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## TESTIMONY.

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New Jersey State Library

*Bill of Complaint.*

**BILL OF COMPLAINT.**

Filed June 10, 1925.

**In Chancery of New Jersey**

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*Between*

THOMAS CONNORS,  
*Complainant,*

*and*

MARGARET MURPHY, admin-  
istratrix of the estate of  
Bridget English, dec'd, and  
THE MORRIS COUNTY SAV-  
INGS BANK, a corporation,  
*Defendants.*

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10

*On Bill, &c.*

*Bill of  
Complaint.*

20

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

The complaint of Thomas Connors, of the  
Township of Hanover, in the County of Morris  
and State of New Jersey, respectfully shows:

1—That on or about November 1st, 1924, he  
was the owner of the sum of upwards of \$5,000  
on deposit, to his credit, in the Morris County  
Savings Bank at Morristown, N. J.

30

2—On or about that date and for a long time  
preceding, your complainant, Thomas Connors,  
had lived and boarded with Bridget English in  
the Town of Morristown, County and State as  
aforesaid. Your said complainant on or about  
that time was over the age of eighty years and  
for a long time prior to the said November 1st,

40

*Bill of Complaint.*

1924, your complainant had been in a weak and feeble state of mind and health to such a degree as to be incapable of transacting any business or of making any contract, or disposition of his property with discretion and understanding.

10 3—On or about the said November 1st, 1924, your said complainant was compelled, influenced or coerced while very feeble in mind and body and not mentally capable of acting with discretion and understanding, to transfer and set over  
20 unto the said Bridget English a large sum of money standing in his name on deposit in The Morris County Savings Bank, which said sum of money was upwards of the sum of \$5,000; and the said Thomas Connors, your complainant herein, did set over unto the said Bridget English such sum of money without free and independent advice and without understanding the nature of his act.

30 4—The said Bridget English did, on the date aforesaid, by herself and with assistance of others, persuade, coerce and fraudulently and most unconscientiously and without any consideration cause and procure the said Thomas Connors to set over the said sum of money to the said Bridget English while he was in an enfeebled condition and without having full and free possession of his mind.

5—The said Bridget English departed this life April 10, 1925, intestate, and Margaret Murphy was, upon application duly made to the Surrogate of Morris County, appointed administratrix of the said estate.

40 6—The said transfer and assignment of money so on deposit was made for the purpose of de-

*Bill of Complaint.*

frauding and depriving your complainant of the same.

7—Complainant is without adequate remedy in the courts of law and therefore prays that the said Margaret Murphy, administratrix as aforesaid, may answer this bill of complaint and each statement made therein. 10

8—That it be decreed that the assignment and transfer of the said sum of money on deposit was fraudulently and unduly obtained and the same be set aside and declared void.

9—That the said Margaret Murphy, administratrix as aforesaid, be enjoined from using, disposing, distributing or withdrawing the said sum of money or any portion thereto from the said Morris County Savings Bank; and that the said Morris County Savings Bank be enjoined from paying out or permitting the withdrawal of the said sum of money or any portion thereof so fraudulently procured by the said Bridget English pending the final determination of this suit. 20

10—That the said defendants be decreed to pay the costs and expenses incident to this suit together with a reasonable allowance for counsel fees to the complainant. 30

11—That a writ of subpoena may issue commanding the said defendants to answer this bill of complaint and abide such decree as this Honorable Court may make in the premises.

12—That the complainant may have such other or further relief as shall be agreeable to equity and good conscience.

LEON E. CONE,  
Solicitor for and of Counsel  
with the Complainant. 40

*Affidavit of Thomas Connors.*

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

THOMAS CONNORS, of full age, being duly sworn according to law, upon his oath deposes and says:

10 1—I am the complainant in the foregoing bill of complaint named, and the said bill of complaint has been read to me and thoroughly explained and the matters and things therein contained are true.

2—I have been ill for a long time and a little over a year ago I was confined to the hospital due to a blood clot and a paralytic stroke.

20 3—During my younger days while I was able, I had saved up a sum of upwards of \$5,000, which was on deposit in The Morris County Savings Bank, at Morristown, N. J., and some time within the past six or seven months, the exact time of which I am unable to remember, Mrs. Bridget English, with whom I boarded, persuaded me to sign some papers at the bank, which I am now informed transferred all my money in the said bank to her.

30 4—At the time of the signing of the said papers I did not understand that I was transferring all my property but was persuaded to do so by Mrs. English. I received no advice from any of my relatives or friends regarding the advisability of this step and was unaware of the consequences until a latter time.

5—Mrs. English is now dead and I am now living with my brother, Patrick Connors, at Morris Plains, N. J., and I am totally dependent

*Affidavit of Leon E. Cone.*

upon his bounty for my support and maintenance.

His  
Thomas X Connors.  
Mark

Sworn and subscribed to before me 10  
this 5th day of June, 1925.

WILLIAM A. HEGARTY,  
A Master in Chancery of New Jersey.

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

LEON E. CONE, being duly sworn according to law, upon his oath deposes and says: 20

1—That I am the solicitor of the complainant, Thomas Connors, in the above cause.

2—That upon being retained by the complainant in this matter I made inquiries of The Morris County Savings Bank as to the amount of deposit claimed by Thomas Connors, and the date when the account had been transferred to the late Bridget English.

3—The banking official refused to give me such information on the ground that they had no right to divulge information of this character regarding their customers' accounts. 30

4—For and on behalf of the said Thomas Connors I served upon the said Morris County Savings Bank a notice directing them not to permit the withdrawal or disposing of said money, and claiming the same for the said Thomas Connors. This notice was served upon Mr. Ward Campbell, treasurer of the said bank. 40

*Affidavit of Leon E. Cone.*

5—However, I was informed by Mr. Corwin, paying teller of said bank, that the assignment had been made as alleged in the bill of complaint.

LEON E. CONE.

10 Sworn and subscribed to before me  
this 5th day of June, 1925.

WILLIAM A. HEGARTY,  
A Master in Chancery of New Jersey.

The Morris County Savings Bank,  
Morristown, N. J.

Gentlemen:

20 TAKE NOTICE, that I claim the sum of money  
now on deposit to the credit of Bridget English,  
as my own property, and direct you to pay the  
same to no one but myself.

Thomas O'Connor,  
By Leon E. Cone,  
Attorney.

April 13th, 1925.

30

40

*Answer.*

**ANSWER.**

Filed July 6, 1925.

Margaret Murphy, administratrix of the estate of Bridget English, deceased, of the Town of Morristown, in the County of Morris and State of New Jersey, one of the defendants in the above-entitled suit, says that: 10

1. In answer to paragraph 1 of the bill of complaint says that she has no information sufficient on which to form a belief.

2. Defendant admits paragraph 2 except the following portion of said paragraph: "and for a long time prior to the said November 1st, 1924, your complainant had been in a weak and feeble state of mind and health to such a degree as to be incapable of transacting any business or of making any contract, or disposition of his property with discretion and understanding." 20

3. Defendant denies paragraph 3.

4. Defendant denies paragraph 4.

5. Defendant admits paragraph 5.

6. Defendant denies paragraph 6.

7. Defendant denies that the complainant is entitled to the relief prayed for in said bill. 30

D. F. BARKMAN,  
Solicitor and of Counsel with  
the Defendant.

*Order of Reference.*

**ORDER OF REFERENCE.**

Filed July 9, 1925.

This matter being opened to the Court by Leon E. Cone, Esq., solicitor for and of counsel with the complainant, and consented hereto by  
 10 the solicitor of the defendants, hereto underwritten;

It is thereupon, on this 9th day of July, 1925, ORDERED, that the above-stated cause be referred to the Hon. James F. Fielder, one of the Vice-Chancellors of this Court, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein.

20 E. R. WALKER,  
 C.

We consent to the making of the above order.

LEON E. CONE,  
 Solicitor of Complainant.

D. F. BARKMAN,  
 Solicitor of Defendant.

30

40

*Order Designating Time and Plan of Hearing.***ORDER DESIGNATING TIME.**

Filed July 18, 1925.

Application being made to fix a time and place for the hearing of the above-stated cause, it is ORDERED that Tuesday, the 27th day of October, 1924, at the hour of 10 o'clock in the forenoon, at the Chancery Chambers in 1 Exchange Place, Jersey City, be, and the same is hereby designated as the time and place for the hearing of the said cause. 10

July 18, 1925.

JAMES F. FIELDER,  
V.-C.

We consent to the making of the above order. 20

LEON E. CONE,  
Solicitor of Complainant.

D. F. BARKMAN,  
Solicitor of Defendant.

30

40

*Notice of Hearing.*

**NOTICE OF HEARING.**

Filed August 6, 1925.

SIR:

PLEASE TAKE NOTICE that final hearing of the  
10 issue joined in this cause will be moved before  
said Court, in the presence of the Hon. James  
F. Fielder, Vice-Chancellor, on Tuesday, October  
27th, 1925, at the Chancery Chambers, Jersey  
City, N. J., at 10 o'clock in the forenoon, or as  
soon thereafter as the said Court can attend to  
the same.

Dated, August 4th, 1925.

Your obedient servant,

20 LEON E. CONE,  
Solicitor of Complainant.

To D. F. Barkman, Esq., solicitor of defendant.

Service of the within notice of hearing  
acknowledged this August 4, 1925.

D. F. BARKMAN,  
Solicitor of Defendant.

30

40

*Thomas Connors, direct.*

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>THOMAS CONNORS,  <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>MARGARET MURPHY, admin-      istratrix, etc., <i>et als.,</i>  <i>Defendants.</i></p>	}	<p><i>On Bill, &amp;c.</i> 10</p>
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Transcript of shorthand notes of testimony taken on final hearing in above-stated cause, October 27, 1925, at ten o'clock in the forenoon, at Chancery Chambers, Jersey City, before his Honor James F. Fielder, Vice-Chancellor.

20

Appearances:

Leon E. Cone, Esq., for complainant.

Hon. David F. Barkman for defendants.

COMPLAINANT'S CASE.

THOMAS CONNORS, the complainant, sworn as a witness in his own behalf, testifies as follows:

30

*Direct examination* by Mr. Cone.

Q Your name is Thomas Connors? A Yes.

Q Where do you live? A Why, Morris Plains.

Q How long have you lived there? A About three months; more, I guess, but I must be—

Q Where did you live before you went to Morris Plains to live? A Morristown.

40

*Thomas Connors, direct.*

Q Whom did you live with? A With Mrs. English.

Q Is Mrs. English living now? A She died.

Q Do you know when she died? A Well, really, I couldn't remember how long since she died.

10 Q How long did you live with Mrs. English?  
A Well, really, I cannot think—when I was taken to the hospital out there—a different year.

Q When you went to live with Mrs. English did you have any money in the bank? A Yes.

Q Which bank? A That big bank—not Foote's bank—that other bank.

Q The Morris County Savings Bank? A Yes, sir.

20 Q Did you have any money in Mr. Foote's bank? A Yes; a little.

The Court: What is the name of that?

Mr. Cone: National Iron Bank.

Q Do you know how much money you had in the Morris County Savings Bank? A I couldn't tell you that.

Q Do you know whether it was \$5,000? A I could not tell you that; I cannot tell you that.

30 Q Do you know what became of that money?  
A I cannot remember.

Q You remember that you went to the hospital when you were with Mrs. English. Did you get sick? A Yes; I went to the hospital.

Q Which hospital? A It is on the hill.

Q All Souls' Hospital? A On the other side, yes.

40 Q How long were you there? A I couldn't tell you that, how long I was there. A long time. That is all I can tell you.

*Thomas Connors, direct.*

Q Did Mrs. English come to visit you while you were at the hospital? A Never. Never came to see me while I was there.

Q After you came back from the hospital, did you go back to Mrs. English? A I went back there again.

Q And then did Mrs. English and you ever go to the Morris County Savings Bank? 10

Mr. Barkman: I object.

The Court: I cannot permit over objection testimony by this witness as to any transactions with Mrs. English.

Q Did you ever go to the bank? A Yes; I went in the bank just the time that she went there with me. 20

Mr. Barkman: I ask that that be stricken out.

The Court: Strike it out.

Q How long have you been sick? A Quite a while.

Q Were you sick before you went to live with your brother in Morristown? A I was. I left there. I went in there from this Mrs. English and then went right back home with my brother. 30

Q Do you know whether you have been sick for two years? A I was getting all right when she took—

*By the Court.*

Q When did you go to the hospital; do you know the date? A I am sure I don't know. All 40

*Thomas Connors, direct.*

I can really tell you just when it was I went in there.

Q Do you know what date you came out of the hospital? This is October, 1925. Did you come out of the hospital this year or was it a year ago? A About that or after. As near as  
10 I can find—when I got to the hospital sick—I came out of it to go—

*By Mr. Cone.*

Q When you went to the hospital what was the matter with you? A I was real sick. I cannot see; that is the way I am; you cannot see.

Q Could you talk? A I couldn't do nothing at all. Sometimes I would see a little bit, finally working that way, and finally I was getting a little better eyesight all the time. That is all. You  
20 see, I could see that I could go like that (indicating).

Q Before you went to the hospital were you sick, too? A I say I got to stay right along the best I could when I got there.

*By the Court.*

Q Were you working when you were taken  
30 sick? A Yes; I was taken to the hospital from another—

Q Were you working when you were taken sick? A I was at the house when it struck me like that. I was taken like that to the hospital.

*By Mr. Cone.*

Q How old are you? A I never can tell you that.

Q How long has it been since you were working on a job? A Oh, about—maybe three or  
40

*Thomas Connors, direct.*

four days or years, I think it must be since I was taken sick there.

Q Three or four years, you say? A I guess so—what happened there.

Q Where did you work last? A Oh—what is this? I was first at Frelinghuysen; I was night watchman there.

10

Q Was that your last job? A No. I wasn't very long there.

Q Did you work afterwards after you left Mr. Frelinghuysen? A A couple of days when that struck me like that.

Q How long had you been sick before you went to the hospital? A They took me over there right away.

Q Was there a doctor treating you before you went to the hospital? A Yes.

20

Q For how long? A Really, I don't know nothing at all about it, what they were doing, or anything about me.

Q For a year? A Yes.

Q For two years? A It came right off and on. It was coming all the time, you know.

Mr. Cone: Does your Honor rule that I cannot introduce anything regarding Mrs. English whether it pertains to personal transactions or otherwise?

30

The Court: Any transactions between this witness and Mrs. English are barred under the statute.

Q How old was Mrs. English, if you know?  
A As long as she lived there, until she got sick there. When she died that was where she always—

40

*Thomas Connors, direct.*

Q I asked you if you know how old Mrs. English was. A I couldn't tell you. I cannot tell you.

*By the Court.*

Q How long did you live with Mrs. English?  
10 A Quite a while.

Q A couple of months? A Oh, more than that.

Q A couple of years? A No. About—really, I cannot tell you much on that, but I know that I was altogether in there, back and forth, until Morris Plains came this last time to me. That was all the time.

Q I understand that you were in the hospital? A Yes.

20 Q You were living with Mrs. English when you went to the hospital? A Yes.

Q How long had you been living with Mrs. English when you went to the hospital? A She was twice with me, back there again, and I came back from the hospital and back again, and then I know I stayed right along until she died.

Q Were you living with her when she died?  
A Yes, sir.

30 Q Do you understand my question? My question is this: How long before you went to the hospital had you been living in the same house with Mrs. English? A Well, I was there right along, and stayed with me all the time—when I went in the hospital—struck me right away. I was struck dumb then.

40 Q How long had you been with Mrs. English when it struck you? Can you tell me that? A Really, I cannot tell you how long; I cannot tell you how much.

*Thomas Connors, direct.*

*By Mr. Cone.*

Q You are living now with your brother at Morris Plains? A Yes.

Q Do you know what this suit is about?

Mr. Barkman: Objected to.

The Court: I will permit Mr. Connors to tell us what the suit is about. I would like to get his view. I am interested in his mental capacity. 10

Q Mr. Connors, do you know why you are here today? A Yes.

Q Why? A She brought me and came in with me to the bank, to leave my money there.

Mr. Barkman: Objected to. 20

*By the Court.*

Q Who owned the house that you lived in when you lived with Mrs. English? A Eh?

Q Do you remember when you lived with Mrs. English before you went to the hospital? Do you remember the time when you lived with Mrs. English before you went to the hospital? Who owned the house that you lived in? Did you own it? A (No answer.) 30

Q Did Mrs. English? A I used to stay there with her.

Q Did you pay board? A Yes.

Q Whom did you pay board to? A She used to take care—she was boarding—that way. I was working with her—I was boarding with her and I worked over there.

No cross examination.

*Charles H. Corwin, direct.*

CHARLES H. CORWIN, sworn as a witness on the part of the complainant, testifies as follows:

*Direct examination by Mr. Cone.*

10 Q You live in Morristown? A Yes.

Q You are connected with the Morris County Savings Bank? A Yes.

Q In what capacity? A Assistant treasurer, paying teller.

Q Have you been with the bank any length of time? A Twenty-five years.

Q Are you acquainted with Mr. Connors who was just on the stand? A As a customer.

20 Q Did he have an account with your institution? A Yes.

Q Have you the records of your bank covering that account with you? A I have.

Q Showing his account? A Yes.

Q Have you the record showing Mr. Connor's account in your bank? A I have.

Q Will you produce it, please? A (Witness produces record.)

30 Q This is a card showing his bank account? A It is the ledger card.

Q That is the original? A That is the original ledger card.

Mr. Cone: I offer it in evidence.

(Marked Exhibit C. 1.)

40 Q I show you Card No. 45,502, and ask you what that is. A That is our signature card of Thomas O'Connor and his wife.

*Charles H. Corwin, direct.*

*By the Court.*

Q Do I understand you to say "Thomas O'Connor"? Let me see that card. A (Card is handed to Court.)

Q The card bears the signature of Thomas O'Connor and of Mary O'Connor; is that right?

A Yes.

10

Q And the Thomas O'Connor who signed that card is the Thomas Connors who was just on the stand testifying? A Yes.

Q He is known by the name of Thomas O'Connor as well as Thomas Connors; is that right? A Well, as far as I know, we never had anything to do with "Connors." It has always been "O'Connor" to my knowledge.

Q Was that the card that was signed at the opening of the account? A Yes.

20

Q When was the account opened? A The account was opened June 20, 1916.

Q It shows four deposits, does it? A Four deposits, yes.

Q And the rest of the credits to the account are interest credits? A Interest credits.

Q Have you any recollection as to who made these deposits? A No; I have not.

Q Were you present when any of them were made, that you can recollect? A I made two of them; I was present.

30

Q You received two of them? A I received two.

Q Do you remember who made them? A No; could not say that.

Q The only reason that you know that you were present when two of them were made, is that the deposit book shows them in your handwriting? A Yes.

40

*Charles H. Corwin, direct.*

Q How many withdrawals does the account show? A One.

Q When was that withdrawal? A December 18, 1923.

*By Mr. Cone.*

10 Q (Showing witness.) Is this the bank-book belonging to that account? A Yes.

Q Where has this bank-book been? A When it was closed we kept it in the bank.

Q The bank-book has been in your possession since the account was closed? A Yes.

Mr. Cone: I offer the bank-book in evidence.

20 Mr. Barkman: No objection.  
(Marked Exhibit C. 2.)

*By the Court.*

Q How was the account closed? A By Mr. Thomas O'Connor personally.

Q By what method; how did he close it? A He presented his bank-book and asked that the account be transferred to Bridget English.

30 Q How do you know that? A Well, it is my recollection.

Q Did he make the request of you? A Yes, he did.

Q When was that? A December 18, 1923.

Q Was Mrs. English with him? A Yes.

*By Mr. Cone.*

40 Q I show you a paper purporting to be a check signed by Thomas O'Connor and ask you if that is the check issued on that bank account

*Charles H. Corwin, direct.*

of Thomas O'Connor closing the same? A It was.

Q Whose signatures appear as witnesses to that? A "C. H. Corwin," mine, and "Elwin Durling," also a clerk in the bank.

*By the Court.*

10

Q Who filled out the body of the check? A I did.

*By Mr. Cone.*

Q Whose signature is that underneath? A I wrote his name underneath his signature.

Q At the time of that writing, what was the physical condition of Mr. O'Connor? A Very feeble.

Q Did you have any opportunity to gauge his mental condition? A No. 20

Q You did not? A No.

*By the Court.*

Q You have seen him while in court today? A Yes.

Q Have you heard him testify? A Yes.

Q How does his condition today compare with his condition December 18, 1923? A Well, 30 it is a good deal worse than it was then.

Q It is worse now? A Yes.

*By Mr. Cone.*

Q When Mr. Connors and Mrs. English came into the bank, who did the speaking? A Mr. O'Connor.

Q Did Mrs. English say anything? A I have no recollection of her speaking at that particular transaction. 40

*Charles H. Corwin, direct.*

Q Had she said anything regarding this account or its transfer at any time before that? A No.

*By the Court.*

Q Was there anybody else with them? A I  
10 don't think there was.

*By Mr. Cone.*

Q I notice on the body of the check that there are two witnesses. Is that a regular requirement of the bank? A No.

Q Can you tell us why two witnesses appear on that check? A Except that I saw that he was very feeble, and I rather think he didn't want to sign the check, in the first place. I said:  
20 "You sign it the best you can. I will have Mr. Durling witness it," and we both witnessed it.

*By the Court.*

Q Did he put his signature there? A Yes.

Q And then you wrote his name? A I wrote it under it for the convenience of the clerks there.

30 Mr. Cone: I offer the check in evidence.

Mr. Barkman: No objection.

(Marked Exhibit C. 3.)

Mr. Cone: I offer the ledger card in evidence also at this time.

(Marked Exhibit C. 4.)

*By Mr. Cone.*

Q After the withdrawal of this account, Mr.  
40 Corwin, do you know what disposition was made

*Charles H. Corwin, direct.*

of the moneys? A A new account was opened in the name of Bridget English.

Q On the same day? A Yes.

Q By whom? A By Bridget English.

Q Immediately following the withdrawal of the Connors account? A Yes.

Q Have you the ledger card of that account? 10  
A Yes.

Q This (indicating on card) shows from the beginning of that account on December 18, 1923. Had Mrs. English an account in your bank before then? A Yes.

Q Has that been included in this ledger? A No.

*By the Court.*

Q Has that first account been closed? A 20  
No; she had two accounts.

Q This was a second account? A This was a second account.

Q What was the amount withdrawn from the O'Connor account? A \$5,356.90.

Q Was that the same amount deposited by her? A Yes.

Q Then, she deposited his check? A Trans- 30  
ferred it. There was no money transaction.

*By Mr. Cone.*

Q Has any money been withdrawn by Mrs. English or anyone acting under her instructions since that account has been opened? A Yes.

Q How much? A \$500.

Q On what date? A July 18, 1924.

Q Have you the check showing the withdrawal of the \$500? A I have. 40

*Charles H. Corwin, direct.*

Q I show you a paper dated July 18, 1924, and ask you what that appears to be? A That is a draft signed by Mrs. English for \$500 on her account.

10 Q Does the account number shown on that check appear to be the same account that you have just testified to? A Yes.

Mr. Cone: I offer the ledger card and check in evidence.

(Marked Exhibit C. 5 and Exhibit C. 6.)

Q Have you the original card showing the opening of the account by Bridget English? A Yes.

Q Produce it, please. A (Witness does so.)

20 Q Is that the card? A That is the original.

Q Does that show Bridget English's signature? A She doesn't write. That is my writing.

Q That is your writing? A Yes.

Mr. Cone: I offer this card in evidence.

(Marked Exhibit C. 7.)

30 Q Do you know whether any notice was served upon your institution by anyone regarding a claim to this account? A Yes.

Q Do you know when that was served?

Mr. Barkman: I do not see how this is competent.

The Court: It may not be, but I will admit it.

40 A April 13, 1925.

*Charles H. Corwin, cross.*

*Cross examination by Mr. Barkman.*

Q Mr. O'Connor gave you the direction for the transfer of this account to Mrs. English?

A Yes.

Q You carried out his instructions? A Yes.

Q Was Mrs. English an old lady? A Yes; 10  
she was fairly old.

*By the Court.*

Q What do you mean by that? A Prob-  
ably sixty.

*By Mr. Barkman.*

Q I show you bank book 32,234. Is that  
the other account referred to as belonging to  
Mrs. English? A Yes. 20

Q She had that some time before the other  
account was opened? A Yes.

Q And it was your custom at that time, or  
the custom of the bank, to retain the books  
closed out in the bank's possession? A Yes.

Q Since then you have adopted another cus-  
tom, I understand, and you cancel the books  
and deliver them? A Yes.

Q But at that time you still retained the  
book? A Yes. 30

Mr. Barkman: I offer the book in evi-  
dence.

Mr. Cone: No objection.

(Marked Exhibit D. 1.)

*By the Court.*

Q What day of the week was this that they  
came in, do you remember? A Hardly. 40

*Charles H. Corwin, cross.*

Q Do you remember the time of the day? A I think it was in the morning.

Q Did they come to the window, or were they in a room connected with your institution?

A They came to the window.

10 Q And the whole transaction was carried on through the window of the bank? A Yes.

Q What was Mr. Connor's physical condition as it appeared to you that day? A He seemed as if he was very ill and my impression was that he was arranging his accounts. He seemed like a very sick man.

Q What do you mean by "arranging his accounts"? A Turning his accounts over preparatory to his death. That is how it struck me.

20 Q How did his illness make itself manifest to you? What was his outward appearance? A Well, as near as I remember, it was hard for him to stand at the window.

Q Did anybody hold him up or assist him? A He held himself up probably; I really don't remember that.

Q I am trying to get the best of your recollection about it. Did he have any difficulty in making himself understood to you? A No.

30 Q Was his speech affected as it is today? A No.

Q Did he talk intelligently? A Apparently.

Q How long was he there? How long did this transaction take? A Not more than ten or fifteen minutes.

Q You don't think Mrs. English said anything during that time? A I am pretty sure she did not.

40 Q Didn't she say anything about wishing this money credited to her account or to open an

*Charles H. Corwin, cross.*

account? A I don't think she had anything to say, as a matter of fact.

Q Was his illness manifest to you in any other way than his inability to stand up and that he was feeble? A No.

Q His hand seems to have been rather trembling, to judge by his handwriting on that check, by his signature? A Yes; that seemed to be his feeble condition, his having just recovered from a very severe illness; he was getting over a very severe illness. 10

Q Did you ask him why he was doing this? A No.

Q Did you question him at all? A No.

Q Did he ask you for any advice about it? A No.

Q He just came in and gave you instructions as to what he wanted done and you followed his instructions? A Exactly. 20

Q Why did you have two witnesses to his signature? A I don't remember exactly, but it was the fact, I think, of his not wanting to sign the check, as they often do. People don't want to sign, they are so feeble; they say: "You sign it." I said "Mr. O'Connor, you sign it yourself, and I will witness it."

Q When you say that your impression was that he didn't want to sign the check, you mean he didn't want to write his name on the check? A Yes. 30

Q Do you mean that he had any objection to making the check at all? A No.

Q Or withdrawing the money? A No; simply that these people, people of that condition, seem to have confidence in us, and they say: "You sign the check." I saw his condition and— 40

*Charles H. Corwin, cross.*

Q I wanted to understand your statement that he didn't want to sign the check. You mean he didn't want to make his own signature on the check? A There was no protest.

Q He had no objection to making out the check and turning the money over to Mrs. English? A No.

10 Q What did her condition appear to be at that time? A Perfectly normal.

Q I mean: Was she in feeble health? A No.

Q This old lady of sixty? A No.

Q You had had some transactions in the bank with her before this? A She used to come in.

Q You personally had transactions with her? A Never.

20 Q Had you any after that? A No; never.

Q Can you tell me anything about her mental condition? A She appeared to be all right.

Q Can you tell me anything about her mental condition before or after this transfer of the account? A I never knew anything about her except as a customer.

Q Did Mr. O'Connor have any other account in the bank? A Yes.

30 Q What account did he have in the bank besides this? A (Witness produces card.)

Q You produce a loose ledger sheet showing an account in the name of Thomas O'Connor that appears to have been opened— A (Interrupting.) That was transferred from an original account that I didn't go back for.

Q This appears to be July 1, 1899, by transfer from an earlier account that stood in his name? A An old account.

40

*Charles H. Corwin, cross.*

Q And the item on deposit on July 1, 1899, is the balance to his credit on that other account?

A Yes.

Q This account is No. 15,324? A Yes.

Q When he transferred the balance of five thousand odd dollars from that other account to Mrs. English, what credit did he have on this account, No. 15,324? A At the time he transferred that? That was 1918. 10

Q December 18, 1923. A \$6,056.14.

Q When he made the transfer of the balance of five thousand odd dollars over to Mrs. English from the first account that you have referred to, he had to the credit of this second account \$6,056.14? A Yes.

Q What is the present balance in that account? A \$6,381.79.

Q It is more than it was December 18, 1923, by reason of credits or interest? A Interest. 20

Q Although \$200 was withdrawn October 2, 1924? A Yes.

Q There have been no deposits made since December 18, 1923, to the credit of this second account? A No.

*By Mr. Barkman.*

Q Do you know who withdrew the \$200? A He did. 30

Q Personally? A I didn't have that transaction. It was witnessed by Mr. Frederick W. Shelly.

*By the Court.*

Q He withdrew October 2, 1924, \$200 from that second account that we have been referring to, on a check signed by his mark, in the presence of one of the men in your bank? A Yes. 40

*Charles H. Corwin, cross.*

Q You did not attend to that withdrawal yourself? A No; I was not home.

Q Did you see Mr. O'Connor again after December 18, 1923? A I don't remember whether I did or not.

10 Q You cannot tell me about any transaction with him after that date? A I didn't have any transactions with him after that transfer; after that transfer I didn't have any transactions with him.

Q You don't recall his having been in the bank again after December 18, 1923? A No; I do not.

Q He could have been there, of course, without your seeing him? A Yes.

Q And have done business with somebody else in the bank? A Yes.

20 Q Do you know whether he had any other property than this second account referred to? A No; I don't know.

Q Mr. Corwin, in case we need the ledger account, will you let us have a copy of that? A The original?

30 Q I don't want the original. But you will make us a copy? I mean of the first account. A I think you can have that, because it is in an old ledger.

Q You better make a copy of it in case we need it. I will ask one of the counsel to let you know; and if we need that deposit book or any of the checks on withdrawal, will you let counsel have them? A Yes.

Q I won't take any of them from you now at all. A All right.

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*Franklin W. Rice, direct.*

FRANKLIN W. RICE, sworn as a witness on the part of the complainant, testifies as follows:

*Direct examination by Mr. Cone.*

Q Doctor, you are a practising physician and surgeon at Morristown? A I am. 10

Mr. Barkman: Qualifications admitted.

Q Are you acquainted with Mr. Thomas Connors? A I am.

Q Did you at any time treat him professionally? A I did.

Q Will you tell the Court what the nature of the treatment was, the nature of the illness, and the time when you treated him? A Around 20  
1920. I operated on him 1920 or 1921. I operated on him for tumor of the rectum.

Q Can you say whether it was 1920 or 1921?  
A The end of 1920 approximately. That has nothing to do with this specific case. Then again December 26, 1922, that is, about two years later, I sent him to the hospital for treatment, with the following diagnosis: Cerebral hemorrhage, arterio-sclerosis, that is, hardening of the arteries, and chronic interstitial nephritis. He 30  
was there from December 26, 1922, and was discharged on March 5, 1923.

Then again I sent him to the hospital on March 12, 1923, in other words, he was home for one week, and he was discharged December 24, 1923.

*By the Court.*

Q December 24, 1923? A Right. 40

*Franklin W. Rice, direct.*

Q He went to the bank December 18th, signed a check— A The date of discharge from the hospital was December 24, 1923. Now, there is another admission and discharge— March 13, 1924, and discharge then on July 21, 1924.

10 *By Mr. Cone.*

Q Same diagnosis? A Yes, sir; high blood pressure.

*By the Court.*

Q You stated why he was sent to the hospital December 22d. Why was he sent there again March 12, 1923? A He was directed to go home with the understanding that if he had any relapse or was not any better, he was to come  
20 back to the hospital.

Q That is, he was permitted to go home March 5, 1923? A Yes; on March 5th he was permitted to go home, because he could get the same medicine at home that he was getting at the hospital. One of the reasons for letting him go home was we wanted to cut down on expenses as much as possible.

Q You have not told me why he went back  
30 March 12th? A During the week that he was home I saw him myself and his condition was unimproved, and so I sent him back to the hospital.

Q Can you tell us whether or not at any time prior to his discharge he was permitted to go out from the hospital and around Morristown and back again to the hospital? A As I recollect, I believe his brother did take him out; he was permitted to go out.

Q That is, before his final discharge? A  
40 Before his final discharge.

*Franklin W. Rice, direct.*

Q On December 24th? A Yes; and I believe he went to a barber shop. He was permitted to go to a barber shop in town.

Q During his stay in the hospital, can you tell us how often he was permitted to go out?

A I should say two or three times.

*By Mr. Cone.*

10

Q What was the mental condition of Mr. Connors from the period from December 26, 1922, when he entered the hospital, with all of the many illnesses that you have mentioned, until July 21, 1924, when he was discharged finally for the third time? A For one period of that time he was out of his mind.

Q Can you definitely fix that period? A That I cannot; no.

20

Q From the period December 26, 1922, to March 5, 1923, do you remember his mental condition? A That was the first time—December 26, 1923, to—

*By the Court.*

Q His first admission after the rectal trouble, was December 6, 1922? A December 26, 1922.

Q He was discharged March 5, 1923. What period are you talking about? What was his mental condition between December 26th and March 5th? A He was admitted to the hospital in a stuporous condition, and on admission he was not able to—

30

*By Mr. Barkman.*

Q That is, December 27, 1922? A This is December 26, 1922, and he was aroused with difficulty.

40

*Franklin W. Rice, direct.*

*By the Court.*

Q How long did that condition continue? A That condition continued for a period of about two weeks. He was treated for high blood pressure. His blood pressure on admission was 235 which is considered very high.

10 Q I have not got an answer to my question as to what his mental condition was from December 26th to March 5th. A He was delirious for approximately two weeks. Then he cleared up.

Q From March 12, 1923, to December 24, 1923, what was his mental condition? A All I can say is this: That his mental condition had improved from his previous discharge. It was not quite right, because the patient got out of bed at times without permission.

20 Q You have stated that there was one period when he was out of his mind. Are you speaking of that period of two weeks after his first admission? A Yes, sir; when he was out of his mind, that was December 26, 1923.

Q December 26, 1923? A 1922.

30 Q Were you his personal physician, or were you the hospital physician? A I was his personal physician; I was in charge of him while he was in the hospital, too.

*By Mr. Cone.*

Q Now, doctor, from the time in December, 1922, when you first started to treat him, when you say he was out of his mind, until the last time you treated him, would you say that the man was entirely normal in his head, mentally? A No; I would say he was not.

*Franklin W. Rice, direct.*

*By the Court.*

Q Was he capable of transacting business?

A He might have been at times, that is, his mind might have been clear at times; at other times, bad.

Q What would you say about his condition in December, 1923, with reference to withdrawing money from the bank? A Around that time I believe his mind was clear, as far as I can determine. He was not in the hospital at that time— 10

Q He was not discharged until December 24, 1923. A That goes back to the first admission, does it not?

Q March 12th, after he had been out a week, you sent him back again? A You just asked me about December, 1923. 20

Q Yes. A Well, he was not in the hospital in December, 1923.

Q He was not discharged until December, 1924.

Mr. Barkman: There must be a mistake in the date somewhere.

A You just asked me what was his mental condition in December, 1923. 30

Q If you can tell us, from your recollection, or from your records. A I believe his mental condition had cleared up around that time.

Q He had a blood clot on the brain, didn't he? A He had had a hemorrhage. He might have had a thrombosis or he might have had an embolism.

Q The fact is that in December, 1922, he had had this brain hemorrhage so that he was in a stupor and out of his mind for two weeks be- 40

*Franklin W. Rice, direct.*

fore he could be aroused from that stupor? A  
That is right.

Q What was his condition following that  
period of two weeks? A Then he gradually  
cleared up. He was not paralyzed. Many of  
these cases are left with a paralysis.

10 Q Has he any symptoms of paralysis now?  
A I have not examined the man the last year.

Q I thought perhaps you were still treating  
him. A No; I haven't seen him in the last  
year.

Q When did you cease treating him? A  
July 21, 1924.

Q What was his condition then? A His  
condition then was that he had improved. He  
didn't have any paralysis of the arm, leg, mouth  
or face.

20 Q Was he able, in July, 1924, to talk to you  
intelligently? A Yes.

Q Could he understand your questions and  
make intelligent answers? A Considering his  
intellect, I would say yes.

Q I mean was he in a normal mental condi-  
tion for him? A Normal, for a man with high  
blood pressure and nephritis.

30 Q What is the normal condition of a man's  
mind under those conditions? A Do you mean  
the average man or do you mean this specific  
man?

Q I mean a man of usual mentality. A  
Well, he should be able to carry on a conversa-  
tion with average intelligence. My recollection  
is that when he was discharged from the hospital  
he was in a pretty fair condition.

Q You came in the court room after he had  
finished his testimony. At least, he hasn't testi-  
fied since you have been here? A No, sir.

40

*Franklin W. Rice, direct.*

Q You have not had a chance to judge of his condition today as compared with July, 1924?

A No, sir.

Q How old a man is he, do you know? A About sixty-eight. That is offhand. Between sixty-five and seventy.

Q The complaint says he is over eighty. Would you say that he is eighty? A I would not. 10

Mr. Cone: That is what his brother tells me.

Q Do the records of the hospital show his age at the time he was first admitted? A Age, 65—from the chart.

Q Where was that information obtained? A From some relative. 20

Q That is, he was not able to give his own age at the time, because he was in a stupor? A That is right.

Q Did he ever talk to you about any money he had in the bank? A Yes; he did.

Q When was that? A During the stay in the hospital.

Q Which stay? A The first time.

Q That is between December, 1922, and March 1923? A Yes. 30

Q What did he say about it; what did he tell you? A He told me he had some money in the bank to pay the hospital bill and pay my bill, and that he would pay my bill as soon as he got out of the hospital.

Q Did he tell you how much he had in the bank? A No, sir.

Q Did he tell you what bank? A No, sir.

Q Did he ever speak to you of Mrs. English? A Not with reference to the bank. 40

*Franklin W. Rice, direct.*

10 Q In any way? A He lived with Mrs. English and when I would go to the home to see him at his home, Mrs. English would always open the door and bring me in to see him, and practically every time I treated him, if I went there to take his blood pressure or to pre-  
scribe for him or examine him, Mrs. English would be in the room.

Q How old would you say she was? A Well, I would say about seventy.

*By Mr. Cone.*

Q Older than Mr. Connors? A Apparently. She looked older.

*By the Court.*

20 Q What was her physical condition? A I took care of her when she died; she died of a stroke of apoplexy.

Q When did she die? A Approximately a year ago, or rather less than that—nine to twelve months ago.

The Court: What is the date?

Mr. Cone: April 12, 1925.

30 Q Is that right? A That is right.

Q How long about had she been ill? A She was ill a week.

Q Up to that time what had been her physical condition? A I never treated her except for her stomach, something like that. She was apparently well.

Q What was her mental condition? A Very keen.

40 Q Was she of stronger mentality, in your opinion, than Connors? A Yes.

*Franklin W. Rice, direct.*

Q Was he living there with her at the time of his first admission to the hospital? A Yes.

Q How long had he been living with her, do you know? A I don't know.

Q Was he living there in 1920 when you treated him for this rectal tumor—I think you said it was a rectal tumor? A I don't know 10  
where he lived then. He came to my office and I sent him to the hospital right away.

Q The operation was at the hospital? A At the hospital.

Q What was his mental condition in 1920? A Very good.

Q When did you first notice that he began to fail? A Around Thanksgiving, 1922, about a month before he was sent to the hospital.

Q What were the symptoms then? A I was 20  
treating him for high blood pressure and nephritis or Bright's disease, and he gradually got worse until the day before admission to the hospital he was delirious; I remember they had a hard time holding him down in bed; he wanted to get up out of bed and run around the house. Mrs. English was trying to hold him down in bed and some of the other people in the house and some of the neighbors, and I told the people 30  
there the only place for him was in the hospital where I could treat him.

Q After he left the hospital in July, 1924, did he go back to Mrs. English to live? A I think so. That I am not certain of.

Q You did not treat him after he left the hospital in July, 1924? A I didn't treat him. I have no way of judging where he did go.

Q Do you know whether Mrs. English visited him at the hospital? A Yes, sir; she did. 40

*Franklin W. Rice, direct.*

Q How frequently would you say she visited him? A I cannot answer that. I don't know.

Q Can you say whether her visits were before or after December, 1923? A They were both before and after.

10 Q How do you know that? A From seeing her there in the hospital.

Q You speak from recollection? A I am speaking from recollection, and she came to my office to find out his condition.

Q After December, 1923? A After December, 1923.

20 Q How can you recollect of her coming to your office to find out his condition after December, 1923, when it appears that he returned to live with her after he was discharged from the hospital in December, 1923, and he didn't go to the hospital again until March, 1924? A She came there several times for medicine for him.

Q Before he went to the hospital in March, 1924? A Before he went to the hospital in March, 1924. I was giving him a special tablet—high blood pressure tablet—and she would come over to my office to get these tablets when he would run out of them.

30 Q The testimony is that on December 18, 1923, Mr. Connors went to the Morris County Savings Bank and had with him his pass-book for an account he had in that bank, and on that day withdrew the whole amount that he had to the credit of that account, which was \$5,356.90, and turned that money over to Mrs. English. Can you say whether at that time, in your opinion, he was capable of understanding the nature of the act in which he was engaged? A I believe he was capable.

40 Q That is, mentally capable? A Yes, sir.

*Franklin W. Rice, direct.*

*By Mr. Cone.*

Q Taking into consideration the question as propounded by the Court, and taking into consideration the further fact that Mrs. English accompanied him to the bank, and that she was present when he withdrew this money, and that it was immediately turned over to her, and that his physical condition was so feeble that he could hardly write his name, and that two witnesses witnessed his signature to the check, would you still be of the opinion that he was mentally capable? A I am talking from a medical standpoint. He was capable. I am not talking from the standpoint of coercion. There might be force or persuasion brought. My answer is "Yes."

Q Taking into consideration the fact that Mrs. English had a keen mind, as you have stated, and that Mr. Connors was still in the hospital—out on parole, so to speak—would you say that her mentality was stronger than his, sufficiently so to coerce him into this signing, making him do something which he might think he was doing voluntarily, but at the same time a stronger mentality was forced upon him? A Perfectly possible.

There is one thing, your Honor, in this case that perhaps I ought to mention: This man at the time he was sick was very resentful to his brother.

*By the Court.*

Q What is his brother's name? A Patrick. He thought his brother was trying to take his money from him. During the period of his acute illness, when he was extremely bad in the hos-

*Franklin W. Rice, direct.*

10 pital, some of his mutterings were in regard to money, and he thought his brother was going to take the money that was saved in his lifetime and keep it himself. In other words, his mind, during that period of his sickness, was resentful to his brother. Whether there was any persuasion to make him so from Mrs. English or her family I don't know.

Q During the time that you say he showed this resentfulness toward his brother was his mental condition all right? A His mental condition was not all right.

Q When his mental condition cleared up after he came out of this stupor in January, 1923, did he still show this resentful feeling toward his brother? A He did.

20 Q Did he show that by any statement to you, or any statement that you heard, up to July, 1924? A We talked a few minutes ago about the fact that he was permitted to go out of the hospital. The first time he was there his brother used to come in a carriage to take him to a barber shop or wherever necessary, and he more or less, from what I could see, did not want his brother to take him out; he was not very anxious for his brother to take him out. In other words, 30 what I am trying to state is this: that he was more or less influenced by—or would do things for—Mrs. English, whereas he would not do them for his brother.

Q Do you know how he got home from the hospital in July, 1924? When he was discharged, was he able to walk? A Well, he could walk around the hospital.

Q How far did he live from the hospital? A He lived at least ten blocks—half a mile.

40

*Franklin W. Rice, cross.*

Q Was he able to walk from the hospital home? A He could not.

Q How far was the hospital from the Morris County Savings Bank? A Seven blocks to the hospital. His home is—

Q They are pretty long blocks, are they not? A Yes. 10

Q What is the distance—half a mile? A About half a mile.

Q Was he able to walk from the hospital to the bank in December, 1923, and back again? A He might have been able, but I don't believe—

Q You don't believe what? A I think his brother took him around in the carriage.

*Cross examination by Mr. Barkman.* 20

Q Do you know the family Mr. Connors had, whether he had wife or child or any family? A No.

Q You shake your head. You don't know whether he had a family? A No; I do not.

*By the Court.*

Q As far as you know, he had no wife or child? A As far as I know. 30

Q He never spoke of any? A He never spoke of any.

Q And he lived alone? I mean, there was nobody living with him, except Mrs. English? A Yes. There were some other boarders in that house.

Q Was it a boarding house? A Yes; a small boarding house. 40

*Frank W. Wade, direct.*

*By Mr. Barkman.*

Q He was living there in 1920 when you first attended him? A I cannot say. Connors came to my office and from my office he went to the hospital.

10 Q After that, when you visited him at his home, you found him at Mrs. English's? A That is right.

Q You also took care of Mrs. English? A I did.

Q Do you know whether or not Mrs. English could read or write? A I never had occasion to know that.

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20 FRANK W. WADE, sworn as a witness on the part of the complainant, testifies as follows:

*Direct examination by Mr. Cone.*

Q You are resident physician of All Souls' Hospital, Morristown? A Yes.

Mr. Barkman: Qualification admitted.

30 Q You were house physician during the time that Mr. Connors was confined to All Souls' Hospital for various illnesses? A I was.

Q Did you have any occasion to see him while he was at the hospital? A Yes; I saw him as a rule practically every day during the time that he was in the hospital.

Q Did you have any occasion to talk to him for a short period of time? A Yes.

40 Q The records show that he entered the hospital December 26, 1922, and was discharged in

*Frank W. Wade, direct.*

March, 1923, and that he was suffering from cerebral hemorrhage, arterio-sclerosis and nephritis. What would you say his mental condition was during his stay at the hospital? A During his period at the hospital, it was poor—poor at the outset, but gradually improving until he was in condition to be discharged as improved—not cured. 10

Q The mere fact of his discharge would not indicate that his mental condition had returned to normal, would it? A No.

Q Just improved? A Just improved.

Q He was in the hospital again from March 12, 1923, until December 24, 1923. Do you recall that, after looking at the records? A March 12, 1923.

Q And discharged December 24, 1923? A I recall the period that he was there, but the dates— 20

Mr. Barkman: There is confusion about these dates.

Q Just look at the record. A Twelfth of March, 1923, and discharged on the twenty-fourth of March, 1923. This is the second time he was in the hospital: Admitted on the twelfth of March and discharged the twenty-fourth of March, 1923. 30

*By the Court.*

Q Not discharged the twenty-fourth of March—discharged the twenty-fourth of December. A This is the second admission to the hospital. He was discharged March twenty-fourth, according to the records I have here. Then there was another subsequent admission, 40

*Frank W. Wade, direct.*

on which he was discharged some time in December, 1924.

Q We want to get these dates. A The first admission that I have a record of, was December 20, 1922.

10 Q He was discharged when on that admission? A He was discharged the fifth of March, 1923.

Q Fifth of March? A That is what it says here: Fifth of March, 1923. These are the hospital dates. The doctor's dates might be different. He dates the discharge when he is discharged from his care.

20 Q That may be, but he was looking over these records when he gave the date of discharge. When do you say he was admitted to the hospital again after March 5, 1923? A The next chart is March 12, 1923.

Q And he was discharged when? A He was discharged the twenty-fourth of March. He was there twelve days. He went out on the fifth and came back a week later.

Q And then he went out on the twenty-fourth of March? A He went out on the twenty-fourth.

Q And then he came back again? A Yes. The next record shows March 13, 1924.

30 Q And then, when he went in on March 13, 1924, how long was he in the hospital on that admission? A He was in the hospital then somewhere in the neighborhood of—I can give you the exact number of days: July 21, 1924; he was in the hospital 141 days at that time. July 21, 1924, he was discharged. He came in March thirteenth.

40 Q What about his being discharged December twenty-third, that Dr. Rice talked about, after he was admitted March twenty-fourth? A He

*Frank W. Wade, direct.*

was in the hospital previous to that for a surgical operation.

Q That is an early one? A Yes, 1920.

Q Was he in the hospital in December, 1923?

A I have no record of it, and I have no recollection. The only thing is the record of former admissions. There is one chart here which showed that the date was 12-26-23. There is an erasure here. It might have been an erasure of the doctor's going through and reading the chart. Three other places in the same chart shows that the date of admission was 1922, instead of 1923, in December. 10

Q What is that? A Evidently there has been an error. Somebody put down 1923. The date of admission is 1922. Here is 1922.

Q Then, you agree with Dr. Rice that the first admission was December 26, 1922? A Yes, sir. 20

Q And he was discharged March 5, 1923? A March 5, 1923.

Q Then he went back again? A March 12, 1923, and was discharged on March 24, 1923.

Q Then, tell me once more: When did he go back again? A The next date was March 13, 1924, almost a year later.

Q So that he was out of the hospital after March 24, 1923, for practically a year? A Practically a year, according to our records. 30

*By Mr. Cone.*

Q Now, doctor, during all of this period and the various times when he was in the hospital and when you saw him just previous to his discharge, what was his mental condition? A Well, in my opinion, it was poor. He was a cerebral case. That is the way we looked at it. 40

*Frank W. Wade, cross.*

10 Q And taking into consideration the fact that he had been discharged from the hospital March 24, 1923, and that on December 18th of the same year he went to the Savings Bank with Mrs. English with whom he boarded and that he drew out all of his money in one account and transferred it to Mrs. English, giving it over to her; and taking into consideration the fact that  
20 on March 13, 1924, some three months later, he was again returned to the hospital for the same illness, would you say, in your opinion, knowing his mental condition previously, that he knew the nature of his act and was mentally competent to do that act? A I first answer that by saying that I believe his mental condition was improved; but during that period there might have been, there are, many things that he can do, the same  
20 as a brain injury. He had some impairment of his mental function. The extent of that, I am not in a position to state.

Q His mentality was impaired? A It was impaired, I would say.

*Cross examination by Mr. Barkman.*

30 Q You were treating him for physical illness, were you? A No, sir; I was not treating him at all. He just came under my observation in my capacity as house physician.

Q You just looked in once in a while? A I talked to him a great deal and many times I had to put him in bed and restrain him when it was necessary to do it, when he was not competent to help himself.

40 Q That was when he was first there? A No; during subsequent periods; his last time particularly.

*Frank W. Wade, cross.*

Q That is, 1924? A 1924.

Q There seems to be confusion about the date, December 24, 1923. You say that— A He was not in the hospital at that period according to the records. We have no record of him during that period.

The Court: According to Dr. Wade, Conners was not in the hospital from March, 1923, to March, 1924. He was discharged in March, 1923, and came back in March, 1924. He was out almost a year.

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Mr. Barkman: Almost a year; yes, sir.

Q After his discharge March, 1923, you did not see him again for how long—until he came back the next time? A Until he was admitted the next time, yes, sir. The only times I did see the man were when he was a patient in the hospital. That is all.

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Q He was a patient there by reason of some physical disability? A Yes.

*By the Court.*

Q Do you know Mrs. English? A No, sir.

Q You don't know whether she came to visit him or not? A No, sir; I don't know that at all.

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COMPLAINANT RESTS.

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*Mary Murphy, direct.*

DEFENDANTS' CASE.

MARY MURPHY, sworn as a witness on the part of the defendants, testifies as follows:

*Direct examination by Mr. Barkman.*

10 Q You are a daughter of Margaret Murphy, the administratrix in this case? A Yes, sir.

Q You knew Mrs. English in her lifetime? A Yes, sir; I did.

Q You knew Mr. Connors? A Yes; I did.

Q After the death of Mrs. English did you make any examination to find out the property or effects or anything she left? A Why, yes; we looked to find a will, and we found the bank-books in a box; these two books in the box. We  
20 tried to find a will. In Mrs. English's writing-desk we found these in a box.

Q Do you know how long Mr. Connors lived with Mrs. English? A He was there nine years or more; ever since his wife died, and his wife is dead going on ten years.

Q You are related to Mrs. English? A Yes.

Q How are you related to her? A I am her niece.

Q What relation are you to Mr. Connors? A  
30 Cousin.

Q Do you know what family Mr. Connors had? A He had no family; just him and his wife.

*By the Court.*

Q Are you a first cousin to Mr. Connors? A My father is a first cousin.

40 The Court: The two bank-books shown the witness ought to be identified on the record.

*Conclusions of the Court.*

Mr. Barkman: I offer them in evidence.

(Books are marked Exhibit D. 1 and Exhibit D. 2.)

The Court: I understood this witness to testify that she found two books in Mrs. English's writing-desk. Of the two books that she found, was one in Mrs. English's name and one in Connors' name? 10

Mr. Barkman: No, sir; both were in Mrs. English's name—both of the books. The purpose of the testimony is to show that Mrs. English was in possession of the book to which the account had been transferred, when she died.

No cross examination.

DEFENDANTS REST.

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CASE CLOSED.

### CONCLUSIONS OF THE COURT.

The Court: (Orally at close of testimony.) In December, 1923, the complainant had two bank accounts in the Morris County Savings Bank, both in his name. In one he had over \$6,000; in the other he had over \$5,000. On the eighteenth of that month he went to the bank with Mrs. English. He had with him his bank-book for the smaller of the two accounts, and he told the treasurer of the bank that he desired to transfer that account to Mrs. English, that is, he desired to withdraw from the bank the sum of a little over \$5,000 to his credit in that account and give that to Mrs. English who wanted to open an account in her name. The transaction consumed about ten minutes, Mr. O'Connor 30

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*Conclusions of the Court.*

10 doing all the talking with regard to the transfer and Mrs. English saying nothing. Mrs. English knew the purpose for which they were at the bank. It was necessary for her to be there, because it was her intention to open a second account—she already had one in the bank—with the money that O'Connor was going to withdraw from his account. She had to be there to sign the signature card and give directions with regard to opening the second account.

20 The official of the bank who handled this transaction testifies that while Mr. O'Connor was feeble in body, there was nothing about his mental condition to excite any suspicion on the part of the official and that Mr. O'Connor apparently understood what he was doing and comprehended the nature of the act he was about to perform. He was not stripping himself of all his property. He had over \$11,000. He was giving \$5,000 to Mrs. English, with whom he had lived as a boarder for nine years and with whom he must have been on friendly terms because she visited him at the hospital while he was there and after his discharge from the hospital he went back to Mrs. English to live with her. Unfortunately, Mrs. English is now dead and Mr. O'Connor is  
30 barred by the statute from testifying as to any transaction with Mrs. English regarding this transfer of account. He is also barred by his illness, or the nature of his illness; for he now appears to me, testifying as a witness, to be suffering from aphasia or loss of memory.

40 It appears from the testimony that he went to the hospital in Morristown in December, 1922, or was sent to the hospital in Morristown in December, 1922, suffering from cerebral hemorrhage, hardening of the arteries and kidney

*Conclusions of the Court.*

trouble. At that time he was in a stupor and out of his mind, at least raving. That condition of mind continued for about two weeks, when his mind cleared up and his condition improved to such extent that he was discharged from the hospital, not cured, but as improved sufficiently to enable the authorities to discharge him in March, 1923. It appears that that discharge was premature, because after being out of the hospital for a week he was returned to the hospital by his physician and stayed there for twelve days longer and was again discharged on March 24, 1923. He was out of the hospital and presumably residing back in Mrs. English's house from March, 1923, to March, 1924, when he again returned to the hospital for treatment for the same form of disease from which he had been suffering in December, 1922. He remained in the hospital from March, 1924, to July, 1924, when he was again discharged as sufficiently improved so as not to require hospital attention. Now, during the period of the year from March, 1923, to March, 1924, when he was out of the hospital, he was under the care and observation (whenever treatment was necessary) of Dr. Rice, his personal physician. Dr. Rice, who saw him during that period and who attended him, said that his mind was practically normal; that while he was never a man of acute mentality, he was able to attend to the ordinary transaction of business affairs in which a man of his condition was engaged, and particularly, that in December, 1923, at the time this bank transaction occurred, O'Connor's mind was clear and that he was capable of understanding the nature of the act in which he was engaged; so that we have in this case the fact that so far as O'Connor's condition of mind is concerned at the time of the trans-

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*Conclusions of the Court.*

fer of the account in question, he was capable of knowing what he was doing and capable of understanding he was making a gift to Mrs. English. It also appears from Dr. Rice's testimony that O'Connor was not on the best of terms with his brother, that there was some feeling between them, and that O'Connor had no wife and no issue and therefore that the one who would be likely to inherit from him in case of his death was his brother, and possibly the explanation of the transfer of part of O'Connor's savings to Mrs. English, is that he did not want his brother to have all of his estate; that he felt that after living with Mrs. English as a boarder in her house for nine years, he wanted to remember her or wanted her to have some part of his estate. If his mental condition was such that he could understand the nature of the act he was performing, then the only question left in the case is whether there was any undue influence exercised by Mrs. English to induce O'Connor to make this transfer to her. They were both about the same age apparently. There is some question about O'Connor's age—whether he was sixty-five or seventy. He was probably between sixty-five and seventy. Dr. Rice thought that Mrs. English was about seventy years of age or a little older. Dr. Rice thought she was of stronger mentality and keener mind than O'Connor.

I do not understand the law to be in a case of this kind, where the complainant has not transferred all his estate and has not impoverished himself, that the burden of proving the absence of undue influence is upon the donee or those who represent the donee. It would be rather a harsh rule to apply in this case, be-

*Conclusions of the Court.*

cause the donee is dead, and the donee's representative cannot give such evidence as she might be able to give under the statute, which would explain the transaction and show what occurred at the time the transfer was made. If there were any evidence produced on the part of the complainant to show that there was any undue influence or improper conduct on the part of Mrs. English to induce O'Connor to make this transfer, then the defendant might be called upon to make some explanation; but since the only testimony from which undue influence might at all be inferred is merely the testimony that Mrs. English was a woman of strong mentality and keen mind, I do not feel that there is any burden placed upon the defendant to rebut any presumption of undue influence. Under the testimony, the bill of complaint will have to be dismissed.

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*Decree of Dismissal.*

**DECREE OF DISMISSAL.**

Filed.

10 This cause coming on to be heard in the presence of Leon E. Cone, Esq., of counsel with the complainant, and David F. Barkman, Esq., of counsel with the defendants, on bill, answer and oral proofs taken in open court; whereupon and upon duly considering the said pleadings and proofs and hearing and considering the argument of counsel, from all of which it now appears satisfactory to the Chancellor that the complainant has not sustained the allegations of his bill of complaint:

20 It is thereupon, on this 13th day of November, 1925, ORDERED, ADJUSTED AND DECREED that the complainant's bill be and the same is hereby dismissed.

Respectfully advised,

JAMES F. FIELDER,  
V.-C.

I consent to the above decree as to form.

30 LEON E. CONE,  
Solicitor of Complainant.

*Notice of Appeal.*

**NOTICE OF APPEAL.**

Filed.

The complainant, Thomas Connors, hereby appeals from the final decree bearing date and filed November 13, 1925, in the above entitled cause, wherein it is ordered, adjudged and decreed that the bill of complaint of the complainant be dismissed, to the Court of Errors and Appeals, in the last resort in all cases. 10

Dated at Morristown, New Jersey, November 13, 1925.

LEON E. CONE,  
Solicitor and of Counsel with the Complainant.

I conceive there is good cause for appeal in the above-stated cause. 20

LEON E. CONE,  
Of Counsel with Complainant.

Service of a true copy of this notice of appeal is hereby acknowledged this 13th day of November, 1925.

DAVID F. BARKMAN,  
Solicitor of Defendants. 30

*Petition of Appeal.*

**PETITION OF APPEAL.**

Filed.

**New Jersey Court of Errors and Appeals**

10 *Between*

THOMAS CONNORS,  
*Complainant-Appellant,*

*and*

MARGARET MURPHY, adminis-  
tratrix of the estate of  
Bridget English, dec'd,  
and THE MORRIS COUNTY  
SAVINGS BANK, a corpora-  
tion,

20

*Defendants.*

*On Appeal,  
&c.*

*Petition of  
Appeal.*

*To the New Jersey Court of Errors and Appeals:*

The petition of Thomas Connors respectfully shows:

30 1. On October 27, 1925, a final decree was entered in the Court of Chancery, in the above-entitled cause, wherein it was ORDERED, ADJUDGED and DECREED that the bill of complaint of the complainant, Thomas Connors, be dismissed.

2. Your petitioner appeals from the order or decree of the Court of Chancery dismissing said bill of complaint for the following reasons:

a. Because the Court erred in excluding the testimony of the complainant, Thomas Connors, regarding transactions with the deceased Bridget English.

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*Petition of Appeal.*

b. Because the Court erred in not finding that the burden of proof rested upon the defendant in this case.

c. Because the Court erred in not finding that the decree should be in favor of the complainant, because the complainant did not have free and independent advice.

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d. Because the Court erred in not finding a decree for the complainant, because the complainant was sick and infirm and mentally incapable of understanding the nature of his act.

e. Because the Court erred in not finding that undue influence was exerted upon him to induce him to make the transfer of his money.

f. Because the Court erred in not finding that Mrs. English was of stronger mentality and therefore influenced him in transferring said money.

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g. Because the Court erred in finding that if there was a gift there was any delivery of said gift.

h. Because the Court erred in not presuming that the gift was the result of undue influence and that the burden of proof was upon the defendant.

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i. Because the Court did not take into consideration the collateral facts and circumstances.

j. Because the decree of the Court of Chancery was based upon an erroneous assumption of laws and facts.

k. Because the decree of the Court of Chancery should have been in favor of your petitioner and against the defendant.

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*Petition of Appeal.*

1. Because the said Margaret Murphy, administratrix as aforesaid, is not entitled to the moneys in question and for these reasons the decree of the Court of Chancery is in error and should be reversed and set aside.

10 LEON E. CONE,  
Solicitor for and of Counsel with  
Complainant-Appellant.

**ACKNOWLEDGMENT OF SERVICE.**

Filed January 28, 1926.

20 Service is hereby acknowledged on this 15th  
day of January, 1926, of a true copy of the  
petition of appeal filed in the above matter.

D. F. BARKMAN,  
Solicitor of Defendants-Appellees.

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*Answer to Petition of Appeals.*

ANSWER TO PETITION OF APPEAL

**New Jersey Court of Errors and Appeals**

*Between*

Thomas Connors,

*Complainant-Appellant,*

*and*

Margaret Murphy, Adminis-  
tratrix of the estate of Brid-  
get English, dec'd, and The  
Morris County Savings Bank,  
a corporation,

*Defendants-Respondents.*

*On Appeal, &c.*

*Answer to*

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*Petition of*

*Appeal.*

The answer of the above named defendant to the petition of appeal of the above-named appellant:

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a decree was on the thirteenth day of November, last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity, and prays that the same may be affirmed with costs to be adjudged to this respondent.

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D. F. BARKMAN,

*Solicitor and of counsel with the respondent.*

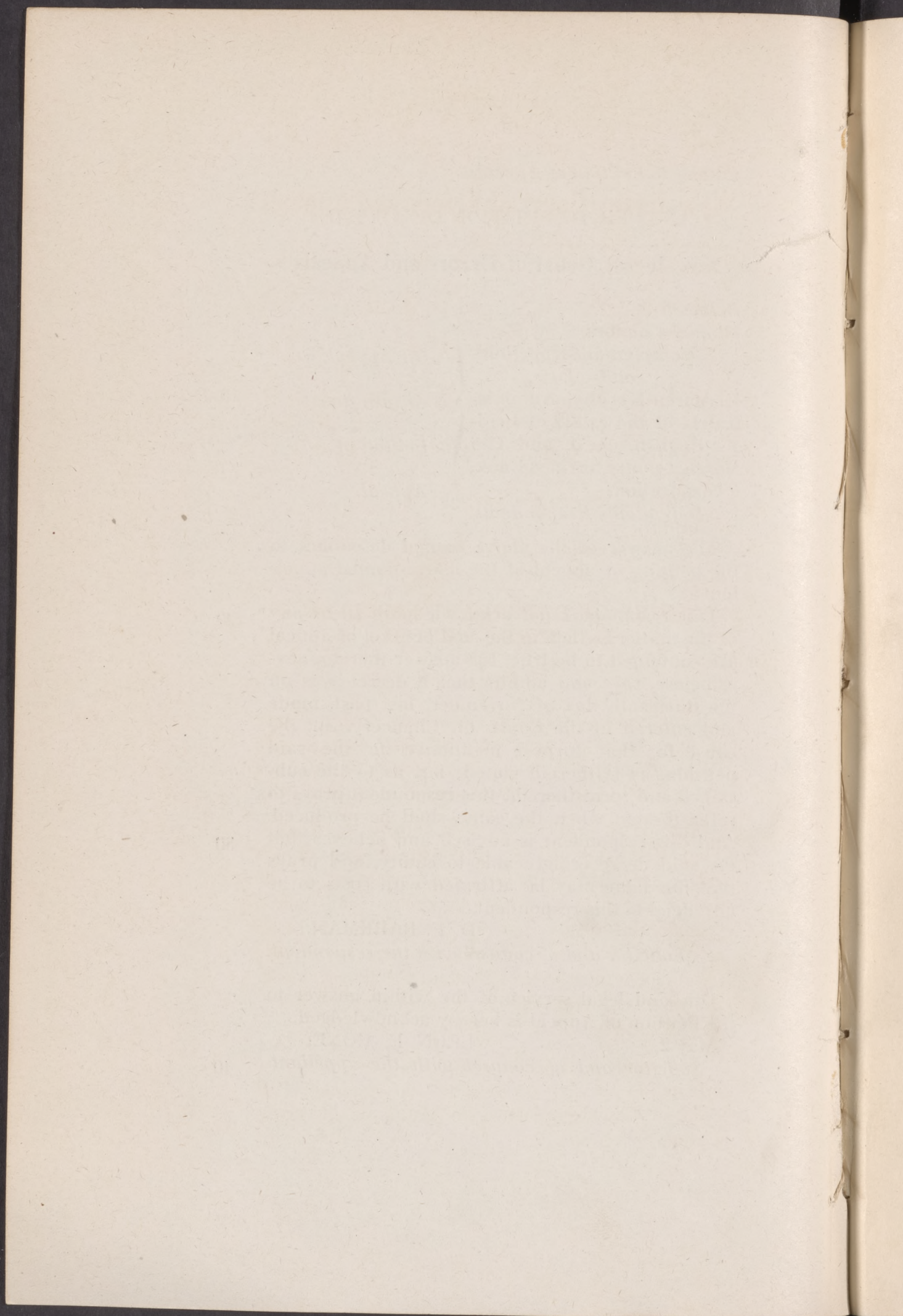
Due and legal service of the within answer to the Petition of Appeal is hereby acknowledged.

May 2

LEON E. CONE,

*Solicitor and of counsel with the appellant.*

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## New Jersey Court of Errors and Appeals

*Between*

THOMAS CONNORS,  
*Complainant-Appellant,*  
*and*

MARGARET MURPHY, adminis-  
tratrix of the Estate of  
BRIDGET ENGLISH, deceased,  
and THE MORRIS COUNTY  
SAVINGS BANK, a corpora-  
tion,  
*Defendants-Respondents.*

*On Bill, &c.*

*On Appeal  
from Decree  
in Chancery.*

### BRIEF OF DEFENDANT-APPELLEE, MARGARET MURPHY.

#### Facts.

Thomas Connors, a man of about seventy years of age, boarded with one Bridget English for about nine years prior to the death of the said Bridget English, which occurred in April, 1925.

The evidence discloses that they were friends. That while he was in the hospital she visited him on several occasions; that she went to the doctor for him to secure medicine and took a friendly interest in the old gentleman, she being a woman of about the same age and apparently in somewhat better health than he, however, she pre-deceased him, dying quite suddenly after a week's illness.

The complainant files this bill to recover a gift made to Bridget English on December 18, 1923, of \$5,356.90, setting up fraud in the transaction.

As a matter of fact the bill is incorrect as to the date of the gift of the money to Bridget English, by one year's time. The evidence shows a transaction between two elderly persons but is absolutely naked of any evidence showing even a suspicion of fraud or undue influence on the part of Bridget English, the State of the Case showing conclusively that O'Connor, or Connors, as he is styled in the bill, was the moving party and instituted and completed the transaction in the presence of a reputable official of the Morris County Savings Bank.

At the time of the transaction Connors was weak physically but clear in mind, knew what he wanted to do, and did it.

Prior to that time he had been in the hospital for one or two operations. The time he left the hospital being March 23rd and not returning until March, 1924, so that when the transaction took place in the bank he had recovered his normal health to a great extent. The case is entirely barren of any evidence showing any importunities upon the part of Mrs. English to influence or cajol him out of any money, the fraud charge failing completely because of lack of proof.

The defendant is Margaret Murphy who defends this suit in a representative capacity as administratrix.

### I.

The rule of evidence relating to the evidence regarding statements and transactions with deceased persons was correctly interpreted by the Court.

The Evidence Act C. S., page 2218, Sec. 4, is so familiar to the Courts of this State, that it

needs no more than a mere citation that the testimony of a living witness with a person since deceased is not competent under its provisions.

Complainant's counsel in his brief, part one, argues that there is an exception to Statute 4 in Section 6 of the Evidence Act which he quotes in full, and annexes a few cases to substantiate his assertion.

The defendant had not removed the disability of the complainant by testifying, and it is difficult to see upon what ground testimony of complainant could have been received without violating this long standing rule.

Counsel did not point out to the learned Vice-Chancellor under what portion of the answer he sought to introduce this evidence. In the Vreeland Case (*Williams v. Vreeland, Exr.*, 30 N. J. E. 576), the character of the evidence given is not set forth and the Court expressly reserved its decision as to its competency.

The case of *State v. Henson*, 66 L., page 601, at page 602, analyzes the Evidence Act and in reference to Sec. 6 of Evidence Act says, "Section 6 makes a defendant in a chancery suit a competent witness for or against any other defendant."

The Henson case was a criminal case and the only questions decided related to testimony of a defendant in a criminal case, and has nothing in common with the suit at issue.

These three or four cases are all that seem to be reported in New Jersey on this section, while the rule laid down in *Lodge v. Hulings, Exr.*, 63 Eq., p. 159, that "By the true construction of Sections 3 and 4 of the Evidence Act, as

revised in 1900, a party to a suit is a competent witness, notwithstanding that either or both of the parties appear on the record in a representative capacity, but, when that is the case, a party offering himself as a witness will not be permitted to testify concerning any transaction with or statement by the decedent of his adversary, unless his adversary first offers himself as a witness and testifies to a transaction with, or statement by, such decedent," is clearly substantiated by many cases.

## II.

**Under the circumstances surrounding the gift to Mrs. English there was no burden on defendant to overcome charges of undue influence, fraud or absence of independent advice.**

The circumstances surrounding this transaction is set forth in the testimony of Charles H. Corwin, a bank official of long standing and integrity (pp. 20-30). He testifies that Mr. Connors and Mrs. English appeared in his bank on December 18, 1923. Mr. Connors did the speaking (p. 21), stating that he desired to transfer an account to Mrs. English. This was done by check (p. 22, Exhibit C. 3). It was then deposited or transferred by his check in a new account opened by Mrs. English. The book was made out and delivered to Mrs. English, she not being able to write (p. 24), Mr. Corwin evidently witnessed her cross to the signature card.

He further testifies (p. 25) that Mr. Connors gave him the directions to make the transfer, and that in the entire matter he acted under the express directions of Connors.

Mrs. English's attitude surely negatives any idea of undue influence, fraud or any other device to induce Connors to give her this money. Mr. Corwin says that she was entirely passive in the matter (pp. 26-27). Outside of physical feebleness Connors was clear as to what he wanted done; talked intelligently and gave instructions as to what he wanted done.

Dr. Rice was sworn and says at this time, December, 1923, his mind was clear (p. 35, Dr. Rice, and on page 41), he categorically says he was capable.

Thus we have the case of two very ignorant persons of about the same age: Connors being able to write his own name, but Mrs. English not being able to do so, friends for nine years, and no other fact or facts upon which to predicate fraud and undue influence. There is no confidential relationship such as is necessary to invoke the rule so elaborately argued by my opponent.

*Parker v. Parker*, 45 E., p. 224. While the Court set aside the gift it did so because defendant was the agent and trustee and had the care and custody of his mother's estate (p. 228) and for that reason the burden was thrust upon him to make clear and to remove any doubt, as to the ownership of the bonds in dispute. Of like tenor is *Albert v. Haeberly*, 68 N. J. E. 665 (last paragraph). "We then declared, on the authority of earlier adjudications, that a deed of gift, which reserved to the donor no power of revocation, was voidable at the option of the donor, or his heirs when it appeared that at the time of its execution there existed between the parties thereto a relation of trust and confidence in which the donee occupied the dominant

position, and also that the donor, when making the deed, did not have the benefit of independent advice as to its effect. This decision now controls the case before us."

In this case we have no such relationship shown.

All of the cases cited by learned counsel for complainant deal with situations where the donor impoverishes himself and in such cases the rule invoked is correct and salutary. In the present case such is not the case. In *Morrison v. Morrison*, 94 Eq., p. 646 (aff. by Court of Errors and Appeals), it was held under circumstances therein related that, the gift was not improvident, and was without undue influence or fraud. The circumstances are somewhat similar in principle to the case at bar. No undue influence or fraud was shown. Donor gave to his daughter \$2,409 when he had house valued at \$4,500, and cash of \$5,000, and at a later time gave his house valued at \$5,000 when he had \$4,200 in bank. Over half the estate was given, but the Court held under the circumstances this was not improvident.

In this case Connors had remaining in bank \$6,056.14 (p. 29), which has grown to \$6,381.79, although \$200 was withdrawn, so there was no impoverishment whatsoever; the true explanation of the transaction being expressed by Mr. Corwin when he states that it was his impression that Mr. Connors regarded the transaction as the arranging of his account preparatory to his death. (P. C. p. 26.) It appears that Connors was afraid of his brother and did not wish him to have any of his money and that his attitude persisted even after his illness. (P. C. p. 41, l. 30; P. C. p. 42, ll. 10-20.)

**III.****The gift was accompanied by delivery.**

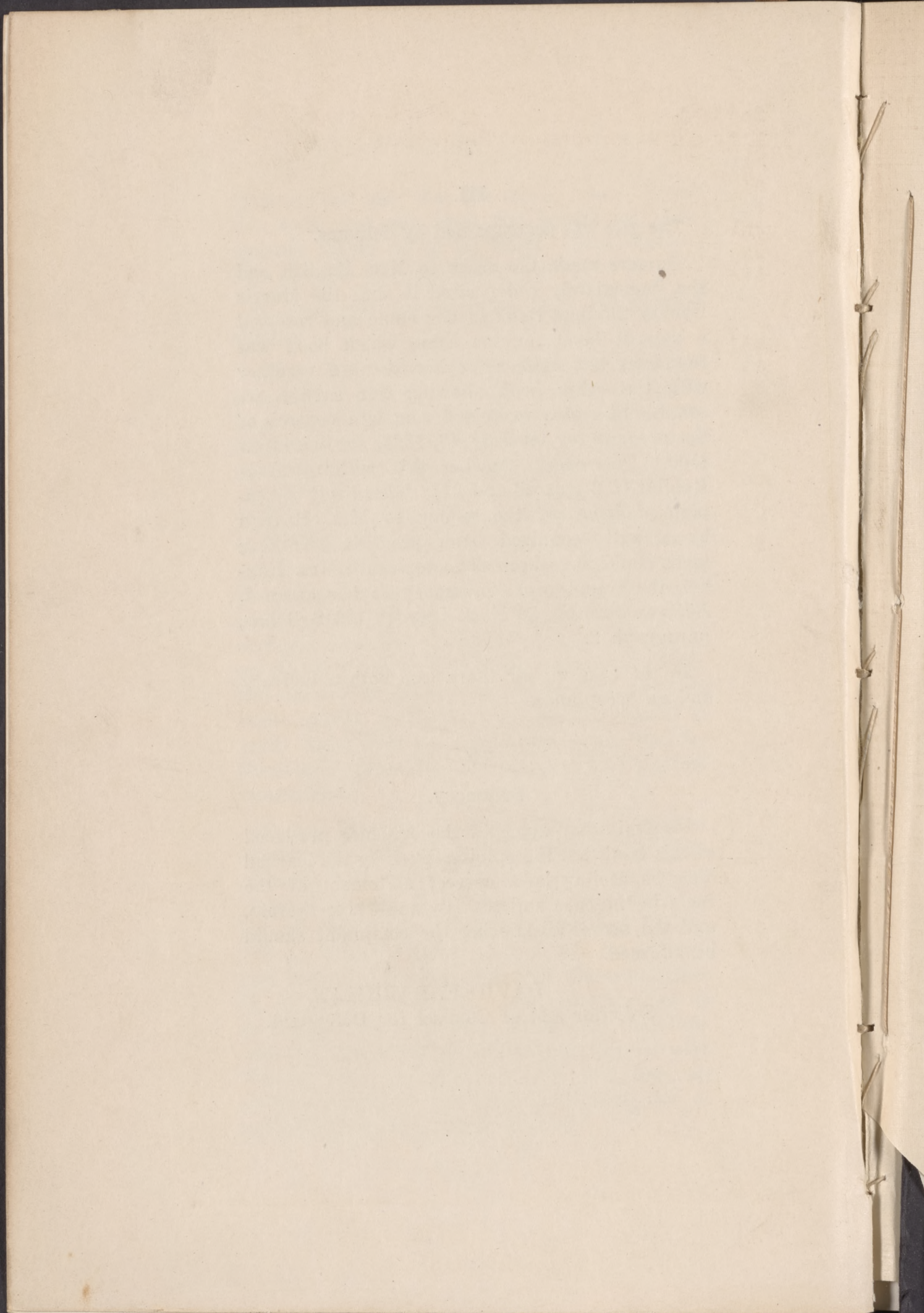
Connors made the check to Mrs. English and she immediately redeposited it with the Morris County Savings Bank in her name and received a deposit book for the same which book was found in her desk after her decease together with the other book showing her earlier account. She also exercised complete control of the account for on July 18, 1924, she withdrew \$500. The check showing this withdrawal is Exhibit C. 6 (pp. 23 and 24). There was a complete delivery of the money to Mrs. English by a well-recognized bank practice. Nothing more could have been done to insure Mrs. English the transfer of the money to her account. *Betts v. Francis*, 30 N. J. Law, p. 152 Syllabus, paragraph 2.

In the case at bar there was both a delivery and an acceptance.

**IV.****Summary.**

I submit that upon all the evidence produced at this trial that the opinion given by the learned Vice-Chancellor is a correct statement of the facts in the case and the law applicable thereto, and the decree dismissing the complaint should be affirmed.

DAVID F. BARKMAN,  
Solicitor and of Counsel for Defendant.



THIS INDENTURE, made the thirtieth day of September, in the year of our Lord One Thousand Nine Hundred and Nineteen, between Hyman Goldberg and Alice Goldberg, his wife, of the City of Garfield, in the County of Bergen and State of New Jersey, the Grantors, and Sam Solomon and Julia Solomon, his wife, of the City of Passaic, in the County of Passaic and State of New Jersey, the Grantees,

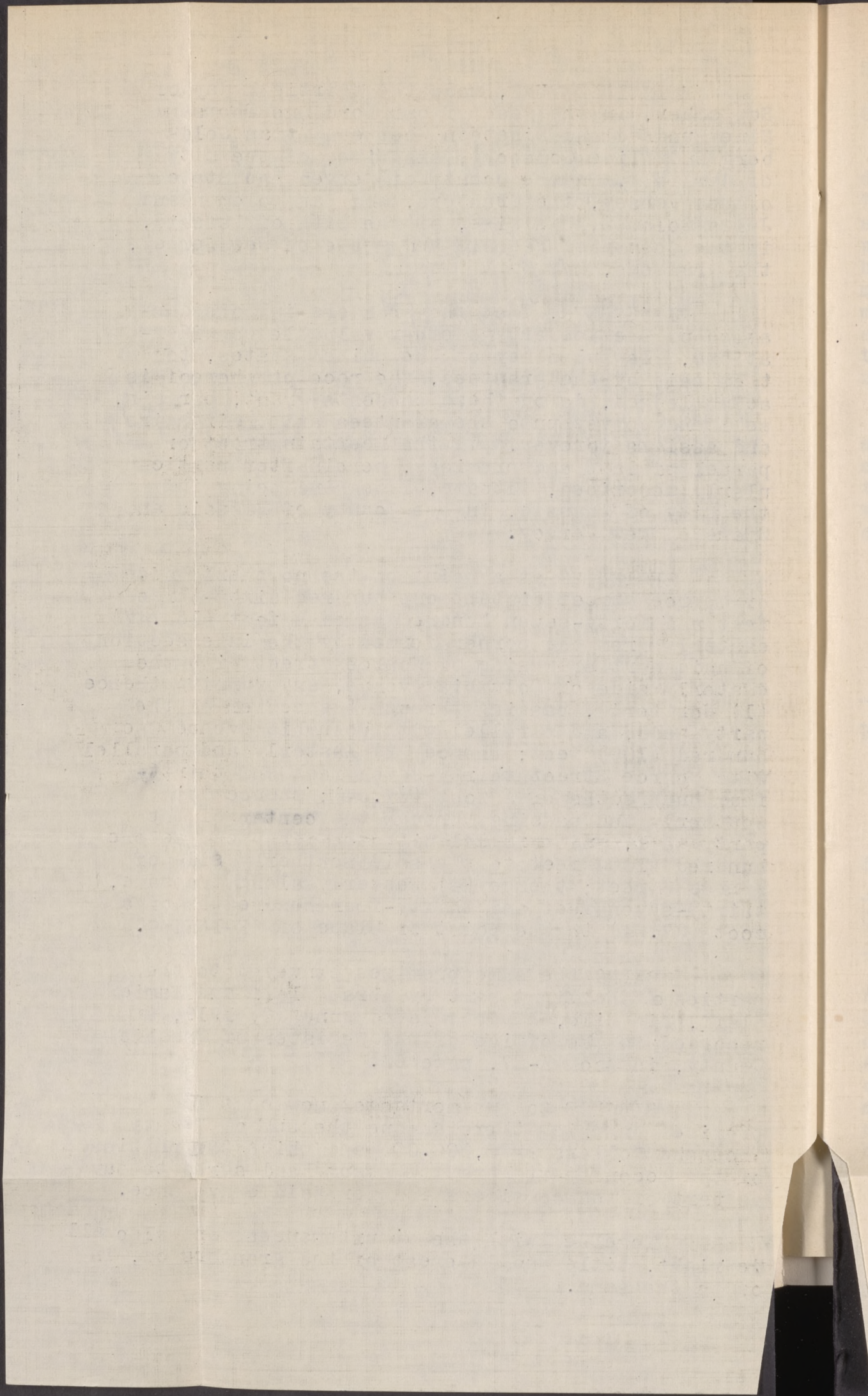
WITNESSETH, That the Grantors in consideration of One Dollar and other valuable considerations, lawful money of the United States, to them paid by the grantees, the receipt whereof is acknowledged, do by these presents grant, bargain, sell and convey unto the grantees and their heirs and assigns forever, All that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Passaic, in the County of Passaic and State of New Jersey:

BEGINNING at a point on the northerly side of Monroe street distant one hundred sixty-three feet and forty-seven hundredths of a foot (163.47) easterly from the corner formed by the intersection of said northerly side of Monroe Street with the easterly side of Columbia Avenue, and running thence (1) Northerly, passing through the center of the party wall, and parallel with Columbia Avenue One hundred (100) feet; thence (2) Easterly and parallel with Monroe Street thirty-seven feet and thirty-four hundredths of a foot (37.34); thence (3) southerly and passing through the center of the party wall, and parallel with the first course one hundred (100) feet to the said northerly side of Monroe Street; thence (4) Westerly along the same, thirty-seven feet and thirty-four hundredths of a foot (37.34) to the point or place of BEGINNING.

BEING the same premises conveyed to the parties of the first part by Abram Slaff and Mamie Slaff, his wife, by deed dated June 30, 1919, and recorded in the office of the Register of Passaic County, in Book R-27, page 63.

SUBJECT to two mortgages now on said premises on which thereis due the sum of Twenty Thousand Dollars (\$20,000.00) and which the parties of the second part herewith assume and agree to pay as part of the consideration for said conveyance.

Together with the appurtenances, and also all the right, title and interest of the grantors of, in or to the same.



To have and to hold the same unto the grantees, their heirs and assigns, to themselves and their own use forever.

And the said Hyman Goldberg and Alice Goldberg, his wife, for themselves, their heirs, executors and administrators, do covenant and agree with the grantees and their heirs and assigns:

(1) That the title to said premises is vested in fee simple absolute in the said Hyman Goldberg and Alice Goldberg, his wife,

(2) That the said Hyman Goldberg and Alice Goldberg, his wife, have lawful authority to grant, bargain, sell and convey the same in form aforesaid.

(3) That the grantees and their heirs and assigns may forever peaceably and quietly hold, possess and enjoy the same against every person lawfully claiming the same.

(4) That the same are now free and clear of all encumbrance whatsoever.

(5) That the grantors and their heirs, and all persons lawfully claiming under them any interest in said premises, shall and will at any time hereafter, upon the request and at the cost of the grantees and their heirs or assigns, execute all further conveyances that shall be reasonably required.

(6) And the said Hyman Goldberg and Alice Goldberg, his wife or their heirs, the above described premises, and every part thereof with the appurtenances unto the grantees, their heirs and assigns against the grantors and their heirs, and against all persons lawfully claiming the same, shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, the grantors have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered  
in the presence of

HYMAN GOLDBERG,

MANUEL N. MIRSKY

(his name in Jewish characters)

ALICE GOLDBERG,

(her name in Jewish characters)

To have and to hold the same unto the  
grantee, their heirs and assigns forever  
and their law forever.

And the said Hyman Goldberg and Alice Gold-  
berg, his wife, for themselves, their heirs,  
executors and administrators, do covenant and  
agree with the grantee and their heirs and assigns:

(1) That the title to said premises is  
vested in the single estate in the said Hyman  
Goldberg and Alice Goldberg, his wife,

(2) That the said Hyman Goldberg and Alice  
Goldberg, his wife, have lawful authority to grant,  
convey and convey the same in form aforesaid.

(3) That the grantee and their heirs and  
assigns may forever peacefully and quietly hold,  
possess and enjoy the same against every person  
lawfully claiming the same.

(4) That the same are not free and clear  
of all encumbrances whatsoever.

(5) That the grantee and their heirs and  
assigns shall be released and discharged from  
all persons lawfully claiming under them any interest  
in said premises, and will at any time here-  
after, upon request and at the cost of the  
grantee and their heirs or assigns, execute all further  
conveyances that shall be reasonably required.

(6) And the said Hyman Goldberg and Alice  
Goldberg, his wife, or their heirs, the grantee,  
described premises, and every part thereof, and the  
apartments into the same, shall hold and  
maintain against the grantee and their heirs and  
assigns all persons lawfully claiming the same, their  
heirs and assigns, and by these presents forever hold

IN WITNESS WHEREOF, the grantors have hereunto  
set their hands and seals the day and year first  
above written.

Witness my hand and delivered  
in the presence of

WALTER R. NISKY

(This name is printed elsewhere)  
ALICE GOLDBERG

Her name in printed elsewhere



BE IT REMEMBERED that on this 30th day of September, in the year of our Lord one thousand nine hundred and nineteen, before me, the undersigned, an attorney at law of New York, personally appeared Hymon Goldberg and Alice Goldberg, his wife, who, I am satisfied, are the persons mentioned in the within instrument, to whom I first made known the contents thereof, and thereafter they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

And the said Alice Goldberg, with her aforesaid, being by me privately examined, separately and apart from her said husband, further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband.

MANUEL H. MURPHY  
 An Attorney at Law of N.Y.

D E B D

Hymon Goldberg, et ux.

-to-

Sam Goldman, et ux.

Dated September 30, 1919.

Received in the Register's office of the County of Sheridan, N. Y., on the 1st day of October, A. D. 1919, at 12:15 o'clock in the afternoon and recorded in Book U-27 of Deeds for said County on page 231.

John A. Ferris,

Register.

# Deed.

Abram Slaff, et ux.,

-TO-

Hyman Goldberg, et ux.,

Dated, June 30, 1919

Received in the Register's office of the County of Passaic, N. J. on the 8th day of July A. D., 1919 at 2:25 o'clock in the afternoon, and Recorded in Book R-27 of DEEDS for said County, on pages 63 &c.,

John R. Morris,  
Register.

State of New Jersey,  
County of PASSAIC

ss.: Be it Remembered, That on this

thirtieth day of June in the year One Thousand, Nine Hundred and Nineteen before me the subscriber, a n Attorney at Law of New Jersey

personally appeared Abram Slaff and Mamie Slaff, his wife,

who, I am satisfied, are the grantor named in the within deed, to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed; And the said

Mamie Slaff, wife as aforesaid,

being by me privately examined, separate and apart from her said husband, further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, FREELY, without any fear, threats or compulsion of her said husband.

MANUEL N. MIRSKY

An Attorney at Law of New Jersey.

Together with the appurtenances, and also all the right, title and interest  
of the grantor of, in or to the same,  
To have and to hold the same unto the grantees and their heirs and assigns, to  
their own use forever.

And the said

Abram Slaff,

for himself, his heirs, executors and administrators, do covenant  
and agree with the said grantees and their heirs and assigns:

(1) That the title to said premises is vested in fee simple absolute in the said

Abram Slaff,

(2) That the said

Abram Slaff

has lawful authority to grant, bargain, sell and convey the same in form aforesaid.

(3) That the grantees and their heirs and assigns may forever peaceably  
and quietly hold, possess and enjoy the same against every person lawfully claiming the same.

(4) That the same are now free and clear of all encumbrance whatsoever.

(5) That the grantor and his heirs, and all persons lawfully claiming under  
them any interest in said premises, shall and will at any time hereafter, upon the request and  
at the cost of the grantees and their heirs or assigns, execute all further conveyances that  
shall be reasonably required.

(6) And the said

Abram Slaff, and his

heirs, the above described premises, and every part thereof with the appurtenances unto the  
grantees their heirs and assigns against the grantor and his heirs, and against all  
persons lawfully claiming the same shall and will Warrant and by these presents forever  
Defend.

In Witness Whereof, the grantors here hereunto set their hands and seals  
the day and year first above written.

Signed, Sealed and Delivered }  
in the Presence of }

MANUEL N. MIRSKY

ABRAM SLAFF (L. S.)

MAMIE SLAFF (L. S.)

# This Indenture,

Made the thirtieth day of June, in the year of Our Lord One Thousand Nine Hundred and Nineteen

Between

Abram Slaff and Mamie Slaff, his wife,

of the City of Passaic in the County of Passaic and State of New Jersey the Grantor

And

Hyman Goldberg and Alice Goldberg, his wife,

of the City of Garfield in the County of Bergen and State of New Jersey the GranteeS

Witnesseth, That the grantor s in consideration of

One Dollar and other valuable considerations

lawful money of the United States, to them paid by the grantee s the receipt whereof is acknowledged do by these presents grant, bargain, sell and convey unto the grantee s and their heirs and assigns forever

All that certain

tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Passaic in the County of Passaic and State of New Jersey.

BEGINNING at a point on the northerly side of Monroe Street distant one hundred sixty-three feet and forty-seven hundredths of a foot (163.47) easterly from the corner formed by the intersection of said northerly side of Monroe Street with the easterly side of Columbia Avenue, and running thence (1) northerly, passing through the center of the party wall, and parallel with Columbia Avenue, one hundred (100) feet; thence (2) easterly and parallel with Monroe Street thirty-seven feet and thirty-four hundredths of a (37.34) foot; thence (3) southerly and passing through the center of the party wall, and parallel with the first course one hundred (100) feet to the said northerly side of Monroe Street; thence (4) westerly along the same, thirty-seven feet and thirty-four hundredths of a foot (37.34) to the point or place of BEGINNING.

BEING part of the same premises conveyed to the parties of the first part by Cornelius J. Cadmus and Rachel E. Cadmus, his wife, by deed dated January 17, 1910, and recorded in the Register's Office of Passaic County in Book W-20, page 151.

Subject to a mortgage now on said premises in the sum of Ten Thousand Dollars (\$10,000.00).

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THIS INDENTURE, Made the thirtieth day of September, in the year of Our Lord One Thousand Nine Hundred and Nineteen, Between Hyman Goldberg and Alice Goldberg, his wife, of the City of Garfield, in the County of Bergen, and State of New Jersey, the Grantors And Sam Solomon and Julia Solomon, his wife, of the City of Passaic, in the County of Passaic, and State of New Jersey, the Grantees,

WITNESSETH, That the grantors in consideration of One Dollar and other valuable considerations, lawful money of the United States, to them paid by the grantees the receipt whereof is acknowledged do by these presents grant, bargain, sell and convey unto the grantees and their heirs and assigns forever, All that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Passaic, in the County of Passaic, and State of New Jersey.

BEGINNING at a point on the northerly side of Monroe Street distant one hundred sixty-three feet and forty-seven hundredths of a foot (163.47) easterly from the corner formed by the intersection of said northerly side of Monroe Street with the easterly side of Columbia Avenue, and running thence (1) northerly, passing through the center of the party wall, and parallel with Columbia Avenue one hundred (100) feet; thence (2) easterly and parallel with Monroe Street thirty-seven feet and thirty-four hundredths of a foot (37.34); thence (3) southerly and passing through the center of the party wall, and parallel with the first course one hundred (100) feet to the said northerly side of Monroe Street; thence (4) westerly along the same, thirty-seven feet and thirty-four hundredths of a foot (37.34) to the point or place of BEGINNING.

BEING the same premises conveyed to the parties of the first part by Abram Slaff and Mamie Slaff, his wife, by deed dated June 30, 1919, and recorded in the office of the Register of Passaic County in Book R-27, page 63.

SUBJECT to two mortgages now on said premises on which there is due the sum of Twenty Thousand Dollars (\$20,000.00), and which the parties of the second part herewith assume and agree to pay as part of the consideration for said conveyance. Together with the appurtenances, and also all the right, title and interest of the grantors of, in or the same, To have and to hold the same unto the grantees, their heirs and assigns, to themselves and their own use forever. And the said Hyman Goldberg and Alice Goldberg, his wife, for themselves, their heirs, executors and administrators, do covenant and agree with the said grantees and their heirs and assigns: (1) That the title to said premises is vested in fee simple absolute in the said Hyman Goldberg and Alice Goldberg, his wife. (2) That the said Hyman Goldberg and Alice Goldberg, his wife have

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lawful authority to grant, bargain, sell and convey  
the same in form aforesaid. (3) That the grantee  
and their heirs and assigns may forever peacefully  
and quietly hold, possess and enjoy the same and  
every person lawfully claiming the same. (4) The  
same are now free and clear of all encumbrances  
and all persons lawfully claiming under them are  
released in said premises, shall and will at any time  
hereafter, upon the request and at the cost of the  
grantee and their heirs or assigns, execute all such  
other conveyances that shall be reasonably required.  
(5) And the said Hyman Goldstein and Alice Goldstein  
do hereby warrant and defend the above described premises  
and every part thereof with the quiet enjoyment of the  
grantee, their heirs and assigns against the claims  
and their heirs and against all persons lawfully claim-  
ing the same, shall and will warrant and defend the same  
forever.

IN WITNESS WHEREOF, the grantors have hereunto  
set their hands and seals the day and year first above  
written.

Hyman Goldstein  
(his name in Jewish  
characters)  
Alice Goldstein  
(her name in Jewish  
characters)

State of New Jersey,  
County of Passaic.  
I, J. H. HANCOCK, Clerk of said County, do hereby  
certify that in the year of our Lord One Thousand Nine  
Hundred and Nineteen, before me, the undersigned, an At-  
torney at Law of New Jersey, personally appeared Hyman  
Goldstein and Alice Goldstein, his wife, who I know to be  
the persons mentioned in the aforesaid instrument,  
to whom I first made known the contents thereof, and  
thereupon they acknowledged that they signed, sealed  
and delivered the same as their voluntary act and deed,  
for the best and purpose therein expressed.  
Alice Goldstein, wife of Hyman Goldstein, being then  
absent, further acknowledged that she signed, sealed and  
delivered the same as her voluntary act and deed.  
Witness my hand, this 13th day of January, 1919.

Manuel H. Mirsky  
Attorney at Law of N.J.

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DEED.

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Hyman Goldberg, et, ux.,

TO

Sam Solomon, et. ux.

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Dated, September 30, 1919.

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Received in the Register's office of the County of Passaic, N. J. on the 1st day of October A. D. 1919, at 12:15 o'clock in the afternoon, and Recorded in Book U-27 of Deeds for said County, on pages 331.

John R. Morris  
Register

Record, charge and return  
to Manuel N. Mirsky  
Attorney at Law  
Lawyers Building  
Passaic, N. J.

DEED

Sam Solomon et. ux.

TO

Sam Solomon et. ux.

Dated September 30, 1918.

Received in the Register's Office of the County of Passaic, N. J. on the 1st day of October A. D. 1918 at 12:15 o'clock in the afternoon, and recorded in Book U-27 of Deeds for said County, on pages 331.

John R. Morris  
Register

Record, charge and return  
to Samuel M. Minsky  
Attorney at Law  
Lawyers Building  
Passaic, N. J.

# Deed.

Abram Slaff, et. ux.,

To

Hyman Goldberg, et. ux.

Dated, June 30, 1919

Received in the Register's office of the County of Passaic, N. J. on the 8th day of July A. D., 1919, at 2:25 o'clock in the afternoon, and Recorded in Book R-27 of DEEDS for said County, on pages 63 &c.

John R. Morris,  
Register.

State of New Jersey,  
County of PASSAIC,

June, in the year One Thousand, Nine Hundred and Nineteen, before me the subscriber, an Attorney at Law of New Jersey,

personally appeared

Abram Slaff and Mamie Slaff, his wife,

who, I am satisfied, are the grantors named in the within deed, to whom I first made known the contents thereof, and thereupon they they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed; And the said

Mamie Slaff, wife as aforesaid,

being by me privately examined, separate and apart from her said husband, further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, FREELY, without any fear, threats or compulsion of her said husband.

~~AN~~ MANUEL, N. AT-LAW, OF New Jersey

} 55: Be it Remembered, That on this thirtieth day of

Together with the appurtenances, and also all the right, title and interest  
of the grantor of, in or to the same,  
To have and to hold the same unto the grantees their heirs and assigns, to  
themselves and their own use forever.

And the said

Abram Slaff,

for himself, his heirs, executors and administrators, does covenant  
and agree with the said grantees, and their heirs and assigns:

(1) That the title to said premises is vested in fee simple absolute in the said

Abram Slaff,

(2) That the said

Abram Slaff,

has lawful authority to grant, bargain, sell and convey the same in form aforesaid.

(3) That the grantees and their heirs and assigns may forever peaceably  
and quietly hold, possess and enjoy the same against every person lawfully claiming the same.

(4) That the same are now free and clear of all encumbrance whatsoever.

(5) That the grantors and their heirs, and all persons lawfully claiming under  
them any interest in said premises, shall and will at any time hereafter, upon the request and  
at the cost of the grantees and their heirs or assigns, execute all further conveyances that  
shall be reasonably required.

(6) And the said

Abram Slaff, and his

heirs, the above described premises, and every part thereof with the appurtenances unto the  
grantees, their heirs and assigns against the grantors and his heirs, and against all  
persons lawfully claiming the same shall and will Warrant and by these presents forever  
Defend.

In Witness Whereof, the grantors have hereunto set their hands and seals  
the day and year first above written.

Signed, Sealed and Delivered }  
in the Presence of }

MANUEL N. MIRSKY

ABRAM SLAFF

L. S.

6 MAMIE SLAFF

L. S.

# This Indenture,

Made the thirtieth day of June, in the year of Our  
Lord One Thousand Nine Hundred and Nineteen,  
Between

Abram Slaff and Mamie Slaff, his wife,

of the City of Passaic, in the County of  
Passaic, and State of New Jersey, the Grantor  
And

Hyman Goldberg and Alice Goldberg, his wife,

of the City of Bergen, in the County of  
Bergen, and State of New Jersey, the Grantee

Witnesseth, That the grantor<sup>s</sup> in consideration of  
One Dollar and other valuable considerations,

do by these presents grant, bargain, sell and convey unto the grantee<sup>s</sup> and their heirs  
and assigns forever lawful  
money of the United States, to them paid by the grantee<sup>s</sup> the receipt whereof is acknowledged

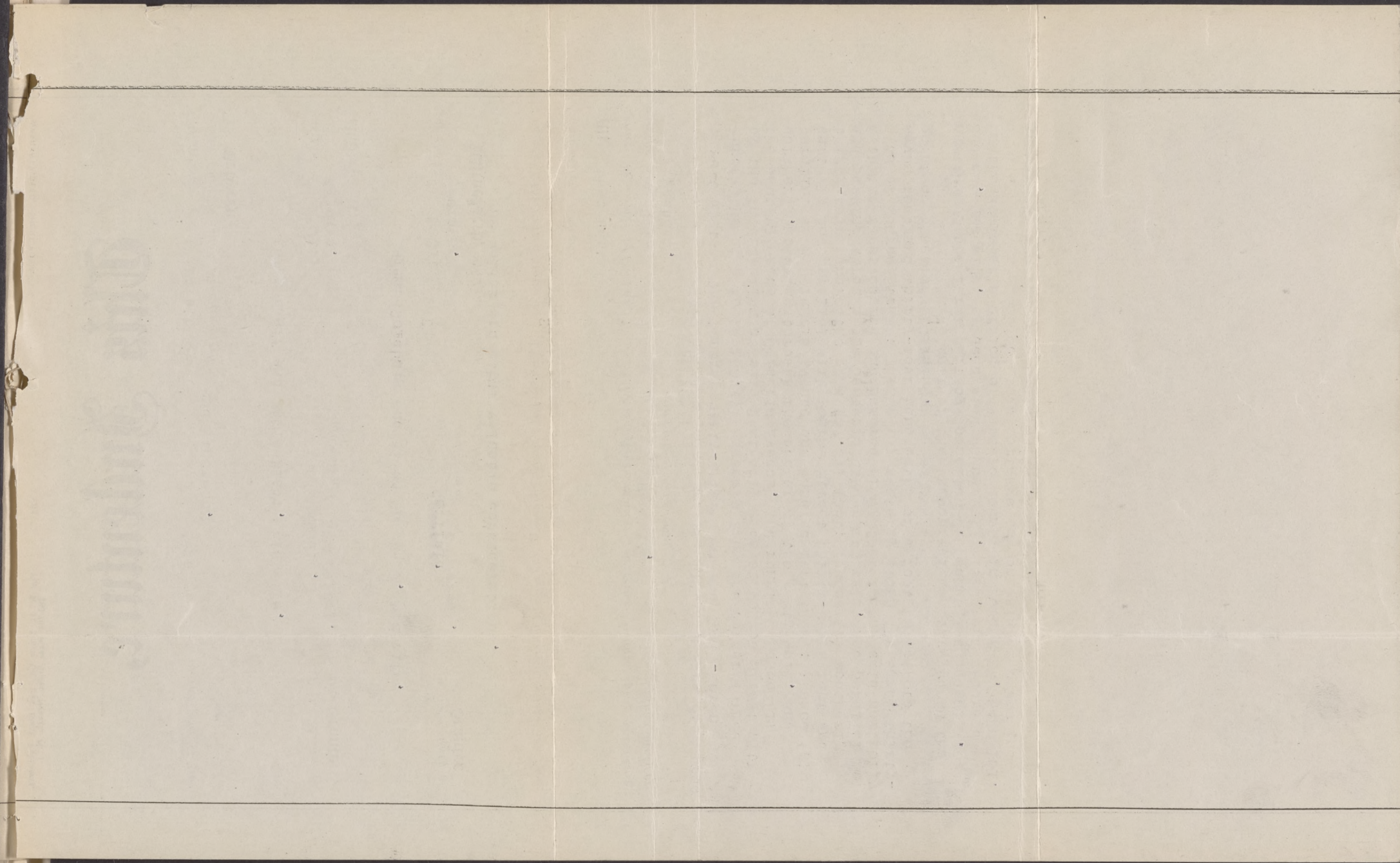
All that certain

tract or parcel of land and premises, hereinafter particularly described, situate, lying and being  
in the City of Passaic, in the County of  
Passaic, and State of New Jersey.

BEGINNING at a point on the northerly side of Monroe Street distant one hundred sixty-three feet and forty-seven hundredths of a foot (163.47) easterly from the corner formed by the intersection of said northerly side of Monroe Street with the easterly side of Columbia Avenue, and running thence (1) northerly, passing through the center of the party wall, and parallel with Columbia Avenue one hundred feet (100); thence (2) easterly and parallel with Monroe Street thirty-seven feet and thirty-four hundredths of a (37.34) foot; thence (3) southerly and passing through the center of the party wall, and parallel with the first course one hundred (100) feet to the said northerly side of Monroe Street; thence (4) westerly along the same, thirty-seven feet and thirty-four hundredths of a foot (37.34) to the point or place of BEGINNING.

BEING part of the same premises conveyed to the parties of the first part by Cornelius J. Cadmus and Rachel E. Cadmus, his wife, by deed dated January 17, 1910, and recorded in the Register's Office of Passaic County in Book W-20, page 151.

Subject to a mortgage now on said premises in the sum of Ten Thousand Dollars (\$10,000.00).



## New Jersey Court of Errors and Appeals

Between

Thomas Connors,  
Complainant-Appellant,  
and

Margaret Murphy, adminis-  
tratrix of the estate of  
Bridget English, dec'd, and  
The Morris County Sav-  
ings Bank, a corporation,  
Defendants-Respondents.

On Bill, &c.

On Appeal  
from Decree  
in Chancery.

### BRIEF of COMPLAINT-APELLANT

#### FACTS.

On December 19, 1923, Thomas Connors, was then around 70 years of age and who had but recently been permitted to leave the hospital after suffering from cerebral hemorrhage, arterio-sclerosis, hardening of the arteries, and chronic interstitial nephritis and high blood pressure, withdrew from his account at the Morris County Savings Bank, Morristown, the sum of \$5,356.90 and transferred it to one Bridget English, since deceased, with whom he had been living.

The complainant, Connors, was sent to the hospital in December 1922, suffering from the diseases enumerated before and at that time he was out of his mind and raving. Eventually that condition cleared up somewhat and he was permitted to leave the hospital, not cured but because of the fact that there was need for his room. About a week later he was again returned to the hos-

pital suffering as before and again was discharged March 24, 1923: From that date until some time in March 1924, he was out of the hospital and living with Mrs. English until his condition again caused him to be sent back to All Souls Hospital in March 1924, suffering from the same diseases and where, after a course of treatment, he was permitted to go home again, his condition having improved.

Between the date of his second discharge from the hospital and his re-entry for a third time he transferred this bank account of some \$5,000 to Mrs. English.

The testimony shows that Mrs. English while a somewhat younger woman had a keener mentality and stronger will power and Dr. Rice, the attending physician testifies that "he was more or less influenced by, or would do things for Mrs. English, whereas he would not do them for his brother." (State of case, Page 42, line 30 &c.)

The bank officials who attended at the transaction stated that the complainant was very feeble. Mr. Connors at the time of the transfer came to the bank with Mrs. English, the donee, and she was present at that time. The testimony of the paying teller, Mr. Corwin, shows that at the time of the transfer Connors received no advice as to the nature of the thing he was doing. (state of case, page 27, line 10 &c.)

There is no evidence throughout the case that Connors ever received free and independent advice or that he understood the nature of his act.

The learned Vice Chancellor in his conclusions states that the complainant appears to be suffering from aphasia or loss of memory at time of the hearing. (State of case, Page 52, line 32.)

The complainant himself as a witness showed no intelligence and no ability to understand simple questions.

The complainant contended that from the circumstances he had not received free and independent advice or any advice, that he was weak and subject to the influence of the stronger mentality of Mrs. English that due to his illness and to old age he was unable to understand the nature of his act and that under these circumstances there arose a presumption of undue influence and fraud and that it became the duty of the donee to prove the lack of such undue influence or fraud and that the burden of proof was upon the defendant.

The learned Vice Chancellor held that there was no

burden placed upon the defendant to rebut this presumption and dismissed the bill of complaint.

1.

THE COURT ERRED IN REFUSING TO PERMIT TESTIMONY BY THE DEFENDANT REGARDING PERSONAL TRANSACTIONS WITH THE DECEASED TO DISPROVE SO MUCH OF THE DEFENDANTS ANSWER AS MIGHT BE RESPONSIVE TO THE ALLEGATIONS CONTAINED IN THE BILL OF COMPLAINT.

In the direct examination of the complainant the court refused to permit Mr. Connors to testify concerning any visit to the bank with Mrs. English (State of case, Page 13, line 10 &c.) and the court ruled that any transactions between the complainant and Mrs. English were barred under the statute. (State of Case, Page 15, line 33 &c.)

Section 4 of the Evidence Act provides that no one can testify as to any transaction with decedent unless the representative first offers himself.

Section 6—"The complainant or petitioner, in any action or proceeding of an equitable nature in any court, shall be a competent witness to disprove so much of the defendant's answer as may be responsive to the allegations contained in the bill of complaint or petition, and any defendant in any such action or proceeding shall be a competent witness for or against any other defendant not jointly interested with him in the matter in controversy."

"The complainant may be a witness, under this section even after the death of the defendant."

Lanning vs Lanning 17 E 228.

Marlatt vs Warwick 19 E. 439.

William vs Vreelands, Exrs. 30 E. 576.

State vs Henson, 66 J. 601, 50 A. 486-616.

"But, by the act of 1851. (Nix. Dig. 228 27) the complainant in any action of an equitable nature is a competent witness to disprove so much of the defendant's answer as may be responsive to the allegations of the bill even after the death of the defendant.

Lanning vs Lanning's, Admir. 17, N. J. E. 228.

"The sixth section of the act concerning evidence only

renders a complaint, other wise incompetent, competent to a limited extent and does not allow him to testify generally. His evidence must be limited to the disproof of so much of the defendant's answer as is responsive to the allegations of the complainants bill."

Williams vs Vreelands, Execs. 30 N. J. E. 576.

There is an exception to section four of the evidence under which testimony of this character may be admitted.

## II.

THE COURT ERRED IN NOT FINDING THAT THE BURDEN OF PROOF WAS UPON THE DEFENDANT; THAT THE COMPLAINANT DID NOT HAVE FREE AND INDEPENDENT ADVICE; THAT HE WAS INCAPABLE OF UNDERSTANDING THE NATURE OF HIS ACT; THAT UNDUE INFLUENCE WAS EXERTED UPON HIM; THAT THERE WAS A PRESUMPTION OF FRAUD ARISING FROM THE FACTS AND THAT THE COMPLAINANT WAS ENTITLED TO A DECREE UPON THE EVIDENCE for the purpose of argument appoints b. c, d, e, f, h, i, and j are consolidated in this argument.)

James vs Aller, 68 N. J. E. 606.

In the case of Pearce vs Stinnes 79 N. J. E. 54 the court classifies cases of this nature into four classes.

First—Gifts by one in full possession of his powers, occupying the dominant position and able to support himself, are valid. This class is illustrated by the case of

Second—Gifts reasonable in amount by an aged parent to a child, who might dominate but who actually did not; held to be valid. This class is illustrated by Le Gendre vs Goodridge 48 N. J. E. 419.

Third—Gifts of a part of his property made by a donor enfeebled by age and disease, to one in a position to occupy dominant power. Where the donee is unable to satisfy the court that donor understood the nature of his act and that there was no influence before; held to be invalid. This is illustrated by Haydock vs Haydock 34 N. J. E. 570.

Fourth. Gifts of practically all of one's property to a person occupying dominant position, by one enfeebled by age and illness are invalid. Proof by the donee of lack

of influence is not sufficient to validate the gift. There must also be proof of free and independent advice. This class is illustrated by *Post vs Hagan*, 71 N. J. E. 242.

The defendant offers no defense to this action. There is no attempt to show lack of influence; to show free and independent advice, to show that the complainant did understand what he was doing.

Corwin, the bank teller, testifies that the complainant was very feeble. (State of case, page 22, line 17 &c.) (State of Case, page 26, line 11 &c.; State of case, page 27, line 9 &c.; State of case, page 28, line 11 &c.) Mr. Corwin said that he did not appear to desire to sign this check. Dr. Rice, who treated the complainant for some period of time testifies that when he left the hospital he was not discharged but permitted to go in order to cut down expenses. (State of case, page 32, line 25. He was out of his mind for a time (State of case, page 33, line 17, page 34, line 15). Dr. Rice testifies that from the time he first started to treat him until the last time he treated him that the complainant was not entirely normal mentally. (State of case, page 34, line 33) Throughout his testimony the Doctor constantly points out that he was never entirely normal as an average man should be. The Doctor himself voluntarily stated that the complainant was influenced by Mrs. English (State of Case, page 42, line 30 )

Dr. Wade, who was his physician at All Souls Hospital, where the defendant received treatment, testifies that when the defendant was discharged he was not cured but improved (State of case, page 45, line 6 &c.) that his mental condition was poor, being a cerebral case (State of case, page 47, line 38) ; that there was an impairment of his mental function (State of case, page 48, line 16).

It must be remembered that this defendant was in the hospital on three different occasions and suffered relapses and that he transferred this account between the time he left the hospital for the second time and his third re-entry; that all the while he was suffering from this same cerebral or brain condition. Can it be said that he was normal mentally in the month of December, when the transfer took place?

The complainant had had what is known to laymen as a "stroke" Dr. Rice stated that he might have had a thrombosis or an embolism. (State of case, page 35, line 35.) In either event some permanent injury must have resulted to an aged man after a stroke. Dr. Rice in his

work on the practice of medicine in volume 9 (1923 edition) on page 584 says.

"Cerebral arteriosclerosis, therefore is a disease, which leads essentially to serious changes in the intellectual life with a corresponding decrease in work performance, besides the various somatic disturbances and the tendency to repeated apoplectiform seizures."

On pages 583 of the same work under the heading of Cerebral arteriosclerosis says.

"In the preceding section mention was made of the irritability of blood-vessels which are undergoing degenerative changes. It was emphasized that temporary and transient attacks of paresis or paralysis are produced by such blood-vessels, especially in aged individuals whose arteries are in an atheromatous state. Since the arteriosclerosis leads to a poor blood supply, it stands to reason that other manifestations will be present besides temporary attacks of diminished motor power. Arteriosclerosis of the brain must necessarily present a series of disturbed functions depending upon its disturbed blood supply. The following manifestations in the psychic, motor, sensory and vegetative spheres have been observed in individuals with arteriosclerosis."

The most conspicuous evidences of the poor blood supply of the brain are decrease in work performance, tendency to fatigue, diminution of power in association of ideas and consequently of mental productivity and faulty memory. The individual no longer shows the former elasticity of his mind. His speech is no longer continuous, but it is halting because of lapses of memory. The progressive loss of functional capacity of the cerebrum has a great influence on his emotional life. Thus sympathy and affection are greatly diminished. The patient has crying spells, especially upon the least emotional stimulation. Headache, pressure on the head, dizziness, confusion, alternating excitement and depression, lack of orientation, are all common in such cases "

In situations of this character our courts have uniformly endeavored to place the burden upon the recipient of the gift to show that the American spirit of fair play has been exercised.

The courts have always wanted to know whether the donor understood the exact nature of his act: whether he was capable of understanding: whether due to his age and due to his enfeebled condition no influence was exerted. An aged and enfeebled man can be influenced

very easily. Whether the donor had free and independent advice must be shown when facts such as these are shown. The courts have placed the burden upon the defendant, the recipient of the gift, of showing that the transaction has been fair.

"An alleged gift of a bank deposit by an aged, infirm and dependent uncle, to his niece, who attended to his affairs, held to raise a presumption of undue influence, requiring her to show by clear and convincing evidence that the gift was the voluntary and intelligent act of the uncle." *Hunt vs Naylor* 84 N. J. E. 646.

"The rule that a deed of gift containing no power of revocation will be set aside where a relation of trust and confidence exists between donor and donee, and the donor has had no independent advice as to the effect of the deed upon his own interest in the subject matter of the gift, applies to an irrevocable conveyance made by an aged and infirm father, without independent and competent advice." *Slack vs Rees* 66 N. J. E. 447.

"If a child accepts from a parent a voluntary conveyance of all his estate "equity, moved by the apparent improvidence of such a gift, will presume that the donor did not appreciate the consequence to himself of his voluntary act, and hence will place upon the donee the burden of overcoming this presumption by showing that the donor in making conveyance had the benefit of proper independent advice. Proper independent advice in this connection means that the donor had the preliminary benefit of conferring fully and privately upon the subject of his intended gift with a person who was not only competent to inform him correctly as to its legal effect but who was, furthermore, so dis-associated from the interests of the donee as to be in a position to advise with the donor impartially and confidentially as to the consequences of his proposed benefaction." *Post vs Hagan* 71 N. J. E. 234.

"In such case, where the uncles entire estate consisted of a \$1000— government bond and the bank deposit of \$1,147- so that the gift of the deposit, if valid would deprive him of more than half of his estate and leave an amount manifestly insufficient for his maintenance, there was a presumption of improvidence, casting upon the niece the burden of showing that the uncle had the benefit of proper independent advice." *Hunt vs Taylor* 84 N. J. E. 646.

"A court of Equity will interfere if the party executing an instrument is weak and liable to be imposed upon,

if it finds that any acts or stratagems or any undue means have been used, if it sees the least speck of imposition at the bottom, or if the grantor is in such a situation with respect to the donee as will naturally give an undue influence over her and there is the least scintilla of fraud." *Mott vs Mott* N. J. E. 192;—22 Atl. 997.

"A voluntary settlement, unreasonable in itself, will be set aside when it is made to appear that the settler did not, for want of proper advice and instruction, fully and clearly understand and appreciate the consequences of his act."

*Doughty vs Miller* 60 N. J. E. 25 Atl. 153.

"The court will decree a party to cancel a judgment obtained against a conscionable."

*Tompkins vs Tompkins* 1 N. J. E. 512.

"In a suit to set aside a deed of a grantor who was advanced in years and afflicted with incipient senile dementia at the time of its execution, evidence held to require a finding that the deed was the result of undue influence exerted by the grantee."

*Krause vs Krause* (N. J. Chan.) 55 Atl. 1095.

"A gift made by a father in infirm health and advanced years to a daughter who is caring for him is presumptively the result of undue influence; and in a suit brought to have a gift, made under such conditions, declared invalid for this reason, the burden of proving absence of undue influence is upon donee."

*Slack vs Reeves* 66 N. J. E. 47.

"Where a person enfeebled in mind by disease or old age is so placed as to be likely to be subjected to the influence of another, and makes a voluntary disposition of property in favor of such other person, there must, to sustain it, be proof that the donor understood the nature of his act, and that it was not done through the influence of the donee."

*Bauer vs Cron*. (Ct. of Errors and Appeals) 66 Atl. 585.

"In transactions inter vivos, the presumption of undue influence is raised solely because of the confidential relation existing between donor and donee; and the donee to establish the gift, must show that independent advice was relied on by the donor."

*In re Cooper's Will* 75 N. J. E. 17.

"Where parties hold positions, in which one is more or less dependent upon the other, courts of equity hold that the weaker party must be protected, and they set aside his gifts if he had not proper advice independently of the other."

Haydoch vs Haydoch 34 N. J. E. 575 P. 3.

"But if we admit that the donor was a person who possessed sufficient mental power to make a gift, yet I think it is upon the recipients of those gifts to show the fairness of the transaction. Here was a man of weak mind and feeble body. All the evidence in the cause shows that the wife was the one upon whom he naturally leaned.\*\*

\*\*\*\*\*While they so lived together, and while none but the wife and her brother were about him, without advice of disinterested counselors, the old man made these gifts of which she was the recipient. I take the rule to be settled that where a person enfeebled in mind by disease or old age, is so placed as to be likely to be subjected to the influence of another, and makes a voluntary disposition of his property in favor of that person the courts require proof of the fact that the donor understood the nature of the act, and that it was not done thru the influence of the donee."

Haydoch vs Haydoch 34 N. J. E. 574.

"Where donor was in custody of donee's agents, when alleged gift was made, it was donee's duty to produce all testimony obtainable to show donee's competency and the lack of undue influence."

Provident Inst. for Savings vs Sisters of the Poor. 83 N. J. E. 424.

"In the late case of Slack vs Rees decided by this court at the last November term (66 N. J. E. 447) we had occasion to consider the questions of the validity of a deed of gift made by a father to his daughter who was a member of his family, where by reason of the physical condition of the father and his dependence upon the daughter for care and service, the relation ordinarily existing between parent and child had been reversed, and the daughter occupied the dominant position. We then declared, on the authority of earlier adjudications, that a deed of gift, which reserved to the donor no power of revocation, was voidable at the option of the donor, or his heirs, when it appeared that at the time of his execution there existed between the parties thereto a relation of trust and confidence in which the donee occupied the dominant position, and also that the donor, when making the deed, did not have the benefit of independent advice as to its effect. This decision now controls the case before us." Gummere, C. J., in Albert vs Haeberly, 68 N. J. E. 665 (last paragraph).

## III.

THERE WAS NEVER ANY DELIVERY OF THIS ATTEMPTED GIFT AND IT IS THEREFORE SUBJECT TO REVOCATION.

Mr. Corwin, the bank teller, (State of case, page 23, line 29) testifies that there was no money transaction; that the moneys were transferred by the bank. Mrs. English never signed a card for the opening of this second account.

"Even a donative intent, where donor gave to the third party to give to donees and third party failed to do so, she was agent of donor and there was no gift because of no delivery."

See Swayze vs Huntington 82 N. J. E. 127.

"When a gift is completed by delivery and acceptance of the chattel, it is irrevocable. So long as there is no delivery and acceptance it may be revoked.  
Betts vs Francis 30 N. J. L. 152.

## IV.

THE COURT ERRED IN DISMISSING THE BILL OF COMPLAINANT AND IN NOT GIVING THE COMPLAINANT THE RELIEF PRAYED FOR.

For the reason set forth in the preceding arguments and from the facts appearing in the testimony the appellant believes he is entitled to the relief prayed for in the court of Chancery and that the said court was in error and prays that said decree be reversed.

Respectfully submitted.  
Leon E. Cone.

Solicitor for and of Counsel  
with the Complainant-Appellant.

