

Mr. Stockwell: I offer it in evidence.

Mr. Bennett: If the Court please, I object to the admission of this letter on the ground it is not relevant, competent or material, there is nothing in that letter which is an issue in this proceeding, there is some building and loan association stock, and some chess board stock.

Mr. Stockwell: He mentions the H. O. L. C. again.

The Court: I understand this witness to testify the mortgages about which he spoke to Mr. Carr were these two mortgages in question.

Mr. Stockwell: Yes, your Honor.

The Court: Were there any other mortgages you talked about Home Owners' Loan Corporation?

The Witness: No, sir.

The Court: These were the only two?

The Witness: Yes.

The Court: It will be admitted under the same conditions.

(Said paper offered in evidence and marked Exhibit C-14.)

Q. Did you understand from Mr. Carr the two mortgages and two assignments executed were continued in the hands of Mr. Carr?

A. Yes.

Q. As late as March 14th, 1935?

A. Yes, he still had them.

Q. Did you have anything to the contrary to show he was using the assignments?

A. No, sir.

Q. Following your visit to Camden did Mr. Carr make any payment to you, your visit to Camden in 1936?

A. Yes, he made payment later, not at that time.

Q. How much did he pay?

A. The first time he paid $200, and the second time he paid $1,500.

Q. Were those two sums included in the credit of

$4,490 allowed by you in the suit in the Supreme Court against the Third National Bank?

A. That $1,700 was included in that.

Q. And the rest of that sum is made up of money sent to you by him?

A. By Carr.

Q. During what period?

A. During the period—well, ever since he took charge, or was counsel for the estate in 1929, up to the time of the visit in 1935.

Q. During this period he was explaining the H. O. L. C. was not operating, and so on?

A. It was purported interest received on the two mortgages.

Q. The total credit of $4,490 against the amount of the two checks plus interest on those amounts from their date down to the time suit was brought?

A. Yes.

Cross-examination.

By Mr. Bennett:

Q. You reside in Illinois, don't you?

A. Yes.

Q. How long have you resided there?

A. Since 1929, the fall of 1929.

Q. You went out in the fall of 1929?

A. Yes.

Q. What was the exact date you went out?

A. Well, it was about the 15th of October.

Q. The 15th of October, 1929?

A. Yes.

Q. And have you lived there continuously since that time?

A. Yes.

Q. Have you been east any time other than what you have testified here today?

A. I have been east about once a year, at least.

Q. When you would be in the east where would you remain?

A. I would be either at Ventnor, at my mother's home, or if I came on business I would be in New York.

Q. How long would you remain in the east on those visits?

A. If I came to Ventnor I would remain two weeks.

Q. If you just came to New York how long would you remain?

A. A couple of days.

Q. You mentioned business, what business are you engaged in?

A. I am employed by the Fruit Dispatch Company.

Q. Where is that located?

A. New York, the headquarters; branches all over the country.

Q. What position do you have with them?

A. An engineer with them.

Q. How long have you been an engineer?

A. All my life.

Q. Are you a graduate of any engineering school?

A. Penn State.

Q. When did you graduate from Penn State?

A. 1917.

Q. Have you worked continuously for this company since that time?

A. No.

Q. When did you first commence working for this company?

A. 1922.

Q. You have worked continuously for this company since 1922?

A. I have, or the parent company.

Q. Did you graduate from any other engineering school?

A. No.

Q. Or do any graduate work in any other school?

A. No.

Q. Now, did you come back to New Jersey after you went to Chicago in 1929?

A. Yes, I came back frequently.

Q. How often between October, 1929, and January 1st, 1930?

A. I didn't come back then.

Q. You didn't come back in that time?

A. No.

Q. So what you said was a mistake?

The Court: I don't think he said any such thing. Don't mistreat the witness, he didn't say that. I listened to his testimony.

Q. What was the date that you had the will of your mother probated?

A. I don't recall the exact date. She died on the 21st of July and it was probated very shortly after that.

Q. Did you go to Mays Landing yourself for the probate of the will?

A. I went with Mr. Carr.

Q. And the will was probated and you qualified as executor in the estate?

A. Yes.

Q. Has any final account ever been filed in the estate?

A. No, sir.

Q. Did you ever make any attempt to file any account?

A. No.

Q. Have you ever discussed the filing of that with Mr. Carr—when did you discuss it with him?

A. I don't believe it ever was discussed with him except he wanted to get it in shape to file it, naturally, we all did.

Q. So, from the time you qualified as executor down to the present time you have never filed an account?

A. No.

Mr. Stockwell: He says "No."

Mr. Bennett: That is right.

Mr. Stockwell: That might be misleading in your question. (To the Stenographer.) Read the question.

(Question repeated.)

Mr. Stockwell: That is all right.

Q. A period of almost nine years has elapsed during that period of time, hasn't it?

A. Yes, pretty near; next month it will be nine years.

Q. Didn't you feel it was your duty to file an account at any time during that period?

Mr. Stockwell: I object. What has that to do with this case?

The Court: I don't think it has anything to do with it. Tell me why you are asking it.

Mr. Bennett: I will withdraw the question, if the Court please.

Q. Was any intermediate account filed during that time?

The Court: He already testified he filed no account since that time, it covers intermediate accounts and everything else.

Q. Do you recall when it was you executed these assignments of mortgages?

A. Yes, it was the beginning of the winter of 1929.

Q. These were sent to you at your home in Chicago, Illinois, for execution?

A. I travel and they might have been sent to me on the road, whatever address I gave him, but they were executed in Chicago on my return.

Q. Did you know at that time why they were being assigned?

A. Yes.

Q. Who told you?

A. Mr. Carr in his letter to me.
Q. What did he tell you in that letter?
A. He told me there was possibility ——

The Court: Is the letter here?

Mr. Stockwell: We don't have any such letter.

The Court: There is no such letter?

Mr. Stockwell: Not in these letters that are in evidence, he is testifying from recollection now.

Q. What did he tell you on that occasion?
A. He wrote me there was a possibility of the various mortgages being paid off in the near future and inasmuch as I wouldn't be able to be there personally would I execute these assignments and return them to him.
Q. Did you execute the assignments and return them to him?
A. I did.
Q. Did you follow up with Mr. Carr what had happened with the money that had been received from these assignments of mortgages?

Mr. Stockwell: What do you mean by that?

Q. When did you first make inquiry of Mr. Carr as to what had happened to the money?

Mr. Stockwell: He didn't know about it until 1935.

Mr. Bennett: The man ought to know whether he

made any inquiry after he executed these assignments as to what Mr. Carr had done with the money, and what happened to it. He was executor and the funds are on deposit at the North Camden Trust Company.

The Court: What is the question?

(Question repeated.)

The Court: What money?

Mr. Bennett: I am referring to the money named as consideration in these assignments.

The Court: You are asking him about what became of the money? There is no testimony he was to receive any money. This is probably predicated on some inference. When he talked to Mr. Carr with reference to these assignments?

Mr. Bennett: When he first made inquiry of Mr. Carr as to what had happened with reference to the money that was the consideration for these assignments, which he himself, in these assignments, acknowledges he received.

Mr. Stockwell: Mr. Teas stated that Carr confessed to him in May, 1935 that he had used the money.

Q. Was that the first time you talked to Mr. Carr about this money?

A. Are you asking me?

Q. Yes.
A. Yes.
Q. And that was in May what—1935?
A. May 30th, 1935.
Q. Why didn't you make some inquiry between 1929 and May 1935?
A. I had been asking him right along, I wrote him from time to time about liquidating the mortgages.
Q. Have you any of those letters here?
A. I have not.
Q. What would he say about it?

Mr. Stockwell: Why haven't you them here? You ought to clear that up.

Mr. Bennett: No, I am asking questions pertinent to our case.

The Court: Let's get it so the Court can understand the effect of his testimony.

(Question repeated.)

A. He said he just couldn't get the money, they weren't in position to pay off the mortgages.
Q. In spite of the fact you had executed these assignments you were satisfied to accept that explanation, were you?
A. Yes.
Q. In 1930 you were in the east, weren't you?
A. Yes.
Q. Did you confer with Mr. Carr while you were in the east in 1930?

A. Yes.
Q. How many times?
A. Once.
Q. Where?
A. In Camden.
Q. Did you ask him about these assignments at that time?
A. No.
Q. Have you at any time since you executed these assignments which are marked Exhibits C-4 and C-3 asked Mr. Carr to return them to you?
A. No.
Q. Now, did you state it was in the fall of 1936 that you first saw photostatic copies of these checks?
A. That is right?

Mr. Bennett: I think the checks are marked as exhibits.

Mr. Stockwell: C-1 and C-5.

Q. C-1 and C-5. Had you at any time previous to receiving that knowledge ever written Mr. Carr, or asked him, as to whether or not he had received any moneys for the assignments mentioned here in this case?
A. No.
Q. He confessed to you, through someone else, about May 30th, 1935, didn't he?
A. Yes.
Q. And that was through Mr. Scheflin, who came to see you in Illinois?
A. Yes.
Q. Now, between that date, and the fall of 1936,

when these checks were first called to your attention, did you ask Mr. Carr whether or not he had ever received any funds in payment of the consideration mentioned in those assignments?

A. No.

Q. Now, after you had this confession from Mr. Carr, you came east, didn't you?

A. Yes.

Q. And you talked to Mr. Carr about the matter here in Camden?

A. Yes.

Q. Where did you see him?

A. I met him in Mr. Scheflin's office here in Camden.

Q. How long were you with him?

A. It must have been an hour.

Q. As the result of that conference he agreed to make restitution, didn't he?

A. Yes.

Q. Did you accept that agreement which he made with you?

Mr. Stockwell: I object to that.

Q. Tell us what the agreement was.

Mr. Stockwell: He didn't say there was any agreement.

Mr. Bennett: Yes, he has.

The Witness: There was no agreement, he agreed to pay me something to make restitution.

Q. How was he going to pay you?

A. So much a month, as much as he could.

Q. Were you satisfied with that arrangement?

A. Yes, we were satisfied.

Q. And after you had made that arrangement with him he paid you on one occasion $200, didn't he?

A. Yes.

Q. And he paid you on another occasion $1,500, didn't he?

A. That is right.

Q. Were those amounts to be applied on account of the principal of the mortgage?

A. No.

Q. As a matter of fact, nothing was said as to where they were to be applied, but you just accepted them on account, didn't you?

A. I accepted them as interest.

Q. Did you write Mr. Carr to that effect?

A. No.

Q. How did you accept that, as interest?

A. Well, they were due on the mortgages, so I applied them as interest.

Q. But you didn't notify Mr. Carr you applied them on account of interest?

A. I had no communication with Mr. Carr.

Q. You didn't mark the checks, either, that they were on account of interest?

A. No.

Q. And didn't do anything to designate them on account of interest?

A. It was deposited to the account of the estate here.

Q. Where did you send them for deposit?

A. Deposited in the North Camden Trust Company.

Q. At that time you expected to have Mr. Carr continue with this arrangement to make these payments, didn't you?

A. I did, up to a certain time.

Q. When you were in Mr. Scheflin's office discussing this matter with Mr. Carr, did you say anything to him about giving these assignments back to you?

A. I don't remember.

Q. You haven't at any time asked him to send back those assignments, have you?

A. I don't remember about what was said about the assignments.

Mr. Stockwell: Referring to the conversation or conference in May of 1935.

Mr. Bennett: The last question is clear enough, I asked in the last question whether at any time he asked Mr. Carr to return these assignments he executed to him and his answer was he didn't recall he ever did that.

The Witness: I received everything that Carr had belonging to the estate. If there were assignments, they were in it.

Q. You understood those assignments when you executed them?

A. Certainly.

Q. You knew these called for the transfer of title to two different mortgages, didn't you?

A. Yes.

Q. And you let them go out of your possession, and your hands, with that understanding and knowledge, didn't you?

A. Yes, sir.

Q. You also knew when you signed these you acknowledged you received the amount of money specified in them, didn't you?

A. I don't know about that.

Q. I ask you to look at them and see if there is an acknowledgment in there you received that amount of money.

Mr. Stockwell: A lawyer asking that question?

Mr. Bennett: As a matter of fact, they do speak for themselves, but I have a right to question on them.

The Court: They couldn't be delivered except in escrow at the best.

The Witness: I don't see anything like that in these.

Mr. Bennett: We will let the record speak for itself.

Q. Was the amount of $200 and the amount of $1,500 all that you received after May 30th, 1935, on account of this indebtedness?

A. Yes.

Q. How was this money remitted to you by Mr. Carr?

A. It was collected through Mr. Scheflin.

Q. Did you receive it by check?

A. No, it was deposited to my account, the estate's account.

Q. It was deposited then in the account, so you yourself didn't send it to the North Camden Trust Company for deposit?

A. No, I did not.

Q. Now, Mr. Teas, you had received payments on account, I think you stated, the interest, since these assignments were executed, is that correct?

A. I received interest all the time, purported interest.

Q. How soon after these instruments were executed did you receive your first payment on account from Mr. Carr?

A. I will have to refer to this. It is back quite a ways.

Q. That is all right.

A. July 1st, 1930, a payment was made on the mortgage of $165 each, that was six months interest due on March 15th.

The Court: Let's get this straight. You received $165 in July?

The Witness: July 1st, 1930.

The Court: On each mortgage?

The Witness: Yes.

The Court: What was the rate of interest on them?

The Witness: 6%.

The Court: What was the amount?

The Witness: $5,500, each one.

Q. That was the first interest you received after the execution of these assignments, one of which is December 16th, 1929, and the other of which is December 23rd, 1929, is that correct?

A. Yes.

Q. Did that pay up the interest in full at that time that was due?

A. Yes.

Q. When did he make any other payment after that?

A. Why, he made another payment October 9th, 1930.

Q. How much?

A. $165 each. That was due September 15th, he was only twenty-four days late.

Q. Twenty-four days late. When was the next payment?

A. The next payment was May 26th, 1931, same amount.

Q. Did that pay you up to date at that time?

A. It paid—due March 15th, that was May 26th.

Q. When was the next payment due—when was the next payment made?

A. The next payment was made on October 21st.

Q. What year?

A. 1933.

Q. Now, how much was that?

A. Ashley Road, the one mortgage, it was $450, and on the other one it was $490.

Q. Did that pay you up to date at that time?

A. No, that didn't pay up to date.

Q. How much did it leave you in arrearages?

A. It left about nine months—let me see—it was about six months in arrears.

Q. When was the next payment made?

A. The next payment was made June 14th, 1934, and there was $495 paid then.

Q. On both mortgages?

A. Yes, on both.

The Court: What do you mean?

The Witness: I have added them both together.

The Court: What was it separately?

The Witness: Separate, $265 on one, and the balance on the other, $230 on the other.

Q. How far in arrearages were those payments at that time?

A. They weren't—just a minute. That paid up to September, 1933, that was back about—well, he owed one, one payment due.

Q. One payment back on each one?

A. Yes, one payment back and a part.

Q. When was the next payment made?

A. The next payment was made May 13th, 1935.

Q. How much was paid on account of each mortgage at that time?

A. $365 paid there, and when I wrote to him and

asked him how that was divided he didn't tell me. He admitted then—at that time he made his confession.

Q. At the time he made his confession how far behind was he in the payment of interest at that date?

A. He was back—I think I have it here somewhere—he owed $840 back interest.

Mr. Stockwell: After the payment of $365.

The Witness: Yes, after he paid that. $840.

Q. In these figures you have given us up to this point, do they include the $1,700 he paid you after May 30th, 1935?

A. No, they do not.

Q. So that payment was made later on?

A. Considerably later.

Q. Now, did you ever collect any of this interest for your mother before her death?

A. No.

Q. Who did collect it for her, if you know?

A. No one did, it was sent to her.

Q. Do you know whether or not it was sent to her directly?

A. Yes, it was sent directly.

Q. The interest had always arrived, up to her death, practically on the due date?

A. It is pretty much so. Here is one, the first payment on September 19th, 1929, that was before they were paid off, after mother's death they were paid. September 19th, and due September 15th.

Q. Who paid that, do you know, did Mr. Carr collect that for you?

A. No. I am not certain about that, I don't remember whether he did.

Q. After your mother's death how soon was it that you consulted Mr. Carr?

A. Very shortly, he was at the funeral.

Q. At that time you turned the papers over to him, didn't you, all the mortgages?

A. No, not at that time.

Q. How soon after that?

A. I turned them over the 1st of November.

Q. 1929?

A. Yes.

Q. But he went with you when the will was probated?

A. Yes, sir.

Q. Did he ask you for a statement of the assets of the estate at the time the will was probated?

A. I guess he did.

Q. Did you, at the time you probated the will, file an inventory of the estate?

A. Naturally.

Q. What did the estate consist of?

A. It consisted of mortgages, and the house in Ventnor, and some miscellaneous stock.

Q. What was the total amount?

A. It was, I think, $85,000.

Q. Were you familiar with your mother's assets before her death?

A. Well, not so much. I was in another country, I didn't know very much about them.

Q. Who opened the account in the North Camden Trust Company for the estate?

A. I did.
Q. You did that personally?
A. Yes.
Q. Was that done at the time you probated the will before you went back to Chicago, Illinois?
A. Oh, yes.
Q. Now, am I correct, that you stated you had consulted a Mr. Shields over in Philadelphia?
A. Yes, I asked Mr. Shields' advice.
Q. When was it you consulted him?
A. In June, 1936.
Q. That was sometime before you consulted Mr. Stockwell, wasn't it?
A. It was about three months.
Q. Before you consulted him?
A. I consulted Mr. Stockwell about three months later after the time I saw Mr. Shields.
Q. You didn't retain Mr. Shields in any way, did you?
A. No, no, indeed, a personal friend of the family's.

The Court: What was Mr. Shields' first name?

The Witness: Franklin.

Mr. Stockwell: Does it appear on the record he is the senior member of Shields, Clark, Brown and McCown?

The Witness: We always called him Colonel Shields.

The Court: How old a man was he?

The Witness: He is up in years.

Mr. Stockwell: He must be 75.

Q. I show you Exhibit C-7, which is a notice signed by you as executor of the estate of Elizabeth Teas, addressed to the Third National Bank and Trust Company, under date of November 16th, 1936, and I ask you if that is the first notice of any kind you ever gave the Third National Bank and Trust Company or any of its officers with reference to these two checks?

A. Yes.

Q. You were advised by Mr. Stockwell to send that notice, weren't you?

A. Yes.

Q. And at no time previous to that date had you had any contacts with the Third National Bank and Trust Company of Camden, or its officers, or any of its employees, had you?

A. No.

Q. Now, when you consulted Carr after he had made his confession to you, did you ask Mr. Carr whether or not he had received any checks in consideration of these assignments?

A. No.

Q. Did you ask Mr. Carr what he had done?

A. Did I ask him at that time what he had done?

Q. Whether or not he had received the consideration for these assignments of mortgages?

A. Did I ask whether he had received the consideration?

Q. Yes.

A. He had confessed to me he had.

Q. Did you ask how and in what manner it was received?

A. No.

Q. Did you, while you were in Camden, after he had made the confession to you, check up, or investigate at any bank to see whether or not any funds had been received to cover the consideration mentioned in these assignments of mortgages?

A. No, sir.

Q. Did you go to the North Camden Trust Company and investigate there?

A. Yes, I knew what money was there.

Q. What investigation did you make there?

A. I found out what the balance was and got any checks and statements.

Q. Did you go to any other bank to see whether or not Mr. Carr had an account for this estate in any other bank?

A. No.

Q. Did you ask Mr. Carr whether he had an account in any other bank for this estate?

A. No.

Q. Did you ask whether he deposited these funds in any other bank in the City of Camden?

A. No.

Q. Did you employ anyone after Mr. Carr had made the confession to you to make such an investigation?

A. No.

Q. As a matter of fact, you let the matter go until you consulted Mr. Stockwell and the checks were discovered, didn't you?

A. We gave Carr a chance to pay it back.

Q. You made no investigation in the matter until

November 16th, 1936, when you consulted Mr. Stockwell?

Mr. Stockwell: He said he went to Colonel Shields.

Q. What kind of an investigation did you make through him?

A. I laid the case before him, gave him the particulars and he said he would look into it to see what he could do and advise me one way or the other.

Q. When was that?

A. That was in June, 1936.

Q. You did not receive any report from Colonel Shields until November 16th, 1936, when you consulted Mr. Stockwell?

A. I received a letter from him stating he was working on the matter and he was hoping to have something shortly.

Q. Who discovered these checks were deposited at the Third National Bank and Trust Company, do you know?

A. I don't know who.

Q. Who first told you?

A. Mr. Shields, or Mr. Scheflin and Mr. Shields, they were in the office together.

Q. When was that?

A. That was in the fall of 1936.

Q. Immediately after that you went to see Mr. Stockwell?

A. I did.

Q. That was the first knowledge you had of that?

A. Yes, sir.

Q. That was the first they were brought to light, is that correct?

A. That is right.

Q. Between the time you consulted Mr. Shields and the time you consulted Mr. Stockwell you made no investigation yourself, did you?

A. No, I laid it in Mr. Shields' hands.

Q. Mr. Teas, I show you Exhibit C-13, which is a letter written by Mr. Carr to you under date of February 22nd, 1935, with reference to the H. O. L. C., Exhibit C-14, March 14th, 1935, to you by Mr. Carr with reference to Home Owners' Loan Corporation, and ask you if that is the first time he called the H. O. L. C. to your attention?

A. He didn't call it to my attention, I called it to his attention.

Q. What suggestion did you make to him?

A. I suggested trying to get H. O. L. C. loans on the properties so that we could liquidate the estate.

Q. When is the first time you made that suggestion to him?

A. It must have been in the fall of 1934, because this letter here—it was quite a while before he answered this, he didn't write very often.

Q. So that between December, 1929, and January, 1930, up until the fall of 1934, you made no suggestions to him about H. O. L. C., did you?

A. No.

Q. You didn't make any suggestion about the replacement of these mortgages with any other mortgages, did you?

A. Yes, we were considering foreclosing them, we had to get the money some way, we couldn't go on

forever like that, but he didn't want to foreclose inasmuch as we were getting supposedly interest now and then. We would rather do that than have a couple of properties on our hands with nobody around to watch them.

Q. Mr. Teas, did you ever make any inquiry in Philadelphia yourself at the public offices that would record assignments of mortgages to see whether or not these assignments had been recorded?

A. No.

Q. Did you ever have anyone make such an investigation for you?

A. No, why should I?

Q. Mr. Teas, in the assignment of these mortgages it states that the money was paid unto you by the Pennsylvania Company for Insurances on Lives and Granting Annuities, that is correct, isn't it?

A. Whatever it says there. I don't know whether it is correct or not.

Mr. Bennett: The records speak for themselves, and they do say that.

Q. Do you want to answer that question?

The Court: Do you want him to interpret the mortgage? Offer them in evidence and whatever they say is part of the record. You can give him the assignment and let him read it, although I don't think it is necessary.

Q. Did you understand at the time you executed these assignments that the money in payment of these mortgages on these assignments was to come

from the Pennsylvania Company for Insurances on Lives and Granting Annuities?

A. Whatever was in there it came from them. I don't retain that for nine years, who was paying us, I know they were being reassigned.

Mr. Stockwell: To be frank with the witness, there is nothing mentioned here about any Pennsylvania Company for Insurances on Lives and Granting Annuities, it is the name "Pennsylvania Company, Trustees for Louise Drexel."

Q. Trustees for Louise Drexel Dolber, under the will of Joseph W. Drexel, deceased. Do you know anything about this company, or these parties?

A. No, I do not.

Q. If, at the time you signed and executed these assignments, you knew it was to come from some source, why did you believe it was necessary to work with the H. O. L. C. to get these mortgages?

A. The people who owned the properties were holding the mortgages on the properties, they couldn't pay the mortgages off, and they were doing it all the time, the H. O. L. C. was helping people like that, paying off, doing the same thing in other parts of the country, and I suggested these people could do that.

Q. Under these assignments didn't somebody buy these mortgages?

A. I don't know anything about that. They were assigned in 1929 and I haven't seen them since.

Q. What did you think you were signing the assignments for?

A. In order to have them paid off when they came due.

Q. They weren't paid off when they came due, were they?

A. No.

Q. And haven't been paid off to date, as far as you are concerned?

A. I never received the money.

Q. Did you consult anyone in Camden as to your legal rights at the time Mr. Carr made the confession to you, May 30th, 1935, if that was the date?

Mr. Stockwell: Legal rights on this particular transaction?

Q. That is right.

A. No.

Q. Who is the first person in Camden you consulted after you made this discovery and had the confession from Mr. Carr?

A. I didn't consult anybody in Camden after the confession was made. I was told by Mr. Scheflin in Chicago and I met him again in Camden the next week.

Q. You met Mr. Carr in Camden, too, when you met Mr. Scheflin?

A. Yes, I testified to that.

Q. You didn't consult any attorney in this matter about your legal rights until you consulted Mr. Stockwell on November 16th in Camden?

The Court: He testified he talked to Colonel Shields.

Mr. Bennett: In Camden, I said, at the end.

The Witness: No.

Q. Now, Mr. Teas, did you, from the time the will was probated, from time to time receive any reports from Mr. Carr as to the condition of the estate?

A. Yes.

Q. What kind of reports did you receive?

A. Oh, mostly payments of interest, that is all there was pending, or some report on other—like a few shares of stock my mother had, the transferring of those, minor items.

Q. Did he ever give you any statement showing what the estate consisted of as far as assets were concerned, and what expenditures had been made?

A. I knew of that, I kept most of that.

Q. You hadn't received any report from him, however, had you, at any time?

A. I didn't ask him for any report, I had that myself.

Q. You left the papers and documents in Mr. Carr's hands?

A. Yes, I had the utmost confidence in him at that time.

Q. Did you have the utmost confidence in him after May 30th, 1935, after you received the confession?

A. Hardly, then.

Q. Did you get all your papers back after that?

A. I got them all back.

Q. When did you get them back?

A. I got them back, I guess, immediately.

Q. How soon do you mean by "immediately"?

New Jersey State Library

A. Maybe the next three days.

Q. You testified before you still left the matter in his hands and he was to pay you on account of what he owed?

A. Yes, I still say that, but he didn't retain any papers, though.

Q. Did you get back all the papers, then, he had?

A. Yes, I had the papers, the valuable papers. I didn't take his files, or anything like that.

Q. What papers did you take?

A. The papers pertaining to the estate, whatever it is that is necessary.

Q. What papers were they?

A. Fire insurance, and things like that, and the house, the deeds to the house down in Ventnor, the mortgage papers on another mortgage.

Q. Did you take these assignments back that had been made?

A. They must have been in there with them.

Q. Where are they today?

A. I have got most of them.

Q. Are you sure about that?

A. I don't know. I have got the papers that are valuable, I have got them, I know.

Q. I understand your testimony today to be you had never insisted on getting these assignments back from Mr. Carr.

A. I hadn't until the time he confessed. Were they any good after he was through?

Q. The question I asked was "at no time." Do you want to change that now?

A. I got the papers back after the 30th of May, 1935, naturally, he gave them to me.

Q. After you got the papers back you still didn't

start any foreclosures, or do anything with these documents until you consulted Mr. Stockwell, did you?

A. Foreclosures?

Q. Yes.

A. On what?

Q. You mentioned ——

The Court: What are you talking about, are you talking about these assignments?

Mr. Bennett: I will reword the question.

The Court: It is quite apparent from the testimony these assignments were delivered and the proceeds of the funds deposited to Mr. Carr's account.

Mr. Bennett: Yes.

The Court: I don't know whether you are trying to confuse the witness or trying to elicit facts for the Court.

Mr. Bennett: I am trying to elicit facts for the Court.

The Court: I don't care to listen to questions which apparently are leading this witness to make some statement that he hasn't foreclosed on these assignments. I understand what his testimony is.

Mr. Bennett: He said he had instructed, or had some conference, or written some letters to Mr.

Carr about foreclosing these mortgages after he got them in his possession.

The Court: Do you understand the witness to say he got these mortgages covered by these assignments in his possession?

Mr. Bennett: I do now.

The Witness: I never got the mortgages for them, that is silly. I got another mortgage that isn't in this case.

Mr. Bennett: I misunderstood your answers.

The Court: I didn't misunderstand the situation at all. The witness testified the mortgages and the assignments were delivered back in 1929 and early 1930. Now, this witness never testified he received these assignments back from Carr, because Carr didn't have them.

The Witness: I didn't know what he had.

The Court: I don't want any misunderstanding about it.

Mr. Bennett: If there is I don't want any misunderstanding, either. It is not my policy to have a misunderstanding. I think that is all.

The Court: All right. Anything further from this witness?

By Mr. Stockwell:

Q. You were asked about certain letters you had written to Mr. Carr and you were asked by Mr. Bennett if you had copies of those letters here and you said no. Did you keep copies of those letters that you sent to Mr. Carr?

A. No.

Q. Is that why they are not here?

A. Yes, sir.

Q. Had you at any time any suspicion as to the integrity and honesty of Mr. Carr until you received the message through Mr. Scheflin in Chicago in 1935?

A. No, sir. It was a very great shock to me.

Q. You had known him for some time?

A. For years and years.

Q. A lawyer of high standing, as you understood it?

A. Since 1924.

Q. You understood him to be a lawyer of high standing?

A. Yes, he was recommended to my mother.

Q. Now, these moneys were deposited from time to time, the moneys belonging to the estate, in the North Camden Trust Company?

A. Yes.

Q. Did you arrange with the Trust Company to send you a duplicate deposit slip of every deposit so made?

A. They sent them to me.

Q. You did have them?

A. Yes, I had them.

Q. And from time to time did you get a bank statement covering your entire account?

A. Yes.

Q. So you kept your records there and kept tabs on the money which actually went into the bank?

A. Yes, I verified it.

Q. Now, as soon as you had learned from Mr. Shields that checks had been given to the order of yourself, as executor, and so on, in settlement of these two mortgages, as soon as you received that information from him, did you then consult me?

A. Yes, sir, right away.

Q. You were asked why you hadn't notified the Trust Company before that notice, I think it is November, 1936, November 16th, 1936, before you had knowledge of the existence of those checks could you identify any bank that was involved with respect to this transaction?

A. No.

Mr. Bennett: I object, it calls for a conclusion.

Mr. Stockwell: It is a legitimate question and he has answered it.

Mr. Bennett: I would like to have my objection noted.

Mr. Stockwell: It is a perfectly legitimate and proper question.

The Court: The question asked whether he had knowledge of these checks up until approximately when he gave the notice to the bank?

Mr. Stockwell: Yes.

Q. Did you, as soon as you had that knowledge, instruct your counsel in Camden to give the notice to the bank?

A. Yes, sir.

Q. And this is the notice dated November 16th, 1936?

A. It is.

Mr. Stockwell: That is all.

By Mr. Bennett:

Q. Mr. Teas, further with reference to the last question. Who gave you this knowledge and information about these checks?

A. Mr. Shields.

Q. And you stated, I think, what Mr. Carr did was a great shock to you when you first learned of it. Didn't you think Mr. Carr had been dilatory in the handling of this estate up to that point by reason of what happened?

A. I don't know. From my personal observation around locally, conditions around the country, I travel all the time, I didn't think he was to blame, I thought the conditions of the country were such where these people could not—I thought at one time we were lucky we did get the money paid off like we did on the mortgages, lots of mortgages aren't paid off yet.

Q. The interest had been paid promptly before your mother's death?

A. I can't say as to that, I don't know whether

it was paid on the day or not. The only record I have it was four days late after mother died. I was in Central America and I didn't know anything at all about my mother's estate, or what she did.

By Mr. Stockwell:

Q. Have you ever heard it said that there were mortgages in the country where interest was paid promptly before 1929 and where the interest wasn't paid promptly after 1929?

Mr. Bennett: I object.

The Court: That was more or less common with regard to all mortgages commencing in 1931.

Mr. Bennett: I would like my objection noted.

The Court: I will sustain the objection to the question.

Mr. Stockwell: We rest. That is all, Mr. Teas.

COMPLAINANT RESTS.

THE CASE FOR THE DEFENDANT.

DR. A. LINCOLN SHERK, sworn.

By Mr. Bennett:

Q. Dr. Sherk, are you at the present time a director of the Third National Bank and Trust Company of Camden?

A. Yes.

Q. How long have you been a director of the Third National Bank and Trust Company?

A. Since its opening.

The Court: When was that?

The Witness: I think in 1928, sir.

Q. Dr. Sherk, as a director of the Third National Bank and Trust Company did you have any information or knowledge of certain checks, marked Exhibit C-1 and Exhibit C-5, being deposited in the account of Joseph H. Carr at the Third National Bank and Trust Company until the bank received this notice of November 16th, 1936?

Mr. Stockwell: May I ask the purpose of this testimony?

Mr. Bennett: The purpose of this testimony is to show that the officers and directors of the Third National Bank and Trust Company never had any

knowledge or information about these checks going through in this manner at their bank until the notice was served on them in November, 1936.

Mr. Stockwell: I object as immaterial and utterly irrelevant, and constituting no defense to this claim.

Mr. Bennett: If your Honor please, it is relevant and it is competent and material in this matter because of the fact Mr. Stockwell, in his own proceeding, has alleged legal fraud on the part of the bank, and this will indicate whether or not the officers or directors of the bank had any knowledge of this information at all until it was called to their attention.

Mr. Stockwell: Do you propose to bring the employees here to prove the same thing by them?

Mr. Bennett: The officers and directors of this bank.

Mr. Stockwell: I still object. They can bring every single director and every single officer of the bank to prove they knew nothing about these checks, but that doesn't relieve them. They have their agents, who are supposed to do their duties, they can't escape liability because a director didn't know.

Mr. Bennett: I can bring any witness to testify as long as the testimony is competent, and this testimony is competent.

The Court: All you can hope to prove by any of

this testimony is that the director or officer says he didn't know anything about this transaction, personal knowledge, is that it?

Mr. Bennett: Yes.

The Court: You have already had the cashier; he testified when they got this notice.

Mr. Bennett: The cashier didn't testify about the other officers and directors of the bank. Notice at this time was brought to the directors at a regular meeting.

The Court: I don't see that it helps the cause, but I will let you put it in.

Mr. Bennett: What was the answer?

The Witness: No.

Q. Dr. Sherk, did you, as a director of the Third National Bank and Trust Company, at any time receive any notice of claim on the part of Rutherford Thompson Teas, as executor of the estate of Elizabeth M. Teas, against the Third National Bank and Trust Company for any matter whatsoever until you received this notice on November 16th, 1936?

A. No.

Mr. Bennett: That is all.

Cross-examination.

By Mr. Stockwell:

Q. Doctor, subject to my objection to the competency and relevancy of this testimony ——

The Court: It is all being admitted conditionally.

Q. Doctor, is it customanry for your bank, in your bank, to have every check that is produced to your bank, whether it comes through your bank or deposited in your bank, submitted to the board of directors?

A. No.

Q. Does any employee of the bank submit to you as a director, or any other director, checks that come through to determine whether or not the checks are forgeries or perfectly legitimate signatures?

A. That is supervised by the cashier.

Q. Supervised by the cashier?

A. Yes.

Q. And under the cashier you have employees of the bank?

A. Yes.

Q. Tellers?

A. Yes.

Q. Bookkeepers, and what-not?

A. Yes.

Mr. Bennett: I object as improper cross-examination.

The Court: I am trying to determine what relevancy the questions may have.

Q. In your bank whose duty was it, in 1929 and 1930, to determine whether the signature was a forgery, or otherwise invalid?
A. The cashier's job.

Mr. Bennett: I object, it is not proper cross-examination.

The Court: If that is the only objection I will permit it to go as direct.

Mr. Stockwell: It is his own line of testimony.

Mr. Bennett: No, you have gone beyond my line of testimony.

Mr. Stockwell: To be sure, I have gone below the directors to the employees.

Q. Who were the tellers of the bank in 1929 and 1930, when these two checks were received at your bank?
A. I don't know who they were.
Q. You don't know?
A. I don't recall their names.
Q. Who would know that?
A. The cashier.
Q. Mr. Higbee?
A. Yes.
Q. You knew Joseph H. Carr, did you?
A. Yes.

Mr. Stockwell: That is all.

Mr. Bennett: That is all.

(At this point a recess was taken until 1:30 o'clock P. M.)

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(Trial of the cause resumed, pursuant to adjournment, at 1:30 o'clock P. M., in the presence of the Court and counsel for the respective parties.)

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MARY C. MURPHY, sworn.

By Mr. Bennett:

Q. Miss Murphy, are you connected with the Surrogate's office of Atlantic County?

A. Yes, I am.

Q. What is your position?

A. Deputy Surrogate.

Q. Were you Deputy Surrogate during the year 1929?

A. Yes, I was.

Q. Have you been Deputy Surrogate since that date?

A. Yes, I have.

Q. Were you subpoenaed to be here today?

A. Yes.

Q. Do you have in your possession, and with you, the documents and papers in the estate of Elizabeth Teas?

A. I have.

Q. Will you please tell us from the beginning what

the record shows as to what papers were filed and when they were filed?

Mr. Stockwell: I object unless the purpose of the question is disclosed.

Mr. Bennett: The purpose of the question is to show what the executor did in this estate, how careless and negligent he was in the handling of the estate, and it is relevant to show what he did in this particular matter.

Mr. Stockwell: I object to that as immaterial and irrelevant. The Surrogate's office can't prove negligence on the part of this man.

Mr. Bennett: It is part of the testimony. The testimony will show whether he was careless or negligent. It is our contention he brought this difficulty entirely upon himself by not exercising the privileges of his executorship and fulfilling it to the fullest extent.

Mr. Stockwell: Negligent with reference to these two particular checks?

Mr. Bennett: Yes, with the handling of the estate as a whole.

Mr. Stockwell: I object to it. Even if it related to these two transactions which are before the Court it wouldn't be competent, or relevant, or material, and certainly referring to transactions which are not

involved here, all the more so. I think it is incompetent testimony.

The Court: You are trying to prove negligence on the part of the executor because of the proceedings taken in the estate?

Mr. Bennett: I am going to show this ——

The Court: How do you bring it down to this particular transaction?

Mr. Bennett: They are alleging we are at fault in this particular matter, and by his own acts or deeds, by his own carelessness, he is estopped from recovering in this matter, and the records will show how he handled this estate.

The Court: How does that affect this particular case?

Mr. Bennett: In this respect, Mr. Teas, the executor of this estate, probated the will in 1929, and hasn't even filed an account down to this time.

The Court: Do your records show he has been cited to account?

Mr. Bennett: An executor shouldn't wait until he is cited.

The Court: I don't suppose you are familiar with the conditions that have existed in the past number of years. I had an estate before me recently where

the party died in 1928 and no final account filed as yet. I don't see what took place in this estate, the administration of this estate, can affect this transaction, without it has some particular relationship to it.

Mr. Bennett: The record of the estate in Atlantic County would show what the executor did and what he did in this matter is material.

The Court: What do the records show he did in this matter?

Mr. Bennett: I started to ask the question and he objected to it.

The Court: He inquired as to what you proposed to do and I am inquiring and asking you to tell me what the record shows in reference to this.

Mr. Bennett: The will was probated and probably a rule to bar creditors was taken out, and after that practically nothing has been done in the estate down to the present time.

The Court: Mr. Teas has testified to that.

Mr. Bennett: I am putting in my case at the present time and I am proving it by this witness.

The Court: Do you want to introduce the files?

Mr. Bennett: Yes.

The Court: Introduce the files, subject to ob-

jection, and they will be disregarded if immaterial. Offer all the files.

Q. Testify to what has been filed in that particular case.

The Court: Is that the complete file in the case?

The Witness: Yes, it is.

The Court: Showing what was done in the filing of the papers?

The Witness: Yes.

The Court: Does that constitute your entire file?

The Witness: Yes.

The Court: Offer the file.

Mr. Bennett: I offer the file.

The Court: Subject to the objection, and subject to being disregarded if immaterial. I think they are irrelevant and immaterial.

Mr. Bennett: May I have it marked as an exhibit in this case?

The Court: Yes.

(Said file offered in evidence and marked Exhibit D-1.)

Mr. Bennett: The only question that arises in my mind is how she can take the papers back. You will have to leave them here in the custody of the Court until the record is made and they will be returned, I presume.

The Court: You can substitute photostatic copies.

Mr. Bennett: Will Mr. Stockwell consent to us making photostatic copies and substituting them, if made under the supervision of the Surrogate?

Mr. Stockwell: Subject to my previous objection, yes.

Mr. Bennett: Oh, yes. All right, you may be excused.

Mr. Stockwell: Not that the papers are to be taken away immediately, we would like to inspect them.

The Court: I would like to see the file and see what they are. Is the subpoena part of the file? I don't think this should be part of the file, the subpoena to the Surrogate to produce these papers.

Mr. Bennett: No, we don't want this in.

The Court: All right.

Mr. Stockwell: We will look at them later.

The Court: A copy of the will isn't admissible,

it is not a certified copy. Is this the original of the appraisal?

The Witness: No, this is a copy.

The Court: Are you consenting to have it go in? There is no certification and it is not the original.

Mr. Stockwell: If this lady will say that is a true copy of the original.

The Witness: Yes, it is.

The Court: Apparently, as I examine it, there is an inventory and appraisement, and a rule to bar creditors, and so forth, and it seems the only other duty on the part of the executor was to file an account. Was the executor at any time cited to file an account by the Surrogate?

The Witness: No.

The Court: Was there any application made to the Surrogate asking for a citation of the executor to file an account?

The Witness: No.

The Court: I don't know that I care about having copies of the papers; I have examined them, and as far as I can gather from them everything has been done by the executor that is required of him except the filing of an account, and it appears he wasn't cited.

Mr. Bennett: Would there be any objection if we did substitute photostatic copies in place of these?

Mr. Stockwell: Not as far as I am concerned, subject to my prior objection.

Mr. Bennett: Yes.

The Court: Can you tell me when the inventory and appraisement was filed?

The Witness: February 19th, 1930.

The Court: Did you get it from these papers?

The Witness: Yes.

The Court: Your file won't be complete unless you produce a certified copy of the inventory, this is nothing but a copy. February what?

The Witness: February 19th, 1930.

Mr. Stockwell: If Mr. Bennett, your Honor, wishes this file placed in evidence, I think he should produce a certified copy of these papers which he wishes to introduce.

Mr. Bennett: Certified copies instead of photostatic copies?

The Court: It appears, as far as this matter is concerned—this is merely a comment on the part

of the Court—as I understand the procedure with reference to the duties of an executor, everything has been done as far as the Surrogate is concerned except the filing of an account.

Mr. Bennett: If your Honor please, we don't admit that. May I make this suggestion? I will produce certified copies of each one of these papers in accordance with what Miss Murphy has before her at the present time and let the records speak for themselves. Of course, they will have to be marked as exhibits after they are presented.

Mr. Stockwell: You are going to do that?

Mr. Bennett: I will do that. Miss Murphy, unless there is cross-examination you are excused.

Mr. Stockwell: No cross-examination.

The Court: Are they marked in evidence?

Mr. Bennett: No, they haven't been, they should be.

The Court: A copy of the will and a copy of the inventory, without the original.

Mr. Stockwell: Are they to be marked individually or the entire file being put in as one exhibit?

The Court: He is asking to substitute photostatic copies.

Mr. Bennett: Certified copies. I suggest they be marked individually and I will produce certified copies.

The Court: The papers that are admissible, that you are now offering.

Mr. Bennett: Yes.

The Court: That doesn't include the will or inventory.

Mr. Bennett: I think the inventory ought to be admitted if I produce a certified copy of it.

Mr. Stockwell: I object to the entire file. I am perfectly willing, subject to my objection, to have Mr. Bennett produce certified copies of these papers, which your Honor may be willing to admit in evidence, subject to my objection.

The Court: Subject to being disregarded if immaterial?

Mr. Stockwell: Yes.

The Court: There is a copy of the will in evidence.

Mr. Bennett: Yes, I would like to have that included.

The Court: He wants to offer, in addition to the file there, a certified copy of the inventory and a certified copy of the will.

Mr. Stockwell: I am willing to include those papers.

Mr. Bennett: That is to include the whole file as it is presented here in toto.

(At this point the stenographer marked the following papers:
D-1 Renunciation of Executor.
D-2 Renunciation of Executor.
D-3 Appointment of Appraisers.
D-4 Decree barring creditors.
D-5 Proof of posting notice.
D-6 Proof of publication.
D-7 Application for rule to bar creditors.
D-8 Petition for probate and letters testamentary.
D-9 Order limiting creditors.
D-10 Inventory and appraisement.
D-11 Copy of will.)

The Court: Do I understand from counsel in this matter that the file shows three of the executors renounced, leaving the complainant here?

Mr. Stockwell: Two renunciations with the file.

The Court: Four sons named as executors in the will—to whom were letters issued? I think they are in evidence.

Mr. Bennett: Yes, they will be in evidence.

Mr. Stockwell: Renunciation by Wellington Teas and one by William H. Teas.

Mr. Teas: John C. Teas died; he died before my mother was killed.

Mr. Stockwell: May we have that placed in evidence, then?

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Louis W. Everly, sworn.

By Mr. Bennett:

Q. Mr. Everly, are you a director and officer of the Third National Bank and Trust Company?
A. I am.
Q. How long have you been a director and officer?
A. About three years an officer and ten years a director.
Q. When you say "officer," what do you mean?
A. President.
Q. Have you been a director during the year 1929 down to the present time?
A. Yes, sir, I have.
Q. Did you, as a director or officer of the Third National Bank and Trust Company, have any notice or knowledge of any claim of the executor of the Teas estate based on Exhibits C-1 and C-5, these checks, prior to the notice known as Exhibit C-7, which I show you, dated November 16th, 1936?
A. I did not.

Mr. Stockwell: I object, as I have already objected, immaterial, irrelevant, and incompetent.

The Court: It is admitted under the same conditions, it is admitted conditionally subject to being disregarded if immaterial or irrelevant.

Mr. Bennett: That is all.

Cross-examination.

By Mr. Stockwell:

Q. Who were the tellers in your bank in January of 1930 and December of 1929?

A. You mean at the window at this present time?

Q. No, in those two months of those two years, 1929 and 1930.

A. Well, we have all our same employees outside of one, and that is John Campbell. I can't tell you whether he was there at that time or not.

Q. You don't know?

A. No.

By the Court:

Q. Were you president in 1929?

A. No, sir, I was not.

Q. Whose business is it at the bank to pass upon the question of endorsements on checks?

A. The cashier's.

Q. Where a check is endorsed by somebody naming themselves as attorney do you require a power of attorney filed with your bank so as to recognize such an endorsement?

A. Mr. Higbee's power of attorney.

Q. Here is a check endorsed "Joseph H. Carr,

Atty.'' Did you have on file in your bank at that time a written document in which Joseph H. Carr was named as attorney in fact for the estate of Elizabeth M. Teas?

A. I can't answer that.

Q. Who knows about that?

A. Mr. Higbee can answer that.

Q. What course do these checks take, do you know about that?

A. No.

Q. Do you know anything about any of the checks that go through the accounts?

A. No.

Q. Do you know when an objection is made to payment?

A. It is always brought up before the board the following week.

Q. Were these checks brought up to the board with respect to the endorsements made on them, these checks, referring to Exhibits C-1 and C-5?

A. They were brought up when they were noticed.

Q. I mean, back in 1929?

A. Oh, no, all checks are not brought up before the board.

Q. Was it the practice of the bank to pay out, during your period as a director, checks endorsed in that respect?

A. When your solicitor brings in a check and endorses it himself ——

Q. Did you put it through in that way because Mr. Carr was your solicitor and a member of the board of directors, is that the reason for it?

A. I wasn't president at that time.

Q. Weren't you a director at that time?

A. Yes, sir.

Q. And do these matters come up before the board?

A. Not all checks do not come up.

Q. Am I to understand because Mr. Carr was solicitor and a director you let the checks go through in that way?

A. No, we assume they are correct.

Q. Just because he was solicitor and a director and endorsed them that way?

A. I would think so, yes, or anyone else.

By Mr. Bennett:

Q. Mr. Everly, you don't mean to convey to the Court that all checks that go through the bank are brought before the board of directors every week?

A. No, none are.

The Court: I didn't infer from anything he said that was a fact. We will take a recess for five minutes.

(After recess.)

Mr. Bennett: If the Court please, that is our case, and we will rest on that testimony.

DEFENDANT RESTS.

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Mr. Stockwell: I have no more testimony.

BOTH SIDES REST.

## CONCLUSLONS.

(Filed July 8, 1938.)

DAVIS, V. C. (Orally):

The bill seeks an injunction to restrain the defendant, Third National Bank and Trust Company, from pleading the Statute of Limitations in a suit at law brought by Rutherford Thompson Teas, executor under the last will and testament of Elizabeth M. Teas, deceased, upon two certain checks drawn upon the Real Estate Title and Trust Company, one dated December 23rd, 1929 in the sum of $5,591.08, payable to the order of Rutherford Thompson Teas, ancillary executor, with a notation under the name of the payee "Payable upon proper identification of payee," and the other dated January 2nd, 1930, drawn upon the same trust company and made payable to the "estate of Eliz. M. Teas, dec'd.," with the same notation underneath the name of the payee, in the sum of $5,605.10. The first mentioned check is endorsed "Rutherford Thompson Teas, ancillary executor, Joseph H. Carr, Atty., Joseph H. Carr;" the testimony discloses that this check was deposited to the personal account of Joseph H. Carr in the defendant bank and was collected by that bank through the usual channels from the Real Estate Land Title and Trust Company. The second check contains the endorsement "Estate Eliz. M. Teas, Dec'd, Joseph H. Carr, Atty., Joseph H. Carr." This check was likewise deposited to the credit of Joseph H. Carr in the defendant bank. The testi-

mony further discloses that these endorsements are in the handwriting of Joseph H. Carr, and that no authority was given, either orally or in writing, by the complainant executor to Joseph H. Carr to endorse the checks, and that no power of attorney was on file at the bank showing any such authority.

The circumstances surrounding the transactions which took place between the executor and Joseph H. Carr, who was his proctor in the settlement of the estate of his mother, Elizabeth Thompson Teas, deceased, as I gathered from the testimony, are as follows: Joseph H. Carr, a well-known attorney formerly practicing in Camden, enjoyed a good reputation for honesty and ability; he had represented the mother of the complainant in the settlement of her husband's estate and had become acquainted at that time with the complainant here; when Mrs. Teas died Mr. Carr was engaged by the complainant to take charge of the settlement of his mother's estate. She left a will which was probated in the fall of 1929 by the Surrogate in Atlantic County. The usual preliminary proceedings were taken toward the settlement of the estate. It appears from the terms of the will that it would probably be necessary to liquidate the estate in order to completely settle it. Among the assets of the estate were certain mortgages, two of which were $5,500.00 in amount, covering premises situated in Delaware County, Pennsylvania. In order to expedite the liquidation of these mortgages by their sale or collection, Mr. Carr suggested to the complainant that an assignment be executed and placed in his hands. The complainant at that time was in Chicago; he was an engineer by profession; he had been in the employ of one com-

pany, or its successor, I think, since about 1922, and his business called upon him to be present in various parts of the country, sometimes in foreign countries, and at the time he took out letters testamentary he retained Mr. Carr and placed the matter of the settlement of the estate in his hands as his attorney; he had entire confidence in Mr. Carr and there was nothing that led him to believe that the affairs of which Mr. Carr had charge were not being conducted with the uttermost faithfulness and honesty. The papers concerning the estate, including the two mortgages in question, were in Mr. Carr's custody. The assignments were mailed to Mr. Teas by Mr. Carr and after execution by him were returned to Mr. Carr. One of the assignments is dated December 16th, 1929, and the other December 23rd, 1929; and both were placed in Mr. Carr's possession for the purpose of delivery upon the sale of these mortgages. From the testimony it appears that Mr. Carr received the two checks to which I have referred, delivered the assignments, and made use of the checks by depositing them to his own account without any notice to the executor, his client. He undoubtedly concealed, and purposely concealed, from his client the fact that these mortgages had been transferred and the proceeds received by him. He went further than that, he wrote the complainant and advised him that they remained unpaid, so that the complainant made the suggestion to Mr. Carr that he attempt to liquidate the mortgages by having them taken over by the Home Owners' Loan Corporation. Further than that, Mr. Carr paid interest on these mortgages from time to time to complainant to the extent of approximately

$3,300.00 before the complainant discovered that the money had been misapplied.

In May of 1935, complainant learned, as the result of a conference he had at Chicago with Mr. Scheflin, appearing on behalf of Mr. Carr, that the money representing the proceeds of sale of these mortgages had been misapplied by Mr. Carr. Mr. Teas thereupon came to Camden and met Mr. Carr at his office; there Mr. Carr confessed his wrongdoing and made a promise of restitution, as a result of which Mr. Carr paid some $1,700.00 thereafter; it does not appear, however, that Mr. Teas was informed of the checks in question. He consulted a Mr. Shields, of the Philadelphia bar, who proceeded to make an investigation which developed the fact that the checks which had been delivered to Mr. Carr had been fraudulently endorsed by him and deposited to his account in the defendant bank. In the fall of 1936, immediately after obtaining this information, demand was made upon defendant bank by the complainant, and by his present attorney, Mr. Stockwell, for the proceeds of these checks, and thereafter a suit was instituted by the complainant in the law court to recover upon these checks. To this suit an answer was filed in which the Statute of Limitations was pleaded; the bill herein seeks an injunction to restrain the use of that plea.

The testimony clearly shows that the bank had made use of these checks upon their presentation by depositing them to the account of Joseph H. Carr personally, and upon his endorsement, and without making any inquiry respecting his right to endorse the checks, or his authority to endorse the same. These checks belonged to the estate of Elizabeth M.

Teas, deceased, and I am satisfied that there was a duty upon the bank, under the circumstances, to have given notice to the executor of the fact that these funds had gone to the credit of Joseph H. Carr, individually, without any endorsement, or authority, given by the executor for that purpose.

A bank is chargeable, when a check is presented, to see that it is paid to the payee or someone duly authorized to receive the payment. On both of these checks, it is significant to note, was a notation that they were payable upon proper identification of the payee, and the bank absolutely violated its duty to see that the payee was identified. The bank diverted the funds from the Teas estate to the credit of Joseph H. Carr personally; the President of the bank, who at that time was a director, intimated, I think, rather strongly, that the fact that Mr. Carr was a director and the solicitor of the bank may have influenced the bank in permitting these checks to be credited to Carr's personal account. Be that as it may, the executor had no notice of the application which was made of these checks by the bank, and remained in total ignorance of the use of these checks, or even the fact these checks were in existence, up until after the investigation was made by Mr. Shields, the attorney who was acting for Mr. Teas. Of course, the use of the plea of the Statute of Limitations should not be restrained unless the right to have the restraint is perfectly clear. I do not think that the bank can escape responsibility in this case upon the showing which has been made. It is quite clear there was a duty not to permit the use of the checks in the manner recited, and a duty to notify the payee of the checks of this transaction.

I think this constituted a fraud by the bank upon the complainant.

The bank seeks to escape the result on the ground that the complainant himself was negligent in this matter in failing to institute his suit within six years after the deposit of the checks, or promptly after he had notice of the default on the part of Mr. Carr, in May, 1935. Of course, the bank did not actually mislead the executor, except as I have recited. Mr. Carr concealed from the executor the fact that the money had been actually paid over on these mortgages, but I can find no lack of diligence on the part of the complainant. He was kept by the bank in total ignorance of the fact that his money, his checks, had been applied to the benefit of Mr. Carr by the bank, permitting their deposit in Mr. Carr's personal account upon what was, at least, an endorsement without authority, and practically, as far as the bank is concerned, a forged endorsement. The circumstances surrounding the settlement of the estate were such that Mr. Teas had every right to place confidence in Mr. Carr. It has been argued that because he did not follow up the matter, after having delivered these assignments to Mr. Carr, he was negligent in his duty and therefore he is not entitled to any relief. Aside from the fact that Mr. Carr, from time to time, paid him interest on these mortgages, and led him to believe they were still held by the estate but that the mortgagors were slow in remitting payment of interest, there were other circumstances which might possibly have made the executor less diligent, for example the general conditions which surrounded the payment of mortgages during that period of business depression which

then existed, and the general knowledge that mortgages were hard to realize upon. The mere fact, as suggested by defendant's counsel, that he had not filed an account as executor in the Orphans' Court, and made an accounting, since the taking out of the letters, to me shows no negligence, particularly, on his part. He was the representative of the estate, of which his brothers were the residuary legatees. Nobody in interest had cited him to file an account and apparently, as far as the testimony is concerned, those interested were entirely satisfied with his conduct of the estate.

I feel, in this case, that the complainant is entitled to a decree enjoining the defendant from using the plea that the action at law is barred by the Statute of Limitations, and I will advise a decree in accordance with the prayer of complainant's bill.

Heard and Determined June 21st, 1938.

FINAL DECREE.

(Filed June 27, 1938.)

IN CHANCERY OF NEW JERSEY.

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Between:

RUTHERFORD THOMPSON TEAS, Executor under the Last Will and Testament of ELIZABETH M. TEAS, deceased,

*Complainant,*

and

THIRD NATIONAL BANK AND TRUST COMPANY,

*Defendant.*

On Bill, &c.
Final Decree.

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This cause coming on to be heard in the presence of Bleakly, Stockwell & Burling, solicitors for the complainant, by Henry F. Stockwell, Esquire, and Harold W. Bennett, solicitor for the defendant, and the Court having heard and considered the testimony and other proofs submitted by the complainant and defendant, and it appearing from said proofs that complainant is the owner of two certain checks issued by the Real Estate Land Title & Trust

Company of Philadelphia, one dated December 23, 1929, to the order of Rutherford Thompson Teas, Ancillary Executor, in the sum of $5591.08 and the other dated January 2, 1930, to the order of the Estate of Elizabeth M. Teas, deceased, in the sum of $5605.10; that said two checks came into the possession of Joseph H. Carr, an attorney at law of New Jersey; that said Joseph H. Carr, without any authority from or the knowledge or consent of the complainant, endorsed on the back of each check the name of the payee named therein "by Joseph H. Carr, Atty." and then endorsed his own name thereunder and deposited said checks in his own private bank account in the defendant bank; that said two checks and the proceeds thereof were and at all times remained the property of the complainant, and that defendant owed to the complainant the duty of disclosing the use of said checks by said Joseph H. Carr aforesaid and failed either to make inquiry as to the authority of Joseph H. Carr to endorse said checks and use the proceeds thereof or to notify complainant of the use of said checks and the collection of the moneys thereon by the defendant; that the complainant did not discover the issuing of said checks or the unlawful endorsement thereof by the said Joseph H. Carr or the use thereof made by the defendant until more than six years after the issuing of the said checks and the collection by the defendant of the moneys represented thereby; that complainant, upon discovering said fraud, promptly notified the defendant and thereafter brought suit against the defendant in the New Jersey Supreme Court for the recovery of the moneys represented by said checks, together with

interest thereon, and that defendant filed an answer in said suit at law under which it did set up as a defense to said action with reference to said two checks that said causes of action alleged in the complaint accrued more than six years prior to the commencement of said suit and that thereby complainant was barred by the statute of limitations, and the Court having read and considered the pleadings and considered the proofs submitted by the respective parties as aforesaid and having heard and considered the arguments of counsel for the respective parties:

It is thereupon Ordered, Adjudged and Decreed on this twenty-seventh day of June, 1938, on motion of Bleakly, Stockwell & Burling, solicitors for the complainant, that the defendant be and it is hereby permanently enjoined from using or in any way availing itself of the said defense of the statute of limitations by it pleaded in its answer in that certain cause in the New Jersey Supreme Court, in which Rutherford Thompson Teas, executor under the last will and testament of Elizabeth M. Teas, deceased, is plaintiff, and the Third National Bank and Trust Company, is defendant.

It is further ordered that the defendant pay to the complainant the costs of this suit to be taxed, together with a counsel fee of $250.00, which is hereby allowed to the solicitor for the complainant.

LUTHER A. CAMPBELL,
*C.*

Respectfully advised, (copy)
F. B. DAVIS.
(copy)

## NOTICE OF APPEAL

(Filed July 1, 1938.)

IN CHANCERY OF NEW JERSEY.

119/499

Between:

RUTHERFORD THOMPSON TEAS, Executor under the Last Will and Testament of ELIZABETH M. TEAS, deceased,

*Complainant,*

and

THIRD NATIONAL BANK AND TRUST COMPANY,

*Defendant.*

On Bill, &c.
Notice of Appeal.

The defendant, Third National Bank and Trust Company, hereby appeals from the final decree made in the above-entitled cause on June 27, 1938, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

HAROLD W. BENNETT,
*Solicitor for and of Counsel with Defendant, Third National Bank and Trust Company.*

Dated, June 29, 1938.

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

HAROLD W. BENNETT,
*Of Counsel with Defendant, Third National Bank and Trust Company.*

A true copy.
EDW. T. WHELAN,
*Clerk.*

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## ACKNOWLEDGMENT OF SERVICE.

IN CHANCERY OF NEW JERSEY.
119/499

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Between:
RUTHERFORD THOMPSON TEAS, Executor under the Last Will and Testament of ELIZABETH M. TEAS, deceased,
*Complainant,*
and
THIRD NATIONAL BANK AND TRUST COMPANY,
*Defendant.*

On Bill, &c.
Acknowledgment of Service.

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Due and legal service is hereby acknowledged on behalf of the complainant, Rutherford Thompson Teas, executor under the last will and testament of Elizabeth M. Teas, deceased, in the foregoing cause

of a copy of notice of appeal filed in said cause with the Clerk of Chancery, a copy of which is attached hereto and made a part hereof.

BLEAKLY, STOCKWELL & BURLING,
*Solicitors for Complainant.*

Dated, July 6, 1938.

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## PETITION OF APPEAL.

(Filed July 20, 1938.)

## NEW JERSEY COURT OF ERRORS AND APPEALS.

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| | |
|---|---|
| RUTHERFORD THOMPSON TEAS, Executor under the Last Will and Testament of ELIZABETH M. TEAS, deceased, *Complainant-Appellee,* v. THIRD NATIONAL BANK AND TRUST COMPANY, *Defendant-Appellant.* | On Appeal from the Court of Chancery. Petition of Appeal. |

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*To the Honorable, the Court of Errors and Appeals in the Last Resort in All Causes:*

The petition of Third National Bank and Trust Company, the appellant in the above-entitled cause, respectfully shows that:

1. Petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor, Luther A. Campbell, Chancellor of the State of New Jersey, on the advice of Francis B. Davis, Vice-Chancellor, bearing date June 27, 1938, in a certain cause in said Court of Chancery wherein the said Rutherford Thompson Teas, executor under the last will and testament of Elizabeth M. Teas, deceased, was complainant and the said Third National Bank and Trust Company was defendant, in this respect, to wit, that the said decree adjudges:

> "that the defendant be and it is hereby permanently enjoined from using or in any way availing itself of the said defense of the statute of limitations by it pleaded in its Answer in that certain cause in the New Jersey Supreme Court, in which Rutherford Thompson Teas, executor under the Last Will and Testament of Elizabeth M. Teas, deceased, is plaintiff and the Third National Bank and Trust Company, is defendant.
>
> "It is further ordered that the defendant pay to the complainant the costs of this suit to be taxed, together with a counsel fee of $250.00 which is hereby allowed to the solicitor for the complainant."

And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that it is contrary to the evidence produced in said cause and it is contrary to the equitable principles established by the law of the State of New Jersey and the Chancellor should have decreed:

That the bill of complaint for injunctive relief in said cause be dismissed and the preliminary restraint be dissolved with costs taxed against the complainant.

Petitioner, therefore, prays that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper.

HAROLD W. BENNETT,
*Solicitor for and of Counsel with Appellant.*

A true copy.
THOMAS A. MATHIS,
*Clerk.*

---

EXHIBIT C-1.

Settlement Check
J. M. Joline
T. and C. Bookkeeper
Payable through the Philadelphia Clearing House
No. 97121
App. 819175 Philadelphia, Dec 23 1929
THE REAL ESTATE-LAND TITLE AND TRUST COMPANY (3-46)
Pay to the order of Rutherford Thompson Teas
Ancillary Executor,
Payable upon proper identification of payee
Real Estate
Land T. & T. Co. $5591 and 08 cts Dollars

*Exhibit C-1, Settlement Check*

Asst Mtge Int & Ack. mtg Bk 519 p 58 prems 126
Ashley Rd
$5591 08/100 J. Martin Chas R. Power Manager
For Settlement Dept. President

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(On back)
Rutherford Thompson Teas
Ancillary Executor.
Joseph H. Carr Atty
Joseph H. Carr

---

(Stamped)
Pay to the order of
Corn Exchange National Bank & Trust Co.
Philadelphia, Pa.
Prior Endorsements Guaranteed
Dec 27 1929
Third National Bank & Trust Co.
55-692 Camden, N. J. 55-692
Wilbert J. Higbee, Cashier

---

(Stamped)
Received payment
through the
Dec 27 1929
Clearing House
Corn Exchange National Bank & Trust Co., Phila

---

(Perforated)
12-27-29
3-46

EXHIBIT C-2.

C-101 No.

THE REAL-ESTATE LAND TITLE AND TRUST COMPANY

Broad and Chestnut Streets

No. 819175 Philadelphia, Pa. Dec 23 1929

Settlement made by City of Phila Trustee etc
with Rutherford Thompson Teas Ancillary Executor
a red to 5000
of Will of Eliz. M. Teas for Asst Mtg 5500 prems 126
Ashley Rd Upper Darby Del Co

| | | |
|---|---|---|
| Dep by Assignee The City of Phila Trustee | 5000 | |
| Dep by owner Joseph Rosenwald | 649.33 | |
| O K | | |
| | | 5649.33 |
| Rec Ack Agmt | 1.50 | |
| Rec Agmt Ext | 3.00 | |
| Rutherford Thompson Teas Ancillary Executor Asst mtge mk Bk 519 p 58 | 5591.08 | |
| Cochges | 20.00 | |
| Sett Fee | 5.00 | |
| Rec Asst | 3.75 | |
| Herman C. Horn | 25.00 | |
| | | 5649.33 |

Settled as above.....in consideration of which The Real Estate-Land Title and Trust Company is directed and authorized to make distributions and payments as above set forth, all of which are hereby approved.

David Rosenwald

EXHIBIT C-3.

KNOW ALL MEN BY THESE PRESENTS, That I, Rutherford Thompson Teas, Ancillary Executor of the Will of Elizabeth M. Teas, deceased (acting in pursuance of Ancillary letters testamentary granted by the Register of Wills in and for the City and County of Philadelphia in the State of Pennsylvania, on the seventeenth day of August A. D. 1929), the said Elizabeth M. Teas, being the assignee by Assignment of Mortgage bearing date the thirty first day of October A. D. 1925, and recorded in the Office for recording Deeds in and for the County of Delaware and State of Pennsylvania in Assignment of Mortgage Book No. 73, page 521 &c., of Elizabeth M. Teas, Executrix of the Will of John Teas, deceased, (which said Will was probated before the surrogate of the County of Atlantic in the State of New Jersey and a certified copy of said Will and Letters Testamentary was filed in the Office of the Register of Wills for the County of Delaware in the State of Pennsylvania aforesaid on the Seventeenth day of February A. D. 1925) the said John Teas being the Assignee, by Assignment of Mortgage bearing date the twenty ninth day of May A. D. 1922, and recorded in the Office for Recording Deeds aforesaid in Assignment of Mortgage Book No. 56 page 590 &c., of The Land Title and Trust Company, assignee by Assignment of Mortgage bearing date the fifteenth day of March A. D. 1922 and recorded in the Office for recording Deeds aforesaid in Assignment of Mortgage Book No. 50, page 234

&c., of Bella Redmond, the Mortgagee named in the Indenture of Mortgage hereinafter mentioned, for and in consideration of the sum of five thousand Dollars, lawful money unto me paid by the City of Philadelphia, Trustee under the Will of Stephen Girard, deceased, at the time of the execution hereof, the receipt whereof is hereby acknowledged do hereby grant, bargain, sell, assign, transfer and set over unto the said The City of Philadelphia, Trustee as aforesaid, its Successors and assigns, all that certain Indenture of Mortgage given and executed by John Donlan to Bella Redmond bearing date the fifteenth day of March A. D. 1922, and recorded in the Office for Recording Deeds aforesaid in Mortgage Book No. 519, page 58 &c. to secure the payment of the sum of five thousand five hundred Dollars, since reduced to five thousand Dollars, at the expiration of three years from the date thereof with interest as therein mentioned; and all that certain lot or piece of ground with the messuage or Tenement thereon erected, Situate at the Northwest corner of Ashby Road and Sansom Street, in the Township of Upper Darby, in the County of Delaware and State of Pennsylvania. Containing in front or breadth on the said Ashby Road thirty two feet and extending of that width in length or depth Westward between parallel lines at right angles to the said Ashby Road, the South line thereof being along the North side of Sansom Street, seventy one feet to the middle of a certain ten feet wide private driveway.

Also the Bond or Obligation in the said Indenture of Mortgage recited, and all moneys, principal and interest due and to grow due thereon, with the

Warrant of Attorney to the said Obligation annexed. Together with all rights, remedies and Incidents thereunto belonging.

And All my right, title, interest, property, claim and demand in and to the same: To have, hold, receive and take, all and singular the hereditaments and premises hereby granted and assigned, or mentioned and intended so to be with the appurtenances unto the said the City of Philadelphia, Trustee as aforesaid, its Successors and assigns to and for its and their only proper use, benefit and behoof forever; subject nevertheless to the equity of redemption of said John Donlan, the Mortgagor in the said Indenture of Mortgage named, and his heirs, and assigns therein.

In Witness Whereof, I have hereunto set my hand and seal this 16th day of December A. D. 1929.

Rutherford Thomson Teas (SEAL)
Ancillary Executor of the Will of Elizabeth M. Teas, deceased.

Sealed and Delivered
in the presence of us
Walter G. Matson
Burtt B. Clorr

On the 16th day of December A. D. 1929, before me, the Subscriber, a Notary Public, of the Commonwealth of Illinois, personally appeared the above named Rutherford Thompson Teas, Ancillary Executor as aforesaid, and acknowledged the above Deed-Poll of Assignment of Mortgage to be his act

and deed, and desired the same might be recorded as such.

Witness my hand and Official seal.

Hattie Strauss (SEAL)

I certify the address of the Assignee is 512 Lafayette Building, Philadelphia.

Notary Public,

My Commission expires Feb. 28, 1932.

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State of Illinois } SS.
County of Cook }

I, Robert M. Sweitzer, County Clerk of the County of Cook, and also, Clerk of the County Court of said County, same being a Court of Record, do hereby certify that, as County Clerk, I am the lawful custodian of the Official records of Notaries Public, of said County, and as County Clerk, am by the law of Illinois the duly authorized County Officer to issue certificates of Magistracy, that, Hattie Strauss, whose name is subscribed to the proof of acknowledgment of the annexed instrument in writing was, at the time of taking such proof of acknowledgment, a Notary Public in and for Cook County, duly commissioned sworn and acting as such and authorized to take acknowledgments and proofs of Deeds or Conveyances of lands, tenements or hereditaments in said State of Illinois, and to administer oaths; all of which appears from the records and files in the County Clerk's Office; that I am well acquainted with the handwriting of said Notary and verily be-

lieve that the signature to the said proof of acknowledgment is genuine. In Testimony Whereof, I have hereunto set my hand and affixed my official seal as County Clerk, same being the seal of the County of Cook, at my office as County Clerk, in the City of Chicago this 16th day of December A. D. 1929.

Robert M. Sweitzer, County Clerk (SEAL)

In Witness Whereof, I have hereunto set my hand and affixed the seal of the County Court of Cook County, at my office as Clerk of the County Court, in the City of Chicago, this 16th day of December A. D. 1929.

Robert M. Sweitzer (SEAL)
Clerk of the County Court.

Recorded December 28, 1929 Harvey-Recorder.

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DELAWARE COUNTY: SS

I, WILLIAM L. DICKEL, Recorder of Deeds of Delaware County, do hereby certify that the above Assignment of Mortgage from Rutherford Thompson Teas, Ancillary Executor, to The City of Philadelphia, and recorded in Assignment of (SEAL) Mortgage Book No. 145, page 22&c., is a true and correct copy as full and entire as appears on record of this Office.

WITNESS my hand and Official seal this 16th day of June A. D. 1938.

Floyd A. Hayden
Dpty Deputy Recorder.

*Exhibit C-4, Mortgage Assignment*

(On back:)
CERTIFIED COPY
OF
ASSIGNMENT OF MORTGAGE
RUTHERFORD THOMPSON TEAS,
Ancillary Executor
TO
THE CITY OF PHILADELPHIA
126 Ashby Rd & Sansom

---

EXHIBIT C-4.

KNOW ALL MEN BY THESE PRESENTS That I Rutherford Thompson Teas of Ventnor, New Jersey, Ancillary Executor of the Estate of Elizabeth M. Teas, deceased, who was assignee (by Assignment dated the Thirty first day of October, A. D. 1925 and recorded at Media, Delaware County, Pennsylvania in Assignment of Mortgage Book #73, page 515 etc.,) of Elizabeth M. Teas, Executrix of the estate of John Teas, deceased, who was Assignee (by Assignment dated the second day of December A. D. 1922 and recorded as aforesaid in Assignment of Mortgage Book #56 page 316 etc.) of The Land Title and Trust Company which was assignee by Assignment dated the Fifth day of September A. D. 1922 and recorded as aforesaid in Assignment of Mortgage Book #53 page 216 etc.) of Florence A. McClatchy the Mortgagee named in the Indenture of Mortgage hereinafter mentioned for and in consideration of the sum of five thousand, five hundred dollars ($5,500.00) lawful money unto me paid by

The Pennsylvania Company for Insurances on Lives and Granting Annuities, Trustee for Lucy Drexel Dahlgren under the will of Joseph W. Drexel, Deceased at the time of the execution hereof, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, assign, transfer and set over unto the said The Pennsylvania Company for Insurances on Lives and Granting Annuities, Trustee as aforesaid, its successors and Assigns ALL THAT CERTAIN Indenture of Mortgage given and executed by John Donlan to said Florence A. McClatchy, dated the Fifth day of September A. D. 1922 and recorded as aforesaid in Mortgage Book #539 page 97 etc., to secure the payment of the sum of Five thousand Five Hundred dollars ($5,500.00) with interest as therein mentioned AND ALSO all That Certain Lot or piece of ground with the Buildings and improvements thereon erected Situate on the Northwest corner of Hampden Road and Sansom Street in Upper Darby Township, Delaware County, Pennsylvania, Hereditaments and premises in said Indenture of Mortgage particularly described and granted or mentioned or intended so to be with the appurtenances.

ALSO the bond or obligation in the said Indenture of Mortgage recited and all moneys principal and interest due and to grow due thereon, with the Warrant of Attorney to the said Obligation annexed. Together with all rights Remedies and Incidents thereunto belonging. And all my estate right title Interest, Property Claim and demand in and to the same:

TO HAVE, Hold, receive and take all and singular the hereditaments and premises hereby granted and

assigned or mentioned and intended so to be with the appurtenances unto said The Pennsylvania Company for Insurances on Lives and Granting Annuities Trustee as aforesaid its successors and Assigns to and for its and their only proper use, benefit and behoof forever; subject nevertheless to the equity of redemption of said John Donlan Mortgagor in the said Indenture of Mortgage named and his heirs and assigns therein.

IN WITNESS WHEREOF said Rutherford Thompson Teas, ancillary Executor as aforesaid, has hereunto set his hand and seal this 23rd day of December A. D. 1929.

Rutherford Thompson Teas (SEAL)
Ancillary Executor of Estate of Elizabeth M. Teas, deceased.

Sealed and delivered
in the presence of us
Walter G. Madsen
Harry R. Rathburn

On the 23rd day of December A. D. 1929, before me, personally appeared the above named Rutherford Thompson Teas, ancillary Executor as aforesaid and acknowledged the above Deed Poll of Assignment of Mortgage to be his act and deed and desired the same might be recorded as such.

WITNESS my hand and Notarial seal.

Hattie Strauss (SEAL)
Notary Public,
My Commission expires Feb. 28, 1932.

State of Illinois }
County of Cook } ss

I, Robert M. Sweitzer, County Clerk of the County of Cook, and also Clerk of the County Court of said County, same being a court of Record, do hereby certify that as County Clerk I am the lawful custodian of the Official records of Notaries Public of said County, and as County Clerk am by the law of Illinois the duly authorized County Officer to issue Certificate of Magistracy, that, Hattie Strauss whose name is subscribed to the proof of acknowledgment of the annexed instrument in writing was at the time of taking such proof of acknowledgment a Notary Public in and for Cook County, duly commissioned sworn and acting as such and authorized to take acknowledgments and proofs of deeds or conveyances of lands tenements or hereditaments in said State of Illinois and to administer oaths; all of which appears from the records and files in the County Clerk's Office; that I am well acquainted with the handwriting of said Notary and verily believe that the signature to the said proof of acknowledgment is genuine.

In Testimony Whereof, I have set my hand and affixed my Official seal as County Clerk same being the seal of the County of Cook at my Office as County Clerk in the City of Chicago this 23rd day of Dec. A. D. 1929.

Robert M. Sweitzer, County Clerk (SEAL)

In Witness Whereof I have hereunto set my hand and affixed the seal of the County Court of Cooks County, at my office as Clerk of the County Court,

in the City of Chicago this 23rd day of December A. D. 1929.

Robert M. Sweitzer (SEAL)
Clerk of the County Court.

Recorded January 11, 1930. Harvey-Recorder

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DELAWARE COUNTY: SS

I, William L. Dickel, Recorder of Deeds of Delaware County, do hereby certify that the above Assignment of Morgage from Rutherford Thompson Teas, Ancillary Executor, to Penna. Co. for Insurances on Lives and Granting Annuities, and recorded in Assignment of Mortgage Book No. 143, page 303 etc., is a true and correct copy as full and entire as appears on record of this Office.

(SEAL)

WITNESS my hand and Official seal this 17th day of June A. D. 1938.

Floyd A. Hayden
Dpty Deputy Recorder

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(On back:)
CERTIFIED COPY
OF
ASSIGNMENT OF MORTGAGE
RUTHERFORD THOMPSON TEAS,
Ancillary Executor
TO
PENNA. CO. FOR INS. ON LIVES
AND GRANTING ANNUITIES
Hampden Road & Sansom St.

EXHIBIT C-5.

SETTLEMENT CHECK
J. M. Joline
T. and C. Bookkeeper

No. 97988 JAN 2 1930
App. 818814 Philadelphia,
Payable Through the Philadelphia Clearing House
THE REAL ESTATE-LAND TITLE AND TRUST COMPANY

(3-46)

Pay to the order of Estate Eliz. M. Teas, Decd
Payable upon proper identification of payee
Real Estate Land T. & T. Co. $5605 and 10 cts DOLLARS
Asst of Mtge—118 Hampden Rd
$5605.10

J Martin
For Settlement Dept.
Arthur A. Gretz
Manager
President

---

(Stamped:)
C C W

---

(On back:)
Estate Eliz M Teas dec'd
Joseph H Carr
Atty
Joseph H Carr

*Exhibit C-5, Settlement Check*

(Stamped:)
Pay to the order of
Corn Exchange National Bank & Trust Co.
Philadelphia, Pa.
Prior Endorsements Guaranteed
Jan 8 1930
Third National Bank & Trust Co.
55-692 Camden, N. J. 55-692
Wilbert J. Higbee, Cashier
Received Payment
Through the
Jan-8 1930
Clearing House
Corn Exchange Nat Bank & Trust Co. Phila

---

EXHIBIT C-6.

C-101 No.

THE REAL ESTATE-LAND TITLE AND TRUST COMPANY
Broad and Chestnut Streets
Philadelphia, Pa.,

No. 818814 1-2-1930

Settlement made by The Pennsylvania Company for Insurances on Lives and Granting Annuities with Estate of Eliz M. Teas for Asst of Mtge #5500
118 Hampden Rd. Upper Darby Rd

| | | |
|---|---|---|
| Dep. by The Pennsylvania Company for Insurance on Lives and Granting Annuities | 5500 00 | |
| Dep by Julia D. Tobias OK | 157 00 | |
| | | 5657.00 |

*Exhibit C-7, Demand*

| | | | |
|---|---|---|---|
| Estate of Eliz M. Teas | | 5605 10 | √ |
| Asst of Mtge | | | |
| Chas. M. Rainsford & Bro— | | 11 00 | √ |
| Chas. Walters ack | | 50 | √ |
| Prem Ex Fee | 25.00 | | |
| Sett Fee | 5.00 | 40 40 | |
| Rec-Asst | 7.00 | | |
| Rec-Agreet | | | |
| Rec-Asst | 3.40 | | |
| | 40.40 | 5657 00 | |

Settled as above.....in consideration of which The Real Estate-Land Title and Trust Company is directed and authorized to make distributions and payments as above set forth, all of which are hereby approved.

Only 1 Asst Ind.

Julia D Tobias

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EXHIBIT C-7.

138 Keystone Avenue
River Forest, Illinois
November 16, 1936.

Third National Bank and Trust Company
Twenty-seventh and Westfield Avenue,
Camden, New Jersey.

Gentlemen:

I have recently come into possession of (1) photostat of original check, made and issued upon The Real Estate-Land Title and Trust Company, at Philadelphia, December 23, 1929, to the order of

Rutherford Thompson Teas, Ancillary Executor, (payable upon proper identification of payee) in the sum of $5591.08, endorsed "Rutherford Thompson Teas, Ancillary Executor, Joseph H. Carr, Atty. Joseph H. Carr", and stamped:

"Pay to the order of CORN EXCHANGE NATIONAL BANK & TRUST CO. Philadelphia, Pa. Prior Endorsements Guaranteed, Dec 27, 1929, THIRD NATIONAL BANK & TRUST CO. 55-692 Camden, N. J., Wilbert J. Higbee, Cashier," and "RECEIVED PAYMENT Through CLEARING HOUSE CORN EXCHANGE NATIONAL BANK & TRUST CO. PHILA. Dec. 27, 1929."

And (2) photostat of original check made and issued upon The Real Estate-Land Title and Trust Company, at Philadelphia, January 2, 1930, to the order of Estate Eliz. M. Teas, Dec'd, (payable upon proper identification of payee) in the sum of $5605.10, endorsed "Estate Eliz. M. Teas, dec'd., Joseph H. Carr, Atty. Joseph H. Carr" and stamped:—

"Pay to the order of CORN EXCHANGE NATIONAL BANK & TRUST CO. Philadelphia, Pa. Prior Endorsements Guaranteed, Jan. 8, 1930, THIRD NATIONAL BANK & TRUST CO. 55-692 Camden, N. J. 55-692 Wilbert J. Higbee, Cashier," and "RECEIVED PAYMENT Through the CLEARING HOUSE CORN EXCHANGE NATIONAL BANK & TRUST CO. PHILA. JAN. 8, 1930."

Said endorsements were not made by me, or my agent, or any person authorized to make the same for me. Said checks, and the moneys represented thereby, were and are the property of the Estate

of Elizabeth M. Teas, Deceased, never having been legally transferred to any other person.

The moneys represented by said checks should be in your possession, since any disbursement thereof upon said endorsements would be improper, unlawful and fraudulent.

I hereby demand of you the sum of $11,196.18, plus lawful interest thereon as follows:

On the sum of $5,591.08 from December 27, 1929 and on the sum of $5,605.10 from January 8, 1930, less payments made on account thereof amounting to $4490.00.

Respectfully yours,
Rutherford Thompson Teas
Executor Estate of Elizabeth
M. Teas, Deceased.

Bleakly, Stockwell & Burling
Attorneys,
West Jersey Trust Bldg.,
Camden, N. J.

---

EXHIBIT C-8.

ATLANTIC COUNTY SURROGATE'S COURT.

CERTIFICATE

In the matter of the Estate of }
Elizabeth M. Teas, Deceased. }

State of New Jersey, }
County of Atlantic, } ss.

I, ALBERT C. ABBOTT, Surrogate of the said County, DO CERTIFY, That the last Will and

*Exhibit C-9, Certificate of Register of Wills*

Testament of ELIZABETH M. TEAS, late of the County of Atlantic, deceased, has been duly admitted to probate, and that RUTHERFORD THOMPSON TEAS, one of the Executors therein named, proved the same before me, and is duly authorized to take upon himself the administration of the Estate of the Testatrix agreeably to said Will.

I further certify that the above appointment is still in full force and effect, and that the Executor has not been removed or discharged.

WITNESS MY HAND AND SEAL OF OFFICE, the Eighteenth day of June, in the year of our Lord, One Thousand Nine Hundred and Thirty.

Albert C. Abbott

(Seal) Surrogate.

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EXHIBIT C-9.

No. 8064

Philadelphia County, ss.

I, JOHN F. McCLOSKEY, Register for the Probate of Wills and Granting Letters of Administration in and for the County of Philadelphia, in the Commonwealth of Pennsylvania.

DO HEREBY CERTIFY AND MAKE KNOWN That on the 17th day of August in the year of our Lord one thousand nine hundred and Twenty Nine

ANCILLARY

LETTERS TESTAMENTARY on the Estate of

*Exhibit C-9, Certificate of Register of Wills*

Elizabeth M. Teas deceased were granted unto Rutherford Thompson Teas. He having first been qualified well and truly to administer the same.

Given under my hand and seal of office, this 17th day of June 1938

Robert T. Ives
(Seal) Deputy Register.

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EXHIBIT C-10.

JOSEPH H. CARR
Counsellor at Law
Camden, New Jersey
Land Title Building
5th & Market Streets
Bernhard G. Luethy

December 6, 1929.

Mr. Rutherford Thompson Teas,
747 Irving Park Boulevard, Apt. 34,
Chicago, Illinois.

Dear Mr. Teas:

In re: Estate of Elizabeth M. Teas

Your letter of December 3d, together with the various estate returns, was received. I will push the matter of final settlement of the estate as fast as I can.

I will also prepare the trust agreement which you wish, and forward it to you in a few days. If this agreement is so framed that title to the stocks purchased can be placed in the name of one of the three interested parties, without indicating that it is a trust, it will be very much easier to transfer

the shares when they are to be sold or transferred. Will a trust permitting the shares to be placed in the name of one of the three interested persons, be satisfactory to you and to your brothers?

I have no definite settlement dates on the other mortgages, as yet.

Is it your wish that you permit all the funds to be invested in the trust? Furthermore, to what extent does each person wish to participate in the management of the trust,—in other words, what has been decided with respect to the personnel of the trustee or trustees? If sufficient funds are retained for payment of legacies and debts, actual payment would not be required.

Please let me hear from you on these points promptly, as I will need this information to prepare these papers.

Respectfully yours,

Joseph H Carr

JHC:HFR

EXHIBIT C-11.

JOSEPH H. CARR
Counsellor at Law
Camden, New Jersey
Land Title Building
5th & Market Streets

Bernhard G. Luethy

October 16th, 1929

Mr. Rutherford T. Teas,
Hotel Monticello
Charlottesville, Va.

Dear Sir:

In re: Estate of Elizabeth M. Teas

It is likely that some of the mortgages which have been called for payment will be paid within the next month or six weeks. It will be necessary for the mortgage papers to be delivered at the time of payment and will also be necessary for you or some person authorized by you by written power of attorney to appear before the recorder of deeds and satisfy the mortgages.

In the event that the method of cancelling by power of attorney is used, there will have to be a power for each county. Please let me know whether you will be available for that purpose and if not, I will prepare a power of attorney for the purpose.

Also please let me know where the mortgage papers are. I presume they are in the bank, in which event, we will have to arrange for access to the bank.

Respectfully yours,

Joseph H Carr

C/B

EXHIBIT C-12.

JOSEPH H. CARR
Counsellor at Law
Camden, New Jersey
Land Title Building
5th & Market Streets

Bernhard G. Luethy

October 24th, 1930

Mr. Rutherford T. Teas,
Apt. 34-747 Irving Park Bld.,
Chicago, Ill.

In re: Teas Estate

Dear Mr. Teas:

I received on Thursday, a check for $5000 principal of mortgage on 120 Glendale Road, the Judge property and $340.50 interest from September 5th, 1929 to October 23rd, 1930 amounting to $340.50. The total of $5340.50 was deposited to your account as executor, on the 23rd.

Respectfully yours,

Joseph H Carr

C/B

EXHIBIT C-13.

JOSEPH H. CARR
Counsellor at Law
Camden, New Jersey
Land Title Building
5th & Market Streets

Joseph H. Carr

Bernhard G. Luethy
R. Cooper Brown

Earle V. Wescott

February 22nd, 1935.

Mr. Rutherford T. Teas,
413 South Lincoln Street,
Hinsdale, Ill.

Dear Mr. Teas:—

Your letter received. The HOLC has not finally granted the loans in question. The situation of the HOLC is that they accepted applications for loans to an amount far in excess of the funds actually available for loans. When they first started operations, in order to make a showing, loans were put through fairly rapidly, and in many instances with insufficient security. They then became much slower and more conservative, and as their potential resources became depleted they practically stopped making loans. What they have been doing for two or three months now is weeding out loans so as to get the amount within their appropriation.

It was thought that by the middle of February

some statement would be forthcoming as to what they were going to do with the large number of loans on hand, which is why I delayed answering your first letter, but nothing has developed. It is generally supposed that they are waiting on instructions from Washington, and probably on what Congress may do. Practically we have made little progress.

I have been out of the office trying cases for a while, but will be in all next week and will write you again more fully in a few days.

Respectfully yours,

Joseph H Carr

C/B

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EXHIBIT C-14.

JOSEPH H. CARR
Counsellor at Law
Camden, New Jersey
Land Title Building
5th & Market Streets

Joseph H. Carr

---

Bernhard G. Luethy
R. Cooper Brown

---

Earle V. Wescott

March 14th, 1935.

Mr. Rutherford T. Teas
413 S. Lincoln Avenue
Hinsdale, Ill.

Dear Mr. Teas:

Following my letter of the 22nd I beg to say that as you have no doubt seen in the newspaper, the

Home Owners' Loan Corporation is being revived, and this ought to be encouraging for us.

I have collected on mortgage interest since you were here, the sum of $365.00. I think there is a bond premium to be paid. I will find out and let you know.

mother

When you make up a statement for your creditors will you send me a copy so I can send it to the Bonding Company.

Has there been any change with regard to the Chess Board Corporation stock since I saw you, and have you received any moneys from the Ventnor Building and Loan Association?

Respectfully yours,

Joseph H Carr

C/B

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STIPULATION AS TO EXHIBITS D-1 TO D-9.

It is hereby stipulated and agreed by and between counsel for the respective parties that in lieu of printing the certified copies of Exhibits D-1 to D-9, inclusive, in full, that it is agreed that the papers on file with the Surrogate of Atlantic County in the Estate of Elizabeth M. Teas, represented by said exhibits consist of the following:

D-1 and D-2 Renunciations Executors, William H. Teas and Livingston Pierson Teas, dated July 25, 1929.

D-3 Appointment of Appraisers, Dated August 6, 1929.

D-4 Decree Barring Creditors, dated February 10, 1930.

D-5 Proof of Posting Notice, dated August 9, 1929.

D-6 Proof of Publication, dated December 14, 1929.

D-7 Application for Rule to Bar Creditors, dated August 6, 1929.

D-8 Petition for Probate and Letters Testamentary, dated August 6, 1929.

D-9 Order Limiting Creditors, dated August 9, 1929.

BLEAKLY, STOCKWELL & BURLING,
*Solicitors for the Complainant.*
HAROLD W. BENNETT,
*Solicitor for the Defendant.*

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EXHIBIT D-10.

ATLANTIC COUNTY SURROGATE'S COURT

| | |
|---|---|
| In the matter of the estate of Elizabeth M. Teas, Deceased. | Inventory and Appraisement |

An Inventory and Appraisement of the goods and chattels, rights and credits, moneys and effects of Elizabeth M. Teas, deceased, late of the City of Ventnor City in the County of Atlantic and State of New Jersey, made this third day of December nineteen hundred and twenty-nine by Rutherford

T. Teas, executor and Archie H. Smith and Joseph M. Davis Appraisers.

| | |
|---|---|
| Checking Account, Provident Trust Company, Philadelphia, | $7852.88 |
| Interest on same to date of death | 5.28 |
| Saving fund account, Provident Trust Company | 224.82 |
| Cash in hands of John H. McClatchy, Phila., (being the proceeds of a mortgage owned by decedent, and collected by McClatchy for decedent several days prior to her death) | 7000.00 |
| Bond & Mtge, $2000, dated 4-1-21, John Donlan to Bella Redmond, prem Twp of Upper Darby, Del. Co., Pa., beg. at intersection of North side of Chestnut with East side of Chatham, thence East along North side of Chestnut 84.585 ft. (irregular). Due 3 yrs. Int. 6%. Assigned Land Title Co. to Mary J. Anderson, Mary J. Anderson to John Teas, Elizabeth M. Teas, Executrix to Elizabeth M. Teas | 2000.00 |
| Interest, 4-1-29 to 7-21-29 | 36.67 |
| Bond & mtge, $5000, dated 9-5-22, John Donlan to Florence A. McClatchey, prem. Twp of Upper Darby, Del. Co., Pa., beg. at West side of Glendale distant 307 ft. South of South side of Chestnut, containing in frontage 32 ft. and extending betw. parallel lines at right angles 80 ft. Due 3 yrs. int. 6%. Assigned Land Title Co. to Elizabeth M. Teas | 5000.00 |

| | |
|---|---|
| Interest 3-5-29 to 7-21-29 | 113.34 |
| Bond & Mtge, $5500, dated 3-15-22, John Donlan to Bella Redmond, prem. Twp of Upper Darby, Del. Co., Pa., beg. at Northwest corner of Ashby Rd and Sansom St., containing 31 ft. in frontage and 71 ft in depth. Due 3 yrs. int. 6%. Assigned Land Title Co. to John Teas, Elizabeth M. Teas, Executrix to Elizabeth M. Teas, | 5500.00 |
| Interest 3-15-29 to 7-21-29 | 115.50 |
| Carried forward | $27,848.49 |
| Brought forward | $27,848.49 |
| Bond & mtge., $4500, dated 11-27-25, John Donlan to Elizabeth M. Teas, prem. Twp of Upper Darby, Del. Co., Pa., beg. at North side of Walnut where the East side of Ashby Rd intersects thence extending 15 degrees 22 minutes East 88.60 ft., thence East at right angles 80 ft to driveway, South 15 degrees 22 minutes West Parallel with Ashby Rd 83.04 ft. to North side of Walnut and thence extending West along Walnut 80.19 ft. to beg. Due ., int. 6% | 4500.00 |
| Interest 5-27-29 to 7-21-29 | 40.50 |
| Bond & mtge, $8000, dated 5-20-26, John Donlan to Elizabeth M. Teas, prem. Twp of Upper Darby, Del. Co., Pa., beg. at intersection of North side of Walnut Street with West side | |

of Copley Rd thence extending North 15 degrees 22 minutes East along Copley Rd 122.04 ft, thence at right angles to Copley 80 ft betw. parallel lines, Due 3 yrs. int. 6% 8000.00

Interest 5-20-29 to 7-21-29 81.34

Bond & Mtge., $5500, dated 9-5-22, John Donlan to Florence A. McClatchey, prem. Twp of Upper Darby, Del. Co., Pa. Beg. at Northwest corner of Hampden Rd and Sansom St., containing in frontage on Hampden Rd 38 ft. and extending betw. parallel lines at right angles to said Hampden Rd 77.5 ft. Due 3 yrs., int. 6%. Assigned, Land Title Co. to John Teas Elizabeth M. Teas, Executrix to Elizabeth M. Teas 5500.00

Interest on same 3-5-29 to 7-21-29 124.67

Bond & Mtge., $13,300, unpaid balance $7300, John Donlan to Bella Redmond, prem. Twp of Upper Darby, Del. Co., Pa., beg. at intersection of South side of Ashby Rd with East side of Heather Rd., thence South 601.66 ft. thence North 81 degrees 1 minute East 63.81 ft., thence parallel with Heather Rd 601.66 ft. to South side of Ashby Rd. thence West 63.81 ft to beg. Due six months, Int. 6%. Assigned Bella Redmond to John Teas, Elizabeth M. Teas, Executrix to Elizabeth M. Teas 7300.00

| | |
|---|---|
| Interest 1-22-29 to 7-21-29 | 217.78 |
| Note of Livingston Pierson Teas, dated 9-23-26, $1500.00, reduced to $500. 6% int. Interest paid to 9-23-29 | 500.00 |
| Note of William H. Teas dated 1-1-29, $12,500. Int. payable quarterly 6%, at Marion, Va. | 12,500.00 |
| Interest 7-1-29 to 7-21-29 | 41.67 |
| 3 shs. common stock voting trust certificate, UNITED STATES LEATHER CO., N. J. corp. No. C0535, @ 21½ per sh. | 64.50 |
| 10 shs. CUBA CANE SUGAR CORP., common stock, no par value, Cert. 041633, @ 3⅞ per sh. (transferable NY or Havana) | 37.85 |
| Carried forward | $66,756.80 |
| Brought forward | $66,756.80 |
| 2 shs. VIRGINIA-CAROLINA CHEMICAL CORP. (Va. Corp) no par value, common stock, transferable NY or Richmond, Cert. NYC3511 @ 12¾ per sh. | 25.00 |
| 3 shs., VIRGINIA-CAROLINA CHEMICAL CORP. (Va. corp) 6% pref. stock, transferable NY or Richmond, Cert. NYPo1147, @ 42½ per sh. | 127.50 |
| 16 shs., FEDERAL CAR EQUIPMENT CO. (Del. corp) Cert. No. 65, par $25.00 per sh., @ $18.00 per sh; | 288.00 |

| | | |
|---|---|---|
| 16 shs., THE MARION EXTRACT COMPANY (Del. Corp) Cert. No. 66, per $100. per sh. @ $50. per sh. | | 800.00 |
| 16 shs. MARION EXTRACT CO., INC. (Va. Corp) Cert. No. 142, Common stock, $100 par, @ $30.00 per sh. | | 480.00 |
| 110 shs., TENNESSEE EXTRACT CORP. (Del. Corp) Cert. Nos. 54 (50 shs), 86 (5 shs), 144 (50 shs) and 145 (5 shs), par $100 per sh. @ par | | 11,000.00 |
| Household furniture at 10 South Newark Avenue, Ventnor City | | 350.00 |
| 1 pair pearl earrings | 15.00 | |
| 1 Elgin Yellow gold 14 K Wrist watch | 25.00 | |
| 1 horseshoe pin, 13 pearls, 15 sapphires | 25.00 | |
| 1 pair diamond earrings weight 90 points | 200.00 | |
| 1 platinum top, 3 stone diamond ring, 92 pts | 225.00 | 490.00 |
| | | $80,317.80 |

Rutherford Thompson Teas
Archie H. Smith
Appraiser
Joseph M. Davis
Appraiser

*Exhibit D-10, Inventory and Appraisement*

STATE OF NEW JERSEY }
COUNTY OF ATLANTIC } ss

ARCHIE H. SMITH, one of the appraisers in the annexed inventory named, being duly sworn, deposes and says that the goods and chattels, rights, credits and effects in the annexed inventory set down and specified, were by him appraised at their just and true respective values, according to the best of his judgment, and that JOSEPH M. DAVIS, the other appraiser whose name is thereunto subscribed, was present at the same time with this deponent and consented in all things to the doing thereof, and particularly to the said valuation and appraisement, and that they appraised all things that were brought to their view for appraisement.

Archie H. Smith

Sworn and subscribed before me this 8th day of February, 1930.
Emma Clark, Notary Public of N. J.

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STATE OF MISSOURI }
CITY OF ST. LOUIS } ss.

I, Rutherford Thompson Teas, executor of the estate of Elizabeth M. Teas, deceased, being duly sworn on my oath, say that the annexed writing contains a true and perfect inventory of all and singular the goods, chattels, rights, credits, and effects of the said Elizabeth M. Teas, deceased, so far as they have come to my possession or knowl-

edge, or to the possession of any other person or persons for my use, to my knowledge, and that the said appraisement is just and true.

Rutherford Thompson Teas

Sworn and subscribed before me this 3rd day of December 1929

(Seal) R. J. Weidle
Notary Public, City of St. Louis, Mo.
My commission expires June 27, 1933.

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Form No. 4

STATE OF MISSOURI )
City of St. Louis ) ss.

I, JOHN SCHMOLL, clerk of the Circuit Court, City of St. Louis, the same being a Court of Record, in and for said City and State, do hereby certify that R. J. Weidle. who subscribed the foregoing Certificate of Jurat. was at the time of taking such affidavit. a Notary Public residing in said City and duly authorized to take and certify the same by the laws of said State, and to take and Certify the acknowledgment and proof of deeds, to be recorded in the State, and that the same is taken and certified in all respects as required by the laws of said State. That I am well acquainted with the hand writing of said R. J. Weidle. and verily believe that the signature attached to the foregoing Certificate is. the genuine signature of said R. J. Weidle.

WITNESS my hand seal of the Circuit Court, City of St. Louis, at my office in said City, this 3rd. day of December. nineteen hundred and Twenty. Nine.

(Seal) John Schmoll
Clerk Circuit Court.

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STATE OF NEW JERSEY
ATLANTIC COUNTY SURROGATE'S COURT

I, Albert C. Abbott, Surrogate of the County of Atlantic, and Ex-Officio Clerk of the Orphans' Court of said County, do Certify the foregoing to be a true copy of the Inventory and Appraisement, in the matter of the estate of ELIZABETH M. TEAS, late of the County of Atlantic, deceased, as the same remains on file and of record in this office.

WITNESS MY HAND AND SEAL OF OFFICE, this Thirty-first day of August, in the year of our Lord One Thousand Nine Hundred and thirty-eight.

Albert C. Abbott
(Seal) Surrogate and Ex-Officio
Clerk

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EXHIBIT D-11.

IN THE NAME OF GOD, AMEN.

I, Elizabeth M. Teas, of the City of Ventnor, County of Atlantic and State of New Jersey, being

of sound and disposing mind, memory and understanding, do make and publish my last will and testament as follows:

FIRST: I direct all my just debts and funeral expenses to be paid as soon as may be reasonable after my decease.

SECOND: I give and bequeath to The West Laurel Hill Cemetery Company, a corporation of the State of Pennsylvania, the sum of Three Hundred Dollars in trust nevertheless, to invest the same and to apply the income arising therefrom for the purpose of keeping the lot in which my husband is buried, being lot #477 in Moreland Section, in good order and condition and for the decoration of the same. I now contemplate making such a provision in my lifetime, and direct that if I shall have paid the said sum of Three Hundred Dollars to The West Laurel Hill Cemetery Company after this date and before my death, then this provision of my will shall be inoperative.

THIRD: I give and bequeath to The Mount Moriah Cemetery Association, a corporation of the State of Pennsylvania, the sum of Three Hundred Dollars in trust nevertheless, to invest the same and to apply the income arising therefrom for the purpose of keeping the lot now or formerly of William Holmes, being Lot #28, Section 3, in good order and condition and for the decoration of the same. I now contemplate making such a provision in my lifetime, and direct that if I shall have paid the said sum of Three Hundred Dollars to The Mount

Moriah Cemetery Association after this date and before my death, then this provision of my will shall be inoperative.

FOURTH: I give and bequeath to the Northeastern Hospital of Philadelphia, the sum of Ten Thousand Dollars in Trust, for the purpose of establishing and maintaining an endowed room in said hospital to the memory of my dear departed husband, Reverend John Teas, D. D. And I direct that said room shall be used for the benefit of patients who are financially able to pay a small sum for the same, but who are not financially able to pay the customary charges. I now contemplate making such a provision in my lifetime, and direct that if I shall have paid the said sum of Ten Thousand Dollars to the Northeastern Hospital of Philadelphia, after this date and before my death then this provision of my will shall be inoperative.

FIFTH: I give and bequeath to my son William H. Teas, the cheval glass, victrola, Martha Washington Sewing table, and cedar chest which he has given to me.

SIXTH: I give and bequeath all of my silver to my sons Livingston Pierson Teas and Rutherford Thompson Teas, to be divided between them.

SEVENTH: I give and bequeath to my son William H. Teas, the loving cup which was given by the U. P—
Tenth Street Presbyterian Church of Philadelphia to my husband and myself on our leaving the said

congregation in June, nineteen hundred and twelve, and request that he, upon his death, hand the same to his eldest son, with the wish that it shall be so disposed of from one generation to the next.

EIGHTH: I give and bequeath to my son William H. Teas, of Annapolis, Maryland, one fourth of my estate to be his absolutely.

NINTH: I give and bequeath to my son John Colwell Teas, of Flushing, Long Island, one fourth of my estate, to be his absolutely.

TENTH: I give and bequeath to my son Livingston Pierson Teas, of Shrevesport, Louisiana, one fourth of my estate to be his absolutely.

ELEVENTH: I give and bequeath to my son Rutherford Thompson Teas, of New York, New York, one fourth of my estate to be his absolutely.

TWELFTH: The provisions herein made for my sons are not to affect the payment to my estate of the moneys now due me by my sons, William H. Teas, whose notes I hold for Twelve Thousand Five Hundred Dollars, and John Colwell Teas, whose note I hold for Twenty two Hundred Dollars, or such other sums as may be due by them, or either of them, or by any other of my sons at the time of my death.

THIRTEENTH: I hereby give to my executors hereinafter named and their successor or successors in office, full power and authority to grant, bargain, sell and convey any or all of my lands to

any person or persons, in fee simple or otherwise, at public or private sale, at such times and upon such terms as they shall see fit, and to sign, execute, acknowledge and deliver all such deed or deeds or other instruments of writing as may be necessary and requisite to vest title in the purchaser or purchasers who shall not be obliged to see to or be responsible for the application thereof, or any non-application or mis-application of the same.

FOURTEENTH: I hereby constitute and appoint my sons, William H. Teas, John Colwell Teas, Livingston Pierson Teas, and Rutherford Thompson Teas, to be the executors of this my last will and testament, and direct that they shall not be required to furnish any bond or other security for the faithful performance of their duties.

IN WITNESS WHEREOF, I, the said Elizabeth M. Teas, have hereunto set my hand and seal this Twenty third day of March nineteen hundred and twenty eight.

Elizabeth M. Teas. (L. S.)

SIGNED, SEALED, ACKNOWLEDGED and DECLARED by the said Elizabeth M. Teas, as and for her last Will and Testament, in the presence of us, both being present at the same time, who at her request, in her presence, and in the presence of each other have hereunto subscribed our name as witnesses.

Sarah Crossett
4017 Baring St. Philada.
Joseph H. Carr
5 & Market Sts. Camden N. J.

*Exhibit D-11, Will of Elizabeth M. Teas*

STATE OF NEW JERSEY
ATLANTIC COUNTY SURROGATE'S COURT

I, Albert C. Abbott, Surrogate of the County of Atlantic, and Ex-Officio Clerk of the Orphans' Court of said County, do Certify the foregoing to be a true copy of the last Will and Testament of ELIZABETH M. TEAS, late of the County of Atlantic, deceased, as the same remains on file and of record in this office.

WITNESS MY HAND AND SEAL OF OFFICE, this Thirty-first day of August, in the year of our Lord One Thousand Nine Hundred and thirty-eight.

Albert C. Abbott
Surrogate and Ex-Officio Clerk

(Seal)

# INDEX

## NEW JERSEY COURT OF ERRORS AND APPEALS.

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RUTHERFORD THOMPSON TEAS, Executor under the Last Will and Testament of ELIZABETH M. TEAS, deceased,

*Complainant-Respondent,*

v.

THIRD NATIONAL BANK AND TRUST COMPANY,

*Defendant-Appellant.*

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ON BILL, &C.

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ON APPEAL FROM THE COURT OF CHANCERY.

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## BRIEF FOR DEFENDANT-APPELLANT.

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### STATEMENT.

On January 2, 1937 a bill of complaint was filed in the New Jersey Supreme Court involving a suit at law brought by Rutherford Thompson Teas, executor under the last will and testament of Elizabeth M. Teas, deceased, against the Third National Bank and

Trust Company to recover certain moneys alleged to be due the plaintiff on two checks; one issued by the Real Estate Land Title and Trust Company, December 23, 1929, in the sum of $5,991.08 payable to the order of Rutherford Thompson Teas, ancillary executor and allegedly endorsed without authority by Joseph H. Carr, who was attorney for said executor and also attorney and director for said bank and deposited at the said Third National Bank and Trust Company, December 27, 1929 in said attorney's personal account; another issued by the Real Estate Land Title and Trust Company, January 2, 1930 in the sum of $5,605.10 payable to the order of Elizabeth M. Teas, deceased, and also allegedly endorsed without authority by Joseph H. Carr, and deposited in said Third National Bank and Trust Company on January 8, 1930 in said attorney's personal account. The Third National Bank and Trust Company filed an answer in said suit on April 26, 1937, pleading, among other defenses, the plea of the statute of limitations. On July 14, 1937 complainant-respondent filed a bill of complaint in the Chancery Court of New Jersey, in which he sought to have the Chancery Court permanently enjoin the defendant-appellant from using or in any way availing itself of the said defense of the statute of limitations in said law action in the New Jersey Supreme Court. The defendant-appellant, Third National Bnk and Trust Company, filed its answer setting up certain equitable defenses to said bill for injunction and after a hearing, a decree of the Court of Chancery (by the Honorable Vice-Chancellor Francis B. Davis) permanently enjoined the defendant-appellant from using or in any

way availing itself of the said defense of the statute of limitations by it pleaded in the New Jersey Supreme Court law action. From that decree defendant-appellant has brought this appeal upon the ground that the same is erroneous and that it is contrary to the evidence produced in said cause and it is contrary to the equitable principles established by the law of the State of New Jersey.

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## ISSUES TO BE DETERMINED.

Defendant-appellant contends that complainant-respondent is not entitled to equitable relief under the evidence produced in the court below for the following reasons:

I. The defendant-appellant performed no fraudulent act upon the complainant-respondent and did nothing to mislead the complainant-respondent or prevent him from bringing his suit within the time limit of the statute but it was the complainant-respondent's acts and failure to act which caused the bar of the statute to rise against him.

II. That by reason of the acts and conduct of the complainant-respondent an equitable estoppel arises which prevents him from obtaining the relief which he seeks, which equitable estoppel may be said to arise out of any one or more of the following:

A. Negligence.

B. Laches.

C. Ratification or Acquiescence.

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## ARGUMENT.

### I.

### Fraudulent conduct of defendant-appellant as grounds for injunction denied.

LAW.

Complainant-respondent in this cause of action sought relief in the Chancery Court on the well-recognized principle that a court of equity will enjoin a defendant in a law action from relying upon the statute of limitations when the defendant's own fraudulent conduct has caused the complainant to delay bringing suit and thus subjecting his claim to the bar of the statute.

*Howard v. West Jersey & S. S. R. Co.*, 102 N. J. Eq. 517; Id., 104 N. J. Eq. 201; *Patrick v. Groves,* 115 N. J. Eq. 208.

This equitable jurisdiction rests on the maxim that no man shall be permitted to take advantage of his own wrong. However, it was early stated that in the case of *Lamb v. Martin,* 43 N. J. Eq. 34, and recently cited in the case of *Russell v. Hanan,* 119 N. J. Eq. 99 that:

> "It is an indispensable requisite, where a plaintiff in a suit at law applies to a court of

equity to restrain the defendant from pleading the statute of limitations, that it shall be made clearly to appear that he was prevented, by the act of the defendant, from bringing his suit at law until his right of action was barred by the statute."

32 *Corpus Juris,* page 98 states:

"And a defendant will not be enjoined from pleading the statute of limitations when the delay in bringing the action was not caused by artifice or fraud on the part of defendant or by an injunction since dissolved." (Citing numerous cases in New Jersey and other jurisdictions.)

In the case of *Russell v. Hanan, supra,* the complainant sought to enjoin the defendant from relying upon the statute of limitations in a pending law action. Using the words of Vice Chancellor Bigelow in describing the facts:

"Defendant, a surgeon, operated upon complainant in April, 1927. The next morning, complainant heard him ask the nurse what had become of the drain tube or tissue which had been in the wound during the operation. She replied that she had not seen it. They immediately searched for it without success, and finally the nurse said it must have gone with the bed linen. Seven years later, another surgeon found the tissue in complainant's neck. She then sued defendant for damages arising from the defendant's negligence in leaving the drainage tissue

within the wound. Defendant pleaded the bar of the statute of limitations."

In dismissing the action, Vice-Chancellor Bigelow in his conclusions said:

> "In the instant case, defendant, until the tissue was eventually discovered in 1935, was as ignorant as complainant that it had been left in the wound. His colloquy with the nurse emphasized by the complainant does not indicate otherwise. He did nothing whatever to delay complainant from bringing the action against him. That the delay was caused by her ignorance of the existence of the cause of action is not a ground for equitable relief. Hardship caused by the statute may move the Legislature to amend, but in the absence of inequitable conduct on the part of defendant, it cannot be the basis for an injunction."

In the case of *La Porte v. United States Radium Corporation,* 13 Federal Supp. 263, decided December 17, 1935 by the United States District Court for the District of New Jersey, a very elaborate opinion sets forth certain rules by which a court of equity in New Jersey is guided in granting injunctions of this type. The principal question before the court in that case was whether or not the plaintiff in an action at law for damages received from radium poisoning resulting from his occupation was entitled to an injunction restraining the defendant from pleading the statute of limitations on the ground of

equitable fraud. The equitable relief was denied. The Court said:

> "Generally, ignorance of the existence of a cause of action is required on the part of the plaintiff. *The lack of knowledge of evidence or the identity of the defendant is not sufficient to invoke the doctrine of fraudulent concealment.* * * *
>
> "Under the orthodox doctrine of fraudulent concealment, it is required that the plaintiff be in ignorance of the existence of the cause of action *and that the defendant must intend to keep the plaintiff in ignorance thereof. Silence is not enough to make out fraudulent concealment.*
>
> "*It is accepted in New Jersey that the plaintiff must show reasonable diligence in bringing his suit after the estoppel has expired.* See cases, *infra*. And it makes no difference if the concealment (or fraud) springs from the same act as the cause of action or is found in subsequent acts (or failure to act.) * * *
>
> "But of course, there must be some sort of conduct or acts which are fraudulent or unconscionable. *Mere negligence will not constitute equitable fraud even if the plaintiff has no knowledge of the cause of action.* * * *
>
> "As heretofore indicated, there is no orthodox doctrine of 'fraudulent concealment' in New Jersey. That is due doubtless to the flourishing Court of Chancery, which is maintained apart from and independently of the law courts. *At any rate, the plaintiff will not be relieved of the bar of the statute unless the defendant by his*

> *equitable fraud has prevented him from commencing his cause of action.* The test of equitable fraud is stated in Patrick v. Groves and the West Jersey Railroad Case, both supra."

In the case of *Howard, et al. v. West Jersey and Seashore Railroad,* 102 N. J. Eq. 517, the test referred to is described by the Court as follows:

> "* * * the test appears to be whether in all the circumstances of the case conscience and duty of honest dealing should deny one the right to repudiate the consequences of his representations or conduct; whether the author of a proximate cause may justly repudiate its natural and reasonably anticipated effect; fraud, in the sense of a court of equity, properly including all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another. L. Story Eq. Juris, Seq. 187."

In said case of *Howard v. West Jersey Railroad Company, supra,* the plaintiff and defendant had been negotiating a settlement of the plaintiff's claim for damages, for personal injuries. The defendant apparently admitted liability, but the amount of damages was in question. The plaintiff believed by reason of the statements and conduct of the defendant that the amount of damages would be determined when the extent of the injuries had been determined. He asked for $10,000.00 in settlement of the claim.

This was taken under advisement and the plaintiff waited a reply. Three days prior to the end of the statutory period of which the plaintiff did not know, the defendant offered $2,500.00 in settlement. *It is important to note that the court indicated in its decision that there was no duty to apprise an adversary of his rights.* The court said,

> "While it cannot be said to be ordinarily any part of duty to apprise an adversary of his rights, it must be recognized that one cannot justly or equitably lull his adversary into a false sense of security, and thereby cause his adversary to subject his claim to the bar of the statute, and then be permitted to plead the very delay caused by his course of conduct as a defense to the action when brought."

In the case of *Patrick, et ux v. Groves,* quoted *supra,* the gravamen of the bill of complaint was that appellant's fraudulent conduct in appropriating the moneys to his own use and in concealing unlawful conversion of the moneys, was followed by a fraudulent representation, persisted in until final hearing of a foreclosure suit, that he was a duly authorized agent of the mortgagee for the collection of certain moneys. It was upon this basis that the Court of Errors and Appeals held that the delay was occasioned by appellant's fraudulent representations and to permit him to have an advantage would be unconscionable.

Each case as the decisions have indicated depends upon its own circumstances. There are no reported cases in New Jersey with facts similar to the case

now before this court, and I shall point out in this brief that the evidence produced in the court below does not entitle the complainant-respondent to relief under the general rules laid down by the courts of this state.

## Facts.

*In the light of the rules of law mentioned above the instant case is void of any evidence of fraudulent conduct which could be considered the basis for an equitable injunction against the defendant.*

The evidence shows that complainant-respondent produced at the hearing before the Vice Chancellor, two checks issued by the Real Estate Land Title and Trust Company of Philadelphia, one dated December 23, 1939, to the order of Rutherford Thompson Teas, ancillary executor in the sum of $5,591.08 representing consideration for the assignment of a certain mortgage from the said ancillary executor to the City of Philadelphia as trustee, covering premises 126 Ashby Road, Upper Darby, Pennsylvania and another check, dated January 2, 1930 to the order of estate of Elizabeth M. Teas, deceased, in the sum of $5,605.10 representing consideration for the assignment of a certain mortgage from said ancillary executor to The Pennsylvania Company as trustee of said party covering premises 118 Hampden Road, Upper Darby, Pennsylvania. The first check was endorsed "Rutherford Thompson Teas, Ancillary executor, Joseph H. Carr, attorney, Joseph H. Carr" and the

evidence shows the said check was deposited to the personal account of Joseph H. Carr in the Third National Bank and Trust Company and was collected by that bank through the usual channels from the Real Estate Land Title and Trust Company of Philadelphia, December 27, 1929. The second check is endorsed "Estate Eliz. M. Teas, deceased, Joseph H. Carr, attorney, Joseph H. Carr" and was also deposited to the credit of Joseph H. Carr in the Third National Bank and Trust Company and collected by said bank as of January 8, 1930. (See Exhibit C-1 and C-5 and testimony Case, pages 56 to 66 inc.) The testimony further discloses that at the time these transactions took place Joseph H. Carr was the attorney for the complainant-respondent and was also the attorney for the defendant-appellant bank as well as a director of the defendant-appellant bank. (See Case, pages 76 and 69.)

Assuming that it be true that the Third National Bank and Trust Company had no authority in law to accept the checks with the endorsement of Joseph H. Carr without questioning the authority of Joseph H. Carr to endorse yet we are confronted with the fact that since Joseph H. Carr was at the time a reputable attorney and was a director of the bank, it could hardly be expected that any of the employees of the bank would question his authority to endorse. (See Case, pages 141 and 142.) As a matter of fact the evidence shows that the directors and officers of the bank including the cashier had no knowledge of the fact that Joseph H. Carr had appropriated any moneys belonging to the executor of the estate until the notice dated November 16, 1936 was served upon

the bank by the complainant-respondent and read at a meeting of the board of directors. (Case, pages 70 and 123 to 125 inc.)

There was no proof produced to show that the bank had any knowledge of the unlawful misappropriation by Joseph H. Carr of his client's funds and there was no proof or evidence from which it could be assumed or inferred that defendant-appellant did anything to mislead the complainant-respondent or prevent the complainant from bringing his suit within the time limit of the statute of limitations.

There is no proof that the defendant-appellant intended to keep the complainant-respondent in ignorance of the facts and, as the Court said, in *La Porte v. United States Radium Corporation, supra,* "Mere negligence will not constitute equitable fraud even if the plaintiff has no knowledge of the cause of action."

The defendant-appellant did nothing whatever to delay the complainant-respondent from bringing the action against it. That the delay, as the evidence reveals, was caused by the executor's ignorance of the existence of the cause of action is not a ground for equitable relief. (See *Russell v. Hanan,* 119 N. J. Eq. 99, *supra.*)

It certainly was not any duty on the part of the defendant-appellant to advise the complainant-respondent of his rights and the bank, not having any knowledge of the fraud committed by Joseph H. Carr upon said executor cannot be said to have lulled the executor into any false sense of security or to have made any fraudulent representations to the executor such as occurred respectively in the cases of *Howard*

*v. West Jersey S. S. Railroad Co.* and *Patrick v. Groves,* both *supra.*

In short complainant-respondent failed to make out a case justifying an injunction against defendant-appellant.

## II.

**Equitable estoppel arising out of negligence, laches and ratification or acquiescence precludes defendant from obtaining relief.**

It is the contention of the defendant-appellant as set forth in the special defenses raised in the answer of the defendant-appellant in the Chancery suit that *by reason of the acts and conduct of the complainant-respondent an equitable estoppel arises which prevents him from obtaining the relief for which he asks.* It is difficult to define equitable estoppel inasmuch as it is used so generally in various instances in the Chancery Court. Pomeroy says, "Equitable estoppel in the modern sense arises from the *conduct* of a party, using that word in its broadest meaning as including his spoken or written words, open acts or his omission to do anything." (*Pomeroy's Equity Jurisprudence,* Vol. 2, page 1635). In the case of *Lamb v. Martin,* quoted *supra,* the Court in dealing with acts and conduct of the complainant, said:

> "It is an indispensable requisite, where a plaintiff in a suit at law applies to a court of equity to restrain the defendant from pleading the statute of limitations, that it shall be made

> clearly to appear that he was prevented by the act of the defendant, from bringing his suit at law until his right of action was barred by the statute. *And just here, as it seems to me, lies the conspicuous weakness of the complainant's case. It is entirely clear, on her own showing that the complainant lost her right of action at law, not by anything the defendant did or procured to be done, but by what she did herself.*"

So in the instant case complainant-respondent on his own showing, as the evidence clearly proves, lost his right of action at law by his own negligence, laches and ratification or acquiescence and he is estopped from obtaining an injunction.

## A.

### Negligence.

In the trial below the evidence shows that the complainant-respondent executed two assignments of mortgages owned by the estate of Elizabeth M. Teas, deceased. These mortgage assignments were attached to the answer of the defendant-appellant in this Chancery action as part of the defense of the defendant-appellant (See Schedules A & B, Case, pages 38 and 49), even though said assignments were introduced into evidence by the complainant-respondent as Exhibits C-3 and C-4. It is apparent that complainant-respondent was endeavoring to belittle the significance which the defendant-appellant placed upon these assignments and complainant-respondent

introduced them to attempt to cover up their use as a defense. It is important to note that one of these assignments was executed under seal by complainant-respondent, on December 16, 1929, and covers premises 126 Ashby Road, Upper Darby, Pennsylvania, and recites, "for and in consideration of the sum of $5,000. lawful money unto me paid by the City of Philadelphia, trustee under the will of Stephen Girard, deceased, at the time of the execution hereof, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, assign, transfer and set over unto the said the City of Philadelphia, trustee as aforesaid, etc." The other assignment was executed under seal by complainant-respondent under date of December 23, 1929 and similarly states, "For and in consideration of the sum of $5,500.00 lawful money unto me paid by The Pennsylvania Company for insurances on lives and granting annuities, trustee for Elsie Drexel Dahlgren under the will of Joseph W. Drexel, deceased, at the time of the execution hereof, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, assign, and set over unto the said The Pennsylvania Company for insurances on lives and granting annuities, trustee as aforesaid, etc."

The testimony reveals that the aforesaid assignments were executed by said executor of the estate at the request of his attorney and mailed to his attorney at the times they were executed (Case, pages 77, 78). On cross-examination the executor stated that he understood the assignments when he executed them and knew that they called for the transfer of title of two different mortgages (Case, page 100 &c.)

It further appears that the two mortgages represented by these two assignments were in the hands of Joseph H. Carr at the time the executor mailed the two executed assignments to him. These mortgages together with other mortgages, approximately eight in all, were already in the possession of Joseph H. Carr, and the executor testified that he first knew that the consideration moneys for these mortgages had been collected by Mr. Carr on May 30, 1935. An attorney by the name of Mr. Scheflan delivered a message to the executor at Chicago from Mr. Carr, the gist of which was that Mr. Carr had collected the moneys and had appropriated them and had not turned them over to the estate. (Case, pages 78, 79.) It is important to note that the complainant-respondent produced no copies of letters written to Mr. Carr between 1929 and May 1935 requesting the return of the executed assignments or making inquiry in relation to the consideration and said executed assignments and even in May 1935 failed to ask Joseph H. Carr what became of the assignments or the consideration therefor and failed to ask for the return of the assignments or the mortgages represented by the assignments. (Case, pages 96, 97.) The executor's testimony seems to be somewhat confused on cross-examination, but he testified that he got all of the papers back relating to the estate on May 30, 1935 and he did not seem to know whether he got the assignments or the mortgages represented thereby back at that time. (Case, pages 115, 116.)

*It is an oft reiterated equitable principle that, "Where one of two innocent parties must suffer by the fraud of a third, the loss should be sustained by*

*the one whose conduct has made the fraud possible.*" *Lawson et al. v. Carson,* 50 N. J. Eq. 370 and *Park-view Building and Loan Association of Newark v. Rose,* 90 N. J. L. 614.

There are many reported cases in New Jersey following the aforesaid principle which involve a situation where papers such as mortgages are left in the possession of an attorney and the attorney fraudulently receives principal as well as interest or fraudulently cancels the mortgage or does some fraudulent act unbeknown to a client.

In *Lawson, et al. v. Carson, supra,* the Court said,

> "But for the confidence reposed by the complainants in Leslie, it would have been impossible for loss to have been sustained by any of the parties to this transaction. They confided these securities to his care and keeping. It is true that they were not separated from other securities; that he was not even informed of the contents of the package; that he was not clothed with any powers of disposition; and that the bundle containing them was only given to him for safe keeping; but the complainants put it in Leslie's power, if guilty of a breach of trust to defraud the mortgagors, because they made it possible for him to show that he was clothed by them with the apparent authority to deal with the papers as if representing the rightful owner. It is a hard case, as before stated, but the recognized rule is where one or the other of two innocent parties must suffer by the fraud of a third, the loss should be sustained by the one whose conduct has made the fraud possible. In

recognition of this rule, I must advise that the bill be dismissed."

In the case of *Parkview Building and Loan Association of Newark v. Rose, supra,* the Court held,

> "Where one through negligence gives another power to practice a fraud upon innocent parties, the court will not interfere in his protection at the expense of the one who has been deceived.
>
> " 'What circumstances shall be' deemed to be 'sufficient to establish negligence * * * must be determined as a question of fact.' Heyder v. Excelsior B. & L. Ass'n. 42 N. J. Eq. 403, 8 Atl. 310, 59 Am. Rep. 49."

In *Baldwin v. Howell,* 45 N. J. Eq. 519 Bird, Vice-Chancellor says,

> "By placing this mortgage in the hands of Van Sikle, he made it possible for him to commit a fraud. It is true, he did not trust Van Sikle, as his attorney, for any such purpose, but only as the simple custodian of the assets, for another particular object; but nevertheless, by so doing, he gave him the power to use it as he did, and so, through the instrument Baldwin had selected, this wrong was committed."

Complainant-respondent, by his actions in executing the assignments and leaving both executed assignments and mortgages in the hands of Joseph H. Carr, his attorney, from 1929 to May, 1935, when complainant-respondent learned that the consideration had

been paid to Joseph H. Carr and even subsequent to May, 1935, having failed to investigate what became of said assignments and mortgages, is undoubtedly guilty of negligence which creates an estoppel against him. It was through his negligence that the fraud was enabled to be perpetrated not only against himself but against the defendant-appellant. He, by his actions, aided, assisted, and permitted the delivery and negotiation of the checks referred to in this case and he had full knowledge or *should have known* of the transactions for which the checks were made payment and he is estopped from obtaining equitable relief.

*Another blatant evidence of complainant's negligence is revealed in the failure of complainant to perform the duties incumbent upon him as executor of an estate and to use due diligence in the administration of the estate.*

By the inventory and appraisement (Exhibit D-10) we can see that the estate of Elizabeth M. Teas was valued at $80,317.80 and that the two mortgages which are the subject matter in the instant case were part of the inventory and appraisement. We see that the petition for probate and letters testamentary were granted August 6, 1929 and the decree barring creditors was entered February 10, 1930 (Stipulation as to Exhibits D-1 to D-9, Case page 182). Yet the records of the Atlantic County Surrogate's Court show that there has been no final account ever filed in this estate, let alone any intermediate account. (Case, pages 128 to 138 inc.) Our statute, Revision of 1937, Title 3:10-5, states,

> "Except as otherwise provided by law, a fiduciary appointed by an orphans' court or surrogate shall render and settle his account in the surrogate's office within one year after his appointment or within thirty days after such year has expired, unless the court for good cause shown, allow further time therefor."

While it is true that the complainant-respondent in this case was never cited to render an account, there still remains the duty upon him to file an account within one year as stated by the statute or at least within a reasonable time. In the instant case nine years have expired and still no account of any sort has been filed. A perusal of the will of Elizabeth M. Teas (Exhibit D-11) reveals that the complainant-respondent was by no means the only one interested nor the only one receiving a bequest under the will. Two of the executors renounced in favor of the complainant-respondent under date of July 25, 1929. (Stipulation as to Exhibits D-1 to D-9, Case, page 182.) It was the sole duty of the complainant-respondent to faithfully administer his trust as executor and the failure to file any account and the failure to carefully check on the mortgage assignments which he had executed and allowed to get out of his possession for a long period of time, is evidence on his part of neglect in the handling of the assets and claims of the estate, two of which claims were allowed to become barred by the statute of limitations. While the executor appears to have had the utmost confidence in Joseph H. Carr, it still does not relieve him from his duties as executor and his negligence in failing to

file any account and failing to diligently check with his attorney the assets and claims of the estate, estops him from coming into a court of equity to enjoin the use of the statute of limitations as a defense in the law court.

## B.

### Laches.

*Even if it could possibly be construed that defendant-appellant was guilty of any equitable fraud, complainant-respondent is very definitely barred from relief by the doctrine of "laches".*

As was said in the New Jersey case of *Doughty v. Doughty,* 10 N. J. Eq. 347, where an injunction was sought to prevent the use of the pleas of the statute of limitations as a defense,

> "But although there is no difficulty in the court's giving this relief in the proper case, the question is, whether the complainant is in a position to call upon the court for aid, and whether he has not, by his own laches, forfeited any claim he might otherwise have had to the interposition of the court on his behalf."

Also, in the case of *La Porte v. United States Radium Corporation,* quoted *supra,* the Court said,

> "There is another serious question which should be briefly considered, but the decision of the court makes it unnecessary to determine

it. *It is that of whether or not the conduct of the decedent and the successors to her alleged cause of action constituted laches which would prevent the plaintiff from enjoining the defense of the statute of limitations, even if the defendant was guilty of equitable fraud.* * * *

"*In view of the unanimity of opinion of all courts that the statute will not be tolled unless the plaintiff has shown 'reasonable diligence,'* the question may well be raised here as to whether or not the decedent was required to avail herself of such medical examination as could have been made as soon as she entertained suspicions of her condition as early as 1927. Under the reasoning herein it seems unnecessary to decide this question, however."

Pomeroy, in discussing the well recognized equitable maxim that "Equity aids the vigilant, not those who slumber on their rights" says,

"The scope and effect of the general principle as a rule for the administration of reliefs irrespective of any statutory limitations was stated by an eminent English chancellor in the following language: 'A court of equity, which is never active in relief against conscience or public convenience, has always refused its aid to stale demands, where the party has slept upon his rights, and acquiesced for a great length of time. Nothing can call forth this court into activity but conscience, good faith, and reasonable diligence.'" (Vol. 1 Pomeroy's Equity Jurisprudence, page 785.)

The evidence in the instant case shows that the complainant-respondent has unreasonably delayed the making of his claim asserted in the law action in the New Jersey Supreme Court and thereby deprived the defendant-appellant of its rights with respect to such transaction as between Joseph H. Carr and defendant-appellant bank and complainant-respondent is estopped from obtaining any relief in equity.

The evidence reveals that the complainant-respondent personally knew that his attorney, Joseph H. Carr had fraudulently appropriated the consideration for the executed assignments of mortgages in May, 1935 (Case, page 79). No notice was served upon the defendant-appellant bank of any claims until November 16, 1936. This was one year and six months after the executor knew or should have known that the bank had allegedly paid the checks on a forged endorsement.

It is important to note in the testimony that the executor admitted that he did not ask Joseph H. Carr, in May, 1935, or any time thereafter what had become of the executed assignments. (Case, pages 97 and 116.) Nor did he ask Joseph H. Carr how the latter received the consideration for the assignments of mortgages nor what Mr. Carr did with the consideration for said assignments of mortgages. (Case, pages 97 and 98.) Rather the executor entered into an agreement with Joseph H. Carr for restitution of the moneys which had been misappropriated. The executor actually received and accepted two payments, one in the amount of $200.00 and another in the amount of $1500.00 after May 30, 1935 on account

of the proceeds due on the two assignments of mortgages. (Case, pages 98 to 101 inc.)

Complainant-respondent was perfectly satisfied as long as he was receiving restitution from his attorney not to investigate the transactions involving the payment of the checks nor make any claim upon anyone else. He failed to make any inquiry at the public offices in Philadelphia or elsewhere to see if the assignments which he knew he had executed were recorded. (Case, page 112.)

The testimony further shows that after receiving the confession of Joseph H. Carr in May, 1935, although complainant-respondent maintained his own executor's account with the North Camden Trust Company in Camden, he failed to make any investigation in any other bank in the City of Camden including defendant-appellant bank to determine if Joseph H. Carr had an account in any other bank and if Mr. Carr had deposited any of the funds of the estate in any other bank. The executor did not employ any attorney or anyone to make any investigation to discover where the checks which were the consideration for the assignments were deposited. (Case, pages 100 and 109.)

It appears from the testimony that the only way in which the executor discovered that the Third National Bank and Trust Company had paid the two checks in question was by chance through a lawyer friend of the family of the executor. The testimony shows that Mr. Shields, an attorney of Philadelphia, Pennsylvania, was a friend of the family. He and the executor's brother went to college together and they were very close in their activities at Pennsyl-

vania State College. It was not until the fall of 1936 that the executor even discussed this matter with Mr. Shields. (Case, pages 80 and 81.) Of course after the attorney, Mr. Shields, made an investigation, the issuance of the two checks was revealed and then the executor consulted counsel in New Jersey.

However, it is very significant that the complainant-respondent did nothing on his own part to make a diligent inquiry regarding the transaction. He should have known in May, 1935, that the two checks in question were deposited by Joseph H. Carr in the Third National Bank and Trust Company and not having made demand upon the bank at that time he seriously prejudiced the defendant-appellant's opportunity to protect itself against Joseph H. Carr who maintained an account in defendant's bank and against whom the bank could have taken steps to protect itself against the loss occasioned through the unlawful action of Joseph H. Carr. Complainant-respondent obviously delayed in giving notice of the forgery to the defendant and is thereby estopped in equity and good conscience from obtaining any relief against the defendant-appellant.

One case which supports the rule that delay in giving notice of a forgery estops the true owner from recovering against the party which has paid paper on the forged endorsement is so similar in facts to the case before this court that I am taking the liberty to present it in detail.

*Catherine Brown v. People's National Bank,* 136 N. W. 506, 40 L. R. A. (N. S.) page 657, Michigan Supreme Court. That case involved an action to recover $608.37 with interest from June 4, 1907, repre-

senting a draft payable to plaintiff's order on that date, which draft was plaintiff's distributive share of her father's estate sent from Washington, D. C. to her attorney in Jackson, Michigan, which attorney forged her endorsement, drew the money and appropriated it. The plaintiff lived in North Dakota and never received this money although she had in May, 1907, signed and acknowledged before an attorney a receipt to the administrator of the estate for the same. About a year afterward she wrote to her brother that she had not received her share of the estate and her brother called upon Campbell, the attorney involved, for an explanation and was assured by Campbell that the money had been sent to Campbell and that the draft was paid by the People's National Bank, defendant, June 4, 1907. On June 25, 1908, Campbell was arrested on the complaint of the plaintiff's brother for embezzling proceeds of said draft. While in jail there was some discussion of an offer to pay the plaintiff the money involved. Nothing further was done to effect a settlement with Campbell. At the time the draft was cashed Campbell bore a fair reputation as a member of the bar and was a customer of defendant bank. No effort was made by the officers of the bank to ascertain whether or not it was genuine. The attorney for the plaintiff in this action did not make written demand on defendant bank until August 4, 1909, which was the first notice it received on intention to hold it responsible on account of the forgery. There is no evidence that any officer of the bank was aware of any forgery until that date. The Court said,

*"So far as the record discloses, both parties to this suit were innocent of intentional wrong and honest in this matter; and both had misplaced confidence in Campbell. Plaintiff had employed and trusted him as her attorney. He was then an attorney in fair standing and customer of the bank. When he presented to his bank the draft, fair on its face, apparently endorsed by the payee and endorsed by himself, the bank naturally cashed it without question on the strength of his endorsement and their acquaintance with him. As her attorney, he had no authority to endorse her name. * * * It is manifest she is entitled to recover, unless she is precluded from relying upon the forgery by the defense of equitable estoppel, which is urged by defendant, based on the claim that, by delay and failure to notify the bank within a reasonable time after she knew of the fraud, and by making her claim against Campbell, and attempting to collect it from him, she has released the bank and lost her right against it.*

"The general rule is that estoppel arises against one who, with knowledge of the fact, fails to give notice until an opportunity of recovery on the forged instrument, which would have been available if prompt notification had been given, is lost. 'If a man's name be forged, and after himself becoming aware of the fact he refrain from advising the holder of the document, and by reason of such inaction the holder's position is changed (by the death, escape, or bankruptcy of the forger, or otherwise), there

New Jersey State Library

> will be estoppel of the man whose name was forged.' Ewart, Estoppel, 135."

The Court said in that case that while the plaintiff had no positive knowledge of the forgery of her endorsement until after June, 1908, she did know of enough facts to put a reasonable person on inquiry. She knew that she had receipted to the administrator for the money in May, 1907. She was advised by her brother June 1, 1908, of Campbell's dishonesty. The Court said,

> *"It is the common voice of our authorities that notice of a forgery must be given and demand made without unreasonable delay after knowledge; and that this was not done by Smith is patent from the conceded facts. 'He had opportunity to speak, it was his duty to speak, and he failed to speak.'"*

The Court further stated, *in dealing with the question of which of two equally innocent parties should suffer,*

> "In the United States v. National Exch. Bank (C. C.) 45 Fed. 163, it was held that the neglect of the drawer of a check, for more than a month after discovery that it had been paid upon a forged endorsement, to notify a bank that it will hold it responsible therefor, releases the bank from liability. In the case at bar, defendant was not notified that it would be held responsible for over a year after the agent had discovered the full facts, and the principal, with knowledge

of facts, sufficient to put a person on inquiry, had commissioned the agent with full discretionary power.

"In United States v. National Exch. Bank, supra, it was said: 'So, in respect to two persons equally innocent, where one is bound to know and act upon his knowledge, and the other has no means of knowledge, there seems to be no reason for burdening the latter with loss in exoneration of the former; or, if both are equally innocent and equally ignorant, the loss should remain where the chance of business has placed it. Gloucester Bank v. Salem Bank, 17 Mass. 33; Bank of United States v. Bank of Georgia, 10 Wheat, 333, 6 L. Ed. 334; Price v. Neal, 3 Burr. 1355, 1 W. Bl. 390.'

"We are agreed that an equitable estoppel arises in this case by reason of plaintiff's failure to give notice of the fraud to defendant within a reasonable time after it was known to her, or to her authorized agent; and therefore the loss must remain where the chance of business has placed it."

While in the instant case it is obvious the bank was prejudiced by the delay of the complainant-respondent to notify the bank, some cases indicate it is not even necessary to prove prejudice to the bank by the delay in notifying of a forgery.

In *Marks v. Anchor Saving Bank,* 252 Pa. 304 L. R. A. 1916 E. 906, 97 At. 399, it was held that delaying unreasonably after the time when he knew or should have known of the forgery, in notifying the

bank thereof, estops one from recovering from the bank the amount which it has wrongfully paid on a certified check on a forged endorsement of plaintiff's signature as payee, *although the bank does not show that it has been prejudiced by such delay.*

In *States v. First National Bank of Montrose,* 203 Pa. 52 At. 13, where an executor, who bought a draft from a bank for the amount of a legacy which was paid by the bank upon the forged endorsement of the legatees' money, did not promptly notify the bank after his discovery of the forgery, he is estopped from recovering the amount of the draft from the bank. It is stated in the opinion of this case that it was the duty of the executor, upon discovering the forgery, to have promptly notified the bank thereof, and that, if he had done so, the bank could have had recourse from other to reimburse it from money paid out upon the forged endorsement.

Not only was the complainant-respondent in the instant case guilty of laches from May, 1935, until November, 1936, but he had the opportunity to investigate and should have known that the two assignments or mortgages which he had executed in 1929 and 1930 were recorded and the consideration paid. The testimony shows that the executor admitted that he never wrote to Joseph Carr or asked Mr. Carr whether or not Mr. Carr had received the moneys on the executed assignments. (Case, page 97.) Furthermore, he failed to investigate the public records in Philadelphia where said assignments should have been recorded. (Case, page 112.) The executor failed to ask Joseph H. Carr for the return of the executed assignments when he was told by Mr. Carr

the settlements on them were not completed and being undoubtedly an intelligent business man it hardly seems excusable that he failed to check his attorney earlier on these assignments. If he had filed an account and had made a timely check on his attorney and the assets of the estate he should have known of the defalcation long before May, 1935, and certainly within the period of the statute of limitations. *The bar of the statute of limitations arises in this case, not by reason of any fraudulent conduct on the part of the defendant-appellant, but rather, by reason of the acts and conduct of the complainant-respondent and the laches of the complainant-respondent clearly estopps him from enjoining the bar of the statute.*

## C.

### Acquiescence or Ratification as Preventing Right of Complainant-Respondent to Equitarle Relief.

Another very important element in the instant case which precludes the complainant-respondent from obtaining relief is that of "acquiescence or ratification".

*Vol. 2 Pomeroy's Equity Jurisprudence,* page 1676 states,

> "Acquiescence is an important factor in determining equitable rights and remedies in obedience to the maxim, he who seeks equity must do equity and he who comes into equity must come

> with clean hands, even when it does not work a true estoppel upon rights or property or of contract it may operate in analogy to estoppel—may produce a quasi estoppel—upon the rights of remedy."

*The transactions involving the checks and assignments or mortgages which are made the basis for the suit in the New Jersey Supreme Court have been so acquiesced in and ratified by the acts and conduct of the complainant-respondent that in equity and good conscience complainant is estopped from obtaining relief in the Chancery Court.*

The testimony shows, in the first place, that the executor had knowledge of the unlawful appropriation of the consideration for the assignments of the mortgages in May, 1935. At that time the executor had the opportunity to inquire and the ability to find out how Joseph H. Carr received the consideration and what he did with it. The executor knew or should have known of the material facts in connection with the alleged forged endorsements of the two checks in question. Therefore, with this knowledge that he had or should have had at that time, the executor was perfectly satisfied to accept restitution from Joseph H. Carr by accepting one payment of $200.00 and another payment of $1500.00. (Case, pages 98 and 99.) In complainant-respondent's demand (Exhibit C-7) and also in complainant-respondent's suit against the defendant-appellant in the New Jersey Supreme Court (Case, page 19), complainant-respondent definitely allows a credit of $4490.00 on account of his claim against defendant-appellant. This

$4490.00 includes interest payments made by Joseph H. Carr at times prior to May, 1935, and the two payments after May, 1935, totaling $1700.00. By this action and by the fact that complainant-respondent was perfectly satisfied to accept restitution without making inquiry and proceeding against defendant-appellant bank, the complainant-respondent acquiesced in and ratified the acts of his agent, Joseph H. Carr, and he cannot in equity and good conscience come into a court of equity and ask relief to enjoin the defense of the statute of limitations. The complainant-respondent cannot accept a portion of the moneys which are represented in the alleged fraudulent conduct and still make a claim against the defendant-appellant for the balance.

A very clear example of a similar situation occurred in a case decided by the Supreme Court of Vermont in 1932. *Nason v. Addison County Trust Company,* 157 At. 821, 104 Vt. 183. In that case the plaintiff, who was a legatee in an estate, employed an attorney to represent him in the settlement of the estate. The executor delivered to the attorney a cashier's check payable to the order of the plaintiff for $333.31, which was the amount of plaintiff's share of the estate. Without the authority or knowledge of the plaintiff, the attorney wrote the plaintiff's name on the back of the check and received the full amount of the same in cash. On February 26, 1931, the attorney sent the certified check in the amount of $226.15 to the plaintiff. This was intended to represent plaintiff's share after deduction of attorney's fees. On March 4, 1931, plaintiff wrote to the attorney asking for an itemized account of fees. He

claimed the fees were too high. He never received any answer from the attorney but some time later, the plaintiff endorsed and cashed the attorney's check. At the time plaintiff did this, he knew that his distributive share of the estate was approximately $333.00 and that the attorney had deducted approximately $107.00. The suit was brought to recover from the defendant bank the $107.00. It was conceded by the defendant that the attorney was the agent of the plaintiff in settlement of the estate but that he had no authority to endorse the plaintiff's signature on the check and cash it. The defense was, however, that plaintiff ratified his attorney's act by accepting and cashing the check for partial payment from his own attorney. The Court said,

> "Since the facts are unquestioned, whether such facts operate a ratification is a question of law. National Bank of Orleans v. Fassett, 42 Vt. 432, 438.
>
> "In the case last cited, Judge Barrett states the law of ratification applicable to this case as follows:
>
> 'We understand that it has become elementary in the law, what when party, knowing all the facts appertaining to an act done by another in his name without previous authority, avails himself of the beneficial results of that act, and asserts rights in himself resulting from it, he thereby ratifies such act, and makes it as effectually his own as if he had done it himself, or it had been done in pursuance of full authority conferred for that purpose on the party doing it. * * * Involved in this doc-

trine, and constituting one of the moral elements of which the law takes cognizance in giving it practical effect, is the obvious duty of the party, whose name has been thus used and credit pledged, to disavow the act as soon as he shall have been informed of it, and to restore to the other party any thing which may have come to him of value or benefit from such other party, by reason of such unauthorized act, as far as practicable under the circumstances of the case.'

"* * * It will be noticed that in the rule stated by Judge Barrett one element of a ratification of an unauthorized act of an agent is that the principal must have knowledge of the material facts at the time. Another element is that, if the principal has received anything of value by reason of the unauthorized act, he must restore it to the other party to avoid a ratification. The reason for the latter rule is that, if the principal elects to ratify any portion of an unauthorized transaction, he thereby ratifies the whole of it. He cannot avail himself of such unauthorized acts as are beneficial to him and repudiate such as are detrimental, whether the ratification be expressed or implied. 21 R.C.L. 923; Newell v. Hurlburt, 2 Vt. 351; McClure v. Briggs, 58 Vt. 82, 86, At. 583, 56 Am. Rep. 557. * * *

"The only inference that can be drawn from the allegations in the plaintiff's declaration and the finding referred to is that the plaintiff had full knowledge of Eno's unauthorized act before suit was brought, and that he retained the pro-

> ceeds of Eno's check after he learned of such act and when he brought this suit. Such retention of the proceeds of Eno's check by the plaintiff with full knowledge of the material facts was as matter of law a full ratification of Eno's act; and this action cannot be maintained. McClure v. Briggs, Supra."

In dealing with ratification of the acts of an agent, Justice Colt in the case of *Harrod v. McDaniels,* 126 Mass. 413, said at page 415,

> "It is a rule in the law of agency that, when the unauthorized act of the agent is done in the execution of a power conferred, in a mode not sanctioned by its terms, and in excess or misuse of the authority given, ratification by the principal is more readily implied from slight acts of confirmation. The duty to disaffirm at once, on knowledge of the act, is said to be more imperative in such cases, because the confidence of the principal in the fitness and fidelity of the person he has selected as an agent is shown by the relations already established between them."

The complainant-respondent, in the instant case, with full knowledge of the material facts failed to disaffirm and notify the defendant-appellant but instead ratified or acquiesced in the acts of his agent, Joseph H. Carr, by accepting partial payment.

From a careful perusal of the evidence and the application of the equitable principles involved, it is respectfully submitted that the Honorable Vice-Chancellor has erred in granting an injunction in this

case. The complainant-respondent, executor of the estate of Elizabeth M. Teas, was an intelligent business man. He was a college graduate and had a responsible position for a number of years with the Fruit Dispatch Company. He had travelled all over the United States and even abroad. His experience certainly qualified him to act as an executor of an estate in a careful and prudent manner. While he employed an attorney to represent him, he maintained his own bank account at the North Camden Trust Company at Camden, New Jersey. While he may have done considerable travelling, he spent anywhere from two weeks to a month each summer at his mother's summer home at Ventnor, New Jersey, and he was often within the vicinity of his attorney who was located at Camden, New Jersey. The executor took out letters testamentary in 1929, filed an inventory and appraisement of his mother's estate and through his attorney took out a rule to bar creditors in 1930 but since that time has never filed any accounting. He executed the two assignments covering two mortgages owned by the estate in late 1929 and early 1930. He was fully familiar with the import of said assignments and knew of the properties they covered. He was also ancillary executor of the estate of his mother in Philadelphia. Complainant-respondent had a confession from his attorney in May, 1935, but demand was not made upon the defendant-appellant bank until November, 1936, and suit instituted subsequent thereto. If the complainant-respondent had been diligent in his duties as executor of the estate and had prepared an accounting with his attorney within a reasonable time he would have had a

careful check upon the assets of the estate and he would have found that Joseph H. Carr unlawfully appropriated the proceeds of two checks and that said checks were deposited in the defendant-appellant bank. He placed the executed assignments in the hands of his attorney in 1929 and 1930 and if he had been careful in asking for the return of these papers and had sought diligently to determine what had become of these assignments and whether or not they were filed in the office where they should have been recorded, he would have learned of the unlawful misappropriation of the proceeds of the checks which were paid by the Real Estate Land Title Company many years before May, 1935, and certainly immediately after May, 1935, and not one year and six months after May, 1935. Complainant-respondent instead did nothing for a long period of time and in May, 1935, agreed to accept restitution from his attorney for the unlawful deposit of the executor's checks and received $1700.00. Only when he failed to receive any more moneys did he by mere chance, in discussing the situation with a lawyer friend of his family discover that he had some form of action against the defendant-appellant bank.

Complainant-respondent ratified and acquiesced in the acts of his agent, Joseph H. Carr; he was guilty of negligence and laches and therefore is clearly estopped in equity and good conscience by any one or combination of these elements from obtaining an injunction in the Chancery Court. The defendant-appellant bank should not be deprived from interposing the statute of limitations as a defense where the bar of the statute has arisen, not by any fraudu-

lent conduct of the defendant-appellant but, by the acts and conduct of the complainant-respondent himself. Complainant-respondent is estopped by his own testimony.

It is respectfully submitted that the decree of the Chancellor should be reversed and the injunction dismissed with costs taxed against the complainant-respondent.

HAROLD W. BENNETT,
*Solicitor for and of Counsel with Defendant-Appellant.*

## NEW JERSEY COURT OF ERRORS AND APPEALS.

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Rutherford Thompson Teas, Executor under the Last Will and Testament of Elizabeth M. Teas, deceased,

*Complainant-Respondent,*

v.

Third National Bank and Trust Company,

*Defendant-Appellant.*

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On Bill, &c.

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On Appeal from the Court of Chancery.

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## BRIEF FOR COMPLAINANT-RESPONDENT.

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### FACTS.

A very clear statement of the facts upon which the decree below was based will be found in the opinion of Vice-Chancellor Davis.

The complainant-respondent, Rutherford Thompson Teas, was executor of the last will and testament of Elizabeth M. Teas, deceased, who died a resident of Atlantic County. He employed Joseph H. Carr, Esq., of Camden, to assist him in the settlement of this estate. He had known Mr. Carr for many years and, in fact, first became acquainted with Mr. Carr

in 1924. He had represented his father's estate (p. 76). He looked upon Mr. Carr as a man of honesty and integrity and a lawyer of high standing. Mr. Teas himself resided in Chicago. He carried an executor's account in the North Camden Trust Company and moneys belonging to the estate were checked in and out of that account.

The estate, among other mortgages, held two covering property in Upper Darby, Delaware County, one 126 Ashby Road, and the other 118 Hampden Road (p. 77). Assignments of these mortgages are marked Exhibits C-3 and C-4, found at pp. 160 and 165 of record. The one covering mortgage on Ashby Road and Sansom Street, is dated December 16, 1929, and was executed in Chicago (p. 162). The other assignment was executed in Chicago December 23, 1929. These assignments, when executed, were mailed to Mr. Carr (p. 77). Mr. Carr led Mr. Teas to believe that the assignments were not used and the mortgages were being held by him because the owners of the properties could not raise the money (p. 82) and the interest was collected and remitted (top of p. 82).

By letter of October 16, 1929 (Exhibit C-11, p. 178) attorney Carr explained to Teas that some of the mortgages might be called for payment within the next six months and the mortgage papers would then have to be delivered and it would be necessary for Teas to authorize some person to appear and satisfy the mortgages.

In a letter by Carr to Teas dated December 6, 1929 (p. 176), the former states that he had no definite settlement dates on these mortgages. On Oc-

tober 24, 1930, Carr wrote to Teas that a check of $5,000 in satisfaction of another mortgage, on Glendale Road, had been paid off and the check was deposited to Teas' account as executor (p. 179). On February 22, 1935, Carr again wrote to Teas showing that the HOLC did not have available funds, and explained that he had made little progress in trying to get the money collected on the mortgages (p. 180). On March 14, 1935, Carr again wrote to Teas that the Home Owners Loan Corporation was being revived "and this ought to be encouraging for us." It will be noted that that letter is as late as March 14, 1935.

Mr. Carr remitted to Teas from time to time what was said to be interest on these mortgages as late as May 13, 1935 (p. 82). On May 30, 1935, attorney Albert Scheflin, of Camden, conveyed a message to Mr. Teas in Chicago, on behalf of Mr. Carr, to the effect that Carr had collected the moneys on these two mortgages and had appropriated them and had not turned them into the estate. This was the first intimation that Carr had done anything wrong. Teas came to Camden and met Carr. Carr then stated that he had collected money on these two mortgages. He did not tell him how he got the money or what he had done with it (p. 80). He promised to make restitution and did make a first payment of $200.00 and another one of $1500.00 after his confession (p. 88, bottom). Teas was never told by anyone until the fall of 1936 that checks had been issued to him for the amounts due on these mortgages or that any such checks had been deposited in the Third National Bank of Camden or, in fact,

that the mortgages had been paid off and the assignments used. He had no relations with the Third National Bank and did not know that there was such a bank in the City of Camden.

In the fall of 1936, Teas went to see a friend of his in Philadelphia, Mr. Shields, of the law firm of Shields, Clark, Brown & McCown. He was a friend of the family. Some time later, Mr. Shields showed to Teas photostatic copies of the two checks which are now in controversy. The first check is dated December 23, 1929, issued by the Real Estate-Land Title and Trust Company, to the order of Rutherford Thompson Teas, ancillary executor, in the sum of $5591.08. (Exhibit C-1, p. 157.) Plainly indicated on the face of the check is the following language:

"Payable upon proper identification of payee."

It is endorsed by the name of Rutherford Thompson Teas, ancillary executor, so placed thereon by Joseph H. Carr, who signed it "Joseph H. Carr, Atty.," and "Joseph H. Carr," and deposited it in his own private bank account.

The second check is for $5605.10, dated January 2, 1930, also issued by the Real Estate-Land Title and Trust Company, of Philadelphia, to the order of estate of Elizabeth M. Teas. It also has on the face of the check the following:

"Payable upon proper identification of payee."

and the payee's name is placed there in the handwriting of Carr and under it "Joseph H. Carr, atty." and "Joseph H. Carr."

The endorsements on both checks are in the handwriting of Joseph H. Carr. (Teas, p. 64, lines 28,

&c.) That this is so is later admitted by counsel for the appellant (p. 73, l. 10). Teas never, orally or in handwriting, authorized Carr to endorse his name or that of the estate on these checks. (Teas, p. 76, lines 30, &c., and p. 77, top.)

There was never at any time any suggestion by Carr that he used the assignments until May 30, 1935, at the time he confessed (p. 78, bottom) and Teas was never told that any checks were issued by the Real Estate-Land Title and Trust Company, or that any such checks were deposited in the Third National Bank of Camden, until the fall of 1936, when photostatic copies of those checks were shown to him by Mr. Shields, of the Philadelphia Bar (pp. 80-81). As soon as this information was received by Mr. Shields, he consulted with New Jersey counsel and the notice and demand was at once prepared and served upon the Third National Bank. (Demand dated November 16, 1936, Exhibit C-7, p. 172, &c.). Joseph H. Carr, at the time of the issuing of these two checks was a director of and solicitor for the Third National Bank of Camden. (Higbee, cashier of the bank, p. 69, lines 8, &c.)

The two checks, after the unauthorized endorsement of the payee by Carr on the back of each check, were deposited in the personal account of Carr in that bank. Teas never had any account in that bank or any relations with the bank. (p. 66 and 75, lines 18 &c.)

The bank at no time gave any notice to respondent or to the estate of Elizabeth M. Teas of the presentation of these checks by Carr, of his endorsement thereof and the depositing of the proceeds in the per-

sonal account of Carr. At no time was any inquiry made by the bank as to whether or not Joseph H. Carr had authority to endorse the name of the respondent to these checks. (Pp. 66 to 69, inc.)

Witness Everly, the president of the Third National Bank of Camden, puts his finger on the explanation of this attitude on the part of the bank, under cross-examination by the Vice-Chancellor (pp. 141-142):

> "Q. Was it the practice of the bank to pay out, during your period as a director, checks endorsed in that respect?
>
> A. When your solicitor brings in a check and endorses it himself ——
>
> Q. Did you put it through in that way because Mr. Carr was your solicitor and a member of the board of directors, is that the reason for it?
>
> A. I wasn't president at that time.
>
> Q. Weren't you a director at that time?
>
> A. Yes, sir.
>
> Q. And do these matters come up before the board?
>
> A. Not all checks do not come up.
>
> Q. Am I to understand because Mr. Carr was solicitor and a director you let the checks go through in that way?
>
> A. No, we assume they are correct.
>
> Q. Just because he was solicitor and a director and endorsed them that way?
>
> A. I would think so, yes, or anyone else."

The essential facts are in no way contradicted. Promptly after the service of the notice and demand

on the bank by Teas, suit was brought by him in the New Jersey Supreme Court against the Third National Bank of Camden to recover the proceeds of these two checks.

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## ARGUMENT.

### I.

Appellant as collecting bank, became liable to respondent as for conversion of respondent's property or "as for money had and received," since the endorsement was a forgery or, what amounts to the same thing in the words of the statute, was

> "made without the authority of the person whose signature it purports to be."

The checks were Teas' property. Appellant acquired possession thereof unlawfully and, therefore, acquired no right, title or interest therein or in the proceeds thereof.

Section 23 of our Negotiable Instruments Act reads as follows (Vol. 3 C. S. 3738):

> "23. *Forged signature.*—Where a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is

> sought to enforce such right, is precluded from setting up the forgery or want of authority. (P. L. 1902, p. 588.)''

Even before this statute and under the common law as administered in our State, the bank would not have acquired any right, title or interest in these checks. While there is no privity between this bank and the respondent, yet the right of action exists by respondent against the appellant for the recovery of these moneys.

In *Passaic Lumber Co. v. U. S. Trust Co.,* 110 N. J. L. 315, &c., two checks were issued to the plaintiff corporation. Possession thereof was acquired by Schick, manager of its East Orange Branch. Schick rubber-stamped the name ''Passaic-Bergen Lumber Company'' as endorsement by the payee and then endorsed to another concern for deposit in the latter's account. Schick had no authority to endorse the checks. Page 318:

> ''The very character of the rubber stamp impression of the plaintiff's name was sufficient evidence to put the defendant on notice and on guard, when these checks were presented for payment.''

The Court of Errors and Appeals overruled defendant's contention that, because there was lack of privity between the plaintiff and the defendant, the suit could not be brought. It held that there was no distinction in principle between the Buckley case (*Buckley v. Second National Bank of Jersey City,* 35 N. J. L. 400) and the case under consideration and said:

"In effect there was forgery of an endorsement. It was made by a rubber stamp by one who had no right to affix the same and by means of which Schick succeeded in obtaining from the appellant moneys which it had collected for the plaintiff.

It seems to us there can be no substantial difference between an actual forging of a name to a check as an endorsement by a person not authorized to make the signature, and the affixing of a name to a check as an endorsement by the use of a rubber stamp by a person not authorized to use it.

The appellant does not deny collecting the money on the endorsement. It was the appellant's duty to inquire as to the genuineness of the plaintiff's endorsement and the authority of Schick to divert to his own company on a rubber stamp endorsement of plaintiff's name, funds belonging to plaintiff. The failure on the part of defendant to make such inquiry was a breach of duty that it owed plaintiff and made it liable to the plaintiff for the amount of the checks for money received by the defendant to the use of the plaintiff."

*Buckley v. Second National Bank of Jersey City* (1872) 35 N. J. L. 400, &c.:

The check was made to "John Buckley or order." It was delivered to Charles Crossman, a New Jersey attorney, who appeared as attorney of record for the claim. Crossman forged the name of Buckley as an endorsement, then signed his own name

as an endorser and delivered it to the defendant bank. The Court said (pp. 402-403):

> "Can there be any doubt that the plaintiff owned the check when it came into the defendants' hands? Having been sent to the plaintiff's agent, and received by him for the plaintiff's use, the transfer of title from the United States to the plaintiff was complete. The plaintiff, by such transfer, became the absolute owner of the check. Did he cease to be the owner when, by means of a forged endorsement of the plaintiff's name, the check was passed by Crossman to the defendants? On this point the law is well settled. 'When a bill is assignable only by endorsement,' says Mr. Chitty, 'as no interest can be conveyed otherwise than by that act, and as it is a general rule that no title could be obtained through a forgery, any person getting possession of it by a forged endorsement, will not acquire any interest in it, although he was not aware of the forgery.' Chitty & Hulme, 261 (11th Am. Ed. from 9 London), and cases cited. To the same effect is the language of Professor Parsons: 'No title,' he says, 'passes with a forged endorsement; consequently possession of a note bearing such an endorsement conveys no more interest to the transferee, even though he give value, and is ignorant of the fraud, than the forger had, which is none at all. From this it results—First, that the loser of a note with a forged endorsement, may recover it from any hand; and, Secondly, that a maker, acceptor, or other

promisor who has already paid such a bill, is liable again for the amount to its proper owner * * * ' 2 Parsons on Notes and Bills 284.

It is clear, then, that nothing passed to the defendants by virtue of the forged endorsement. The plaintiff's right to the check remained precisely as it was before his name was forged. The check, therefore, when the defendants obtained the money on it, was the property of the plaintiff, and in that case he may, as we have seen, recover the amount in this action, as money received by the defendants to his use."

Page 404:

"The defendants' case is not helped by the fact that the forged endorsement was made or contrived by the plaintiff's agent."

*Merchants' Bank of Washington, D. C. v. National Capital Press, Inc.,* 288 Fed. 265 (Court of App. District of Columbia). Suit was against the collecting bank on 22 checks where the name of the payee had been endorsed by its bookkeeper, but without authority. Suit was against the collecting bank. The Court said (citing a long list of cases, including the New Jersey case of *Buckley v. Second National Bank of Jersey City* above cited):

"The checks, when received and collected by defendant, were the property of plaintiff, and plaintiff's title therein could not be defeated by a forged indorsement. Plaintiff's title remained

> the same as it was before the forgery was committed; hence, when defendant received the money on the checks, it had no more title to the money than it had to the checks, and plaintiff could recover the amount collected on the checks in an action for money had and received. This rule is sustained generally in the states, and we have not been cited to any federal authority to the contrary."

One of the latest cases is one decided by the Pennsylvania Supreme Court—*Lindsley v. First National Bank of Philadelphia,* 325 Pa. 393; also reported 190 Atl. Rep. 876. Here sundry checks payable to the plaintiff were endorsed in the plaintiff's name by a bookkeeper, who then, on these forged endorsements, delivered them to a third party who deposited them in defendant bank. The Court makes it plain that in some earlier cases that particular Court had refused to permit recovery by such a plaintiff against a collecting bank, on a theory that there was no privity between payee in the checks and the collecting bank. However, in the cited case the Supreme Court of Pennsylvania goes on record as reversing its previous stand in order to bring its own decisions into harmony with the Courts of other States (citing *Passaic-Bergen Lumber Co. v. U. S. Trust Co.,* 110 N. J. L. 315). The decision is based squarely on the Uniform Negotiable Instruments Act which we have above quoted. The Court holds that:

> "in receiving a check for collection, the collecting Bank gets no title to the check if the holder

> depositing it had none; by collecting it, and crediting the collection to the depositor, the bank necessarily assumes dominion over it inconsistent with the payee's control over his own property; this is conversion." (p. 879.)

It was claimed in the cited case that the plaintiff had been negligent. The Court then construes Sec. 23 of the Uniform Negotiable Instruments Act and holds:

> "But the plaintiff, as payee, stood in no legal relation to the defendant as a collecting bank at the time of the forgery and therefore owed no duty to defendant." (p. 888.)

and also:

> "The legal relations of plaintiff and defendant are not, as defendant suggests, like those existing between depositor and his bank, or between drawer and drawee, where the terms of the contract prescribe what must be done and thereby give rise to the duty of immediate notice."
>
> "There is now nothing to show that after learning of the forgery plaintiff induced defendant to act as if title to the checks had passed; if the fact, defendant may show it. Being under no duty to the defendant or to the public, mere failure to notify was not of itself negligence." (p. 880.)

In our own case, Teas gave notice to the defendant bank as soon as he learned of the forgery. If, how-

ever, he had kept silent, his mere silence would not have defeated his right of recovery.

*Dennis Metal Mfg. Co. v. Fidelity Union Trust Co.*, 99 N. J. L. 365:

Checks were drawn to the order of plaintiff company and endorsed by its president as follows:

> "Pay to R. W. Dennis, Dennis Metal Manufacturing Co., R. W. Dennis, President."

Dennis was the president of the corporation. After endorsement as above stated, the checks were passed to the credit of R. W. Dennis in his personal account in the same bank. The action against the bank was sustained and the Court stated as follows (p. 368):

> "A president of a corporation does not have, by virtue of holding the office of president, any power to endorse checks, drafts, notes and other obligations payable to the corporation. There are many matters in which one holding the high office of president cannot bind the corporation. The New Jersey cases in this point are collected in the case of Aerial League of America v. Aircraft Fireproofing Corporation, 97 N. J. L. 530. Where a bank receives a check payable to a corporation and endorsed by the president so as to make it payable to himself, and the president deposits it in his personal account with the bank, the bank is chargeable with notice so as to put it on inquiry to determine whether the president of the corporation was authorized so to use its funds as against the corporation."

Therefore, all authority in this State, as well as in many other States, sustains the proposition that defendant bank in this case became liable to respondent upon the receipt and use of checks which did not belong to the bank but to the respondent.

## II.

The use of the defense of the statute of limitations by the appellant in the New Jersey Supreme Court suit by the respondent is inequitable, unconscionable, and amounts to taking advantage by the appellant of its own wrong.

The Court of Chancery of New Jersey will, by its injunctive process, restrain the use of this defense under such circumstances.

A. The conduct of the appellant bank in taking into its possession these checks and appropriating the proceeds thereof, without notice to the payee or any inquiry to ascertain whether or not Joseph H. Carr might have authority as attorney to endorse and collect the moneys on these checks, amounts to equitable fraud against the respondent.

——The Court's attention is directed to the fact that the payee's name is plainly written as an endorsement on the back "by Joseph H. Carr, Atty." and immediately under that is placed the name "Joseph H. Carr." The bank then credited the amount of those checks to Carr's personal account. Not only was the bank immediately put on notice by the character of the endorsement to inquire whether Carr in fact had any authority to endorse

the checks, *but there was printed under the payee's signature in each check the following words*:

*"payable upon proper identification of payee."*

and in addition the bank saw that Carr, an attorney, was placing client's funds in his own private bank account and making use thereof.

The Court of Errors and Appeals in *Passaic-Bergen Lumber Co. v. U. S. Trust Co.*, 110 N. J. L. 320, uses this language:

> "The appellant does not deny collecting the money on the endorsement. It was the appellant's duty to inquire as to the genuineness of the plaintiff's endorsement and the authority of Schick to divert to his own company on a rubber stamp endorsement of plaintiff's name, funds belonging to the plaintiff. The failure on the part of defendant to make such inquiry *was a breach of duty that it owed plaintiff* and made it liable to the plaintiff for the amount of the checks for money received by the defendant to the use of the plaintiff."

Defendant bank had in its own possession all the information with respect to this forgery and misappropriation of client's funds. In the face of that, the bank, without inquiry and without ever bringing the matter to the attention of the payee, appropriated these checks and collected and retained the money on them. It in effect not only appropriated these checks which were the property of the plaintiff, but by its silence and failure to make inquiry and failure to give notice to the payee, in legal ef-

fect, concealed the existence of said checks and their misappropriation from the complainant.

——Equitable fraud does not mean necessarily technically active fraud on the part of the defendant. In *Howard v. West Jersey, &c., R. R. Co.,* 102 N. J. Eq. 517, &c. (Vice-Chancellor Leaming), the Court, in discussing equitable fraud and the operation of the doctrine of *estoppel in pais,* uses the following language:

(p. 521)

> "It should be noted that while the doctrine of *estoppel in pais* rests upon the ground of fraud, it is not essential that the representations or conduct giving rise to its application should be fraudulent in the strictly legal significance of that term, or with intent to mislead or deceive; the test appears to be whether in all the circumstances of the case conscience and duty of honest dealing should deny one the right to repudiate the consequences of his representations or conduct; whether the author of a proximate cause may justly repudiate its natural and reasonably anticipated effect; *fraud, in the sense of a court of equity, properly including all acts, omissions and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed,* and are injurious to another, *or by which an undue and unconscientious advantage is taken of another.*"

(This was affirmed on the opinion below by the Court of Errors and Appeals in 104 Eq. 201.)

Vice-Chancellor Leaming also used the following language (p. 520, bottom):

> "It must be recognized that the statute of limitations is for the benefit of individuals and not to secure general objects of policy; *hence, it may be waived by* express contract *or by necessary implication, or its benefits may be lost by conduct invoking the established principles of estoppel in pais.* Freeman v. Conover, 95 N. J. Law 89."

The same language is again cited with approval by the Court of Errors and Appeals in 115 N. J. Eq. at p. 210. This case is cited to the same effect in *Noel v. Teffeau,* 116 Eq. 446, &c. (see language of Court at p. 448).

One of the cases cited by Vice-Chancellor Leaming in the foregoing opinion (*Howard v. West Jersey, &c. R. R. Co.*) is *Holloway v. Appelget,* 55 Eq. 585, Vice-Chancellor Reed. The whole opinion is adopted *in toto* by the Court of Errors and Appeals. The Court issued its injunction to restrain the use of the statute of limitations as a defense:

> "although the cause of action may not have arisen out of a technically fraudulent act, if the defendant has employed any means to mislead the plaintiff, or to hide from him the fact that a cause of action has arisen."

——In *Clark v. Augustine,* 62 N. J. Eq. 689, at 695, V. C. Stevenson restrained the use of the statute, using the following language:

"* * * 'although the cause of action may not have arisen out of a technically fraudulent act, if the defendant has employed any means to mislead the plaintiff or to hide from him the fact that a cause of action has arisen.'

It seems to me that the principle running through all of the decisions above cited extends to a case like the one under consideration. In all these cases we find that the plaintiff has not intentionally or negligently allowed his time for suit to elapse, but that the defendant by his conduct in some way has brought about that result."

B. Specifically as to the statute of limitation:

The conduct of the appellant in the case now before the Court amounts to equitable fraud and comes within the authorities holding that under such conditions the use of the statute of limitations will be restrained.

In *Clark v. Augustine,* 62 Eq. 689, &c., it was not claimed that there was any intentional deception, but misleading information was given which caused the complainant to lose his right of action. The Court said (p. 694):

"I think the right of the complainant to an injunction against the defence which the defendants have pleaded in the action at law depends on whether or not the defendants must be deemed to have wrongfully caused the complainant to make his fatal delay in prosecuting his action.

That courts of equity do not undertake to

amend a statute of limitation when they grant an injunction restraining its use as a defence, because such use would be fraudulent or inequitable, is no longer open for discussion. All these statutes of limitation create merely a personal right, for the benefit of individuals, and may therefore be waived. Quick v. Corlies, 10 Vr. 11 (1876). Generally speaking, it may be said that the bar of the statute is raised when the plaintiff has elected to allow it to be created and the defendant has elected to invoke its benefits. When the defendant not only has elected to set up the statute, but has also previously, by deception or by any violation of duty toward the plaintiff, caused him to subject his claim to the statutory bar, he must be charged with having wrongfully obtained an advantage which equity will not allow him to hold. It is a matter of no importance that the advantage which he has wrongfully secured is based upon this sort of a statute which, at any time, he is permitted to waive.

In large numbers of cases where the defendant has caused the plaintiff to subject his claim to the statutory bar by procuring an injunction upon its prosecution or by fraudulently concealing its existence, or by apparently waiving, by a promise or otherwise, the benefits of the statute as a defence, courts of equity have restrained the defendant from pleading the statute on the ground that he had estopped himself or that to permit him to interpose such a plea would be to allow him to take advantage of his own wrong."

——*Patrick v. Groves,* 115 Eq. 208; *Howard v. West Jersey, &c., R. R. Co.,* 102 Eq. 517, *supra.*

*Lewey v. H. C. Frick Coke Co.* (Pa. Sup. Ct., 28 L. R. A. 283). In this case, defendant, owner of adjoining lands, mined under plaintiff's property without the knowledge of plaintiff. Knowledge of this unlawful appropriation of defendant's property was not known until after the statutory period had expired. The Court said (p. 284):

> "The case at bar affords an excellent illustration of ignorance due to the defendant's conduct, and without fault on the part of the plaintiff. The defendant was mining its own coal through its own shafts or drifts opened on its own lands. In the course of its operations, and for its own convenience, it pushed an entry or passage under the plaintiff's lands, and *appropriated the coal removed therefrom. It was bound to know its own lines, and keep within them. If, by mistake or for any other reason, it did invade the mineral estate of another, and remove and appropriate the coal therefrom, good conscience required that it should disclose the fact, and pay for the coal taken. Its failure to do this is, in its effects, a fraud upon the injured owner*; and if he has no knowledge of the trespass, and no means of knowledge, such a fraud, whether it be called constructive or actual, should protect him from the running of the statute."

C. In cases of this character where there is *estoppel in pais* based upon either actual or equi-

table fraud such as we have outlined, the statute does not begin to run

> "until the fraud is discovered or would have been discovered had reasonable diligence been exercised."

*Todd v. Rafferty's Administrators,* 30 Eq. 258, where the Court says:

> "* * * the rule is well established in equity, that where the complainant's action is grounded on a fraud, which the defendant has concealed until sufficient time has run to enable him to set up the statute, the statutory period will not be considered to have commenced until the fraud is discovered, or would have been discovered had reasonable diligence been exercised. Ang. on Lim. Sec. 183; Story's Eq. Juris, Sec. 1521, 1521a; Hoveden v. Lord Annesley, 2 Sch. & Lef. 634; Meader v. Norton, 11 Wall. 458. Vice Chancellor Wigram, in Blair v. Bromley, 5 Hare 541, said, where the court assumes jurisdiction on the ground of fraud, the statute only begins to run from the discovery of the fraud; and this doctrine was reiterated by Lord Cottenham when the case came before him on appeal. 2 Phil. Ch. 354. In Brooksbank v. Smith, 2 You. & Coll. (Exch. Eq.) 60, Barron Alderson said, courts of equity adopt the statute of limitations to assist their discretion. In cases of fraud, however, they hold that the statute runs only from discovery, because the plaintiff's laches does not commence until he is acquainted with the circumstances."

*Lincoln v. Judd*, 49 N. J. Eq. 389:

> "Courts of equity ordinarily act in obedience and in analogy to the statute of limitations, but they will not allow the bar of that statute to prevail where it would further manifest injustice, hence it is a well-settled rule in equity that in cases of fraud the time limited within which the action must be brought will not commence to run until the discovery of the fraud, or until the complainant was in a situation where, by the exercise of reasonable diligence, he would have discovered the fraud."

To the same effect is *Levy v. D'Alesandro*, Vice-Chancellor Egan, 185 Atl. Rep. 583, &c.

In an attempt to escape liability, appellant in its brief, raises the following points:

1. Appellant's counsel states in his typewritten brief (the printed brief has not yet been served at the time our own brief goes to the printer):

> "There was no proof produced to show that the bank had any knowledge of the unlawful misappropriation by Joseph H. Carr of his client's funds"

and

> "there was no proof or evidence from which it could be assumed or inferred that defendant-appellant did anything to mislead the complainant or prevent the complainant from bringing his suit within the time limit of the statute of limitations."

We feel that opposing counsel has misread the record, otherwise such a statement would not have been made.

(a) As to knowledge by the Bank of unlawful misappropriation by Joseph H. Carr.

Appellant's counsel seems to feel that a Bank is not charged with knowledge or notice unless it comes to the attention of the Board of Directors or the Company's president. The two checks were drawn to the order of a payee. The endorsements on the back of each check plainly showed that Joseph H. Carr was assuming to endorse that payee's name and, furthermore, was actually appropriating that check by placing the money in his own personal bank account.

Here was full and complete knowledge on the face of each instrument brought home to the Bank. Whether or not the Board of Directors or the Company's President knew about it is immaterial.

(b) When the checks were received by the Bank, no inquiry was made of Teas or other person to find out whether Carr had authority to endorse the check. The presumption was against any such authority and, furthermore, when it appropriated Teas' checks and credited them to Carr's personal account, it failed to inform Teas of the existence of such checks and the appropriation of such money by the Bank. In short, it concealed from Teas the fact that such checks had been issued to his order and had been taken by the Bank and that he had any cause of action against the Bank.

2. It is claimed that respondent, Teas, was negligent:

(a) because he did not file an account in the Orphans' Court of Atlantic County. What possible bearing the filing of an account by him in the Orphans' Court can have on the question of negligence is difficult to see.

(b) It is said that Teas should have known about the issuing of these checks. Teas is a layman and not a lawyer. He certainly had a perfect right to rely upon the integrity of Joseph Carr, his attorney, and trust to him the possession of the mortgages and the assignments until they were needed. He had the right to accept the explanation of Carr as to the delay. How could Teas possibly know that checks had been issued to the order of the estate and to him as ancillary executor by the particular Philadelphia Bank? He had never had any dealings with this financial institution. There would be nothing to suggest that any checks had been issued by that particular institution. Furthermore, he had never even heard of the Third National Bank of Camden at that time or until the fall of 1936, when he inspected photostatic copies of the checks which had been obtained by Mr. Shields, of the Philadelphia Bar. Not knowing that any checks were issued or that the Real Estate-Land Title and Trust Company was in any way involved or that any such checks were deposited with the Third National Bank of Camden, he was without any knowledge of the fact that he had any cause of action against the

Third National Bank or any other Bank. This knowledge came to him only when his friend, Mr. Shields, in Philadelphia, discovered the two checks and showed him copies of them. Teas then acted with dispatch both in serving notice and in bringing suit for recovery.

The Third National Bank received, without authority, and appropriated checks belonging to the respondent. It owed a plain duty to respondent to notify him that the checks were issued, received and deposited in Carr's account. The Bank had in its possession all of the information. Anything that Teas could have said or done would not have given them any more information than they already had.

Teas was neither guilty of laches nor of negligence.

The Bank's use of the statute of limitations under the conditions outlined in this brief and particularly described in the Conclusions of Vice-Chancellor Davis would, in effect, permit the Bank to take advantage of its own wrong.

Under established authority, respondent is entitled to an injunction to restrain the use of the statute as a defense and the Decree of the Court of Chancery was fully justified.

We submit that this Decree should be affirmed.

Respectfully submitted,

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HENRY F. STOCKWELL,
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# INDEX.