Please Note.

Pages 231 to 361 inclusive, Equity No. 4742, should precede page one in this book.

No.4742 Equity.

LIBER 78 PAGE 1

In the matter of the sale of the mortgaged real estate of Mary W.F.Speers.

No. I

- - - - - - - - - -

Corrections of Exceptants Testimony, by Mary W.F.Speers.

Page 7.

Answer No.3.

Next to bottom line-- write "positively stated" instead of possibly.

Last line-- write "effect" instead of fact.

Page 8.

Line 8 --change name of Francis Jenks to Albert S.Owens.

Line 9-- write "but" instead of that, and insert after "but" the following so as to read: but the vice-president of the Title Guaranty and Trust Co.

Line 14.--write "Margaretta B.Speers" instead of Mary W.F. Speers.

Line 15--insert "Maryland" before the word Casualty.

Line 16-- Insert "Mr." before Jenks and insert "to me". Then begin with quotation marks so as to read "Pass this title, etc.

Line 12 from bottom-- write "foreclosure" instead closed, after the word it.

Line 9 from bottom--omit and ; write "we" instead of he and I so that line reads "we have a release" instead of he and I will have.

Line 8 from bottom--write "we" instead of he, after whereby.

Line 3 from--write "foreclosed" in stead of "closed".

Line 2 from bottom-- after me insert "immediately after the sale", instead of in 1920.

Page 9.

Line 7--write "$1500.00" instead of $15,000 ; write "which made" after $15,000, instead of "that is".

Line 13. from bottom-- write "property" instead of thing.

Filed January 4, 1924

No. II

Page 10.

Line 3--insert after "knifing" the words"this proposition" and insert thw word "to" before every.

Line 5--write Dan Randall instead of him.

Line 10--write "to hold" instead of to decide.

Line 11--write "time" instead of the word "period" and insert after period --"he claimed the property as his own", so as to read:"time he claimed etc."

Line 3 from bottom,at end of line--write "each time" instead of all that time

Line 2 from bottom--write "gave" instead of "was".

Page 11.

Line 9)-after the word "Lovering" omit "at the time Kelly got
10) ill in Canada" and in line 10 after "later on" write--"Lovering withdrew".

Line 12--Insert "ill" after was.

Line 18-- write --"Randall" instead of he.

Line 6 from bottom--change "have" to "offer"

Line 2 from bottom--write after "indication" the word that.

Page 12.

Line 2 --insert after "letters" the words "from investors proving it";and after the word "lawyers" write tell instead of telling ;omit the word "but" before they, and insert "but" before "my lawyers".

Line 6--change the second word"I" to "he"; and write "me in place of "him".

Line 8)-at end of sentence change wording so as to read "abso-
9) lutely in self defense that I took it."

Line 9-- write minute instead of "meeting".

Line 14--after word "it",write:I claim that Kelly has not yet deeded this point of land and the cestui que trust is still alive,and as Trustee,he could not change it.

Line 11--after "when" write:"he sent me the deed,it exempted this point of land". Omit "it did not have it in"(line 12).

Line 13--write "Mr.Randall" instead of "he";and "Dr.Kelly" in place of him.

Page 13.

In answer No.3.--write "Answer by Attorney Curley" before that .

No. III

Page 13.

Line 13 from bottom--after "agrees" write or insert the words"set aside".Put period after the word "proceedings".Start new sentence with capital O in word "on".

Line 10 from bottom--write "gave" instead of "got",and insert "to the" before the word Chaplain.

Line 6 from bottom-- insert the word"County" before Treasurer.

Page 14.

Line 10 from bottom--write "100 acres" instead of "that".

Line 7 from bottom-- write "deal" instead of "thing".

Page 15.

Line 6-- write "objected" instead of "excepted".

Line 11,end of sentence--write "would loose" instead of losing.

Page 18.

Line 15 from bottom--write"Mr.Owens"instead of "he".

Page 19.

Answer to question 44--write"Mr.Welch and Mr.Curley returned to the office where I was waitting" in place of he.

Page 20.

Line 16 from bottom--Answer should read:"No,I don't know that is the one which I did." After the word "did",insert "I signed a paper". Place period mark after the word "counsel".

Line 14 from bottom--after the word"circumstances" write "unless the words 'without prejudice to the rights of either party' were stipulated.

No. 4742 Equity.
Corrections of Exceptant's Testimony in Rebuttal,
by Mary W.F.Speers.

Page 12.

Line 5-- write "recorded" instead of done.

Line 13--after the word "money" write "from being procured" instead of "to be produced".

Page 13.--

Line1-- write "this" instead of "the"(second word) .

Line 4-- after letter insert"to Walters,April16,1922,from Daniel R.Randall."

The above corrections made in pursuance of an order of the Circuit Court for Anne Arundel County sitting in Equity, passed in the above entitled cause is herewith returned to the Court this 4th day of January 1924.

George D Bullman (Seal)
Examiner

IN THE MATTER of the Mortgaged Real Estate of Mary W. F. Speers.

No. 4742 Equity. In the Circuit Court for Anne Arundel County.

To the Honorable, the Judges of said Court.

The Assignee, John S. Strahorn, excepts to the following testimony taken on behalf of Mary W. F. Speers, being certain letters purporting to be letters of Dr. Howard A. Kelly, and other papers, filed in this cause on the 10th day of July, 1923, and the 24th day of July, 1923, and marked Exhibits Nos. 1-2-3-4-5-6-7-8-9 10-11-12-13-14-15-16-17-18-25-26-27-28-29-30-31-32-33-34-35, and for cause of exception shows: first, that with the exception of said Exhibit No. 5, all of said Exhibits are admittedly copies, and furthermore, all of said Exhibits, including said Exhibit No. 5, no proof has been offered as to the signature of Dr. Howard A. Kelly, or as to any other signatures attached to any of said Exhibits, and your Assignee further shows, as to Exhibit No. 14, purporting to be a telegram from said Howard A. Kelly, no proper proof has been offered, that the said telegram was sent by the said Howard A. Kelly.

Filed January 5, 1924

For the reasons stated, your Assignee moves the Court to strike from the records in this case all of said Exhibits above mentioned. He further excepts to all the "rebuttal" testimony of "exceptants" taken on December 6 1923 for the reason that same is testimony in chief and not proper rebuttal testimony and the Assignee moves the Court to strike the same from the record in this case.

John S. Strahorn

Atty for Assignee

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[redacted] [redacted]

This is to certify that I, Mary W. F. Speers, have no interest of any kind in the property on the Severn River consisting of fifty-one acres, more or less, which is the subject of foreclosure proceedings under a mortgage to Howard A. Kelly, which property was sold, after being properly advertised, at public auction under said proceedings to Joseph H. Bilbrey on or about the 22nd day of March, 1923 for $13,525.00, and that the said Joseph H. Bilbrey is making preperation to purchase the said property under the terms of the said sale in order to protect himself against a resale of the said property and that I am making this statement in the interest of the said Joseph H. Bilbrey. He intended to purchase the said property in order to protect me, but since I have no means and am unable to relieve the said Joseph H. Bilbrey of said property, I am correcting the statement made in the exceptions to said sale because of my inability to relieve the said Joseph H. Bilbrey of said property which was the purport of our agreement at the time of the purchase of the property at said sale.

Witness my hand and seal this 30th day of December, 1924.

Test:

Britain Winter

Mary W. F. Speers (SEAL)

STATE OF MARYLAND,
CITY OF BALTIMORE, ss:-

I HEREBY CERTIFY that on this 30th day of December, 1924, before me the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City, aforesaid, personally appeared Mary W. F. Speers, and acknowledged the foregoing to be her act.

WITNESS my hand and Notarial seal.

Britain Winter
Notary Public

Annapolis, Maryland, January 10, 1925.

I hereby certify that the original of the within certificate, of which this is a photostat copy, was by me filed in No. 4742 Equity, in the Circuit Court for Anne Arundel County, this date, the said cause being " IN The Matter of the Mortgaged Real Estate of Mary W. F. Speers.

Jno. [illegible]

Augusta Brown

Exhibit Exceptant #3. Filed 2/2/26. [illegible] Examiner.

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IN THE MATTER OF THE SALE OF THE MORTGAGED REAL ESTATE OF MARY W. F. SPEERS.

No. 4742 Equity.
In the Circuit Court for
Anne Arundel County.

Filed March 5 1924

OPINION of COURT.

(Judge Moss.)

In this case Exceptions have been filed to the ratification of a sale made of the property involved in these proceedings, by John S. Strahorn, Assignee, on Thursday, March 22nd, 1923, by Mary W. F. Speers.

Exceptions to this sale are in these words:-

"Mary W. F. Speers, the mortgagor in these proceedings mentioned, excepts to the ratification of the sale made and reported in these proceedings for the following reasons:- That the whole amount secured by said mortgage was paid before said sale, and for other reasons to be shown at or before the hearing of these exceptions."

To these Exceptions the Assignee foreclosing the mortgage, made Answer in which he denied that the whole mortgage debt had been paid, and alleged that there was due at the time of the foreclosure Nine Thousand Dollars with interest from the 15th day of August, 1922.

A large amount of testimony has been taken in the case, and numerous Exhibits and copies of letters, all of which has been

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read and considered by the Court.

It appears from all the facts in the case that Mrs. Margaretta B. Speers was, in the year 1912, seized and possessed of a tract of land in the Third Election District of Anne Arundel County, on the Severn River, on which there was, at that time, two mortgages: and in 1915, Dr. Howard A. Kelley loaned to Mrs. Margaretta B. Speers, at the request of her daughter, the Exceptant, in this case, the sum of Fifteen Hundred Dollars, secured by a third mortgage on this farm; and that later, upon the foreclosure of the first and second mortgages, to protect his interest in the property, he became the purchaser of the whole property, which was duly conveyed to him. That from the time he became the purchaser of this property, until the day she actually became the purchaser of the same, the Exceptant, Mary W. F. Speers, sought to obtain title to the same, and her many endeavors were finally successful when, on the 8th day of December in the year 1919, the property was sold and conveyed to her for the sum of Thirty Thousand Dollars, and on the same day, Miss Mary W. F. Speers mortgaged the property to Dr. Howard A. Kelley for the sum of Twenty nine Thousand dollars, which, by the testimony in the case, was in payment of that much of the purchase money, One Thousand Dollars which she had before this paid to secure an option upon the same, being allowed as the only payment of cash on this Thirty Thousand Dollar purchase of land.

There was inserted in this mortgage, which is filed in the case, a clause by which the mortgagee agreed to release a part of this property from the operation of the mortgage, as follows:- "A part of the mortgaged property containing one hundred acres, more or less, forming the Southeastern portion of the whole tract, and lying next to that of the Brenan Sand Company, to be released, upon the payment of Twenty Thousand Dollars of the mortgage debt, with interest to date of such payment".

On the 24th day of August, 1922, in pursuance of this agreement, Dr. Howard A. Kelley released, in consideration of Twenty Thousand Dollars principal, and Three Thousand Eight Hundred and forty-two Dollars and fifty cents interest, by his Deed of Release, one hundred acres of this land from the operation of this mortgage, a copy of which Release was filed in the papers marked "Examiner's Exhibit B".

It would thus appear that a balance of Nine Thousand Dollars, with accumulated interest up to the day of sale, was due upon this mortgage, at the time of sale, as there is no contention of any other payment.

On the 7th day of February, 1923, Dr. Kelley, by his Deed of Assignment, "Examiner's Exhibit A", assigned this mortgage to Charles A. Pulis, and it was by Pulis assigned to John S. Strahorn, for the purpose of foreclosure, who advertised the same for sale at the Court House in Annapolis City for March 22nd, 1923, and on the same day sold the same to Joseph H. Bilbrey of

Washington, D. C. at and for the sum of Thirteen Thousand Six Hundred and Twenty-five Dollars, the part of the land sold at that time amounting to Fifty-one and three quarters acres of land, on which a deposit of One Thousand Dollars, as required by the terms of sale, was paid in cash.

In the testimony, Miss Mary W. F. Speers, on Cross Examination, admitted that she was really the purchaser of the property and that Bilbrey merely bid it in for her, at her request, but did not disclose her name, all of which is set out fully in a letter filed in this case, from Bilbrey to Miss Speers, dated March 25th, 1923, and marked "Exhibit Rebuttal B".

Copies of numerous letters from Dr. Kelley to Miss Speers relating to this transaction are filed in the case, with the evident purpose on the part of the Exceptant to show that Dr. Kelley held this property in trust for Miss Speers, and that he did not make his original loan of Fifteen Hundred Dollars, or purchase the property at the foreclosure sale of the first and second mortgages for any purpose of gain, but merely for the purpose of preserving a home for its owner, Mrs. Margaretta B. Speers and her daughters.

These letters are not, in any manner sufficient to create a trust. Mortgagees as a rule do not lend money on third mortgages upon farm property for the purpose of gain, and there is no doubt that Dr. Kelley in making this loan hoped it would

result eventually in Mrs. Speers recovering her home property, and that he was not actuated by motives of gain in any of these transactions, and through the whole matter wished the family well.

On this point, Miss Speers says, in her testimony, page 7, in answer to the third interrogatory,-"Ans. Don't deny he had the mortgage, but Dr. Kelley also took title to the property one time, and it is very material to show that Dr. Kelley held this property for the Speers, not as an investment."

It appears further from the testimony that it was really at the suggestion of Miss Mary W. F. Speers that the property was sold to her at the time she acquired it, she saying, page 12 of the testimony, "I had a large deal on hand at that time, I expected to sell the property and it was in absolute self defense to take it". Thus it will be seen that any trust, had there been testimony sufficient to create one, existing at the time of the sale of this property to Miss Speers, which was to have been, so Miss Speers says, for the benefit of the Speers' family, mother and daughters, was deliberately defeated by the Exceptant, Miss Mary W. F. Speers, to serve a purpose of her own because she had a large deal on hand at that time and expected to sell the property. And it even appears, without the consent of her mother, as far as the testimony shows, she consented to Dr. Kelley holding an acre of the water front out from the sale of the balance of the farm.

It further appears that at the time when she had found a purchaser for one hundred acres of this land at Twenty thousand dollars, that she paid this money to Dr. Kelley, together with accumulated interest, to obtain a release of the same from the operation of his mortgage. It should be borne in mind that Mrs. Margaretta B. Speers does not appear to be a party to these proceedings and has not even testified in the case.

The Court has read the testimony relating to the inadequacy of price at which this property was sold, and it is certainly not sufficient to show such a disparity from its true value as to justify the Court in setting the sale aside. It may be true that this property is valuable for clay and sand, but before a Court could form an estimate of that, it would have to know something of shipping facilities, freight rates and places where it could be sold, as all sand, if properly located for its use, is valuable, but much of it valueless owing to the great cost of getting it to a place of sale.

The Court has, therefore, reached the conclusion not to dwell further upon the facts in this case, first, because if there was any testimony sufficient to establish a trust, Miss Speers, the exceptant, having by her own act defeated the same, could hardly now be heard to deny the deed she accepted, and her Deed of Mortgage which she gave to purchase this property, when she determined she had to have it.

Second, if there was any inadequacy of price she gets the full benefit of it as she has admitted, in her testimony, she purchased the same at the Assignee's sale.

It was held in

Lawson vs. Mullinix, 104th Md. page 156,

that, "The defendant deed could not be supported by evidence of any other consideration than that stated in the deed". And further on, at page 166, Judge Boyd, in quoting from the Chancellor, in

Sewell vs. Baxter, 2nd Md. Chancery, page 477, says:-

"The decisions in this State are conclusive to show that parole proof is inadmissible to vary the consideration stated in deeds, and, thereby, either to alter their character or to maintain them when impeached for fraud, by showing considerations different from those mentioned in them."

"Where parties have entered into a written agreement it is only reasonable to suppose that they have introduced into it every reasonable and material term and circumstance, and consequently all parole testimony of conversations made by them whether before, or at the time of completing the contract will be rejected."

Lazear vs. Bank, 52nd Md. page 78.

Funk vs. Newcomer, 10th Md., 301.

In 24th Corpus Juris, Page 1068, subject title, Estoppel against Mortgagor, it says:-

"Conforming to the general rule, a mortgagor is estopped to assert anything in derogation of the rights which the instrument purports to convey, as that he had no title at the time of executing the mortgage, that there is an outstanding title in a third person, that the estate mortgaged was other or less than an estate in fee simple, that the instrument was defeotively executed, or that the instrument, although running to the mortgagee, was in fact the property of a firm to which the mortgagee belonged. And where a mortgage is given to secure the price of land, and the mortgagor remains in undisputed possession under a deed warranting his title, and no eviotion is shown, and no fraud on the part of vendor, the mortgagor cannot set up an outstanding title, or breach of warranty, as a defense to foreclosure, but has his remedy at Law on the broken covenant."

Solicitor for Exceptant relied on

Ruhe vs. Ruhe, 113th Md. 595, but that case is distinguished from the case under consideration by the fact that the Plaintiff, with his earnings and savings, purchased real estate and had it conveyed to his wife for the purpose of a home in their old days, and that, thereafter, his wife attempted to dispose of the same.

There is no suggestion in this case that Dr. Kelley used Miss Speers', or her mother's money in the purchase of this property, or that there was any consideration whatever moving

him in his efforts, as far as he could, consistent with the duty to himself and family, of preserving a home for Mrs. Speers and her daughters.

It follows from the view the Court takes of the case that it is not necessary to notice the Exceptions of the Assignee to Exceptant's testimony, first, because if we consider all of Exceptant's testimony properly before the Court, it is not sufficient to establish or create a trust. Secondly, that the Exceptant is estopped from setting up such a trust.

It follows from what has been said that the Court will dismiss the Exceptions and ratify the sale, which is accordingly done this 5th day of March, 1924.

Robert Mars A.J.

LIBER 78 PAGE 17

In the Matter of the Sale	)(	No. 4742 Equity.
of the	)(	In the Circuit Court
Mortgaged Real Estate	)(	for
of	)(	Anne Arundel County
Mary W. F. Speers	)(	

Filed March 27, 1924

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The petition of the Union Trust Company of Maryland, and of Arthur V. Kalenburg, respectfully shows:

(1). That they are the holders of two judgments against Mary W. F. Speers, who at the time of entering said judgments held the fee simple title to the tract of land described in these proceedings, copies of which judgments are filed herewith, and the same being liens, according to their legal priority, against the property sold in these proceedings and against the proceeds of said sale.

WHEREFORE, your Petitioners pray Your Honors to pass an Order in this cause directing the Auditor to allow your Petitioners' said judgments according to their legal priority.

AND AS IN DUTY BOUND, ETC.

Ridgely P. Melvin
ATTORNEY FOR PETITIONER Union Trust Co
James M. Munroe for Arthur V. Kalenburg.

Upon the aforegoing petition, it is hereby ORDERED by the Circuit Court for Anne Arundel County in Equity, this 27th day of March 1924, that the judgments of the Union Trust Company of Maryland, and of Arthur V. Kalenburg, be allowed by the Auditor in stating his account in this case according to the legal priority of said judgments.

Robert Mann A.J.

LIBER 78 PAGE 18

In the Matter of the Sale	:	In the Circuit Court for Anne
of the Mortgaged Real Estate	:	Arundel County in Equity.
of Mary W. F. Speers	:	No. 4742 Equity.

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Filed May 19, 1924

Mr. Woodward, Clerk:

Enter an appeal to the Court of Appeals of Maryland from the order or decree of Judge Moss, dated March 5th, 1924, in the above entitled cause.

James A. Curley.
Solicitor for Mary W. F. Speers.

April , 1924.

LIBER 78 PAGE 19

IN THE MATTER OF THE SALE OF THE MORTGAGED REAL ESTATE OF MARY W. F. SPEERS

NO. 4742 EQUITY

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY.

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MOTION TO DISMISS APPEAL

- - - - - - - - - - - - - - - - - - - -

To the Honorable, the Judge of said Court:-

The petition of John S. Strahorn, Assignee, respectfully shows.

Filed April 30, 1924

1. That on the 19th day of May, 1924, the above named Mary W. F. Speers filed an order herein, directing an appeal to the Court of Appeals of Maryland, from the order of the Court filed herein on the 5th day of March, 1924, overruling the exceptions to the sale made herein by your petitioner on the 22nd day of March, 1923.

2. That your petitioner is advised that since said appeal was so filed by the said Mary W. F. Speers, no action has been taken by her touching the preparation of or the payment for the record herein for the Court of Appeals, though, as your petitioner is further advised, the Clerk of the Court has the same ready for filing in the Court of Appeals whenever the said appellant pays to him the cost thereof.

3. That your petitioner is advised that since more than three months have expired since said appeal was taken and the said record has not been filed in the Court of Appeals, he is entitled to have said appeal dismissed, to the end that further proceedings may be had in the premises.

Your petitioner, therefore respectfully prays that an order be passed herein by this Honorable Court requiring the said appellant to show cause why the said appeal should not be so dismissed.

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LIBER 78 PAGE 20

Filed Sept. 30, 1924

And he will ever pray, etc.

Jno. S. Strahorn
Solicitor.

ORDERED, this 30th day of September, 1924, by the Circuit Court for Anne Arundel County, In Equity, on the foregoing petition of John S. Strahorn, Assignee, that Mary W. F. Speers show cause, on or before the 25th day of October, 1924, why the said appeal mentioned in said petition should not be dismissed; provided, a copy of this said petition and of this order be served on the said Mary W. F. Speers or her attorney of record, on or before the 10th day of October, 1924.

Robert Moss, J.

In the Matter of the Sale of
The Mortgaged Real Estate
of Mary W. F. Speers.

No. 4742 Equity.
In the Circuit Court for
Anne Arundel County.

LIBER 78 PAGE 21

Filed October 28, 1924

I, William N. Woodward, Clerk of the Circuit Court for Anne Arundel County, do hereby certify that immediately after the Order for the Appeal herein was filed on the 19th day of May, 1924, the Record for the Court of Appeals herein was practically prepared; and I do further certify that since said Order for Appeal was so filed herein nothing whatever has been done by the said Mary W. F. Speers, Appellant, or by anyone on her behalf looking to the forwarding of said Record to the Court of Appeals of Maryland, nor have the costs of said Record been paid or any part thereof although the amount of said costs was estimated by me at the request of said Appellant made at or about the time said Appeal was so filed, and the amount thereof duly made known to the said Mary W. F. Speers.

Wm N. Woodward

Clerk of Circuit Court for
Anne Arundel County.

Sworn to and subscribed before me this 28th day of October, 1924, by William Martin Brady, Deputy Clerk of the Circuit Court for Anne Arundel County.

Clara M. Howard
Notary Public.

CLARA M. HOWARD NOTARY PUBLIC ANNE ARUNDEL CO. MD.

LIBER 78 PAGE 22

IN THE MATTER OF THE SALE OF THE MORTGAGED REAL ESTATE OF MARY W. F. SPEERS

NO. 4742 EQUITY IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY.

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Filed October 28, 1924

It appearing from the papers herein that the petition of John S. Strahorn, Assignee, filed in this case on the 30th day of September, 1924, praying that the appeal herein be dismissed, and the order of Court thereon of the same date, have been duly served on James P. Curley, Esquire, the attorney of record herein of Mary W. F. Speers, the Appellant, in accordance with the requirements of said order of September 30th, 1924; and it further appearing that the costs of the record herein have not been paid, nor has said record been filed in the Court of Appeals of Maryland as required by the statute covering appeals in such cases; and no sufficient cause to the contrary having been shown as required by said order of September 30, 1924; IT IS THEREUPON, this 28th day of October, 1924, by the Circuit Court for Anne Arundel County, in equity, adjudged and ordered that the appeal of Mary W. F. Speers filed in this case on the 19th day of May, 1924, be and the same is hereby dismissed.

Robert Moss, A.J.

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IN THE Circuit Court for Anne Arundel County.

In the Matter of the Sale of Mortgaged Real Estate of Mary W. F. Speers

Petition and

ORDER OF COURT

2 [illegible] 3-21

Petition and Copy of Order of Court served on James P. Curley Atty on the 8th day of October 1924, in presence of Alan S. Cook

John E. Potee Sheriff.

Fees, $ 0.50

Filed 9-Oct-1924

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In the Matter of the	;	No. 4742 Equity
Sale of the Mortgaged Real	:	In the Circuit Court for
Estate of Mary W. F. Speers	:	Anne Srundel County.

---------oOo----------

Filed October 25, 1924

To the Honorable, the Judges of the said Court.

The Answer of Mary W. F. Speers to the petition of John S. Strahorn, Assignee, and the order of Court thereon dated September 30th, 1924, respectfully represents:

That the said Mary W. F. Speers is ready to proceed with her appeal and will take the necessary steps to perfect the same, and that her right of appeal, she believes, is one to be determined by the Appellate Court.

And as in duty bound, etc.

James R. Curley

Sol'r. for Mary W. F. Speers.

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IN THE MATTER OF THE SALE	IN THE CIRCUIT COURT
OF THE MORTGAGED REAL ESTATE	FOR ANNE ARUNDEL COUNTY
OF MARY W. F. SPEERS.	IN EQUITY, NO. 4742.

- - - - - - - - - - - - -

To the Honorable, the Judges of said Court.

The petition of John S. Strahorn, Assignee, respectfully shows.

(1) That on the 22nd day of March, 1923, he offered at public sale the land described in the mortgage, filed in these proceedings, and sold the same to Joseph H. Bilbrey, of Washington, D. C., he being then and there the highest bidder therefore, at and for the price of $13,625.00.

Filed Mar 3 1924

(2) That exceptions were filed to said sale by Mary W. F. Speers, and during the taking of testimony on said exceptions the said Mary W. F. Speers testified, in effect, that the said Joseph H. Bilbrey, though seeming to act for himself, was, in fact, acting for her; and that she was the actual purchaser, although not disclosed as such on the day of sale.

(3) That on the 5th day of March, 1924, this honorable court overruled said exceptions and on the same day ratified the said sale.

(4) That the terms of sale have not been complied with either by the said Joseph H. Bilbrey or the said Mary W. F. Speers.

And your petitioner therefore respectfully prays the Court to pass an order in the premises authorizing him to resell the said property at the risk of the said Joseph H. Bilbrey or Mary W. F. Speers, or both of them.

And he will ever pray, etc.

John S. Strahorn
ASSIGNEE.

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State of Maryland,

Anne Arundel County, to wit.

I hereby certify that on the 3rd day of November, 1924, before me, the subscriber, Clerk of the Circuit Court for Anne Arundel County, personally appeared John S. Strahorn, Assignee, and made oath in due form of law, that the matters and facts set out in the foregoing petition are true as therein stated.

Wm N. Woodward
Clerk of the Circuit Court for A. A. County.

Upon the above petition and affidavit it is this 5th day of November, 1924 ORDERED by the Circuit Court for Anne Arundel County, In Equity, that John S. Strahorn, Assignee be and is hereby authorized to resell the property mentioned in the above proceedings, unless cause to the contrary be shown on or before the 25th day of November 1924 provided a copy of this order be served on the said Josheph H. Bilbrey and also upon Mary W. F. Speers or her Solicitor of Record on or before the 14th day of November 1924.

Robert Mace, J.

Received copy of the foregoing and annexed petition and order this 6th day of November 1924
J H Bilbrey

Filed 7 November 1924

Service of copy of the above petition and order admitted.
Nov. 7/24.
James P. Cowley
Sol'r. for Mary W. F. Speers.

Filed 7 November 1924

LIBER 78 PAGE 26

IN THE MATTER OF THE SALE OF THE MORTGAGED REAL ESTATE OF MARY W. F. SPEERS.

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY IN EQUITY, NO. 4742.

- - - - - - - - - - -

It appearing from the proceedings herein that Joseph H. Bilbrey and Mary W. F. Speers, through her attorney, James M. Curley, have each been duly served with a copy of the order herein of November 5, 1924, requiring cause to be shown on or before the 25th day of November, 1924, why the property mentioned in these proceedings should not be resold by John S. Strahorn, Assignee, and it further appearing from these proceedings, that no cause to the contrary has been shown by any of the parties mentioned;

It is thereupon, this 26th day of November, 1924, by the Circuit Court for Anne Arundel County, In Equity, ordered that John S. Strahorn, Assignee of the mortgage herein, be and he is hereby authorized to resell the property heretofore sold by him, as mentioned in the mortgage herein.

Robert Magruder, Jr.

Filed 26 November 1924

This is to certify that I, Mary W. F. Speers, have no interest of any kind in the property on the Severn River consisting of fifty-one acres, more or less, which is the subject of foreclosure proceedings under a mortgage to Howard A. Kelly, which property was sold, after being properly advertised, at public auction under said proceedings to Joseph H. Bilbrey on or about the 22nd day of March, 1923 for $13,625.00, and that the said Joseph H. Bilbrey is making preperation to purchase the said property under the terms of the said sale in order to protect himself against a resale of the said property and that I am making this statement in the interest of the said Joseph H. Bilbrey. He intended to purchase the said property in order to protect me, but since I have no means and am unable to relieve the said Joseph H. Bilbrey of said property, I am correcting the statement made in the exceptions to said sale because of my inability to relieve the said Joseph H. Bilbrey of said property which was the purport of our agreement at the time of the purchase of the property at said sale.

Filed January 10, 1925

Witness my hand and seal this 30th day of December, 1924.

Test:

J. Britain Winter

Mary W. F. Speers (SEAL)

STATE OF MARYLAND,
CITY OF BALTIMORE, ss:-

I HEREBY CERTIFY that on this 30th day of December, 1924, before me the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City, aforesaid, personally appeared Mary W. F. Speers, and acknowledged the foregoing to be her act.

WITNESS my hand and Notarial seal.

J. Britain Winter
Notary Public

TELEPHONE PLAZA 4660

LIBER 78 PAGE 28

EDWARD A. STRAUFF
ATTORNEY AT LAW
2 EAST LEXINGTON STREET
BALTIMORE, MD.

January
Twelfth,
1 9 2 5 .

John S. Strahorn, Esq.,
Annapolis, Maryland.

Dear Sir:-

I herewith wish to register a protest on behalf of Mr. Joseph H. Bilbrey, the purchaser of the property of Mary W. F. Speers, the protest concerning the charges made by you for the postponement of the sale of December 30th and the further charge of interest made upon the original purchase price from March 1923.

Filed February 2, 1926

According to the law as laid down in Maryland, you are not entitled to such charges, and while I protested at the time you made such charges, I found that your demand was made at such a time that we would have had to acquiesce therein or you would conduct a re-sale of the property.

You are, therefore, hereby notified that I, on behalf of Josehp H. Bilbrey, demand that you return the sum of $626.00 as set forth in your separate receipt under date of December 30, 1924 and that you also return the sum of $1300.00 charged as interest in the final settlement.

The amounts herein set out are no part of your trust funds under the foreclosure proceedings and were illegally collected.

Very truly yours,

Edward Strauff

Respondent's Exh. J

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In the Matter of the
Mortgaged Real Estate of MARY W. F. SPEERS, No. 4742 Equity.

- - - - - - - - - - - - -

Information for Auditor.

- - - - - - - - - - - - -

1923, Mch.22	Sale price, - - - - - - - - - - - - - - -	$13,625.00
" "	By cash deposit - - - - - - - - - - - -	1,000.00
	Balance due on purchase price -	12,625.00
1925, Jan. 8	Interest due on the above balance from day of sale to this date - - -	1,357.18
	Cash deposit, as above - - - - - - - -	1,000.00
	Total amt. for distribution - - - -	$14,982.18

Filed January 24 1925

Amount due on mortgage, as per statement filed herein on FeB 28, 1923, - - - - - - - - - - - -$9,000.00

Interest on mortgage from Aug. 15, 1922 - - - - - - - - - -

Jno. T. Strain
Auditor

In the Matter of the claim of :
:
ARTHUR V.KALDENBURG :
:
against MARY W.F.SPEERS :
:

STATE OF NEW YORK
: s.s.
CITY and COUNTY OF NEW YORK

Arthur V.Kaldenburg,being duly sworn deposes and says:

FIRST. That he was at all times hereinafter mentioned and now is an attorney and counsellor at law,duly licensed to practice as such under and by virtue of the Laws of the State of New York.

SECOND. That on or about the 20th day of September,I92I said Speers employed deponent in his professional capacity and promised and agreed to pay him therefor,if he,deponent, would go to the City of Baltimore,Md.,and there endeavor to bring about a compromise or settlement,with all parties and attorney's concerned,of a certain action or suit entitled as follows:

"In the Matter of the Mortgaged Estate of
Mary W.F.Speers.
No.45II.Circuit Court for Anne Arundel Co."

Filed February 3,1925

THIRD. That deponent did go to Baltimore,Md.,persuant to said employment and for the exclusive purpose aforesaid and did render the following professional services:

I92I
Sept 20.In Baltimore.Interviews with Messrs Owens and Randellrelative to settlement of suit.

" 2I.Mr.Randell declined to accept our proposition. Conference with Mr.Owens and Miss.Speers.

" 22.Discussed matter with Mr.Owens and Miss Speers on better terms to offer Mr.Randell,acting for Dr.Howard Kelley.

" 23.Interviewed Mr.Owens again,also Miss Speers in same matter.

" 24.Conference with Mr.Randell,in his office,who then submitted written proposition of his terms.Went over statement fully with Miss Speers.

" 25.Went to Annapolis with Miss Speers and interviewed

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Mr.Brady,attorney for Miss Speers,as to points of law,in the case.Prepared an account of Miss Speers indebtedness to Dr.Kelley and submitted same to Mr. Randell.

Sept 26,27,28. In library in Baltimore,looking up the law on the various points of the case.

" 29. At Annapolis,to attend last hearing in said suit before Judge Howard Moss,Mr.Randell having declined to accept our offers.

" 30. Last interview with Mr.Owens.

" " . Left Baltimore for Phila,with Miss Speers.

Oct I . Remained in Phila at Miss.Speers request and inviewed friend of Miss Speers who was interested in said suit.

FOURTH. That the fair and reasonable value of said services is the sum of Two Hundred Dollars,which said Speers promised and agreed to pay on October Ist,at Baltimore Md., but no part of said sum has been paid,although due and duly demanded.

FIFTH. That there is now due and owing from said Speers to deponent the just and full sum of Two Hundred Dollars together with interest thereon from the Ist day of October,I92I and that there are no offsets or counterclaims in favor of said Speers against deponents within claim.

Sworn to before me this 30th :
day of January,I925. :

Amello Mattera

NOTARY PUBLIC, New York County
N. Y. County Clerk's No. 114 Register's No. 6[illegible]
Kings County Clerk's No. 150 Register's No. 6[illegible]
Bronx County Clerk's No. 43 Register's No. 2020
Commission Expires March 30, 1926

State of New York, County of New York, } ss.:

No.....2085.....Series B Form 1

I, JAMES A. DONEGAN, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, having a seal, DO HEREBY CERTIFY, That

Amello Mattera

whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such deposition, or proof and acknowledgment, a Notary Public in and for such County, duly commissioned and sworn, and authorized by the laws of said State, to take depositions and to administer oaths to be used in any Court of said State and for general purposes, and also to take acknowledgments and proofs of deeds, of conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 30 day of Jan. 192 5

James A. Donegan Clerk.

In the Matter of the Sale of the Mortgaged Real Estate of Mary W. F. Spears	No. 4742 Equity In the Circuit Court for Anne Arundel County

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The petition of Eleanor B. Biggs respectfully shows:

1. That she is the holder of a judgment against Mary W. F. Spears, which was secured on an attachment upon original process against Mary W. F. Spears, having entered suit June 23rd, 1922 upon the law side of this Court, and by the sheriffs return to the writ of attachment levied upon the equity in 52½ acres of land belonging to the said defendant and lying upon the Severn River in the Third Election District of said County.

2. That the short note case came on for trial at the July term 1923 in this Court and the finding by the Court was in favor of your petitioner and damages were assessed at $2,525.60 as of July 13, 1923, with costs of $16.45. And your petitioner files herewith a short copy of said proceeding and judgment, which she prays may be taken as part of this petition.

3. That your petitioner is advised that there remains a balance in the hands of the mortgagee's attorney, after the payment of the mortgage debt, interest and costs, which represents the equity of the said Mary W. F. Spears in the aforesaid land leased and levied upon your petitioner in the aforesaid attachment proceeding and which sum is liable to such attachment and your petitioner's judgment claim.

Where for your petitioner prays that herclaim may be paid from such balance of the proceeds of the sale, no part of the same having as yet been paid or secured.

And as in duty bound, etc.

Daniel Chandlee
Attorney for Petitioner.

Filed February 28, 1923

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, To wit:

I hereby certify that upon this twenty-eighth day of January in the year 1925 before me the subscriber, a Notary Public of the State of Maryland, in and for Anne Arundel County aforesaid, personally appeardd Daniel R. Randall, attorney for the petitioner and made oath in due form of law that the matters and facts as therein set forth are true to the best of his knowledge and belief

AS WITNESS MY HAND AND SEAL NOTARIAL.

Margaret A. Baker
Notary Public

Filed Feb 11, 1925

Upon the aforegoing petition, it is hereby ORDERED by the Circuit Court for Anne Arundel County in Equity, this 11th day of Feby 1925, that the judgment of Eleanor B. Biggs, be allowed by the Auditor in stating his account in this case according to the legal priority of said judgment.

Robert Magruder

Judgment amount	$2525.60
Interest from 3/19/24	125.38
Costs	16.45
Total	$2667.43

In the Matter of the Mortgaged Real Eatate of Mary W. F. Spears.	No. 4742 Equity. In the Circuit Court for Anne Arundel County.

To the Honorable, the Judge of the said Court.

James W. Owens, Auditor states to the Court that having personal interest in the above entitled case, he is therefor disqualified to state an accoount and file the report he therefor prays you honor to appoint a Special Auditor for that purpose.

James W Owens

Auditor.

Filed February 4, 1925

Ordered by the Court upon this 4th day of February in the year 1925 that George B. Woelfel, be and he is hereby appoint special auditor to state the said account and file a report but before proceeding to act in the premises he is required to take the same oath that is required of the Auditor.

Robert Moss, A.J.

I, George B. Woelfel make oath that I will state the account without fear, favor partiality or prejudice.

George B. Woelfel

Subscribed and sworn to before me this 4th day of February in the year 1925.

Robert Moss, A.J.

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In the Case of

In the Matter of the Sale of the Mortgaged Real Estate of Mary W. F. Speers.

vs.

IN THE

CIRCUIT COURT

FOR

Anne Arundel County.

To the Honorable, the Judges of said Court:

The Auditor reports to the Court that he has examined the proceedings in the above entitled cause, and from them he has stated the within account

1st. He allowed the mortgagee 6% compound interest on the mortgage debt of Nine Thousand (9000) Dollars.

2nd. Much thought and deliberation was given in allowing judgments. It appearing that both Eleanor B. Biggs and Arthur Kalenburg instituted suit by having non-resident attachments issued, but they waived their liens in order to have trial at the October term, hence it appears to me, they had no vested liens and accordingly in allowing judgments I have given priority to those judgments that were first in point of time.

3rd. No expenses were allowed the attorney for advertising, etc. on proposed re-sale of the property due to agreement made with the attorney.

4th. That the remainder of the account is self-explanatory.

Filed February 12 1925

All of which is respectfully submitted.

George B. Wacefel

Special Auditor.

Dr. In the Matter of the Sale of the Mortgaged Real Estate of Mary W. F. Speers. in ac.

To the attorney for his Commissions	479	47		
To the fee named in the mortgage	100	00	579	47
To the attorney for Court Costs, viz:				
Plaintiffs Solicitor's Appearance Fee	10	00		
Defendants Solicitor's Appearance Fee	10	00		
Clerk of Court	27	30		
Premiums on Bond for 2 years	50	00		
Auditor's fee	18	00		
Exhibit's (J. S. S., atty.)	9	00		
Testimony (Depositions C. H. P.)	25	00		
Stenographer taking testimony on exceptions	24	70		
Stenographer making testimony copy for appeal	25	00		
Examiners fee	16	00	215	00
To the attorney for his expenses, viz:				
Advertising sale in the Md. Gazette	28	50		
Order Nisi on sale	5	00		
Order Nisi on Auditor's Account	5	00		
Auctioneer's Fees	30	00		
Posting Hand Bills	1	00		
100 copies of Hand Bills	4	00	73	50
Distribution, viz:				
To Mortgagee in full for mortgage debt of $9,000.00 plus interest from 8/15/22 to 1/15/25.	10365	21	10365	21
Union Trust Company of Maryland as per judgment 5/11/23			947	30
Arthur Kalenburg as per judgment filed and dated 7/14/23			1055	77
Eleanor B. Biggs as per judgment dated 3/19/24	2667	43	1745	93
			14982	18

with John S. Strahorn, assignee, *Cr.*

By proceeds for sale of Realty	13625	00		
	1357	18	14982	18
			14982	18

LIBER 78 PAGE 38

Filed February 16, 1925

ORDER NISI.

In the Matter of the Sale of the Mortgaged Real Estate of Mary W. F. Speers

VERSUS

IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

No. 4742 Equity.

ORDERED, This 16th day of February 1925, That the Report and Account of the Auditor, filed this day in the above entitled cause,

BE RATIFIED AND CONFIRMED, unless cause to the contrary be shown on or before the 19th day of March next; Provided a copy of this Order be inserted in some newspaper published in Anne Arundel County, once in each of three successive weeks before the 19th day of March next.

Wm N. Woodward, Clerk.

In the Circuit Court for Anne Arundel County.

ORDERED BY THE COURT, this ..... day of ..... 19 , that the aforegoing Report and Account of the Auditor be and the same is hereby finally ratified and confirmed, no cause to the contrary having been shown, and that the Trustee apply the proceeds accordingly with a due proportion of interest as the same has been or may be received.

IN THE MATTER	:	No. 4742 Equity.
OF THE SALE OF THE	:	In the
MORTGAGED REAL ESTATE OF	:	Circuit Court
MARY W. F. SPEERS.	:	for Anne Arundel County.

TO THE HONORABLE, THE JUDGES OF SAID COURT:-

The petition of Mawson Furs, Incorporated, respectfully shows:-

FIRST. That it is a judgment creditor of the said Mary W. F. Speers, its judgment having been obtained on the 17th day of October, 1923, in the sum of Nine hundred and fifty-one dollars and fifty-one cents ($951.51), with interest from date and Court costs.

SECOND. That the property of the said Mary W. F. Speers has been recently sold under the power of sale contained in the mortgage filed in these proceedings, at and for the sum of Thirteen thousand six hundred and twenty-five dollars ($12,625.00), and your petitioner is informed that there will be a balance due the mortgagor , after satisfying the mortgage indebtedness, together with all costs incident thereto.

Your petitioner, therefore, prays your Honors to pass an order, authorizing and directing the Auditor, when stating his Account in this case, to allow the amount of the judgment, interest and costs of Mawson Furs, Incorporated, out of the balance that may be due the said mortgagor, according to its priority.

And, as in duty bound, etc.

Mawson & Ford
SOLICITOR FOR PETITIONER.

Filed February 18, 1925

LIBER 78 FOLIO 39

ORDER OF COURT.

ORDERED by the Circuit Court for Anne Arundel County, in Equity, this 18th day of February, 1925, that the Auditor of this Court be, and he is hereby, authorized and directed, when stating the Account in this case, to allow the judgment of Mawson Furs, Incorporated, interest and costs, according to its priority, subject to the usual exceptions.

Filed Feb 18 1925

Robert Moss, J.

In the matter of the mortgaged real estate of Mary W. F. Speers.	:	Equity, in the Circuit Court for Anne Arundel County

Eleanor B. Biggs excepts to the auditor's account filed in this proceeding, distributing the balance of funds in the hands of the assignee-mortgagee, John A. Strahorn, Esq., for the following reasons:

(1) Because the auditor has failed to disperse the net fund among lienors according to their respective priorities, as directed by the Court.

(2) Because in distributing such fund the auditor has allowed the judgement claims of Arthur Kaldenburg and the Union Trust Company as prior liens upon the said fund to the claim of this exceptant.

(3) Because the auditor, in distributing the said fund, failed to note that the lien of attachment upon the mortgaged real estate of Mary W. F. Speers, held by this exceptant and perfected by a verdict and judgement on July, 1923, was a prior lien under the laws of this State, and a decision of its Court, to the confessed judgement in favor of the Union Trust Company, entered subsequent to the attachment and levy upon this exceptant's claim.

(4) And for other errors which may be cited at the hearing.

Wherefore this exceptant prays that a new auditor's account may be stated, allowing in full this exceptant's judgement claim, filed in this proceeding in accordance with the order of Court and the law governing the same.

(Signed) Daniel R. Randall
Solicitor for Eleanor B. Biggs, Exceptant.

It is agreed that this paper be substituted as a correct copy of the original that was filed in this case on February 18, 1925

Daniel R. Randall

Ridgely P. Mackin
Solicitor for Union Trust Co.

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IN THE MATTER OF THE	:	No. 4742 Equity
SALE OF THE	:	IN THE
MORTGAGED REAL ESTATE	:	CIRCUIT COURT FOR
OF MARY W. F. SPEERS.	:	ANNE ARUNDEL COUNTY.

To the Honorable, the Judges of said Court:-

Arthur V. Kaldenburg begs leave to except and does hereby except to the account and report of the Auditor filed in this case on the 16th of February, 1925, and for the following reasons:-

Filed February 26, 1925

First - Because the judgment of this Exceptant is the first lien upon the real estate, next after the mortgage under which the property mentioned in these proceedings was sold, the claim of your Petitioner being founded in his attachment which was levied on the property mentioned in these proceedings, and sold under mortgage, on the 16th of May 1922; judgment of condemnation nisi having been entered on the 22d of September 1922; judgment on the short note case having been rendered on the 14th of July 1923; and final judgment of condemnation having been entered on the 12th of February, 1925; and this Exceptant shows that all the other liens against the property and the proceeds of sale thereof, mentioned in these proceedings, are subsequent to the claim of this Exceptant.

Second - Because no costs have been allowed to this Exceptant on the short note case, and the attachment case; the costs being, in the short note case $8.60 Plaintiff's costs, and in the attachment case $43.95, Plaintiff's costs.

Third - because this Exceptant is not allowed a proper proportion of interest received on the proceeds of sale,

Wherefore, this Exceptant prays the Court to //

allow his claim as a first lien, payable out of the surplus proceeds of sale in this case, after satisfaction of the mortgage debt, together with the costs as above stated and as shown by the Exhibits filed in the case, and with a due proportion of interest as the same has been or may be received by the attorney who made the sale.

And as in duty, etc.

SOLICITOR FOR EXCEPTANT

IN THE MATTER OF THE SALE OF THE MORTGAGED REAL ESTATE OF MARY W. F. SPEERS.	*	In the Circuit Court for Anne Arundel County.
	* No. 4772.	In Equity.

* * * * * * *

EXCEPTIONS TO AUDITOR'S ACCOUNT.

TO THE HONORABLE, THE JUDGES OF THE SAID COURT:-

Joseph N. Bilbrey, respectfully excepts to the ratification of the Auditor's Account filed herein and for causes of such exceptions says:-

1. That by the said Auditor's Account, the Assignee of the Mortgage is charged with funds coming into his hands amounting to $14,982.18, whereas the funds collected by him from this exceptant, as the purchaser at the sale of the property sold under this foreclosure proceeding, amounted to $15,622.18, the said Assignee of the mortgage having in his hands as assignee the sum of $640.00 for which he has not accounted.

2. That the distribution of the funds in the hands of the Assignee is erroneously made, in that all of the said funds, after the payment of certain expenses, are distributed to the mortgagee and to certain judgment creditors of the mortgagor, and nothing whatever is distributed to this exceptant, whereas there is, in equity, due to this exceptant the sum of $1797.18 as a prior claim to all other claims herein, the said sum representing $1357.18 wrongfully and unlawfully collected from him by the said assignee; the said sum being alleged to be due for interest on the purchase price, which interest was not legally collectible; the sum of $626.00 wrongfully and unlawfully collected from him by the said assignee, the said sum being for certain charges unlawfully demanded by the said Assignee from this exceptant; and the sum of $14.00 wrongfully and unlawfully collected by him from this exceptant, the said sum being alleged to be due for a revenue stamp of the deed of the property sold in this proceeding, the said sum of $14.00 not being properly chargeable to this exceptant.

3. And for other and further reasons to be shown at the hearing.

Attorney for Exceptant.

Filed March 5 1925

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IN THE MATTER OF THE SALE	:	IN THE
OF THE	:	CIRCUIT COURT
MORTGAGED REAL ESTATE	:	FOR
OF	:	ANNE ARUNDEL COUNTY.
MARY W.F.SPEERS.	:	No.4742 In Equity.

Filed - March 17, 1925

EXCEPTIONS TO AUDITOR'S ACCOUNT.

TO THE HONORABLE, THE JUDGES OF SAID COURT:

Mary W.F.Speers, mortgagor, respectfully excepts to the ratification of the Auditor's Account filed herein by the Assignee in the above cause, and for causes of such exception says:

1. That by the Auditor's Account filed in this cause, the said Assignee of the Mortgage is charged with funds coming into his hands amounting to $14,982.18, whereas the funds collected by him amounted to $15,608.18, the said Assignee having in his hands the sum of $626.00 for which he has not accounted in said Auditor's Account.

2. That the distribution of the funds in the hands of the Assignee is erroneously made, in that the said sum of $626.00 has not been duly placed to the credit of the account of your exceptant as proceeds of the sale of the property in this cause.

3. And for other and further reasons to be shown at the hearing.

Benjamin Michaelson
Solicitor for Exceptant.

* * * * * * * * *

IN THE MATTER OF THE MORTGAGED REAL ESTATE OF MARY W. F. SPEERS.

In the Circuit Court for Anne Arundel County.

* * * * * * * *

P E T I T I O N .

TO THE HONORABLE, THE JUDGE OF THE SAID COURT:-

The Petition of Joseph H. Bilbrey, respectfully shows unto Your Honor:-

1. That on or about the 22nd day of March, 1923, Your Petitioner became the purchaser of the property described in these proceedings at an auction sale conducted by John S. Strahorn, Assignee of the mortgage filed herein under the powers contained in the said mortgage, at and for the sum of $13,625.00 of which said sum Your Petitioner paid at the time of the said sale the sum of $1000.00 in cash.

2. That thereafter, to wit: on or about the 23rd day of April, 1923, Mary W. F. Speers filed exceptions to the ratification of the said sale, which said exceptions were finally duly heard and the said sale was on or about the 5th day of March, 1924 finally ratified and confirmed.

3. That on or about the 19th day of May, 1924, ad appeal was filed on behalf of the said Mary W. F. Speers to the Court of Appeals of Maryland, from the Order of this Honorable Court dismissing the said exceptions filed on her behalf, which said appeal was dismissed by this Honorable Court on or about the 30th day of September, 1924.

4. That on or about the day of , 1924, Your Petitioner was notified to complete the purchase of the said property, the subject of the said litigation.

5. That before Your Petitioner's arrangements were finally completed to pay the balance of the said purchase price, he was notified by the said John S. Strahorn, Assignee that a re-sale of the said property would be conducted at Your Petitioner's expense, which said re-sale was advertised to take place on December 30, 1924.

6. That on or about the 26th day of December, 1924, Your Petitioner, thru Edward A. Strauff, his attorney, interviewed the said John S. Strahorn, Assignee, and it was agreed that Your Petitioner should make an additional deposit of $5000.00 to the said John S. Strahorn, Assignee on account of the purchase at the said first sale hereinbefore recited, and that in consideration thereof, the said sale advertised to be held on December 30, 1924 should be postponed to some future day, in order to give Your Petitioner an opportunity to pay the balance of the said purchase price.

7. That on the morning of the said re-sale, to wit: December 30, 1924, Your Petitioner, thru his attorney, tendered to the said John S. Strahorn, Assignee the said sum of $5000.00 in cash but the said John S. Strahorn, Assignee refused to accept the same unless an amount equaling $626.00 in cash be paid to him in consideration for the postponement of the said sale; and that Your Petitioner, in order to prevent the additional costs and charges attending a re-sale of the said property was forced and constrained to pay the said sum of $626.00 under protest.

Filed March 24 1925

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8. That thereafter, to wit: on or about the 6th dau of January, 1925, Your Petitioner, thru his attorney, endeavored to pay unto the said John S. Strahorn, Assignee the balance of the purchase price of the said property but that the said John S. Strahorn, Assignee again refused to accept the balance of the said purchase price unless Your Petitioner pay unto him interest on the said purchase price from the said day of sale, to wit: March 22, 1923, amounting to $1300.00 and further insisted that Your Petitioner or his assigns deed unto a certain Charles H. Pulis one acre of land described by metes and bounds, which metes and bounds were established by the said Pulis irrespective of the description contained in the said mortgage under which the said John S. Strahorn sold the property herein.

9. That Your Petitioner finally paid unto the said John S. Strahorn, Assignee, all of the charges exacted, under protest, in order to prevent the unnecessary expense which would be caused by a re-sale, relying on his rights to ask for a return of said funds out of the said proceeds.

10. That the said charges were wrongfully and unlawfully demanded and exacted by the said John S. Strahorn from Your Petitioner.

11. That Your Petitioner is advised that he is entitled to obtain an Order from this Honorable Court requiring the said John S. Strahorn to account for all funds received by him in his capacity as Assignee for the purposes of foreclosure of the said mortgage, and that he, the said John S. Strahorn, Assignee, be required to return unto Your Petitioner the said funds wrongfully and unlawfully collected and retained by him.

WHEREFORE Your Petitioner prays Your Honor to pass an Order in this cause requiring the said John S. Strahorn, Assignee, to account in this Court for all funds received by him in his capacity as Assignee for the purpose of foreclosure of the mortgage herein referred to; and that the said John S. Strahorn be directed and required to return unto Your Petitioner such sums as shall to this Honorable Court appear to have been wrongfully or unlawfully demanded and collected by the said John S. Strahorn, Assignee from Your Petitioner.

And as in duty bound, etc.,

Joseph H. Bilbrey
Petitioner.

Atty. for Petitioner.

DISTRICT OF COLUMBIA,
CITY OF WASHINGTON, ss:-

I HEREBY CERTIFY that on this 19 day of January, 1925, before me, a Notary Public of the District of Columbia, in and for the City of Washington, personally appeared Joseph H. Bilbrey, and made oath in due form of law that the matters and facts contained in the foregoing Petition are true to the best of his knowledge and belief.

WITNESS my hand and Notarial seal.

Notary Public

LAP OVER MARGIN

IN THE MATTER	:	No. 4742 Equity.
OF THE SALE OF THE	:	In the
MORTGAGED REAL ESTATE OF	:	Circuit Court
MARY F. W. SPEERS.	:	for Anne Arundel County.

TO THE HONORABLE, THE JUDGES OF SAID COURT:-

Mawson Furs, Incorporated, begs leave to except, and does hereby except, to the Account and Report of the Auditor filed in this case on the 16th of February, 1925, for the following reasons:

Filed March 24 1925

(1) Because this Exceptant is a judgment creditor of Mary F. W. Speers, which judgment appears to be the third lien of record against the said Mary F. W. Speers, and should have been allowed by the Auditor out of the balance of the proceeds of the sale of the property, mentioned in these proceedings, after the payment of the mortgage debt and two prior judgment liens.

(2) And for other and further reasons to be shown at the hearing of these exceptions.

Wilson & Gosnell

SOLICITOR FOR EXCEPTANT.

15

IN THE MATTER OF THE MORTGAGED REAL ESTATE OF MARY W. F. SPEERS.

IN THE CIRCUIT COURT for ANNE ARUNDEL COUNTY.

- - - - - -

TO THE HONORABLE, THE JUDGES OF THE SAID COURT:-

The answer of John S. Strahorn, Assignee in the above entitled case, to the exceptions to the ratification of the Audit herein, filed by Edward A. Strauff, Attorney, on behalf of Joseph H. Bilbrey, respectfully shows:

FIRST

(a) Answering the first paragraph of said exceptions, and all the time denying exceptant's right to relief in this action, this respondent shows: That as such Assignee, he received from the said Edward A. Strauff, Attorney for said exceptant, on account of the purchase price for the property sold by him, (only) the sum of $14,982.18, the same having been paid to your respondent by said Attorney, as follows: December 30, 1924, $4,374.00, and on the 8th day of January, 1925, the sum of $9,608.18, which two said accounts totalling $13,982.18, together with the sum of $1000.00 theretofore, to wit, on the 22d day of March, 1923, paid by the said Bilbrey to your respondent on account of the purchase price of $13,625.00 bid for said property by said Bilbrey, covered the said bid of $13,625.00, plus the interest on the deferred payment of $12,625.00, from the day of said sale to the day of such settlement on the 8th day of January, 1925, as follows:

Filed June 24, 1925

1. Cash paid March 22d, 1923,	$1,000.00
2. Balance purchase price,	12,625.00
3. Interest on this balance from 3/22/23 to 1/8/25	1,357.18
	$14,982.18

And your respondent shows that such payments were made in

strict conformity with the terms of sale as advertised, and without protest on the part of the said exceptant, or his said Attorney, at the time he so made them, the said Bilbrey having been present, in your respondent's office, with his said Attorney between the dates of the two said payments, and had full knowledge of said interest charge, as well as of all the other matters complained of in said exceptions.

(b) Further answering said exceptions, this respondent avers, on information and belief, that the said Bilbrey had (has) no interest whatever in said payments, he having acted throughout as agent, and did not advance, out of his own funds, any part of said sum of $14,982.18; he having been, by his own admission, made to your respondent on the 6th day of November, 1924, a "straw man" in the purchase of said property.

(c) Your respondent further shows, that the said balance of $9,608.18, so as aforesaid paid to your respondent on the 8th day of January, 1925, was tendered your respondent by the said Bilbrey and Strauff, at his office, in Annapolis, on or about the 6th day of January, 1925, but the same was not accepted by your respondent on said date, but was thereafter, to wit, on said 8th day of January, 1925, accepted by him, at the office of said Strauff, in the City of Baltimore; and this respondent denies that he has received from the said Bilbrey, for and on account of said purchase price, or from any person or corporation on his behalf, any further sum of money than the said sum of $14,982.18.

SECOND

Further answering said exceptions, and with particular

(2)

reference to the item of $626.00 set out in paragraph 2 thereof, all the time denying the exceptant's right to relief in this action, this respondent shows:

(a) That said sum of money was not paid to this respondent as Assignee, but rather, to him as Attorney for Charles H. Pulis, the holder of the mortgage under foreclosure, and after conference with the said Charles H. Pulis, and with his express direction and consent; your respondent having united in the receipt given therefor for the sole purpose of carrying out the wishes of his said principal, Charles H. Pulis, and for no other reason; your respondent's formal acquiescence in said agreement being necessary to its proper fulfilment.

(b) That on or about the 26th day of December, 1924, the said Edward A. Strauff, Attorney, came to his office in the City of Annapolis, and said, in effect, that he, on behalf of the said Bilbrey, desired to complete the purchase made by said Bilbrey on the 22d day of March, 1923, but that he, the said Strauff, as such Attorney, would not be able to so complete said purchase on or before the 30th day of December, 1924, the day on which said property was advertised to be offered for re-sale under the order of this Court; and asked that an arrangement be effected, whereby said sale could be postponed beyond said 30th day of December, 1924, in order that further time might be had by the said Bilbrey to raise sufficient, funds to so complete his said purchase. That a tentative agreement, subject to the approval of Charles H. Pulis, your respondent's said principal, was made, and, on the said 30th day of December, 1924, while the Auctioneer was calling the re-sale of said property, as so advertised, and after the said Charles H. Pulis had been made acquainted with and agreed to the terms of said agreement so as theret-

fore conditionally made by your respondent as Attorney on his behalf, the said sum of $626.00 was paid to your respondent as such Attorney under the following written agreement, the original of which is now in the hands of the said Edward A. Strauff, Attorney, to wit: (This agreement here omitted from record at direction of Appellee, the same being Exceptant's Exhibit No. 1 already in the record.)

And in consideration of said payment of $626.00, together with other valuable condideration, the said Charles H. Pulis agreed thatthe said re-sale should be postponed until the 10th day of January, 1925, and further agreed that your respondent, as his Attorney, should sign said agreement (receipt) and receive, for him, the said sum of $626.00; all of which was for the purpose of permitting the said Bilbrey to complete the purchase as aforesaid, and to prevent the re-sale of said property; and your respondent here shows, on information and belief, that if said property had been re-sold on said 30th day of December, it would have brought considerably more than $13,625.00. That all the items set out in said agreement were specifically mentioned prior to the said 30th day of December, 1924, and your respondent shows that on said 30th day of December, 1924, the said Edward A. Strauff, Attorney, produced a formal statement, based on the said tentative agreement so as aforesaid entered into on or about the said 24th day of Defember, 1924, showing said items, as set out in the above receipt, which will be produced at the hearing hereunder.

THIRD

Further answering said exceptions, and with praticular reference to the item of $14,00 set out in paragraph 2 thereof, your respondent shows, on information and belief, that the said sum of money was not paid by the said Bilbrey, or by anyone on his behalf,

the same having been paid to him by check of Edward A. Strauff, on behalf of the Atlas Realty Company, Inc., as he recalls and believes, and he further shows, that after the said check was so delivered to him, he paid for said revenue stamps out of his own pocket, and offered, on proper showing by said Strauff, Attorney, to pay a part or the whole of said sum, but said offer having been ignored by said Attorney, your respondent, after holding said check for about ten days, then used the same. Your respondent, all the while denying the exceptant's right to receive back said sum of money in this action, offers to reimburse the person who actually paid said sum of money when shown that under the law the said revenue stamps should have been paid for by him.

And having fully answered said exceptions insofar as he is advised and believes it is necessary for him to so answer, your respondent prays to be hence dismissed with his reasonable costs.

And as in duty, etc.

John S. Strahorn Assignee
Respondent.

(Affidavit of John S. Strahorn)

(Affidavit of Charles H. Pulis)

- - - - - - - - - -

The answer of the respondent to the exceptions of Joseph H. Bilbrey filed in this cause on the 24th day of June, 1925, being lost, it is agreed that the above, which is a copy of the office carbon copy of said answer belonging to John S. Strahorn, Solicitor, be substituted in lieu of said original and used in making up the record of the appeal in this case, filed on behalf of said Bilbrey.

Solicitor for Appellant.

John S. Strahorn
Solicitor for Appellee.

Brief On Exceptions of Mrs. Biggs to
Allowance of Strahorn Fee.

Mrs. Biggs' original claim against Speers in 1922 was	$3,650.00
The judgment recovered upon hearing before Judge Moss in 1923 was	2,725.27
The allowance to Mrs. Biggs of the balance under the first audit was in 1926	2,693.23
The allowance under the second audit with interest was	1,861.66

There has been a progressive downward trend from the start, although Mrs. Biggs has been uniformly successful in her litigation in this Court and in the Court of Appeals in maintaining her position as a preferred creditor. Had she received her due, following the decision in the Court of Appeals a year ago, she would have been allotted the entire balance of the fund in the Auditor's hands, $2,693.23 with such interest as had accrued.

Filed January 27, 1926

1. The second appeal however of Bilbrey to the April term of the Court of Appeals has had this result, that the fund in Mr. Strahorn's hands applicable to the Biggs' judgement; viz., $2,693.23. has now been charged with the costs of that appeal amounting to $260. and piled on top of that has been deducted a personal fee to the Solicitor, representing the mortgagee and appellee in the Court of Appeals, of $250., a net loss to Mrs. Biggs of at least $622.

Was Mrs. Biggs implicated in any way in this Bilbrey appeal for which she should be held in fees and costs. She was not a party to the appeal in any sense. Her rights had been favorably adjudicated by an earlier opinion in that Court which gave her the entire residuary fund in Mr. Strahorn's hands as well as the interest accrued. She was remotely interested in the outcome of the second proceeding on the question of accumulated interest on the mortgage debt which Mr. Strahorn had collected ~~from~~ Bilbrey, and which constituted a portion of the

balance, but that interest was never in jeopardy. It was, as this Court and the Court of Appeals held, a part of the mortgage fund to be distributed under the audit. Should Mrs. Biggs, against her will, be compelled to bear the entire costs of the Bilbrey appeal, and also be taxed for the counsel fees in that proceeding? We respectfully submit that it would be grossly inequitable to so charge her.

2. The Allowance of the Fee -- Upon his own application, with the certificates of two attorneys, the Court allowed, subject to exception, a fee from the fund to Mr. Strahorn of $250. If the attorney had adopted the method prescribed by the Court of Appeals in Farr vs. Shirk, 142 Md. 118-123 the application should have been made by such person or persons as were represented by Mr. Strahorn, and not upon his own motion. The Court there says, and for this reason alone, the exceptant holds, that Mr. Strahorn cannot be compensated from Mrs. Biggs' money where she had not employed him, nor consented to such employment and the compensation claimed.

3. Mortgage provided the Fee -- In addition to the commission allowed by the Auditor to Mr. Strahorn for the foreclosure of the Speers to Kelly mortgage owned by Mr. Chas.H.Pulis, the mortgage provided an additional fee as compensation for any special service rendered. This fee Mr. Strahorn claimed and took. We respectfully submit that this is absolutely at variance with the decisions of the Court of Appeals in

Shaw vs. Smith, 107 Md. 523
Mahoney vs. Hackubbin, 54 Md. 366.376

The Court will recall as well the case of Johnson vs. Glenn wherein the law was established in Maryland that an assignee of mortgage is entitled only to such compensation, fees, or commissions, as the mortgage itself provides.

In the 107th Maryland case, the Court sustained the

exception to the allowance of a fee of $100. because there was no provision in the mortgage authorizing it, and by inference, the Court held, as it might in this case, that the remaindng fund in the hands of Mr. Strahorn. after the payment of the mortgage debt, interest and costs (including his special fee and commissions) was a trust fund, and this, declares the Court, upon no principle known could be charged with a fee for resisting exceptions where other compensation had been allowed by the Court or in the mortgage itself.

We respectfully submit therefore, that under any one of the three reasons assigned, or because of all three, the deduction of $250. from the quasi trust fund in Mr. Strahorn's hands belonging to Mrs. Biggs, under the affirmative decree of the Court of Appeals, cannot be sustained where exception is taken to such allowance.

We should say here in connection that while we recognize that much more work was involved in this proceeding than Mr. Strahorn had first suspected. and that we further recognize the able manner in which he handled this litigation for his principal, that the subsequent losses to the exceptant in the volume of litigation do not justify her in permitting the further reduction of her claim without a protest. Mr. Strahorn's principal secured his money and its full interest; Mr. Strahorn, apart from what he may have received in fees from his principal, secured full commissions and an additional fee of $1.00. for the conduct of the foreclosure proceeding, whereas, the exceptant has been subjected to continual losses from the day of filing her attachment in May 1922. If Mr. Strahorn is deserving of further compensation, we respectfully submit it should come from those most benefitted by his professional labors.

January 27th, 1926.

(By Mr Melvin.)

On behalf of the Union Trust Company Judgment creditor and claimant in this case there are filed the following papers, with leave of the Court, Priginal attachment papers in case of Eleanor Biggs vs. Mary W. F. Speers, 130 Trials October Term, 1922, and also the papers in case of Arthur V. Kalenburg vs. Mary W. F. Speers, 40 Trials April Term, 1923, and list of Docket entries in these cases.

In the Matter of the Sale of the Mortgaged Real Estate of Mary W. F. Speers,

No. 4742 Equity.
In the Circuit Court for Anne Arundel County.

Filed February 2, 1926

It is this 2nd day of February, in the year 1926, by the Circuit Court for Anne Arundel County, Ordered and Decreed that the papers in this case be referred to one of the standing Examiners of this Court for the purpose of taking testimony on the Exceptions to the Auditor's Account, that the parties hereto may take such testimony as they may desire.

Robert Mass

Judge.

TELEPHONES:
OFFICE 36
RESIDENCE 42

7410

JOHN S. STRAHORN
LAWYER
CHURCH CIRCLE AND SOUTH STREET, NEXT DOOR TO COURT HOUSE
ANNAPOLIS, MARYLAND

RECEIVED, Annapolis, Maryland, December 30, 1924, of Edward A. Strauff, Attorney, the sum of Six Hundred and Twenty Six Dollars, being for the following items of expenses incurred by John S. Strahorn, Assignee, in the matter of the first and second sale of the Speers property, towit: $16.00, auctioneer's charges onsecond sale; $169.50, one half commissions on the second sale, based on amount due on the mortgage and accrued interest from August 22nd, 1922; $50.00, on half attorney's fee mentioned in mortgage, on account of second sale or advertisement; $250.00 attorneys fee for services rendered in connection with exceptiions to first sale; $100.00 for expenses for same; and forty one dollars advertising costs on second sale, and in consideration of which it is hereby agreed that the sale of the property set for twelve o'clock, NOON, this date, shall be postponed for Eleven days, in order that sufficient time may be allowed the said attorney to make his arrangements to complete for Joseph H. Bilbrey, the purchaser at the fitst sale, of the said purchase made by him on March 22, 1923; this said payment of $626.00 being separate and apart from any charges to be allowed in the audit to be hereafter filed in(said)cause, No. 4742 Equity.

Geo. J. Strahorn,
Assignee and Atty for C. H. Pulis.

Sale at 12 o'clock noon Saturday January 10 1925

1 copy made and given to Mr. Curley. 3/10/25.

Exhibit #1 2/2/26

In order to facilitate the purchase of the fifty-one acres, more or less, on the Severn River sold to Mr. Joseph H. Bilbrey at public auction under foreclosure proceedings, I Mary W. F. Speers, do hereby acknowledge and agree to the attached statement of expenses in connection with the said sale, hereby releasing John S. Strahorn from any discrepency in the amount therein set forth and hereby acknowlegde the said amounts to be true and correct amounts for the purpose of permitting the said mortgage and said mortgage claim in the hands of John S. Strahorn, Assignee to be assigned to the said
who are called upon by the said John S. Strahorn, Assignee to pay the said amounts in full payment of the said mortgage.

Witness my hand and seal this 30th day of December, 1924.

Filed 2/2/26

Test:- J. Britain Winter — Mary W. F. Speers (SEAL)

State of Maryland
City of Baltimore ss:-

I hereby certify that on this 30th day of December, 1924 before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City aforesaid personally appeared Mary W. F. Speers and acknowledged the foregoing agreement to be her act.

Witness my hand and notarial seal

J. Britain Winter
Notary Public.

Commission on first sale, - - - - - - - - - - - - - - -	$ 418.75
Fee in mortgage -	100.00
Auctioneer; first sale - - - - - - - - - - - - - - - -	31.00
Auctioneer; second sale - - - - - - - - - - - - - - -	16.00
Balance due as purchase price - - - - - - - - - - - -	9000.00
Int. on this balance from 3/22/23 to 12/20/24 - -	1300.00
½ Commissions on second sale- - - - - - - - - - - -	169.50
½ counsel fee, same - - - - - - - - - - - - - - - -	50.00
Counsel fee for exceptions - - - - - - - - - - - -	250.00
Expenses, two trips to New York - - - - - - - - - -	100.00
Assignee's bond, 2 years - - - - - - - - - - - - -	50.00
Advertising first sale - - - - - - - - - - - - - - -	33.50
Advertising second sale - - - - - - - - - - - - - -	41.00
Court costs (estimated) - - - - - - - - - - - - - -	60.00
	$11,619.75

TELEPHONES:
OFFICE 36
RESIDENCE 42

LIBER 78 PAGE 62

JOHN S. STRAHORN
LAWYER
CHURCH CIRCLE AND SOUTH STREET, NEXT DOOR TO COURT HOUSE
ANNAPOLIS, MARYLAND

RECEIVED, Annapolis, Maryland, December 30, 1924, of Edward A. Strauff, Attorney, the sum of Four Thousand three hundred and seventy four dollars, further on account of the purchase price of property bought by Joseph H. Bilbrey in No. 4742 Equity, IN THE MATTER OF THE Mortgaged Real Estate of Mary W. F. Speers, the balance of the said purchase price, with all accrued interest on the deferred payment of $12,625.00 from March 22nd, 1923 to date of final settlement to be made not later than twelve 08clock, NOON, on Saturday, the 10th day of January, 1925, as per agreement of this date, whereby the sale of the said property advertised formsale at NOON this date has been postponed until noon of said January 10, 1925, and if said balance and all other proper charges are not so paid by said last mentioned date, then the said sale shall proceed at noon on said January 10, 1925.

Filed 2/2/26

Jno. S. Strahorn
Assignee.

This Deed, Made this 6th. day of January, in the year one thousand nine hundred and twenty five by and between John S. Strahorn, Assignee, Anne Arundel County in the State of Maryland, of the first part, and Joseph H. Bilbrey, of Washington D. C. of the second part.

Whereas, at a public sale made the 22nd. day of March 1923, by the said John S. Strahorn, in pursuance of the special power and authority vested in him as the assignee of a certain mortgage from Mary W. F. Speers to Howard A. Kelly, the said mortgage bearing date December 8, 1919 and being recorded among the Land Records of Anne Arundel County in Liber W. N. W. No. 12, folio 295, etc., which sale was made after default had occurred under the said mortgage and after due public notice of sale, and after bond had been duly filed in the Circuit Court of Anne Arundel County, the parcel of land and premises hereinafter described, being the property by said mortgage conveyed, was sold unto the said Joseph H. Bilbrey who was then and there the highest bidder at and for the sum of Thirteen thousand, six hundred and twenty-five Dollars and the said sale having been duly reported to and ratified by the said Court, and the purchase money fully paid, as is hereby acknowledged, the said Assignee is in law duly authorized to execute a deed for the property to the purchaser.

Filed February 2, 1926

Now, therefore, this Deed Witnesseth, That in consideration of the sum of Thirteen thousand, six hundred and twenty-five ($13,625.00) Dollars, the said John Strahorn, Assignee, in execution of the power and authority in him vested by the said mortgage, doth grant and convey unto the said Joseph H. Bilbrey, his heirs, personal representatives and assigns, all that tract or parcel of ground situate in Anne Arundel County, aforesaid, and described as follows, that is to say:

All that property situate, lying and being on the North side of the Severn River in Anne Arundel County near Whitney's Landing, and lying between the land formerly belonging to Mary W. F. Speers and conveyed by the said Mary W. F. Speers in the mortgage hereinbefore

LIBER 78 PAGE 64

mentioned from the said Mary W. F. Speers to Howard A. Kelly, but now owned by the Speers Sand and Clay Works, Inc., and the land at said Whitney's Landing now owned by Morgan and Roberts, the land hereby conveyed consisting of 51¾ acres, more or less. Being the residue of the tract of land formerly owned by Solomon Speers and heretofore occupied by his widow, Margaretta B. Speers, and which whole tract formerly contained 167¾ acres of land, more or less, and from which last mentioned acreage the following tracts have heretofore been deducted to wit: 15 acres on the West side of said whole tract, conveyed to R. Jennie Speers by Deed of June 1, 1912, recorded in Liber G. W. 94, folio 435; 100 acres more or less on the East side of said whole tract of land conveyed to the Speers Sand and Clay Works, Inc., by Mary W. F. Speers by Deed of May 31, 1922 and recorded in Liber W. N. W. No. 52, folio 62, etc., and one acre more or less on the river shore reserved to the said Howard A. Kelly in his Deed to the said Mary W. F. Speers of the 151¾ acres conveyed by the aforesaid mortgage which deed is dated the 1st day of December, 1919, and recorded just prior to the said mortgage among the Land Records of Anne Arundel County in Liber W. N. W. No. 12, folio 294, etc., the said property being subject to all the rights of ingress and egress belonging to the said one acre tract.

In conformity with the agreement executed on December 30, 1924 between this Grantee and Grantor and Charles H. Pulis and Mary W. F. Speers on the reverse side of a copy of the plat of the one acre filed herewith as a part hereof, it is understood and agreed that the following shall be and is considered a proper description of the said one acre, to wit:

Beginning for the same at a dead chestnut tree at the Southeast corner of said one acre, as laid down on plat thereof attached hereto, as a part hereof, made by J. Carson Boush, surveyor, March 15, 1923, said tree being at the top of the North bank of the Severn River and about fifteen feet, more or less, from the spring and pump house mentioned in the aforesaid Deed from Doctor Kelly and wife to the

said Mary W. F. Speers, and running thence North five degrees East 85 feet to the West side of a road there situate; thence North ten minutes, West 100 feet to the intersection of said road with another road leading thru the property hereby conveyed to the said Joseph H. Bilbrey to the road to Whitney's Landing; thence leaving said road and running North 69 degrees, 30 minutes West 232 feet to another dead chestnut tree at the top of the river bank; thence continuing the said last mentioned line to the water edge; thence following the down stream meanderings of the shore line the following courses and distances as laid down on the plat herewith made part hereof, to wit, 103 feet; 58 feet; 112 feet; 100 feet; and 72 feet; thence leaving said shore line and running up said river bank in an almost due North direction to the place of beginning; containing one acre of land more or less as shown by the said plat.

Together with the buildings thereupon; and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

To Have and To Hold the said described lot of ground and premises, unto and to the use of the said Joseph H. Bilbrey, his heirs, and assigns, in fee simple, forever.

Witness the hand and seal of said grantor_

Test: Jno. S. Strahorn (Seal)

J. Britain Winter Assignee

State of Maryland, Anne Arundel County, to wit:

I hereby Certify, That on this 8th. day of January in the year one thousand nine hundred and twenty five before me, the subscriber, a Notary Public of the State of Maryland, in and for Anne Arundel County aforesaid, personally appeared John S. Strahorn, Assignee, the grantor named in the above Deed and he acknowledged the aforegoing Deed to be his act.

As Witness my hand and Notarial seal.

(Notary Seal) J. Britain Winter

Notary Public.

Recorded 9th. January, 1925, at 9 o'clock A. M.

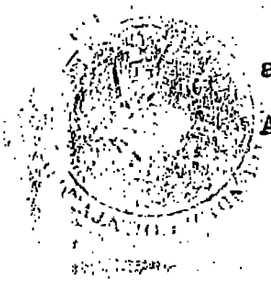
(Plat of one acre tract recorded.)

LIBER 78 PAGE 66

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, TO WIT:

I HEREBY CERTIFY, That the aforegoing Deed is truly taken and copied from Liber W. N. W. No. 99, folio 60, one of the Land Record books for Anne Arundel County.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Circuit Court for Anne Arundel County this 12 day of February, 1926.



Wm. Martin Brady Clerk.

This Deed, Made this sixth day of January, in the year one thousand nine hundred and twenty five (1925) by and between Joseph H. Bilbrey, and Bebe Bilbrey, his wife, of Washington, in the District of Columbia, of the first part, and The Atlas Realty Company of Baltimore City, a body corporate duly incorporated under the laws of the State of Maryland, of the second part.

Witnesseth;- That in consideration of the sum of Five Dollars and other good and valuable cinsiderations, the receipt whereof is hereby acknowledged, the said Joseph H. Bilbrey and Bebe Bilbrey, his wife, grant and convey unto the said The Atlas Realty Company of Baltimore City, its successors and assigns, all that tract or parcel of ground situate in Anne Arundel County aforesaid, and described as follows, that is to say:-

Filed February 2, 1926

All of the property situate, lying and being on the North side of the Severn River in Anne Arundel County near Whitney's Landing, and lying between the land formerly belonging to Mary W. F. Speers and now owned by the Speers Sand and Clay Works, Inc, and the land at said Whitney's Landing now owned by Morgan and Roberts, the said land hereby conveyed consisting of 51¾ acres, more or less, and being the residue of the tract of land formerly owned by Solomon Speers and heretofore occupied by his widow, Margaretta B. Speers, and which whole tract formerly contained 167¾ acres of land, more or less and from which last named acreage the following tracts have heretofore been deducted, to wit;- 15 acres on the West side of said whole tract conveyed to R. Jennie Speers by deed of June 1, 1912, recorded in Liber G. W. 94 folio 435; 100 acres, more or less on the East side of said whole tract, conveyed to the Speers Sand and Clay Works, Inc, by Mary W. F. Speers by Deed of May 31, 1922 and recorded in Liber W. N. W. No. 52, folio 62 etc; and one acre, more or less on the river shore reserved to Howard A. Kelly in his Deed to the said Mary W. F. Speers of the 154¾ acres which the said Mary W. F. Speers, on the 8th. day of December, 1919, conveyed to him by way of mortgage which said Deed is dated about the 1st. day of December, 1919, and recorded just prior to said mortgage

among the Land Records in Liber W. N. W. No. 12, folio 294 etc., the said property being subject to all of the rights of ingress and egress belonging to the said one acre tract.

Being the same tract of land which by Deed bearing even date herewith and being intended to be recorded among the Land Records of Anne Arundel County prior hereto was granted and conveyed unto the said Joseph H. Bilbrey, by John S. Strahorn, Assignee of the mortgage from Mary W. F. Speers to the said Howard A. Kelly, aforesaid.

Together with the buildings thereupon; and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

To Have And To Hold the said described lot of ground and premises, unto and to the use of the said The Atlas Realty Company of Baltimore City, its successors in fee simple forever.

And the said party of the first part hereby covenant that they have not done or suffered to be done, any act, matter or thing whatsoever, to encumber the property hereby conveyed; that they will warrant specially the property hereby granted; and that they will execute such further assurances of the same as may be requisite.

Witness the hands and seals of said grantors.

Test:- Josehp H. Bilbrey (Seal)

G. Paul Monck Bebe Bilbrey (Seal)

District of Columbia; City of Washington, to-wit;-

I hereby certify, That on this Sixth day of January 1925, in the year one thousand nine hundred and twenty five before me, the subscriber, a Notary Public in and for Washington D. C. aforesaid, personally appeared Joseph H. Bilbrey, and Bebe Bilbrey, his wife, the grantor named in the above Deed and they acknowledged the aforegoing Deed to be their act.

As Witness my hand and Notarial Seal.

(Notary Seal) George Paul Monck

Notary Public

Recorded 9th. January, 1925 at 9 o'clock A. M.

LIBER 78 PAGE 69

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, TO WIT:

I HEREBY CERTIFY, That the aforegoing Deed is truly taken and copied from Liber W. N. W. No. 99, folio 62, one of the Land Record books for Anne Arundel County.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Circuit Court for Anne Arundel County this 12 day of February, 1926.

Wm. Martin Brady Clerk.

Commissions $ 3000.00 — $ 120.00
" 10625.00 3% 318.75
Tax in cont. 100.00
Auctioneer 1st sale 31.00
" 2nd sale 16.00
Balance due on purchase price 12625.00
Interest on balance from Mch 22
1923 to Dec. 30 1924 — 1342.42
1/2 Commissions on second sale
(1) on first $2000.— $120.00
(2) on balance 7.300 — 219.00 164.50
339.00

Filed Feb 2, 1926

Bal + interest
Mtg + int
Aug 22 1922
to
Dec 30 1924

~~Cont Costs all~~
1/2 Counsel fee 50.00
Counsel fee on all 2.00
Expenses 2 [illegible] 100.00
Bond 2 yrs 50.00?
Advertising 1st sale 33.00?
" 2nd sale 41.00

Cont Costs Estimated 60.00

Moss, Chas #1616 L, 3/22/23 — $31.00
Capital Order Misc #1670 — 4/23/23 — 5.00
Clerk Court $6.25 Copy of Kelly test. #1752 — 8/20/23

JOSEPH H. BILBREY
ATTORNEY-AT-LAW
COLORADO BUILDING
WASHINGTON, D. C.

March 25, 1923.

Miss Mary W. F. Speers,
c/o Howard Cooper Johnson,
Philadelphia, Pa.

My dear Miss Speers:

As You will find from copy of the report of sale I was forced to bid the sum of $13,625 in order to purchase for you the 51¾ acres of the Earleigh tract, and that I paid a deposit of $1,000, the amount of which was furnished by you.

Ordinarily the purchaser would be called upon to complete his purchase in about thirty days from the date of sale. Please be governed accordingly.

Yours very truly,

J. H. Bilbrey

Copy of recort of sale enclosed herewith.

THIS DEED made this 6th day of January, 1925 by and between The Atlas Realty Company of Baltimore City, a body corporate, duly incorporated under the laws of the State of Maryland, party of the first part and Charles H. Pulis, party of the second part,

WHEREAS, at a public sale made by John S. Strahorn, Assignee, on the 22nd day of March, 1923, in the matter of the mortgaged real estate of Mary W. F. Speers, being No. 4742 Equity, in the Circuit Court for Anne Arundel County, which said sale was, on the 5th day of March, 1924, duly ratified and confirmed by said Court, Joseph H. Bilbrey was the purchaser at the said sale, and the said John S. Strahorn, Assignee, in pursuance of the power contained in the mortgage under which said sale was so made, has by Deed of even date herewith conveyed to the said Joseph H. Bilbrey the property mentioned in the said mortgage and advertised for sale in said proceedings; and,

Filed Jul 2, 1926

WHEREAS, the description of the one acre tract reserved from the conveyance made to the said Mary W. F. Speers, mortgagor by Dr. Howard A. Kelly and wife, as mentioned in the said advertisement, was possibly incomplete, inasmuch as the lines surrounding said one acre, as set out and reserved to said Kelly in said Deed from said Kelly and wife to said Mary W. F. Speers, bearing date December 1, 1919 and duly recorded among the Land Records of said County, in Liber W. N. W. No. 12, folio 294, etc., were uncertain; and,

WHEREAS, in order to perfect in Charles H. Pulis, grantee from Dr. Kelly and wife of said one acre, the title thereto if, indeed, any part thereof was not already in him, the said Pulis, it was, on the 30th day of December, 1924, agreed by and between the said Bilbrey and the said Pulis, the owner in fee as aforesaid of said one acre, that the resale of the said property advertised to be made by the said John S. Strahorn, Assignee, on the said 30th

day of December, 1924, should be and was postponed until the 10th day of January, 1925, in order that further time in which to complete the said purchase of March 22, 1923, might be had by the said Bilbrey; in consideration of which postponement the said Bilbrey agreed to pay, and did pay, certain monies in addition to the balance of the purchase price due for said property, and further agreed that he or his assigns would execute these presents, to the end that whatever interest, if any, he should or might acquire in said one acre by virtue of a Deed of said property from the said John S. Strahorn, Assignee, should be conveyed to the said Charles H. Pulis, in fee, and,

WHEREAS by Deed bearing even date herewith and being intended to be recorded among the Land Records of Anne Arundel County prior hereto the said Joseph H. Bilbrey did grant, assign and convey unto the said The Atlas Realty Company of Baltimore City, all ofthe property hereinbefore referred to, conveyed unto him by the said John S. Strahorn, Assignee,

NOW, THEREFORE, THIS DEED WITNESSETH, that in consideration of the premises and of the sum of Five Dollars and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said The Atlas Realty Company of Baltimore City, a body corporate, doth grant, assign and convey unto the said Charles H. Pulis, in fee simple, all that tract or parcel of land situate, lying and being in Anne Arundel County aforesaid and described as follows, to wit:-

BEGINNING for the same at a dead chestnut tree at the southeast corner of said one acre, as laid down on plat thereof attached hereto, as a part hereof, made by J. Carson Boush, surveyor, March 15, 1923, said tree being at the top of the North bank of the Severn River and about fifteen feet more or less from the spring and pump house mentioned in the aforesaid Deed from

Dr. Kelly and wife to the said Mary W. F. Speers, and running thence North five degrees East, 85 feet to the West side of a road there situate; thence North ten minutes West, 100 feet to the intersection of said road with another road leading thru the property so conveyed to the said Bilbrey, to the road to Whitney's Landing; thence leaving said road and running North 69 degrees, 30 minutes West 232 feet to another dead chestnut tree at the top of the river bank; thence continuing the said last mentioned line to the water edge; thence following the down-stream meanderings of the shore line the following courses and distances as laid down on the plat herewith made part hereof, to wit, 103 feet; 58 feet; 112 feet; 100 feet, and 72 feet; thence leaving said shore line and running up said river bank in an almost due North direction to the place of beginning, containing one acre of land, more or less, as shown by said plat.

TOGETHER with all the rights, roads, ways, waters, privileges and appurtenances thereto belonging as well as all rights reserved in the advertisement of said property by the said John S. Strahorn, Assignee, and more particularly the right of free access to said spring and pump house, as reserved to said one acre in said Deed from Dr. Kelly and wife to said Mary W. F. Speers.

TO HAVE AND TO HOLD the said premises unto and to the use of the said Charles H. Bulis, his heirs and assigns in fee simple, forever.

AND the said party of the first part hereby covenants that it has not done nor suffered to be done any act, matter or thing whatsoever to encumber the property hereby conveyed; that it will warrant specially the same, and will execute such other and further assurances as may be requisite.

WITNESS the hand of Edward A. Strauff, Vice President of the said The Atlas Realty Company of Baltimore City, attested by its corporate seal.

Attest:-

THE ATLAS REALTY COMPANY OF BALTIMORE CITY.

By _____ Vice President.

STATE OF MARYLAND,
ANNE ARUNDEL COUNTY, ss:-

I HEREBY CERTIFY that on this 8th day of January, 1925, before me, the subscriber, a Notary Public of the State of Maryland, in and for Anne Arundel County, aforesaid, personally appeared Edward A. Strauff, Vice President of The Atlas Realty Company of Baltimore City and he acknowledged the foregoing Deed to be the act of the said corporation.

WITNESS my hand and Notarial seal.

_____
Notary Public.

A

LIBER 78 PAGE 76

KNOW ALL MEN BY THESE PRESENTS that we, Joseph H. Bilbrey and Bebe Bilbrey, his wife, in consideration of the payment of the sum of Five Dollars and other good and valuable considerations, the receipt whereof is hereby acknowledged, have bargained, sold, set-over and assigned and by these presents do hereby bargain, sell, set-over, convey and assign unto The Atlas Realty Company of Baltimore City, a body corporate, duly incorporated under the laws of the State of Maryland, all of our right, title, interest and estate of every kind, nature and description whatsoever in and to the tract of land situate in Anne Arundel County in the State of Maryland, containing 51¾ acres of land more or less on the North side of the Severn River near Robinson's Station on the Annapolis Short Line Railroad, formerly owned by Mary W. F. Speers, and the right, title, interest and estate of either one or both of us therein; and particularly the interest of the said Joseph H. Bilbrey as the purchaser of the aforesaid property at an auction sale thereof conducted on the 22nd day of March, 1923, the aforesaid sale being conducted under and by virtue of powers contained in a mortgage from the said Mary W. F. Speers to Howard A. Kelly, dated December 8, 1919 and recorded among the Land Records of Anne Arundel County in Liber W. N. W. No. 12, folio 295, etc.; and we do hereby authorize the substitution of the name of The Atlas Realty Company of Baltimore City in place of the name of Joseph H. Bilbrey, as the purchaser at the said sale.

WITNESS our hands and seals this 2nd day of January, 1925.

Test:
T. H. EDWARDS — (Signed) JOSEPH H. BILBREY (SEAL)

G. PAUL HONCK — (Signed) BEBE BILBREY (SEAL)

DISTRICT OF COLUMBIA
CITY OF WASHINGTON, ss.:

I HEREBY CERTIFY that on this 2nd day of January, 1925, before me, the subscriber, a Notary Public of the District of Columbia, in and for the City of Washington, aforesaid, personally appeared Joseph H. Bilbrey and Bebe Bilbrey, his wife, and they each acknowledged the foregoing Assignment to be his and her respective act.

WITNESS my hand and Notarial seal.

(Signed) GEORGE PAUL HONCK
C E 11/28/28

(NOTARY'S SEAL)

~~I hereby certify that the above is a true copy.~~

~~J. BENJAMIN WHITED~~
~~Notary Public~~

(Seal)

It is hereby agreed that the above is a true copy of the conveyance from Joseph H. Bilbrey and wife to the Atlas Realty Co., filed with the testimony on the exceptions of the said Bilbrey to the ratification of the audit in No. 4742 Equity, and marked therein as Respondent's Exh. A.; the original exhibit having been lost from the papers.

Solicitor for Appellant.

Solicitor for Appellee.

Exhibit B

In order to facilitate the purchase of the fifty-one acres, more or less, on the Severn River sold to Mr. Joseph H. Bilbrey at public auction under foreclosure proceedings, I, Mary W. F. Speers, do hereby acknowledge and agree to the attached statement of expenses in connection with the said sale, hereby releasing John S. Strahorn from any discrepancy in the amount therein set forth and hereby acknowledge the said amounts to be true and correct amounts for the purpose of permitting the said mortgage and said mortgage claim in the hands of John S. Strahorn, Assignee to be assigned to the said
who are called upon by the said John S. Strahorn, Assignee, to pay the amounts in full payment of the said mortgage.

Witness my hand and seal this 30th day of December, 1924.

Mary W. F. Speers (Seal)

Test:

J. Britain Winter

STATE OF MARYLAND
ss:
CITY OF BALTIMORE

I hereby certify that on this 30th day of December, 1924, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City, aforesaid, personally appeared Mary W. F. Speers and acknowledged the foregoing agreement to be her act.

Witness my hand and notarial seal.

J. Britain Winter,
Notary Public.

(Seal)

Exhibit B-1

Commission on first sale - - - - - - - - - - - - - - - - - -	$418.75
Fee in mortgage -	100.00
Auctioneer; first sale - - - - - - - - - - - - - - - - - - -	31.00
Auctioneer; second sale - - - - - - - - - - - - - - - - - -	16.00
Balance due as purchase price - - - - - - - - - - - - - -	9000.00
Int. on this balance from 3/22/23 to 12/20/24 - - - - -	1300.00
1/2 Commissions on second sale - - - - - - - - - - - - - -	169.50
1/2 Counsel fee, same - - - - - - - - - - - - - - - - - - -	50.00
Counsel fee for exceptions - - - - - - - - - - - - - - - -	250.00
Expenses, two trips to New York - - - - - - - - - - - - -	100.00
Assignee's bond, 2 years - - - - - - - - - - - - - - - - -	50.00
Advertising first sale - - - - - - - - - - - - - - - - - -	33.50
Advertising second sale - - - - - - - - - - - - - - - - -	41.00
Court costs (estimated) - - - - - - - - - - - - - - - - - -	60.00
	$ 11,619.75

: : : : : : : : : : :

The originals of these two papers, being Exhibits B and B-1, being missing from the papers in this case, it is agreed that these copies shall be substituted and used in place of the said lost papers.

Edw A Kraft
Attorney for Appellant.

Jno. S. Strahorn
Attorney for Appellee.

In the Matter of the sale of
The mortgaged Real Estate of
Mary W. F. Speers.

No. 4742 Equity.
In the Circuit Court for
Anne Arundel County.

February 2nd, 1926.

Testimony taken on Exceptions to Auditor's Account.

Exceptants and Respondents.

PRESENT:-

Edward A. Strauf, Esq.,
Benj. Michaelson, Esq.
J. Britton Winter, Esq., Attorneys for Exceptants.

John S. Strahorn, Esq., Attorney for Respondents.

George E. Rullman, Examiner.

Juliet D. Strahorn, Court Stenographer.

Filed February 13, 1926

Witnesses.	For Exceptants.	
Edward A. Strauf,	2 to 6	6 to 20
James P. Curley	21 to 22	22 to 25
J. Britton Winter,	26 to 27	
	For Respondents.	
John S. Strahorn,	28 to 37	
C H.Pulis,	38 to 42	42 to
J.D.Strahorn,	43 to 44	
John B. Deming	45.	

Edward A. Strauf, a witness of lawful age, being first duly sworn, says:-

(By Mr. Winter.)

1. State your name, residence and occupation.

A. Edward A. Strauf, Attorney-at-Law, Baltimore, Md.

2. In December 1924 did you represent Joseph H. Bilbrey?

A. Yes sir.

3. In what connection did you represent him?

A. In connection with the purchase of 51 acres on the Severn River.

4. From whom had that been purchased?

A. John S. Strahorn, Assignee under foreclosure proceedings.

5. Sometime in 1923, March 22nd, 1923, had Exceptions been filed to that same that you know of?

A. Yes sir.

6. On whose behalf had those Exceptions been filed, do you know?

A. Mary W. F. Speers. Q.7 The papers in this case show an Order of Court ordering a re-sale of the property at the risk of Joseph H. Bilbrey, did you ever have any conversations with John S. Strahorn, Assignee under the mortgage with reference to the re-sale of the property, if so, please state when and the substance of it?

A. Yes. On a day previous to the day set for the sale, I, in conjunction with others, interviewed Mr. Strahorn preparatory to paying the original purchase price and thereby defeating a re-sale, on behalf of Mr. Bilbrey, and it was agreed that if a payment of Five Thousand Dollars were made at sometime prior to the re-sale, that the sale would not take place, it would be postponed, and the balance of the purchase price could be paid on some day prior to the day set for the sale. On December 30th, the day set for the original sale, I tendered Mr. Strahorn

Five Thousand Dollars in cash as per agreement, but was informed that I would be compelled to pay an additional sum of Six Hundred and Twenty-six Dollars in order to stop the sale. This took place in the office of Mr. Strahorn at or about the time the sale was about to take place, and after discussing the propriety of the additional payment of $626, I was informed that unless said amount was paid the sale would take place, and while the auctioneer's bell was ringing I acceded under protest to the $626, and received from Mr. Strahorn the following receipt,

******Witness offers in evidence receipt now marked Exceptant's Exhibit No. 1.

7. Did you receive from Mr. Strahorn any receipt in addition to the receipt for $626?

A. Yes, I received from Mr. Strahorn a receipt for $4374 on account of the purchase price of the property bought by Joseph H. Bilbrey in No. 4742 Equity. This second receipt was signed by John S. Strahorn, Assignee. The protest at the time of this final transaction went so far that I telephoned to the National Bank of Baltimore and had made provisions to send down the balance of the purchase price by telegraph, rather than accede to the payment of the amount as set forthnin these receipts. After conference with my colleagues I decided to pay the amount as specified in the receipts and rely upon my rights in filing Exceptions to the Account, etc. This was done to insure the least expensive procedure as a re-sale which was threatened at the very moment would have been additional expense.

8. When did you next see Mr. Strahorn?

A. The next meeting of record appears to be January 8th, there may have been intervening conferences which at present I do not recall.

9. What was the substance of the meeting of January 8th.

A. The meeting of January 8th was the final settlement for the property.

10. How much money was paid to Mr. Strahorn on that occasion?

A. $9608.18, this was paid two days prior to the postponed date of re-sale, and again, at that time, there were discussions relative to the interest of $1357.18 which the assignee insisted was due and which was paid under protest. An additional sum of $4 for Revenue Stamp was paid to the Assignee under protest, $14 representing the full amount of the stamp where it was insisted that the cost of the stamp should be divided.

11. Was any allowance made to the purchaser for the rent of the property?

A. No.

12. When was possession of the property delivered to the purchaser?

A. As of January 8th.

13. Do you mean then that the purchaser was charged with interest from the date of sale to January 8th and was given no credit for rents during that period?

A. Yes.

14. Who occupied the property do you know?

A. That is very hard to say. No one ever answers any knocks on the door, letters have been sent, and most of the buildings seem to be vacant and are in decay.

15. Who was present in the office of Mr. Strahorn when the payment of $5,000 was made?

A. Mr. Curley, Mr. Winter, Mr. Strahorn and Mr. Pulis. Mr. Strahorn did the typewriting himself, I don't know whether his stenographer was present or not.

16. What time of the day did your conversation take place with Mr. Strahorn, I am referring to the day of sale, the day of the proposed re-sale?

A. I presume we arrived there about 11:30, probably a little later, I know Mr. Strahorn was writing off the receipt himself for the $626 when the auctioneer's bell was ringing, and he had occasion to go out and ask the auctioneer to keep ringing, so it must have been after 12.

17. Was anybody actually gathered there for the re-sale?

A. Yes, everybody was gathered there. I presume that receipt Mr. Strahorn drew up for the $626 was not completed until 10 or 15 minutes after 12. That includes also the receipt for the $4374.

18. In the Auditor's Account does Mr. Strahorn account for this $626 and for the $14 which was received by him?

A. He does not.

19. Are there any items which appear on the receipt which he gave you for $626, similar items to which appear in the account? Look at the account and state whether there are any items for which Mr. Strahorn has asked allowance, for which he also collected amounts out of the $626?

A. I could not say they represent the same items.

20 Do you find any items in that account for attorney's fee?

A. In the Auditor's account there is a fee of $100.

21 Do you find any item in that receipt for attorney's fee?

A. There is an item of $50 for 1/2 of attorney's fee mentioned in the mortgage, and there is also an additional fee of $125 in the receipt.

22. In the Auditor's account do you find any item for commission?

A. There is an item of $479.47 for commissions, and in the receipt there is also an item of $169.50 for commissions.

23. In the $626 do you find any item there marked "Expense"?

A. Yes, item of $100 for expenses and $41 for advertising costs.

24. Dealing with the item of $100 for expenses in the Auditor's account do you find any items which are expenses of that first sale?

A. Yes sir there is Premium on Bond, two years; Auditor's fee, testimony depositions $25, stenographer taking testimony on exceptions, stenographer making copy for appeal, $25, Examiner's fee $16, Attorney for his expenses advertising sale in Maryland Gazette $28, Auctioneer fee $30, and handbills $1, 100 copies handbills $4, and the Court costs $27.30.

*******Receipt of December 30th now filed as Exceptant's Exhibit No. 2.

25 Look at the original mortgage from Mary W. F. Speers, do you find any item there as to what Counsel fee, if any, is to be allowed?

A. This mortgage is filed in the proceeding, is it not?

A. On the 3rd page of the 8th line there is an allowance of $100 and a commission to the party making ~~the~~ sale of said property. The allowance of $100 is in the nature of counsel fee.

Cross Examination.

(By Mr. Strahorn.)

1. Did you have any conversation in my office on December 30th other than you have already stated?

A. I presume the conversation was flying thick and fast for over half an hour.

2. Did you have any conversation about a one acre tract?

A. Yes sir, we were forced to sign one acre tract to Mr. Pulis.

3. Then you did sign the agreement about the one acre tract?

A. Yes, that had nothing to do with this case, but before you permitted a postponement of the sale, you demanded that we deed to your client one acre of land by metes and bounds which was not a part of the mortgage procedure.

4. Then as I understand it there were three demands made on you that day, treating the $626 as one item of demand, the agreement in the other receipt of that date for the payment of the interest on the deferred payment and the conveyance of this one acre tract, is that correct?

A. Yes sir.

5. And you did agree to all three of those?

A. Under protest, yes.

6. Have you protested the conveyance of the one acre as you are now protesting the payment mentioned?

A. What conveyance?

Q. The one acre, the third demand mentioned?

A. We fought about that for quite a while, we had no interest in the one acre and it was a matter forced upon Mr. Bilbrey if I remember correctly.

8. Did Mr. Bilbrey have any interest in the one acre?

A. None whatever.

9. Did he have any interest in the money which was being paid for this property?

A. Oh yes.

10 Did his interest continue down to the day of the delivery of the deeds?

A. Yes sir.

11. Have you the original of this conveyance from Bilbrey and wife to

The Atlas Realty Company? You say Bilbrey and wife had an interest in this property down to the day of the delivery of the deeds?

A. Mr. Bilbrey was interested in that he was always fearful of a re-sale until the transaction was finally closed, fearful of the property selling for less than what he bought it for, and that was his interest at all times.

12. It was not his moneybbeing put into the property at this time?

A. No, he had transferred his rights in the property, and all of his ~~rig~~ rights to The Atlas Realty Company?

13. When was that transfer made?

A. I don't know, we supplied you with a record of that transfer voluntarily.

14. I show you a paper dated January 2nd, 1925 is that it?

A. Yes.

15 Is that the transfer?

A. Yes.

*********Respeondent's solicitor here files with the Examiner, the paper signed by Joseph H. Bilbrey and Bebe Bilbrey, his wife, duly acknowledged 2nd January, 1925, conveying to The Atlas Realty Company all of said Bilbrey's interest in the property in question, marked

Respondent's Exhibit A.

16 State, if you know, when that paper was prepared?

A. I can't say that.

17 By whom was it prepared?

A. I presume it was prepared in our office.

18. I call your attention to the fact that where the word "January" is written in with pen, the word "December" is found, and by the word "January" scratched out, does that refresh your recollection? The "December" not stricken out, and "January" is put in there in ink, does that not tell you it was prepared in December?

A. You can conclude anything you want.

19 Do you know?

A. I don't know.

20 You won't say it was not?

A. I won't say it was not.

21. Why did you insist on that paper from Mr. Bilbrey?

A. Are we trying exceptions on this account or trying to get at a transaction between the Atlas Realty Company?

****Objection noted.

It is a legal paper that goes with the purchase of an interest in a piece of property.

22. And di you not state, and was it not a fact, that you would not pay the balance of the purchase money until you had from Bilbrey this paper?

****Objection.

A. No, I don't know what you mean.

23 But the fact is you did have this paper executed by Bilbrey before you paid the balance of the purchase money?

***Objection.

A. Yes, it speaks for itself.

24. What was the primary purpose of your first visit to my office, prior to December 30th?

A. We wanted to arrange to have the Atlas Realty Company put in as a substituted purchaser for the property, if we could, that is the primary purpose. We were then negotiating to purchase from Mr. Bilbrey.

25. So when you came to my office the first time you were negotiating for the AtlastRealty Company?

A. No, we were negotiating to have The Atlas Realty Company put in as

substitute purchaser for Mr. Bilbrey, at the instigation of Mr. Bilbrey, but it does not make any difference.

26. Did you not tell me it was The Atlas Realty Company $5000 you proposed to pay and was it not?

A. It was not, it was Mr. Bilbrey's money because it was paid to him for the purchase of the property.

27 It was not paid to Mr. Bilbrey?

A. Mr. Bilbrey was down there when the $5000 was paid.

28. Was Mr. Bilbrey there on December 30th?

A. Yes sir.

29 You did not say so before, do you want to correct your testimony?

A. Atleast I think so. I won't say whether he was there that day or not. I know he was down there, he was in one of the fracas.

30 You won't say he was there on December 30th?

A. I can't recall.

31 Did you and Mr. Winter, in my office, the first time you called, discuss with me whether or not you would be safe in putting $5000 of the Atlas Realty Co. money up in a property which belonged under a previous sale to Joseph H. Bilbrey?

A. No, we wanted to feel secure if we advanced this money to Mr. Bilbrey, that we would be secure.

32 You did not pay it to Mr. Bilbrey you paid it to me?

A. You found it as its ultimate destination.

33. It did not come from Mr. Bilbrey?

A. Certainly it came from Mr. Bilbrey, there was no other way for it to come to you unless it came from Mr. Bilbrey. You would not permit us to have the purchaser substituted so we had to pay it for Bilbrey.

34 In your conveyance ~~from~~ to The Atlas Realty and Company from Bilbrey and wife, it was agreed that The Atlas Realty Company should be substituted as purchaser?

A. That is the agreement I made with Mr. Bilbrey but it could not be carried out because you as Assignee refused us to be substituted as purchaser.

35. Is it not a fact that in order to avoid the trouble of the Petition for substitution it was agreed the legal title should go through Mr. Bilbrey even after this conveyance to the Atlas Realty Company of Jany. 2nd, from Bilbrey and wife, then a deed co-incident with that deed was to be executed from Bilbrey and wife to the Atlast Realty Company and thereby avoid the necessity of lumbering up the Equity Records with a Petition and order for substitution?

A. You refused to permit the Atlas Realty Company to be substituted as purchaser and insisted that Mr. Bilbrey conclude his purchase.

36. Were there any stamps put on the deed from Bilbrey and wife to the Atlas Realty Company? On the deed recorded here?

A. I don't recall.

37 Who brought the deed of the Atlas Realty Company to Annapolis for recording?

A. You did.

38. I did bring the deed to Annapolis for you and did not you instruct me to tell the Clerk that no stamps were required on the deed from Bilbrey to the Atlas Realty Company because it was one and the same transaction?

A. I don't recall that.

39 The $14 you have mentioned you recall that for the stamps on the deed from me to Bilbrey?

A. Yes, you never replied what you did with it.

40 Did I not write to you and tell you I had paid the $14 out of my own pocket and was waiting your response as to whether I should pay one-half of it?

A. On January 16th I wrote you the following:- John S. Strahorn, Dear Sir:- Your letter of January 15th received, you have exacted the $14 check, I have protested and it is up to you to use yournjudgment in reference to the use thereof. Yours very truly,

41 Had you not written to me prior to that stating that you thought I ought to pay one-half of the stamp?

A. Yes, that was what the fight was about.

42. Did you or not produce at my office on the morning of December 30th when you arrived, on the day of the proposed re-sale, the two sheets which I hand you?

A. Yes sir, and I produced it for this purpose. We were dealing with a personage who had been creating a vexatious litigation for years, Mary W. F. Speers by name, and before we entered into negotiations with Mr. Bilbrey we insisted that an approximate statement of the expenses co-incident with the sale and re-sale be set up by you, and that then we would attempt to get the signature of Mary W. F. Speers to that approximate expense account for the purpose of off setting any exceptions that she might file to the account after it had been rendered, and that is the purpose of this paper?

43. Where did you get those items of expense on the second sheet of that paper?

A. Those items are an approximation without binding any one.

44. Where did you get it?

A. From you.

45. When?

A. Some days before the final transaction was closed, probably before

the 30th of December, pr probably on the very 30th of December.

*******Respondent files herewith same marked Respondent's Exhibit B and B-1.

46 Did you not get the items mentioned in that part of this Exhibit called B-1 from me on the day that you and Mr. Winter came to my office prior to December 30th?

A. Yes.

47 And are not those items mentioned, many of them atleastm the very items about which you are disputing in this receipt for $626?

A. No.

48. Are any of them identical with the items set out in the $626 receipt?

A. I don't know, the paper is not of interest asvfar as the items are concerned, it was prepared for the elimination of Mary W. F. Speers only, we have never compared the items, they have been of no interest to us.

49. But they might be the same items?

A Some of them may be. We don't want to be construed as casting any reflections on the items in the receipt as compared with the items in the Exhibit signed by Mary W. F. Speers, we are not here to attack the items.

50 Why did you get from Bilbrey his conveyance prior to the final consummation of the deal?

*****Objection.

A. It was given as security for our advance to him of $5000.

51. You took the pains to exact it before you paid the balance of the money?

A. Certainly.

52. And was it not expressly agreed between all the parties that you would not pay the balance of the money to me until Bilbrey had conveyed the legal title to you which was still in him through his purchase from me, and was it not actually done in that way?

***Objection.

A. Who are "All the parties"? I cannot answer that question.

53 Bilbrey, The Atlas Realty Company and myself?

A. No, you were never a party to that transaction.

54. Between Bilbrey and The Atlas Realty Company was it not agreed it had to be done that way?

Objection to each and all of these questions as before stated, by Mr. Strauf.**

A. As a matter of security I suppose it had to be done that way.

55. Was it not actually done that way after the agreement between you?

A. No, it was not actually done that way, Mr. Bilbrey could not give us title until he had first obtained legal title to it.

56. Was Bilbrey in your office the day the deal was finally consummated?

A. I don't know.

57 I tell you he wat not. I also tell you that his deed was executed in Washington on January 6th does that help you decide whether or not his deed was executed prior to mine, atleast the delivery of mine?

****Objection.

A. I don't know, I don't recall, it is immaterial, the records speak for themselves.

Respondent's Attorney here files with the Examiner certified copy of deed from John S. Strahorn, Assignee, to Joseph H. Bilbrey, of the property in question, marked"Respondent's Exhibit C" also certified copy of the deed from Joseph H. Bilbrey and wife to The Atlas Realty Company, marked Respondent's Exhibit D.

58. You are an officer of The Atlas Realty Company are you not?

A. Yes sir.

59 What is your official position?

****Objection.

A. Vice-President.

60 You were Vice-President at the time this deal was consummated?

A Yes sir.

61 You have stated that on the occasion of your visit to my office prior to December 30th it was agreed that the sale should be postponed, is it not a fact that I expressly told you on that occasion it would have to be held up until Mr. Pulis would say whether or not he has principal would oonsent?

A. I don't recall that.

62 Did you have any information about the $626 items prior to December 30th?

A. No, none in the nature of which they were presented on December 30th

63 Did you not state in my office on the occasion of your first visit, did we not discuss the fact that the mortgage did not provide for the payment of any of these expenses, if the sale was called off?

A. No, the Law provides for all that.

64 Did we discuss that question in my office?

A. No. I am quite certain we discussed the exigencies of re-sale, we disoussed it with you as assignee under the mortgage foreclosure and in no other capacity.

65 Was I talking as Mr. Pulis' Attorney at the same time?

A. No sir.

66. Did I discuss with you on that occasion the item of $250 Counsel fee for services rendered in the previous exceptions to the ratification of the sale?

A. If you did it was discussed with a view of it being an item to be carried by the assignee under the foreclosure proceeding.

67 And did you not on that occasion say that the fee of $250 was reasonable?

A. I don't admit I ever discussed it; in the nature you are coloring it now, if I ever did discuss it.

68. Did you at any time, or more than one time, ask that those items in the $626 receipt be put in the audit in order that if the Court would allow them The Atlas Realty Company would be relieved from its payment to that extent?

A. At the time that the $626 was demanded I insisted that the items in said receipt were items, if proper, to be included in the auditor's account, and were not subject to separate payment outside of the auditor's account, and that discussion was the nature of the protest on December 30th, that being the first day on which these items were demanded of the purchaser.

69. You mean to say you had no information about those items prior to December 30th?

A. Yes, we had information from the course of legal events, the re-sale naturally carried with it expenses.

70 How did you get the items which are set out in Exhibit B-1 which you protested on December 30th?

A. Exhibit B-1 signed by Mary W. F. Speers was prepared by our office, it included a list of items which had been submitted to Mary W. F. Speers for the purpose of eliminating her exceptions to an Auditor's account, and the items as listed on said page were presumably to be items accounted for in the auditor's account.

71. Who submitted that list of items to Mary W. F. Speers?

A. It must have been submitted by our office.

72. Don't you know as a matter of fact it was?

A. Naturally, we prepared the paper.

73. You did submit the paper to Mary W. F. Speers?

A. Unquestionably, we don't deny that. Yes it was, it must have been. It is acknowledged before Mr. Winter, it speaks for itself.

74 We have in here Counsel fee for Exceptions to sale, $250 where did you get that? That is not found in the mortgage?

A. They are items you prepared, you prepared all those items.

75 When?

A. Some day prior to the sale, they were given to me for the purpose of being submitted to Mary W. F. Speers.

76 You did get them prior to December 30th?

A. Yes.

77 You did know of them prior to December 30th?

A. As items to be included in the Auditor's account.

78 Did you not, on the day you were first in my office discuss this case in a perfectly frank and friendly manner with me?

A. Yes, and still friendly.

79 And did you not, at that time, in a most friendly way, say to me "Mr. Strahorn, or words to this effect, we want you to try atleast to get this allowed in the audit"?

A. No, I don't recall that.

80 Do you recall the visit you and I made to the Century Trust Company on January 8th when the final payment was made, the day you paid the last of the money there to me?

A. Yes, and still friendly and always been friendly.

81 Did you not, on that occasion, after the money had been paid, and the deed delivered, and the deal closed, say to me again in effect, "Old man, now try to get this $626 back for us"?

A. No, I don't recall that, I have always protested that $626 in the nature you have it in.

82 Do you mean to say on December 30th in my office you made any protest about that $626?

A. Yes, so much so I telegraphed to Baltimore to send all the money down to try to pay the entire amount to Mr. Bilbrey (?) and conclude the transaction?

83. That was not accomplished?

A. That was not accomplished, we were fearful of the time consumed.

84 Mr. Pulis was present in my office that day?

A. Yes.

85 Did he show a reluctance to have this sale adjourned, and you called up the Trust Company in Baltimore hoping to be able to force the adjournment by complying with the terms of the previous sale in spite of Mr. Pulis' objections?

A. We were at odds over so many things on the day of sale that the telephoning to Baltimore for the money was the outcome of our numerous discussions as to the method of consummating the transaction.

86 Do you recall why you were as late as 11:30 getting down here on December 30th?

A. No, I don't.

87 Don't you recall that you stated it was because you had had some difficulty in getting hold of Miss Speers in Baltimore that morning to execute certain papers you had brought with you to my office?

A. I don't recall having said that, I don't recall that that is a fact at this time.

88 What interest did Mr. Bilbrey have in this property on the day of the filing of his exceptions and his petition herein?

*****Objection.

A. The interest of the purchaser at the foreclosure sale.

89. Notwithstanding that he had already conveyed by two conveyances everything he had in the property?

A. Yes sir.

90 Mr. Bilbrey was not ready to complete his purchase on December 30th, was he? You were acting as his attorney then?

A. Yes, he could have been ready.

91 Why was it not done?

A. Because you had agreed to a postponement several days prior thereto.

92 I had agreed to a postponement?

A. Yes.

93 Was anything signed to that effect?

A. No.

94 What was the consideration?

A. Just the fact that we were going to try to complete the sale.

95 Did I discuss with Mr. Pulis anything about whether he was willing to have a postponement of the sale?

A. I don't know anything about that. We knew we were coming down with $5000 on the day of sale, the postponement had been arranged for with you previous to December 30th.

96 At the time you were in my office the first time, did you say anythin to me about Mary W. F. Speers having a contingent right in the property ~~[illegible]~~ if this deal went through?

*****Objection.

A. No, I did not, emphatically no, and you are endeavoring to prepare evidence in an additional case that has been filed against Mary W.F. Speers and I object to lumbering up the record here for the purpose of preparing the case that is now filed in one of the Courts of this county.

97 On this previous visit, previous to December 30th, did you not say to me that the Atlas Realty Company was buying the property and paying

for it and that Mary W. F Speers had a right for six months to redeem the property?

A. Emphatically no.

98 You did not say The Atlas Realty Company was buying the property and Mary W. F. Speers had a right to redeem it?

A. In no way shape or form .

Objection, I have contended with you that you should not lumber up the record,

I have contended with you that we should eliminate Mary W. F. Speers in every way we possibly could.

99 And did you not tell Mr. John B. Deming that The Atlas Realty Company has purchased the property and paid for it?

A. Yes. Mr. John B. Deming called me up and stated that he represented some one who was associated with Mr. Pulis and that they had filed a Bill claiming Mary W. F. Speers owned the 51 acres, and I stated to Mr. Deming that Mary W. F. Speers had no interest whatever in the 51 acres, and that we were in no way obligated to Mary W. F. Speers,

*****Imobject to all this.

100 Did you tell him in that cinversation The Atlas Realty Company had bought the property and paid for it?

A. Yes, bought it from Mr. Bilbrey.

To the general question under the rule the witness says:-

A. No.

Signature waived by agreement.

James P. Curley, a witness of lawful age, being first duly sworn, deposes and says:-

(By Mr. Straub.)

1. State your name, residence and occupation?

A. James P. Curley, Attorney-at-Law, live at Laurel, Maryland, and practice Law anywhere.

2. Were you present at Mr. Strahorn's office on December 30th, 1924, when the receipt for $626 in question was executed?

A. I was.

3. Please tell us what happened?

A. I came down with you on that day, at your request, not knowing just why I should be present. At any rate I agreed to come and did come. I was not apprised to any extent of your negotiations, and did not know how far they had progressed, but I do recall that when we got to Mr. Strahorn's office that you and Mr. Strahorn began to discuss certain fees, etc., and it was about the time the sale was cried and the time for getting together was imminent, not being an interested party I did not specifically note, as I would otherwise, what your specific conditions were, but I recall very well that you had an argument over expense items and that finally there was an apparent understanding what it was to be, but my recollection is that there was more or less protest on your part even to the end, though finally Mr. Strahorn went to his typewriter and prepared the items of expense that you had evidently been discussing and the arrangement was made, but apparently made to call the sale off, and that paper I understand now is in the record of this case.

4. Do you recall that I said "We will accept this paper because we have to"?

A. As I stated, my recollection is that you finally accepted this

paper under protest.

5. Can you recall if the receipt for $626 is that the paper in question?

A. I remember that the amount involved in the paper I refer to as drawn by Mr. Strahorn for these expenses was six hundred and some odd dollars I could not say specifically the odd dollars but six hundred and some.

6. You can't recall the paper by looking at it?

A. No, I could not do that but I recall it was a paper prepared that day involving expenses of six hundred and some odd dollars.

7. Did you hear any other protest regarding other papers?

A. I think there were one or two other papers drawn in Mr. Strahorn's office on that day, one I think had to do with the one acre of land and I don't recall what the other one was, but I think there was another paper.

8. You formerly represented Mary W. F. Speers, did she have anything to do with this settlement as of December 30th?

A. Nothing so far as I know.

9. Do you know, as her attorney, that she was not interested in the property?

A. Yes, I knew that from a paper that I saw being signed, and which is a part of the record in this case.

Cross Examination.

(By Mr. Strahorn.)

1. She was interested in the property down close to the day of re-sale was she not?

****Objected to.

A. I had not seen Miss Speers for sometime until I think the morning you (Mr. Straub) were coming to Annapolis, and then I saw her. I think she came to my office for a minute, or to Mr. Straub's office, and

then I went over there, what she had done I don't know because I had not been in touch with her.

2. You are still her attorney of record are you not?

A. I presume so.

3. Your appearance has not been stricken out?

A. No.

4. You became her attorney of record long before this date?

A. When I filed Exceptions to the ratification of the sale.

5. Is it not a fact that down almost to the day of re-sale you were communicating with me in an effort to get the property back to Miss Speers?

A. Up to a short time before, it might have been two weeks or a month, certainly a short time.

6. On the day of this proposed re-sale December 30th, you said a moment ago you were not Miss Speers' attorney?

A. I did not mean to put it that way; I said I did not know that I had anything to do with the transaction as an attorney when I came down here, did not know I would be called on.

7. Were you called on for anything that day?

A. I think I signed some paper which is probably a part of the record in this case, I did, yes.

8. I show you a blue print of the one acre in question with an agreement on the back of it dated December 30th, 1924, signed by you as attorney for Miss Speers.

A. That is my signature, I signed that paper.

*******Paper now filed by Respondent's attorney marked Exhibit E.

9. You have stated that after these papers which I drew on the machine were prepared that Mr. Straub said he would accept them but under protest?

A. That was my understanding at the time, that the papers were prepared and he acquiesced in them because he had to.

10. Is that the idea, he acquiesced because he had to?

A. That is the impression I got.

11. And paid the money over as provided in the two receipts, the two papers on file, which are the two receipts prepared by me on that day, atleast the one for $626?

A. That would be my conclusion.

12. After the $626 receipt was drawn Mr. Straub paid the money over and accepted the receipt?

A. I assume he did, not being an interested party I did not follow that closely after the papers were drawn, as to be able to state just how much money he paid over.

13. Just simply as to the protest which you stated in your examination in chief he registered at the time he accepted this receipt?

A. Yes.

Re-Direct.

(By Mr. Straub.)

1. I present to you a photostat copy of the statement signed by Mary W. F. Speers dated 30th December which I will read to you, " This is to certify that "I, Mary W. F. Speers have no interest of any kind in the property on the Severn River consisting of 51 acres which is subject to foreclosure", etc. now offered as Exceptant's Exhibit No. 3, ********

Were you present when this was signed?

A. I think I was.

2. Was this paper intended to clearly state,- her position,-

****Objection,

that Mary W. F. Speers, as far as the property was concerned, in that she had absolutely no interest in that property in any way,-

******OBjection, paper speaks for itself.

A. That was my understanding.

3. And that her interest in that property had been eliminated in every way?

A. Yes, and I advised her of the effect of that paper.

*****Objection.

To the general question under the rule the witness says:-

A. No.

Signature waived by agreement.

Mr. J. Britton Winter, a witness of lawful age, being first duly sworn, deposes and says:-

(By Mr. Straub.)

1. State your name, residence and occupation?

A. J. Britton Winter, 2 E. Lexington st., Baltimore, Md.

2. Were you present on December 30th, 1924 in the office of Mr. Strahorn when we made a deposit of $5,000 on the purchase of the Speers property?

A. Yes I was.

3. What happened at or about the time Mr. Strahorn prepared the receipt for $626?

A. Mr. Straub had gone down to Annapolis with $5000 cash to pay as additional deposit on the purchase price of the property, 51 acres on the Severn River purchased by Joseph H. Bilbrey from John S. Strahorn, Assignee. Mr. Straub tendered the $5,000 to Mr. Strahorn as additional deposit on this property. Mr. Strahorn stated that he would have to issue two separate receipts for the money, one for $626 which was made up of certain items for advertising, commissions, attorneys fees, etc. and that only $4374 would be applied on account of the purchase price of the property. Mr. Straub objected to this, it was at that time about ten minutes of 12, the auctioneer was outside of Mr. Strahorn's office which adjoins the Court House ringing the bell and people were assembling for the sale. Mr. Strahorn stated to Mr. Straub that if the $626 was not paid as a separate item for these expenses he would instruct the auctioneer to go ahead with the sale, and so Mr. Straub agreed under protest to accept the receipt in this manner, that is one receipt for $626 and one for $4374.

4. Were you present on a day prior to December 30th when, in a conversation with Mr. Strahorn, I asked that The Atlas Realty Company be substi-

tuted as purchaser of the property, and what conversation took place relative to that request on the part of Mr. Strauf to Mr. Strahorn?

A. Inwas present at a conversation in the office of Mr. Strahorn on the 29th of December, I ascertained from my diary just before coming down here that that was the date of the first interview, we had in Mr. Strahorn's office. At that time Mr. Strauf spoke to Mr. Strahorn about having The Atlas Realty Company substituted as the purchaser of the property in the place of Joseph H. Bilbrey. Mr. Strahorn stated that he would not be able to permit that, but that the sale would have to be made to Mr. Bilbrey.

5. Were you present in the office of Mr. Strauf when Mary W. F. Speers signed the statement filed in this proceeding marked Exhibit No. 3 , I show you this statement?

A. Yes, I was present.

6. Did Mary W. F. Speers disclaim all interest in and to the property known as the Speers' property?

****Objection, the paper speaks for itself.

A. She did, I personally took her acknowledgment on the paper.

7. Was that paper intended to set up specifically the elimination of Mary W. F. Speers from claiming any title whatever in the property?

A. It certainly was, it was for that purpose the paper was prepared.

***Objection.

No Cross Examination.

To the general question under the rule the witness says:-

A. Nothing.

Signature waived by agreement.

There being no further testimony desired on behalf of the Exceptants, same is herewith closed.

TESTIMONY ON BEHALF OF RESPONDENTS. February 2nd, 1926.

John S. Strahorn, a witness of lawful age, produced on behalf of the respondents, being first duly sworn, says:-

John S. Strahorn, Attorney-at-Law, Annapolis, Maryland.

On a day prior to December 30th, Mr. Strauf and Mr. Winternappeared at my office with a possible,- with reference to a possible postponement of the re-sale advertised for December 30th. We discussed the question very fully and in a most friendly fashion, and I told them I had no authority to agree to a postponement, it was a question for my principal, Mr. Charles H. Pulis to decide he being the owner of the mortgage by assignment. In the course of our conversation I mentioned to them the fact that there were several charges involved in the foreclosure covering the first and second ones which were in doubt in regard to whether or not they could be charged against the fund derived from the sale of the property. I discussed these charges with them most frankly, and stated to them that I had been advised by reliable attorneys that for the services which I had rendered as attorney for the mortgagee touching the exceptions filed by Mary W. F. Speers I was entitled to counsel fee of atleast $250. Mr. Strauf remarked that he thought this fee was eminently reasonable and should be paid. In addition to this I told them that Mr. Pulis had paid my expenses for two trips to New York had in conjunction with two efforts on the part of Mary W. F. Speers to take testimony on her exceptions in New York under formal notice under the Statute. This sum which he had paid was $100 in round figures. In addition to this I stated that inasmuch as the mortgage was "Bobtailed" in that it had no clause which usually is found in our county mortgages covering the

contingency where a sale is called off whereby the mortgagee could require the mortgagor, at the time of calling off the sale, to pay the advertising and one-half commissions and other items usually charged against a mortgage fund where a sale has been held.

As we progressed in this conversation I jotted down on a yellow sheet of paper in my office the different items mentioned, and some others, stating, among others the auctioneer's charge on the second sale which I was indoubt about, one-half commissions on the second sale, which I was likewise in doubt about, one-half of counsel fee which I was also in doubt about, and the counsel fee of $250 which I had been advised by certain attorneys could not properly be charged against the fund in my hands. Also the advertising charge for the second sale, all of which were put down by me on this yellow sheet which I hold in my hand and which is my office memorandum of the figures we discussed at this time. Mr. Strauf and Mr. Winter made a memorandum from this working sheet of mine and took this home with them when they left my office on that day. (Note. The last three lines on this sheet which I now offer in evidence, have nothing whatever to do with the controversy in this case, they being memorandum which I put there afterwards about certain checks which I had paid out in the prior conduct of this case).

Mr. Strauf and Mr. Winter left my office on this day in question without asking anything about how much or how little they should pay if a postponement could be had, and that evening Mr. Strauf called me on the telephone at my home and asked how much they should bring and I said, just arbitrarily speaking that I thought $5000 would be enough to cover all the matters which we were talking about. I told them in this conversation that I could not agree to a postponement, I had no authority to do it it being for Mr. Pulis, my principal, to say whether or not he would consent to a postponement. I told them, however, if Mr. Pulis was willing, I

would not object. The night before the sale, Mr. Pulis called me from Baltimore on the telephone and said he was on his way and would be here next morning in time for the sale. I asked him to please come as early as he could that certain parties had seen me with reference to a possible postponement of the sale and I had made a tentative arrangement with them, subject to his approval, and I wanted to discuss this with him before the sale was to be called off, so that in the event it was acceptable to him the sale could be postponed.

****Solicitor for respondent here offers in evidence the yellow sheet in question marked Respondent's Exhibit F.

The next morning Mr. Pulis appeared at my office about 9:30 or 10 o'clock, I gave him the details of the tentative arrangement I had made with these two parties. The only items I had mentioned were the items set out in the Exhibit filed this morning and showing the payment of $626. Mr. Pulis, however, mentioned certain other things which he wanted to have included as a further consideration before he would consent to such a postponement, one of which was the accrued interest on the deferred payment of $12,625. I had not discussed this nor had I thought about it because the advertisement of the first sale held on March 22, 1923 provided that the deferred payment should bear interest from the day of sale, but Mr. Pulis insisted that that be mentioned, and it was incprporated in the receipt for $4374 in evidence in this case. In addition to the item of interest on the deferred payment Mr. Pulis insisted as a further consideration that Bilbrey, or his assigns, convey to him a title to the one acre mentioned in the advertisement of sale, the lines of which were possibly not well defined. Mr. Strauf, Mr. Winter and Mr. Curley appeared at my office on the morning of December 30th, rather late, I think about 11:30, and I think they said they had had some motor trouble

coming down, and furthermore that they had had some delay in getting hold of Miss Speers to execute certain papers which they brought with them. No protest of any kind was entered by any of the persons in interest to these charges made by Mr. Pulis, he was there ready to have the property sold under his mortgage, and expressed a desire to have it sold, and the only protest of any kind made in my office that morning was made by Mr. Pulis against the postponement, but these attorneys acquiesced in Mr. Pulis' demands and paid the money as set out in this receipt, and Mr. Strauf as Attorney for Bilbrey signed the agreement for the conveyance of the one acre, and Curley as Attorney for Miss Speers did likewise, the receipt for the $626 was signed by me in a double capacity, I signed it as attorney for Mr. Pulis, at his express direction, I having received the $626 for him as attorney, and I also signed it as assignee in order that there might be no technical objection standing in the way of a postponement which this receipt contemplated. I signed the receipt for the balance paid on the purchase price, $4374 only as assignee since in this particular payment Mr. Pulis had no immediate interest.

Prior to the date of the re-sale, the Court passed an Order on a Petition drawn by me as assignee for a re-sale, and in this Order specified that it should be served not only on Joseph H. Bilbrey but upon Mary W. F. Speers, or her attorney of record, Mr. Curley, The Court had, in its opinion overruling the exceptions to the ratification of the sale, at page 4 of said Opinion which Opinion is dated March 5th, 1924 used the following lamguage.

****Objection to all testimony about Mary W.F.Speers. "In the testimony, Miss Mary W. Speers, on Cross Examination, admitted she was really the purchaser of the property, and Bilbrey merely bought it in for her at her request, but did not disclose her name", all of which

is set out fully in a letter filed in this case from Bilbrey to Miss Speers dated March 25th, 1923 and marked Exhibit Rebuttal B,

********Respondent here files with the Examiner the letter in question already marked Rebuttal B, it being now marked Respondent's Exhibit G.

As the record shows this order for re-sale was served on James P. Curley and I personally took it to Washington and served it on Mr. Bilbrey. I visited Mr. Bilbrey in Washington the 6th of November, 1924, the day after the Court had signed the order [illegible], and he endorsed on the original petition and order the words, "Received copy of the aforegoing and annexed petition and order this 6th day of November, 1924", signed Joseph H. Bilbrey. When I served this paper on Mr. Bilbrey he exhibited the most complete indifference about it that could be imagined and told me point blank he was not interested in the matter at all, that he was only a straw man and had never had any interest in the property. I said to him, possibly you ought to be interested because you might be faced with a deficiency verdict against you if the property should be re-sold and would not bring sufficient to cover your bid, andbhe said, in reply, in effect that he should worry and said furthermore, "Why I believe there is a deficiency verdict against me here in Washington now in a like case for $20,000, if I recall the figures right, and that does not worry me, nor does your proceeding worry me"

****Objection.

Mr. Bilbrey had on the day of sale signed a contract on the back of the sale bill filed in this case on that date, whereby he agreed to pay the balance of the purchase price and to comply with all the terms of sale as set out in said advertisement.

***Respondent here files with the Exa miner the said advertisement of sale with the said contract thereon, marked Respondent's Exhibit H.

The money paid on these two receipts in question covering in the aggregate $5000 was paid to me without any suggestion of protest, and the

first intimation that I had in this case of any protest such as has been testified to here today, arose when I received from Mr. Strauf his letter dated January 12th, which I presume was received by me in due course, on January 13th, signed by Mr. Strauf and written on his letterhead.

*****Respondent here files with the Examiner letter in question marked Respondent's Exhibit J.

Mr. Strauf and Mr. Winter, in my office, exhibited some doubt in their mind as to where they would stand if they paid over all of this money without something from Miss Speers and Bilbrey to show for it, and on the morning of December 30th when they appeared at my office as above mentioned they brought with them the waiver referred to, a photostat copy of which has been filed marked Exceptants Respondent's Exhibit No. 3. In addition to that they brought with them to my office and filed with me, the papers marked Exhibit B and Exhibit B-1 containing the items, most of which are identical with the items set out on the working memorandum which I have filed, the yellow sheet in question marked Respondent's Exhibit F.

I desire to read into the evidence on these exceptions,

***Objection

the evidence of Mary W. F. Speers taken in this case on July 10th, 1923 and filed herein October 30th, 1923, and beginning

****I again seriously object to incorporating in this examination matters that have nothing to do with the exceptions, to lumbering up the proceedings for the purpose of affecting litigation that is not a part of this particular matter,

and beginning with Question 16 on page 17 and ending with Ques. 27 and the answer thereto on page 18 of said testimony.

"You were present at the sale? A. I was.

17. Do you know who bought the property? A. Mr. Bilbry bid it in.

18. Do you know him? A. I do.

19. How long before had you known him? A. I don't know. I don't know how long before the sale.

20. Where did he get the $1000 cash paid on the property that day?

A. I suggest that you ask gim.

21. Do you know where he got the money?

A. I don't know whether that is relative or not.** Court rules it is.

22. Do you know where he got the money?

A. Mr. Bilbrey bought the property in so far as I know, I understood he bought it it.

23. The Court says you shall answer my question, do you know where he got the $1000 which he paid on the property that day?

A. I presume I do.

24. Where did he get it? A. Do I have to answer?

25 Did not Mr. Bilbrey buy the property in for you, and have you not so stated? A. Yes.

26 You were the purchaser at that sale were you not?

A. I expect to be.

27 Were you not the purchasernat that sale through Mr. Bilbrey?

A. Yes, I was, I had no other way to protect my interest."

***** Respondent offers in evidence the original mortgage in this case marked Respondent's Exhibit K.

*****Also Petition asking for re-sale marked Respondent's Exhibit L.

The question of the substitution of The Atlas Realty Company in the place of Mr. Bilbrey did not arise until after the conveyance of Jany. 2nd from Bilbrey to the Atlas Realty Company, Exhibit A herein, was in my hands. There was no reason why I should object, nor did I object to the substitution of The Atlas Realty Company, but it was deemed easier to have

the purchaser Bilbrey and his wife convey this property to the Atlas Realty Company after I had conveyed the bare legal title to Bilbrey than to go through the trouble of a Petition to the Court, and if I recall it right it was deemed wiser to do it this way in view of Miss Speers' possible interest in the property. It was treated as one transaction and the only stamps that were put on these two deeds were the $14 stamps put on the deed from myself as assignee to Bilbrey. Mr. Strauf who was the Vice-President of the Company and who throughout this whole transaction has acted and was then acting for Bilbrey said to me over the phone from Baltimore at my house on the evening of January 8th, 1925 when I had called him to remind him that we had forgotten the matter of revenue stamps that it was only necessary to put stamps on the deed which I had executed and that I should say to the Clerk of the Court when I recorded these deeds, both if which he had entrusted to me to be recorded, that since it was all one transaction no stamps were required on the deed from Bilbrey and wife to The Atlas Realty Company, and none were put on. Co-incidentally with the delivery of the deed from myself as assignee to Bilbrey which was delivered to his attorney Mr. Strauf in Baltimore on January 8th, and the delivery of the deed from Bilbrey and wife to the Atlas Realty Company, the Atlas Realty Company executed a deed to Mr. Charles H. Pulis covering the one acre of ground, it is recited fully in the 4th paragraph thereof and the exact agreement and the reason for it as appears in this testimony, particularly as to the three considerations which were passed for the postponement of the proposed re-sale being the $626 item and the $4374 and the agreement on the plat.

***Respondent here files with the Examiner the deed from The Atlas Realty Company to C. H. Pulis marked Respondent's Exhibit M."

Mr. Pulis was reluctant to allow this sale to be postponed and had instructed me if the sale went on to bid the property up to atleast $15,000, and the postponement was had at the urgent request of the parties whoever they were interested in the conveyances mentioned.

Mr. Curley, down to a very short time, possibly a week or ten days prior to December 30th was in negotiation with me looking to a possible saving of the property to Miss Speers, he being her attorney of record and still is. Mr. Strauf expressed to me, the first time he was in my office, some doubt as to whether he was safe in dealing with this property in view of Miss Speers' possible interest. He stated in effect that he wanted to be sure about it, if possible, because he was putting his own good money in the proposition and he did not want to lose it. He stated further that The Atlas Realty Company was buying the property and that Miss Speers had a six months right to redeem it.

I was on this property sometime after the 7th of March, 1925 , possibly in April, but positively after March 7th, 1925 and saw the Speers family living in the house.

At the time the conversation was had when the tentative agreement to postponement of the sale was made, all of the items mentioned were discussed, and Mr. Strauf said to me in a most friendly way, "We want you to try to get those items allowed in the Audit", and I said "No, I could not agree to that." My reason for this was that the mortgage, as I believed, did not permit it, and I for one was also a little apprehensive about getting mixed up with Miss Speers any further, I had had several apples out of that bag.

Mr. Strauf and Mr. Bilbrey came to my office I think it was the 7th of January, it was either one or two days before the 8th, and Mr. Strauf had a sheath of paper money with him representing the balance of the

purchase price, which he tendered to me, and which I on that day refused to accept, my refusal was based on the fact that we had some dispute about who should convey the one acre to Pulis. The dispute principally was between Mr. Bilbrey and myself, and I recall that he said with some heat, that he had not authorized any one to act for him and sign his name to the back of the plat, and that he was not going to convey that property as set out in that agreement to Pulis. Mr. Strauf and I, however, had a quiet understanding that the next day we thought the whole thing could be closed up in his office, and it was, and it ended in a practical love feast, although we did not actually eat. Mr. Strauf showed some confidence in me by asking me to bring to Annapolis the very deed which I had delivered to him, and he also gave me the deed which Bilbrey had given to The Atlas Realty Company, and everything was nice. In addition to this, when we went down to The Century Trust Company in order for Mr. Strauf to get the check of The Atlas Realty Company cashed, and when he didbhe turned $9000 over to me without the least protest and I turned over to him the deeds, and as we came out of the Trust Company, after I had made a deposit of the fund there, he laid his hand on my shoulder and said "Old man, try to get that $626 back for us", I again said "No, I can't do that".

I did not and could not consent to any postponement of this re-sale.

No Cross Examination.

Signature waived by agreement.

Charles H. Pulis, a witness of lawful age, produced on behalf of the respondent, being first duly sworn, says:-

(By Mr. Strahorn.)

1. You were the assignee of the Speers mortgage from Dr. Kelley were you not?

A. I was.

2. When was the first time you were made acquainted with the fact that any one wanted to get a postponement of the re-sale of this property advertised for December 30th, 1924?

A. December 29th, between 9:30 and 10 o'clock I arrived in Baltimore from New York, after going to my hotel I called you on the phone and told you I would be down the next day in time for the sale. You asked me if I could get down early in the morning as you had a proposition to adjourn the sale and you wanted to talk the matter over with me. I told you I would get down as near as I could to ten o'clock. I left Baltimore a few minutes after nine, I can't say exactly what time I got here, you know the timetable better, I got here a little after ten o'clock. You apprised me of the fact that a proposition had been made whereby if an adjournment could be had certain amount of expenses would be paid. You informed me that your mortgages here were different than ours in New York State, that they provided certain clauses for the expenses, I know you used the term "Bob tailed" mortgage, you went on to explain that there was a question whether or not you could charge the expenses for re-sale and re-advertising against the funds in the mortgage. I told you I did not care, I wanted a sale. We discussed it for sometime, all the while we were expecting these gentlemen, and I would say between 11:30 and a quarter of 12 three gentlemen arrived, and we took up the question of the adjournment. I told them I did not want it adjourned, I wanted it sold.

3. Did they say anything to you at that time which indicated a positive agreement had been made?

A. They did not.

4. Had I told you I had made any positive agreement?

A. You did not.

5. Did they express any surprise indicating they thought a positive agreement had been made?

A. They did not. Mr. Strauf during my objection asked for the use of your telephone and called up some one in Baltimore, he said, and asked for them to arrange for certain amount of money down here to take up that sale. What the answer was I don't know. Afterwards Strauf got me aside and told me the reason he did not want to take title to the property today was that he had not as yet received the assignment from Bilbrey and he did not want to put up the amount of money without some assignment from him of his claim. After some discussion, I think a few minutes after 12, I agreed to it.

6. Under what conditions?

A. That the fees you had set forth and expenses of this second sale, and expenses you had been put to, which I reimbursed you in getting to New York and several other items I am not prepared to say what they were.

7. Is this a copy?

A. I could not say whether that is a copy or not.

8. Were the items all set out in the receipt for the money which I gave to Mr. Strauf as attorney?

A. Based on my judgment I would say they were though I am not positive about it. In addition to that I wanted them to establish lines between Miss Speers' property and the one acre which I had purchased from Dr. Kelley as according to the survey the lines were very much confused, and did not hardly mean anything, which he gladly agreed to do.

We agreed those lines on that blue print should be the lines of this property. They entered into an agreement to that effect and then the sale was called off.

9. Was anything else specifically mentioned by you at that time?

A. Yes I did, I ~~xxxxxxx~~ exacted the interest on my mortgage be paid to the 30th of December.

10 That was agreed to?

A. Yes.

11. Of the three items of consideration one was the conveyance of the one acre, the other was the item set out in the $626 receipt and the other was the receipt in which appears the appropppiate language covering the deferred interest, which ones had been agreed upon tentatively up to the time you came to my office?

A. The charges in the $626 item .

12. The other two how did they arise?

A. These gentlemen brought down several papers from Miss Speers. Strauf stated he had some trouble in locating Miss Speers, and he apologised for being late, and you wanted those papers before you would consent to my consenting to an adjournment.

13. Those papers were produced?

A. Yes, there were three papers. That is why Mr. Strauf told me he did not want to put up the balance of the purchase money because Mr. Bilbrey had not yet assigned his rights to it, and he had the papers and he had not been able to get them. I instructed you that morning to go as high as $15,000 and bid it in for me if it was re-sold.

14. Did you hear any one discussing about the time of the re-sale or immediately after, the possibility of a price it might bring that morning?

****Objection.

A. I did.

15 Tell, if you know, who the person was?

A. I don't know his name, never met him before, I met several here, and one man asked me if the property was sold if I would consent to leaving a portion of my mortgage on the property, in other words take a purchase money mortgage, and I told him No. After leaving your office I walked out and got on the Electric train and met a man who asked me why I adjourned the sale and I told him they paid an additional sum on it and I thought the sale would go through the first of the coming week. He wanted to know what it sold for at the previous sale and I told him roughly and he said he was there prepared to go to $20,000 for it.

16. You were in my office that morning when these three gentlemen arrived that morning?

A. Yes.

17 You were there and heard the conversations ensuing about this matter?

A. I was.

18 Were you intimately interested in it?

A. I was.

19 Were you the one person who had the final word in regard to that?

A. I was.

20 Did you insist upon having the final word?

A. I did.

21 Did you hear any protest registered that morning?

A. None whatsoever.

22. If there had been any protest registered there that morning against any of the charges you insisted upon being paid by them, and set out in these three papers what would you have done?

A. I would have had the property sold that day. I was disgusted with it and disgusted with Miss Speers and I would have had the property sold

and it was only after you came to me and told me, Mr. Strauf, the position you were in with Bilbrey that I considered it at all.

23 If there had been any protest registered against the payment of the accrued interest on the deferred payment as set out in the Exhibit covering the $4374 would you have consented to the postponement?

A. You don't suppose any business man is going to throw away 15 or 18 months interest on $9000 just for simply adjourning the sale for a man, I would not. No fault of mine the sale did not go through.

24 It was not adjourned at your request or the request of your attorney?

A. It was not.

25. Did you expressly understand at the time this adjournment was agreed to that the accrued interest as set out in the terms of sale would be paid?

A. I did.

Cross Examination.

(By Mr. Strauf.)

1. Referring to that interest, Mr. Pulis, the sale of 1923 was for $13,625, how much was your mortgage?

A. $9,000.

2. There was plenty in that sale to take care of your interest and up to the very day of settlement?

A. There was.

3¾ You could not have been thinking about interest on that date?

A. The question was whether I was to get interest up to the day of re-sale.

4. Don't you know as a matter of fact there was enough surplus in the proceeds to pay the interest on your mortgage whether the deferred interest was collected from the purchaser or not?

A. Your Laws here are so different in every way than our laws that I was

using all the protection that I could think of to protect myself.

5. You then dictated all these terms?

A. I dictated the terms I wanted interest up to date.

6. And you said if we did not accede the sale would go on?

A. That is all.

To the general question under the rule the witness says:-

A. No.

No Cross Examination.

Signature waived by agreement.

Juliet D. Strahorn, a witness of lawful age, being first duly sworn, says:-

(By Mr. Strahorn.)

1. You are the Court Stenographer of Anne Arundel County?

A. I am.

2. Please state whether or not you knew anything about the proposed sale of the Speers property mentioned in these proceedings advertised for December 30th, 1924?

A. I did.

3. Please state specifically what you saw or heard, if anything, on the day mentioned, December 30th, 1924, concerning this re-sale, and when?

A. On the morning of the sale I was atching from the Court House window as I was deeply interested in the Speers sale. I saw the three gehtlemen go into Mr. Strahorn's office, I did not know who they were except Mr. Curley, I knew him. I then went down through the Court House yard and stopped and spoke to the Auctioneer, Mr. William H. Moss, who was standing there with the handbills in his hand. I asked him if the sale would take place and he said it was scheduled to take place at 12 o'clock , but,-

4. What time was this?

A. About a quarter of 12, I should say, my usual time for going down,- but, he said there are some men in there and it may not take place, I am waiting for your husband to give the word.

5. Where did you go then?

A. I then went into Mr. Strahorn's office into the front room. In the back room stahding at the little table were the three gentlemen I saw go in including Mr. Curley. Mr. Strahorn was sitting at the typewriter writing something, Mr. Pulis, (I did not know him at the time) was pacing the floor between the two rooms, the door being open, I sat first in the chair

at the desk, and I think I stamped some letters, then I stood at the door watching the crowd gather on the outside for the sale and saw Mr. Moss, the Auctioneer talking to some people who seemed interested in the sale, and answering their questions.

6. Did you hear any controversy in my back office between these three gentlemen or any of them, and Mr. Pulis and myself or either of us?

A. No, I did not, I heard you read some papers you had written, then I heard you read them, and was naturally interested in the contents, I saw the gentlemen sign some papers while I stood there, and you passed by me and went out and said something to the auctioneer, I don't know what, and the crowd dispersed.

7. Then you were in the office from about a quarter of 12 until I went out and the crowd dispersed?

A. Yes, I was waiting for you.

8. In that time did you hear any protest of any kind concerning the payment of money by these gentlemen in regard to this property?

A. I heard no talking or protest of simply the usual signing of papers, all seemed to be very congenial.

No Cross Examination.

To the general question under the rule the witness says:-

A. No.

John B. Deming, a witness of lawful age, produced on behalf of the respondents, being first duly sworn, deposes and says:-

(By Mr. Strahorn.)

1. You are a member of the Bar of Baltimore City?

A. Yes sir.

2. How long have you been a member of the Bar of the State of Maryland?

A. Nearly 27 years.

3. With whom were you associated before your present firm of Keech, Deming and Carman?

A. Upon my admission to the Bar I became associated with the late George Whitelock, In about 1905, then Ex-Judge David Fowler of the Court of Appeals came in with us and we formed the firm called Whitelock and Fowler composed of the same Judge Fowler, Mr. Whitelock, the late W. Thomas Kemp and myself. That firm lasted for about three years until Judge Fowler became incapacitated and his death. Then we called the firm Whitelock, Deming and Kemp, composed of Mr George Whitelock, W. Thomas Kemp and myself which was in existence approximately 13 years until Mr. Whitelock's death, and I am now a member of the firm of Keech, Deming and Carman, since the death of Mr. Kemp.

4. Are you familiar with the Record in the Speers' case?

A. Yes, I have read the Record.

5. I tell you as Attorney for Mr. Charles H. Pulis I, alone, at this end of the line conducted the defense of the Exceptions filed by Mary W.F. Speers to the ratification of the sale made by me in March, 1923. During that time and in the course of the hearings on those exceptions I was served with notice twice that she proposed to take testimony on her exceptions in New York and both times went there for that purpose, and afterwards I conducted the Exceptions throughout. An appeal was taken from

the Court's order, which appeal was dismissed and re-sale ordered. For the services rendered by me in connection with the said Exceptions to the ratification of the sale, would you or not consider a counsel fee of $250 and actual expenses of my trips to New York a reasonable fee?

A. I would consider it most reasonable.

No Cross Examination.

To the general question under the rule the witness says:-

A. No.

There being no further testimony desired by either the Exceptants or Respondents, this testimony is now closed and returned to the Court this 13th day of February, 1926.

George E. Cullman (Seal)
Examiner.

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In the Matter of the Sale	)(	No. 4742	Equity.
of the	)(		
Mortgaged Real Estate	)(	In the Circuit Court	
of	)(	for	
Mary W. F. Speers	)(	Anne Arundel County	

Filed March 19, 1926

Testimony taken at the office of Ridgely P. Melvin, Esq., on Wednesday, March 3, 1926, those present being the following:

Daniel R. Randall, Esq., Solicitor for Eleanor B. Biggs;
Ridgely P. Melvin, Esq., Solicitor for Union Trust Company;
George E. Rullman, Esq., Examiner.
Laura R. Jickling, Stenographer.

Witness:

William A. Naden

William A. Naden, a witness of lawful age, having been duly sworn, testified as follows:

BY MR. MELVIN:

Q. 1. State your name, residence and occupation.

A. William A. Naden, Annapolis, Maryland; occupation - Deputy Clerk of the Circuit Court for Anne Arundel County.

Q. 2. How long have you been a deputy clerk of the Circuit Court for Anne Arundel County?

A. Nine years.

Q. 3. Does the custody of the Court records and original papers come under your jurisdiction?

A. Yes, as one of the olerks in the office, they do.

Q. 4. State whether or not you have ever made an examination of the original papers in the attachment case of Eleanor B. Biggs vs. Mary W. F. Speers, #130 Trials, October Term, 1922.

A. I have.

Q. 5. State whether or not you have been able to find, after a diligent search, any schedule of attached property or schedule of any kind among said papers.

A. I did not find any.

Q. 6. Did you find any desoription of any real estate or other property among said papers or anywhere else among your Court records relating to this attachment?

A. No, I did not find any.

Q. 7. Did you make a thorough search for any suoh schedule or description among said papers?

A. I did.

Q. 8. Did you examine any other cases between these same parties relating to attachments?

A. I did.

Q. 9. State what other oases and original papers you did examine in your search for any schedule or description of attaohed property.

A. #68 Appearances, July Term, 1922; #56 Trials, April Term, 1923; #30 Trials, July Term, 1923; and #48 Trials, January Term, 1926.

Q. 10. What were these cases?

A. These cases were all growing out of the attachments of Eleanor B. Biggs vs. Mary W. F. Speers, and mentioned in the case #130 Trials, October Term, 1922. This last named case is the one in which all the original attachment papers are filed.

Q. 11. In any of these cases, or anywhere else among your Court records, have you been able to find any schedule of attached property or description of property?

A. I have not found any schedule or description among any of these papers.

Q. 12. Have you been able to find them anywhere?

A. No.

Q. 13. Will you state what, if anything, is shown in the way of a Sheriff's return in the original attachment papers in #130 Trials, October Term, 1922.

A. On the back of the writ of attachment there is the following: "Property attached as per scheduled, and copy posted at Court House Door. H. T. Levely, Sheriff." I have looked carefully for any schedule but there is none to be found anywhere among the papers in the case, and that is the only reference there is to any schedule. I also note that this return of the Sheriff is not marked filed, as is customary.

In answer to the General Question, witness answered: "No."

CROSS EXAMINATION WAIVED.

Wm A. Mayden
Deputy Clerk.

There being no other witnesses to be examined and no further time being desired by the parties hereto, the within testimony is herewith closed and returned to the Court this 19th day of March, 1926.

George D. Pullman (SEAL)
Examiner.

recitals in transcript
also the papers
mentioned on next page

March 3, 1926.

Filed with Examiner the original attachment papers in case of Eleanor B. Biggs vs. Mary W. F. Speers, #130 Trials, October Term, 1922;

Also original attachment papers in the case of Arthur V. Kalenburg vs. Mary W. F. Speers, #40 Trials, April Term, 1923.

In the matter of the	:	No. 4742 Equity
Mortgaged Real Estate	:	In the Circuit Court for
of Mary W. F. Speers.	:	Anne Arundel County

To the Honorable Judges of said Court:

The petition of Eleanor B. Biggs respectfully represents unto your Honors:

(1). That since July, 1923, when your oratrix was awarded a judgement upon trial in open Court against Mary W. F. Speers in the sum of Twenty-six Hundred Sixty-seven Dollars, Forty-three Cents ($2667.43) interests and costs, there have been pending in this proceeding motions and exceptions which have delayed the payment of such judgement to your oratrix for a period of nearly three years.

(2). That in February last, upon the petition of your oratrix and of the Union Trust Company, the Court passed a peremptory order directing the said Mary W.F.Speers and other exceptants to close their testimony before a given date, and upon that date all the parties were in Court and prepared to finally submit their claims and exceptions, but that there developed a new question under the exceptions which required testimony, and the Court directed the same to be taken that day and returned at once with briefs of the various claimants to the fund.

Filed June 29, 1926

(3). That such testimony was taken as directed by some of the exceptants but that no submission of the matter has been made as required by this Court's order.

Wherefore your oratrix prays your Honors to pass an order upon her petition directing generally that all exceptions and testimony thereunder taken in this proceeding be peremptorily filed with the Court on or before a day and date therein named, in order that justice may be done your oratrix and other exceptants whose money has been withheld as aforesaid.

And your oratrix will ever pray, etc.

Daniel Randall
Solicitor.

The Union Trust Co., having in February last Concluded its taking testimony on behalf of its judgment in this case and having filed its brief, Concurs in the petition for a peremptory order to close the case.

Walter H. Buck
Ridgely Brewer
Attorneys for Union Trust Co.

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In the matter of the	:	No. 4742 Equity
Mortgaged Real Estate	:	In the Circuit Court for
of Mary W. F. Speers	:	Anne Arundel County

ORDERED, this 29th day of ~~March~~ June, 1926, by the Circuit Court of Anne Arundel County, upon the aforegoing petition of Eleanor B. Biggs, that the testimony taken in accordance with a previous Order of Court, with the briefs of counsel, be filed in this proceeding before the 20th day of ~~March~~ July, 1926, provided a copy of this petition and order be served upon Messrs. Melvin, Gott, Michaelson and Strahorn, solicitors representing the various exceptants and claimants of the fund.

Filed June 29 1926

Robert Moss J.

IN THE MATTER OF THE SALE OF THE MORTGAGED REAL ESTATE OF MARY W. F. SPEERS.	* * * * * *	In the Circuit Court for Anne Arundel County, No. 4772, In Equity.

* * * * * * *

JOSEPH H. BILBREY'S BRIEF ON EXCEPTIONS TO AUDITOR'S ACCOUNT.

STATEMENT OF CASE.

On March 22, 1923, John E. Strahorn, Assignee of a certain mortgage from Mary W. F. Speers, sold the property therein described under the powers therein contained at public auction to Joseph H. Bilbrey for $13,625.00, of which amount $1000.00 was paid in cash at the time of the sale. Miss Speers, the mortgagor filed exceptions to the sale, which were finally overruled and an appeal was taken to the Court of Appeals, which was subsequently dismissed; the said expections and appeal having delayed the consummation of the said sale for over a year and a half.

The balance of the said purchase money not having been paid, the said Strahorn did obtain an order from this Honorable Court authorizing the re-sale of the said property at the risk of the said purchaser, and did advertise such re-sale to take place on December 30, 1924 at 12 o'clock, noon.

On December 29, 1924, Edward A. Strauff, attorney for the said Bilbrey went to Annapolis and, in the office of the said Strahorn, agreed to make an additional deposit of $5000.00 on account of the said purchase price of $13,625.00, and it was agreed by the said Strahorn, Assignee, in consideration of such additional payment to postpone the said sale until some future day in order to give the said Bilbrey an opportunity to pay the balance of the purchase price and it was arranged that the said additional deposit of $5000.00 should be made on the following day. On the following day, December 30th, the said Strauff, again went to Annapolis and tendered to the said Strahorn $5000.00 in the shape of five certified checks on the National Bank of Baltimore of One thousand dollars each, as the additional payment of $5000.00, which amount the said Strahorn refused to accept as such additional deposit, but stated that he would only agree to postpone the said sale if $626.00 of the said $5000 was applied to the payment of certain alleged expenses as follows:

Auctioneers charges on second sale	$ 16.00
One half commissions on second sale	169.50
One half attorney's fee mentioned in mortgage	50.00
Attorney's fee for services rendered in connection with exceptions to sale	250.00
Expenses for sale	100.00
Advertising costs of second sale	41.00

and the balance of $4,374.00 would be applied toward the said purchase price as an additional deposit. This arbitrary position was assumed by the said Strahorn at about 11.50 A. M. on the morning of the sale which was to take place at noon, while the auctioneer was already ringing the bell and the people were already gathering at the court house door for the said sale. That in order to avoid the expense of such new sale, which was unnecessary, the said Bilbrey, under the pressure of such unreasonable demands of the said Strahorn, paid to him the said sum of $5000.00, and received from him a receipt for $626.00 for the expenses, etc. and another receipt for $4,374.00 on account of the purchase price.

Filed July 20 1926

It was then announced that the said sale would be postponed until January 10, 1925 at 12 o'clock, noon.

On January 8, 1925, the said Strahorn called at the office of the said Strauff, in Baltimore, for the purpose of consummating the said sale, at which time he demanded the payment to him of $9,608.18, alleging it to be the sum due as the balance of the purchase price of the said property; $1,357.18 thereof representing interest on the purchase price, alleged to be due by the said purchaser, altho no credits had been given to him for the rent of the said property during the time when he could not get possession thereof because of the exceptions of the mortgagor. The said Strahorn also demanded $14.00 for a revenue stamp on the deed, refusing to place the same upon record until the said amount was paid.

In the Auditor's Account filed herein, the Assignee is charged with $14,982.18, instead of with $15,622.18, the amount of money received by him in this matter. Exceptions were filed thereto by the said Bilbrey, alleging that the assignee had collected from him $640.00 for which he had not accounted, and that there should have been distributed to him in the said account $1997.18, unlawfully collected from him by the said Strahorn, Assignee.

A R G U M E N T .

I. ALL MONEY RECEIVED BY STRAHORN SHOULD HAVE BEEN ACCOUNTED FOR BY HIM IN THE AUDITOR'S ACCOUNT.

It is the duty of a trustee, or of a person in the nature of a trustee to act for the benefit of all parties interested in the property or fund of which he is trustee. The principle is so firmly established and is so fundamental that it scarcely needs the citation of authority to prove that a trustee cannot profit personally by his own actions.

39 Cyc. 296, and cases there cited.

If the money was paid to Strahorn in consideration of a postponement, which postponement was a detriment to the trust estate, then Strahorn had no right to agree to it. At all events whether there was a detriment or not, it is clear that Strahorn cannot personally profit by his own action in postponing the said sale. He is, in equity, bound to account for every penny passing thru his hands in his capacity as Assignee under the mortgage. He must account for this money for the benefit of all parties interested in the property or in the fund.

II. IN THE AUDITOR'S ACCOUNT, BILBREY SHOULD HAVE BEEN ALLOWED THE SUM OF $1997.18 WRONGFULLY COLLECTED FROM HIM.

A. The charge made by Strahorn of $169.50 for one-half commissions was not properly made.

"In cases where the purchase money of a sale has not been paid, and a re-sale becomes necessary, the trustee in entitled to commissions only on the sum actually received by him on account of the first sale, and also commissions on the entire amount of money received by him on the re-sale."
Miller's Equity, Sec. 561, page 661(also Note1)
McCullough v Pierce, 55 Md. 540, 545-546;
Melvin v Aldridge, 81 Md. 650, 658-659;

If in the case of there actually being a resale, the trustee is entitled to commissions only on the amount of

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money actually received by him, certainly where the property is not sold the second time, he has no right whatever to claim commissions in full on the first sale and then to demand in addition thereto one-half commissions on the probable amount of the second sale, which was never held, the entire purchase price, having been paid prior to such advertised second sale.

Nor can it be contended that the payment of the one-half commissions on the probable amount of the second sale (which was never held) was an agreement entered into between the trustee and the said Bilbrey, for the purpose of postponing the said sale, for even if this be admitted (which it is not) it would constitute a contract which would not be looked upon with favor by a court of equity.

Neptune Ins. Co. vs Dorsey, 3 Md. Ch. 334, 341.

B. The charge made by Strahorn for One-half the attorney's fee named in the mortgage, amounting to $50.00 was not properly made.

In Shaw vs Smith, 107 Md. 523, 527, it is decided that where there has been a sale and exceptions are filed which are contested by the attorney for the mortgagee, he is not entitled to the allowance of any fee out of the proceeds of sale in the absence of a provision in the mortgage authorizing the same.

In this case there is a provision in the mortgage authorizing a fee of One hundred Dollars. In the absence of such a provision, no fee whatever would be allowed, under the Shaw case. There being such a provision in the mortgage, it necessarily follows that the fee or fees to be allowed are, of course, not to exceed $100.00. Despite this fact Strahorn claims $100.00 in the account and demanded $50.00 in addition thereto from the said Bilbrey, and demanded further a fee of $250.00 for contesting the said exceptions to the sale.

See also Mahoney vs Mackubin 54 Md. 268,276.

C. The charge made by Strahorn of $250.00 for services rendered in connection with exceptions to the sale was not properly chargeable to this exceptant.

In the first place, this charge is not properly chargeable to any one.

Under the authorities cited in sub-paragraph B hereof, it appears that no fee whatever can be allowed for such services greater than that named in the mortgage. In this case the fee named in the mortgage is limited to $100.00. Yet Strahorn has attempted to collect fees totaling $400.00, four times the amount therein set forth.

At all events, however, even if it should be held that in the face of these decisions, Strahorn was entitled to such fees, this item of $250.00 cannot be charged to Bilbrey. Bilbrey was the purchaser. He did not file exceptions to the sale. They were filed by Miss Speers, the mortgagor, and her exceptions and appeal tied up the property for over a year and a half during which time Bilbrey was deprived of it. To charge a purchaser personally with an attorney's fee for services rendered in connection with expections to the sale filed by another party, is a most unusual situation, and is without reason or precedent. If the charges is due at all,

and this fact is not admitted by this exceptant, they are certainly not properly chargeable to Bilbrey, but, if due at all, should be charged against the funds in the hands of Strahorn, as all expenses of sales are charged.

Furthermore, counsel fees ought never be charged or allowed in cases of this kind without a Petition reciting the services rendered, a certificate of counsel as to the value thereof, and an Order of court thereon allowing the same, subject to the usual exceptions.

D. The charge of $100.00 for expenses of sale should not have been made.

Admittedly these expenses are for the first sale, as the second sale was never made, and what slight costs were incurred by it are specifically set forth in the receipt of Strahorn. Just what these expenses which amount to $100.00 are, does not appear, and it is difficult to imagine what they could be. Commissions, advertising, court costs, premiums on bond, auditor's fee, depositions, stenographer's charges for taking testimony, stenographer's charges for making copy of testimony, examiner's fee, orders nisi, printing handbills, posting handbills and fee named in the mortgage all are allowed in the auditor's account and thus are charged against the funds in Strahorn's hands (which fund, however, does not include this item of $100.00, nor any of the remaining items of which the $626.00 is made up). There were no expenses incident to the said sale other that those named in the account, so that the $100.00 demanded by Strahorn and retained by him was for expenses which he is also allowed in the account for.

E. The $14.00 collected by Strahorn for revenue stamp was improperly collected.

ByChapter 619 of the Acts of 1916, it is provided that the cost of revenue stamps shall be borne equally by the Grantor and Grantee. Therefore, Strahorn was not justified in demanding the full amount of $14.00 from Bilbrey before placing the Deed to the property purchased on record.

F. The purchaser should not be charged with interest where he is prevented from consummating his purchase by the mortgagor, from whom no rent is received.

"As a general rule in sales under decrees, the purchaser pays interest according to the terms of the decree, from the day of sale, whether he gets possession or not. But where a sale is made on credit, and the defendant refuses to give the purchaser possession, the latter cannot be required to pay interest for the benefit of the defendant for the time he is deprived of possession; and where the sale is for cash and the money was paid, and the defendant retained possession of the property, the purchaser was indemnified for this loss out of the proceeds of sale in court belonging to the defendant."

Millers Equity, Sec. 514,
Barnum v Raborg, 2 Md. Ch. 516,532-3.

In this case the property was sold for more than the mortgage debt and there is a balance which, ordinarily would go to the mortgagor. Therefore, under the principle of the Barnum case the purchaser at the sale would be entitled to

be indemnified for this loss out of the funds remaining in the hands of the Assignee, which would, ordinarily, be audited to the mortgagor. It was due to the action of the mortgagor that the purchaser was required to pay interest and she would notbe allowed to benefit by her own unsuccessful action in excepting to the sale. It is true that claims have been filed against the funds due to her, which may wipe out that amount so that she will get nothing out of the sale, out of which the claim of the purchaser would be paid, but the purchaser ought to be entitled to priority over these claims, as indirectly she would be getting a benefit out of their payment as her indebtedness would be reduced to the extent of such payments.

C O N C L U S I O N .

It is therefore, respectfully submitted that John D. Strahorn should be required to account for the $640.00 received by him for which he has failed to account; that the said sum of $640.00 paid by Joseph H. Bilbrey to the said Strahorn should be audited to him, the said Bilbrey in the auditor's account; and that the said Bilbrey should also have audited to him the sum of $1357.18 demanded by the said Strahorn as interest.

Respectfully submitted,

Attorney for Exceptant.

In the Matter of the Mortgaged Real Estate of Mary W. F. Speers.

No. 4742 Equity.
In the Circuit Court for Anne Arundel County.

OPINION of COURT.

(Judge Robert Moss)

In this case there are three questions before the Court, they are, FIRST, Was the purchaser of the real estate in these proceedings properly chargeable with interest during the time his Exceptions were pending against the ratification of the sale up, until the date of its conveyance to the purchaser.

Filed Nov 13, 1926

SECOND, Are certain moneys that were paid to the Assignee making the sale for the purpose of having the time extended for the completion of the payment of the purchase money, to be brought into the case, with the purchase money, and to be returned to the purchaser of the real estate at said mortgagee's sale.

THIRD, Has the judgment of Eleanora B. Biggs priority over the judgment of The Union Trust Company of Baltimore City.

The Court having already written an Opinion in this case, will merely announce its conclusions with such comment and authorities as it deems necessary.

It was found, at the time of the Exceptions to the Ratification of this sale that the Mortgagor, Mary W. F. Speers, was the actual purchaser of the property, although it was purchased in the name of Joseph H. Bilbrey.

Indeed this was a confessum in the case, and Bilbrey makes no effort to contradict it, and yet files Exceptions in his own name and says nothing about purchasing it for Miss Mary W. F. Speers. The terms of sale, as shown by the handbill filed in the case, declared that deferred payments were to bear interest from the day of sale, and to be secured to the satisfaction of the assignee. The question as to this exception is merely where a mortgagor whose property is being sold purchases the property in open market and becomes the highest bidder through the agency of some one she has employed, and then files, in her own name, as mortgagor, exceptions to the ratification of the sale, should she, when the sale is finally ratified, and the purchase money paid, be required to pay interest up to the day of the last payment of the purchase money . There appears to be no dispute about the amount of this interest, the mortgagor simply asking that she be not charged interest. The mere statement of this proposition carries with it its answer. If a mortgagor was at liberty, acting through a third party, to purchase back her property when sold at mortgagee's sale, and could then file exceptions to the ratification of the same, and escape the payment of interest during the pendency of said exceptions, and only have to pay the costs of exceptions which is generally trifling, a mortgagor could defeat any mortgagee's sale whenever one was attempted to be made.

The Rule as to the payment of interest, as well stated in Miller's Equity, paragraph 514.

The Court is, therefore, of the Opinion that the interest charge is a proper charge against the purchaser.

The Second question for the Court's consideration is whether the sum of Six Hundred and twenty-six Dollars ($626) which was paid to the assignee of this property on the morning fixed for a re-sale, when it was to be sold at public auction, at the risk of the purchaser, for the purpose of having the sale withdrawn and obtaining an extension of time for payment of the balance of the purchase money, should be carried into the Auditor's Account distributing the proceeds of sale, and refunded to the mortgagor from said fund. This transaction and the money paid represents no part of the purchase money, and the question of its refund and distribution is not before the Court in these proceedings. The Court is not called upon, and does not pass upon the legality of these charges. It appears that after negotiations had been carried on for sometime, that the Assignee and the holder of the mortgage, fixed upon this amount as the amount they would require to be paid in advance for a further extension of the time of payment, and for a postponement of the sale, that their terms were agreed to, and the assignee passed to them his receipt for this amount. Now, on the question of a refund there might be a question of fact arise which this Court is not called upon to deal with in the distribution of this fund, and what the Court says is not to construed in any manner of approving or disapproving of this charge, it simply decides that it is not a part of the purchase money to be brought into this fund.

And what the Court has said as to the money paid for an extension of time and the payment of the purchase money and withdrawal of sale, applies equally to one-half of fourteen dollars ($14) which the purchaser claims should all have been paid as a tax by the assignee making the deed. This money was not, in any way, a part of the purchase money.

As to the question of priority bwteen the two judgments, the one held by The Union Trust Company of Baltimore, and the other held by Eleanora B. Biggs, the Court has reached the conclusion that the Biggs judgment should have priority. After the attachment was laid in this case a Motion to Quash was duly made and was overruled, which raised and settled the very question now under consideration. At that time the Union Trust Company's judgment had not been obtained and in that Motion to Quash the defendant in the attachment, Miss Mary W. F. Speers, declared that the Sheriff made a levy upon the real estate by going upon it in person, that he fixed a copy of the declaration and other papers to the front door of the house, that he made a return to the Court of his proceedings, but alleged in each instance that the act performed by the Sheriff was irregular and not according to the statute. The Plaintiff produced the Sheriff who testified that the service of process was made in this case as in that of the Kaldenberg attachment, and laid at the same time, which has not been assailed, and that the identical return was made in each case. On the 9th of November, 1922, the Attorneys for Miss Speers, prepared in open court, and filed in the Biggs' attachment case, the following agreement:- "That the attachment in this case is released as to 100 acres, but is retained as a valid attachment against the remainder of the tract of which the 100 acres was a part, to avail to the extent of the recovery, if any, by the Plaintiff, against the said Mary W. F. Speers."

It appears from the testimony that at the time, November 9th, 1922, of this agreement, the claim of the Union Trust Company, subsequent creditors, had not materialized nor had suit been brought or judgment entered in the Union Trust Company case, and any preference thus shown to Mrs. Biggs

to obtain a release of the larger part of the land upon which the attachment was ~~made~~ said was not to the injury of subsequent creditors, provided it was done for a good and bona fide consideration.

See Totten, et al, vs. Brady, et al. 54th Md., 170.

Thompson vs. Williams, 100th Md., 195

It follows from what has been said that the Court will overrule the Exceptions as to the interest charge, and the refund of one-half of $14 for tax on deed. Also as to the exceptions to the failure of the Auditor to include in the account the sum of $626 paid for the withdrawal of the advertisement and extension of time to complete the payment of the purchase money. And that the Court will sustain the Exception of Eleanora B. Biggs as to the allowance of her judgment claim, after the allowance of the judgment of the Union Trust Company, and the Auditor is hereby ordered and directed to so amend that part of the Auditor's Account making distribution of the surplus to the judgment creditors of Mary W. F. Speers as to give the said Eleanor B. Biggs' judgment priority over the judgment of The Union Trust Company of Baltimore, which is accordingly done this 12th day of November, 1926. and the Assignee is hereby directed to distribute the funds in his hands in accordance with this opinion and order of the Court.

Albert Ross, A.J.

In the Matter of the Sale	)(	No. 4742 Equity.
of the	)(	In the Circuit Court
Mortgaged Real Estate	)(	for
of	)(	
Mary W. F. Speers	)(	Anne Arundel County.

Mr. Clerk:

Filed Nov 23 1926

Please enter an appeal to the Court of Appeals of Maryland from the Order of Court filed herein under date of November 23, 1926, in the matter of the exceptions to the Auditor's Account, being an appeal from the Court's final order of said date.

Walter H. Buck

Richard Melvin

ATTORNEYS FOR UNION TRUST CO.

IN THE MATTER OF THE MORTGAGED REAL ESTATE OF MARY W. F. SPEERS.

IN THE CIRCUIT COURT for ANNE ARUNDEL COUNTY.

NO. 4742 EQUITY.

TO THE HONORABLE, THE JUDGES OF SAID COURT:-

The petition of John S. Strahorn, Solicitor, respectfully shows:

FIRST

That the above proceedings were filed by him in this court, as Solicitor for himself as Assignee of the Mortgage herein, on the 28th day of February, 1923, and since said date he has conducted the said proceedings without assistance from other Solicitor, and he believes that for the services rendered by him throughout the period intervening since said proceedings were so filed, he is entitled to receive, out of the funds herein, a reasonable counsel fee.

Filed November 26, 1926

SECOND

Your petitioner shows: That after the sale was made herein by him on the 22nd day of March, 1923, exceptions to the ratification thereof were filed by Mary W. F. Speers, and during the pendency of said exceptions, and through your petitoners efforts, alone, it was shown that the said Miss Speers was the purchaser of said property and that said exceptions filed by her were, in fact, filed in opposition to her own purchase at the sale so made by your petitioner.

THIRD

That the services rendered by your petitioner, touching said exceptions, required a great amount of professional time on your petitioners part; he having, twice, at the formal demand of Miss Speers, been compelled to go to New York City where testimony

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was to be taken by the said Miss Speers touching her said exceptions. That afterwards, said exceptions were over-ruled, and an appeal taken by said Miss Speers, and this appeal, at the request of your petitioner, was thereafter dismissed, and the property again offered for sale by your petitioner, the said Miss Speers having failed to comply with the terms of her said purchase.

FOURTH

That after the said re-sale had been advertised, the said first sale was finally consummated at the price of $13,625.00, and the purchase money fully paid, after which an audit was stated, to which the said Miss Speers, and others, filed exceptions, which exceptions were, on the 12th day of November, 1926, after the taking of voluminous testimony, and the filing of extended Brief by your petitioner, over-ruled; and, in consequence, the sum of upward of $1500.00 was saved to the creditors of Miss Speers; and your petitioner files herewith a copy of the Docket Entries in the case, showing the several and various steps herein.

Your petitioner, therefore, respectfully prays that an order be passed herein, directing the auditor of this court to re-state the audit herein and to allow him therein a reasonable counsel fee; subject, however, to all proper exceptions.

And he will ever pray, etc.

Jno. S. Strahorn

STATE OF MARYLAND,
ANNE ARUNDEL COUNTY, Sct:

I HEREBY CERTIFY, that on this 19th day of November, 1926, before me, the subscriber, a Notary Public of the said state, in and for the said county, personally appeared John S. Strahorn, the above petitioner, and made oath, in due form of law, that the matters and facts set out in the foregoing petition are true, as

therein stated, to the best of his knowledge and belief.

WITNESS my hand and Notarial Seal.

Clara M. Howard
Notary Public.

The undersigned, members of the Bar of the State of Maryland, hereby certify that we have read the foregoing petition of John S. Strahorn, and, in our opinion, the services rendered by him should be compensated out of the funds in his hands as Assignee; and we further certify that in our opinion Five hundred ——— dollars is a reasonable counsel fee to be paid the said John S. Strahorn for the said services.

Frank Driscoll
Benjamin R. Andrews
Francis Key Murray,
Webster Blades

Ordered, this _____ day of November, 1926, by the Circuit Court of Anne Arundel County, in Equity, on the foregoing petition and certificate of counsel that the auditor of this court re-state the audit in this case, and to allow therein a counsel fee of _____ dollars to John S. Strahorn; subject, however, to all proper exceptions.

In the Matter of the sale of the mortgaged Real Estate of Mary H. F. Speers

No. 4742 Equity — Appearance January Term 1923.

Docket Entries

1923 - Feb. 28 - Original Mortg. + Assignment + statement of mortgage debt filed.

1923 Feb. 28 - Bond filed and approved.

1923 March 22 - Report of John S. Strahorn assignee of sale filed + order Nisi issued thereon.

1923. March 22 - Certificate of Auctioneer filed.

1923 - March 22 - Assignees exhibits No. 1 and No. 2 filed.

1923 April 23 - Exceptions to Ratification of Sale filed.

1923 May 5 - Answers of Assignee to Exceptions filed.

1923 May 19 - Petetion and Order of Court thereon requiring exceptant to complete testimony filed. Service of copy admitted this 23rd day of May 1923" by James P. Curley. Atty for Mary H. F. Speers."

1923 June 11 Petetion of Mary H. F. Speers for extension of time to take testimony filed and order of Court extending time to Friday June 22 - 1923.

1923 June 22 Petetion for further extention of time to take testimony filed, + one exhibit filed same day.

1923 Aug. 31 Deposition of Charles H. Pulsifer, Edwd. G. Alsdorf, N. P. N. J. filed.

1923 Oct 1 - Petetion and order of Court requiring exceptant to close testimony filed. Service of Copy Petetion + order admitted 10 Oct. 1923.

1923 Oct. 30 - Testimony and Exhibits filed.

1923 December 10 - Testimony in Rebuttal + 3 Exhibits filed.

1923 Dec. 19 Petitions + Order of Court thereon

(over)

for final argument and exceptions filed.
1924 Jan. 4 - Correction of Testimony by Mary W. F. Speers Exceptant filed.
1924 Jan. 5 Motions of Assignee (Exceptee) to strike out certain testimony filed.
1924 March 5 Opinion of Court dismissing exceptions to sale and ratifying sale made by assignee on March 22, 1923 filed.
1924 March 5 final order ratification sale.
1924 March 27 Petetion of Union Trust Co. of Md. and of Arthur V. Kalenberg for allowance of Judgment according to legal priority filed and order of Court thereon.
1924 May 19 - Order for appeal filed.
1924 Sept. 30 - Petetion of Assignee to dismiss appeal filed and order of Court thereon same day filed.
1924 Oct. 9 - Copy - Petetion and order Court served on James P. Curby, atty. on the 8th October 1924 in presence of Adam L. Buck filed.
1924 Oct. 25 Answer to Petetion of John S. Stratton Assignee, filed.
1924 Oct. 28 - Affidavit of Clerk and order of Court dismissing appeal filed.
1924 Nov. 3 Petetion for Re Sale filed.
1924 Nov. 5 - Order of Court on petetion of resale filed.
1924 Nov. 7 - Received copy of the foregoing and annexed petetion and Order this 6 day of November 1924 J. H. Billacy filed.

1924 Nov. 7- Service of copy of the above petetion and order admitted November 7, 1924 James P. Curley Solicitor for Mary H. F. Speers

1924 Nov. 26- Final Order for re-sale of property filed.

1925 Jany. 10- Certificate of Mary H. F. Speers dated December 30th, 1924 filed.

1925 Jan. 24- Assignee Report of Assets filed.

1925 Jan. 28- Copy of Judgment upon attachment-

1925 Feb. 3- Claim of Arthur V. Kaldenberg filed.

1925 Feb 11- Petetion to appoint special auditor and order of Court thereon filed same day.

1925 Feb. 12 Auditors Report + account filed.

1925 Feb. 16- Order Nisi passed.

1925 Feb. 18- Exceptions of Eleanor B. Bigger to Auditors Acct. filed.

1925 Feb. 18- Petetion of Mawson Surs Inc. to allow its Judgment according to its priority filed and order of Court thereon same day.

1925 Feb. 26- Exceptions to Auditors report and account on behalf of Arthur V. Kaldenberg filed.

1925 March 5- Exceptions of Joseph H. Bilbrey to Auditors Account filed.

1925- March 17 Exceptions of Mary H. F. Speers to the Auditor's Account filed.

1925- March 24- Exceptions to Auditors Account filed

1925- March 24 Petetion of Joseph H. Bilbrey fd

1925 April 6- Petetion of Arthur Kaldenburg for payment of claim fd. + order of Court directing John S. Strahorn, Atty. to pay same with

(over)

cost + proportion of interest filed.
1925-April 11-Petition of Arthur V. Faldenburg for allowance of the face of his judgment with cost in both cases filed and order of Court thereon same day.
1925-June 24-Answer of John S. Strahorn to exceptions of Joseph H. Bilbrey filed.
1925-June 24-Answer of John S. Strahorn to exceptions of Mary H. F. Speers filed.
1925-July 2-Petetion of Charles H. Pulis for payment of principal of Mortgage filed + order of Court thereon same day.
1926 Jan. 14-Petition of Eleanor B. Briggs and Union Trust Co. to close testimony and order of Court thereon filed.
1926 Feb. 13-Testimony on Exceptions to Ratification of Auditors Account on behalf of Exceptants and Respondents.
1926 March 19-Testimony on the attachment filed.
1926 June 29-Petetion for Peremptory Order upon Exceptants for return of Testimony filed + order of Court thereon + copies delivered to be served, service of Copy admitted by R. P. Melvin, Thrson S. Gott, John S. Strahorn + Benjamin Michaelson
1926 July 20-Brief exceptions of Joseph H. Bilbrey to Auditors account filed.
1926 July 20-Brief on behalf of Respondents to exceptions to audit filed.

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IN THE MATTER OF THE SALE OF THE MORTGAGED REAL ESTATE OF MARY W. F. SPEERS,	* * * * * * * * *	No. 4742, Equity. In the Circuit Court for Anne Arundel County.

* * * * * * * * *

ORDER OF APPEAL.

Filed Dec. 14 1926

Mr. Clerk:-

Please enter an Appeal to the Court of Appeals of Maryland, on behalf of Joseph G. Bilbrey, from the Order of the Circuit Court for Anne Arundel County overruling his Exceptions to the Auditor's Account filed in this cause.

Attorney for Exceptant.

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In the Matter of the Sale of	*	No. 4742 Equity.
The Mortgaged Real Estate of	*	In the Circuit Court
Mary V. F. Speers.	*	for Anne Arundel County.

****

Mr. Clerk:

In making up the record in the above entitled case please omit the following portions of the testimony and exhibits, the same being considered unnecessary by the appellant:-

Testimony of Edward A. Strauff, questions and answers #50 to #57 inclusive to be omitted.

Testimony of John S. Strahorn. Omit from line 18, page 31 of stenographic record to line 27, page 32 inclusive of said record, and from line 17, page 33 to line 23, page 34 inclusive of said stenographic record.

Also omit the following exhibits:-

Respondents exhibit C, referred to on page 14 of stenographic record, the same being a certified copy of deed from John S. Strahorn to Joseph H. Bilbrey.

Respondents exhibit D, referred to on page 14 of stenographic record, the same being a certified copy of deed from Joseph H. Bilbrey and wife to The Atlas Realty Company.

Respondents exhibit E, referred to on page 23 of said stenographic record, the same being a blue print of one (1) acre of land referred to in the testimony.

Respondents exhibit H, referred to on page 32 of the said stenographic record, the same being an advertisement of sale.

Respondents exhibit K, referred to on page 34 of said stenographic record, the same being the mortgage referred to in this case.

Respondents exhibit L, referred to on page 34 of said record, the same being a petition asking for re-sale of the property referred to in this case.

Edw. A. Strauff
Attorney for Appellant.

Filed Dec 31 1926

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Court of Appeals of Maryland

January Term 1927

No. 30

Union Trust Company,

vs.

Eleanor B. Biggs.

Judge Parke delivered the Opinion of the Court.

Filed - May 10th 1927

On June 23rd, 1922, Eleanor B. Biggs caused to be issued out of the Circuit Court for Anne Arundel County an attachment against Mary W. F. Speers, a non-resident, on an alleged debt of three thousand, six hundred and fifty dollars ($3650.00), and the sheriff laid the attachment on the day of its issuance on certain land of the debtor, and made on that day the return of "property attached as per schedule and copy posted at Ct. House door," as appears from the docket entry in the attachment case. On the same day the short note case was docketed. Nothing was done in either case until October 9th, 1922, when separate motions were made in the attachment case by the Speers Land and Clay Works, Inc., and by the debtor to quash the attachment. The ground upon which this corporation and the debtor intervened was that the latter had conveyed to the corporation on May 31st, 1922, one hundred acres of land of the tract of one hundred and fifty-two then owned by the debtor and on which the attachment had been attempted to be levied. While these motions were filed separately, they were identical in the grounds assigned, which attacked the sufficiency of the affidavit of the cause of action of the short note case and of the description of the property scheduled, which denied the issuance of a summons for the defendant or an actual

levy having been made upon the land; and which asserted that, although the tract of land was occupied, the sheriff had falsely returned that no person was in possession. The next and final act of the parties in the attachment case was on November 9th, 1922, when it was agreed in writing by the attaching creditor and debtor that the attachment should be released as to the one hundred acres of land conveyed by the debtor to the corporate intervenor before the attachment was issued, and that the attachment "is retained as a valid attachment against the remainder of the tract of which the said one hundred acres was a part, to avail to the extent of the recovery, if any, of the plaintiff against the said Mary W. F. Speers in the case. Short note case No. 12. Appearances October Term, 1922, for trial at April Term, 1923." This agreement contained a reference to the date and place of record of the deed for one hundred acres, and was filed, with an order for a release of the one hundred acres, on November 9th, 1922.

No further action was had in the short note case until July 11th, 1923, when the suit was tried and a verdict of two thousand, five hundred and twenty-five dollars and sixty cents was rendered in favor of Eleanor B. Biggs against Mary W. F. Speers. The verdict was followed by a motion for a new trial, which was over-ruled, and judgment was extended on the verdict, on March 19th, 1924.

At the time the attachment was begun there was a mortgage lien upon the residue of the tract of land owned by Mary W. F. Speers, and, because of her default, foreclosure proceedings, under the power contained in the mortgage, were begun on February 28th, 1923, by the assignee of the mortgagee, who made sale of the property and filed his report of such sale on March 22nd, 1923, whereupon an order nisi was passed, and afterwards exceptions were filed to its ratification, but the sale was finally ratified on March 5th, 1924, and later the funds became available for distribution.

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After the beginning of the foreclosure proceedings and after the assignee of mortgagee had ~~[illegible]~~ filed his report of sale, the Union Trust Company of Maryland obtained on May 11th, 1923, a judgment by confession against Mary W. F. Speers in the Circuit Court for Anne Arundel County for the sum of eight hundred and twelve dollars, with interest and costs of suit and counsel fees of $81.20.

The Union Trust Company and then Eleanor B. Biggs filed in the mortgage foreclosure proceedings their respective petitions to be allowed their claims out of the surplus ~~[illegible]~~ funds remaining in the hands of the assignee of the mortgagee after the payment of the mortgage indebtedness, and the auditor gave preference to the judgment claim of the Union Trust Company, which left an insufficient residue to pay in full the Biggs claim. The appellee excepted to the auditor's account and the Chancellor decided that Eleanor B. Biggs was entitled to be allowed priority, and from this decree the Union Trust Company has appealed.

1. With the filing of his bond, the assignee of mortgagee assumed the discharge of the trust created by the power of sale contained in the mortgage and, although the jurisdiction of equity did not become complete until the subsequent filing of his report of sale, yet the sale of the mortgage premises under the power of sale in the mortgage deed virtually foreclosed the mortgage and divested all rights of redemption which had remained in the mortgagor until the sale. Warehime vs. Carroll County Bldg. Assn., 44 Md. 512, 519; Berry vs. Skinner, 30 Md. 567, 572-574; Miller's Equity, secs. 463, 466; Albert vs. Hamilton, 76 Md. 304, 307. After the foreclosure sale the purchaser had the equitable interest in the land commensurate with that conveyed by the mortgage deed, and he was entitled to the legal title upon the final ratification of the sale by the Court and the ~~[illegible]~~ payment of the purchase money. The assignee, on the other hand, held the legal title in trust for the purchaser for the completion of the sale by its ratification, the satisfaction of the purchase price and the delivery

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of the deed, subject to the right to enforce the payment of any of the purchase money by a re-sale at the risk of the buyer. So, the whole beneficial ownership or estate of both the assignee and the mortgager had passed from the land into the obligation of the purchaser to pay. In short, after the sale, equity regarded the property in the land as in the buyer, and the property or the price as in the assignee and mortgagor. It is true that the sale is incomplete until ratified by the Court, and that the purchaser's title is an inchoate and equitable one from the day of sale until the final ratification, which, however, retroacts so that the purchaser is regarded by relation as the equitable owner from the time of the sale, and entitled to all the intermediate rents and profits of the estate. Although he thus becomes the substantial owner from the time of the sale and the property is at his gain if it appreciate and at his risk in case of loss by fire or through detreciation, yet, notwithstanding the purchase money be paid, the legal title of the purchaser does not vest until the deed to him is delivered, but upon its delivery, this deed is not effective merely from the day of its execution, but vests the property in the purchaser from the day of sale. It follows that after the day of sale, the mortgagor's equity of redemption generally ceases to exist as an interest in land. The day of sale, therefore, marked the close of the period in which any creditor could acquire a lien upon the mortgagor's interest in the mortgaged land or equity of redemption by simply obtaining a judgment against the mortgagor, since a judgment lien upon real estate or an equitable interest in land, only exists because it gives the judgment creditor the right to make his debt out of the land or equitable interest in land of the judgment debtor with the correlative liability of such property of the debtor to be sold by way of execution for that purpose. The real and not the apparent rights of the judgment debtor in the property measures the rights of the judgment

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creditor. Davidson vs. Myers, 24 Md. 538, 555, 556; Poe's Practice (Tiffany Ed.), secs. 374, 375, 666; Miller's Equity, secs. 453, 454, 463, 466, 498, 510, 512, 513; 1 Pomeroy's Equity Jurisprudence, secs. 368, 372; Hampson vs. Edelen, 1 H. & J., 64, 66, and notes in Brantly edition; Jordan vs, Reynolds, 105 Md. 288, 294; Sweet vs. Jaococks, 6 Paige Ch. (N.Y.), 355, 362; 2 Freeman on Judgments (5th Ed.), sec. 963 p. 2022; Gregory vs. Chapman, 119 Md. 495, 503; Compare Werner vs. Clark, 108 Md. 627.

What has been said in the course of this opinion is not in conflict with the recognized right of a judgment creditor, who secures his judgment at any time after a sale of the mortgaged property and before a distribution of the funds, to acquire by attachment a lien whatever residue of trust funds may remain belonging to the mortgagor after the payment of the mortgage debt and all prior claims. The appellant, in this case, did not resort to an attachment, and, as his judgment was obtained after the mortgaged property was sold at a sale later duly ratified by the Court, and, therefore, at a time when the mortgagor's equitable estate had been determined, the appellant acquired no lien by his judgment on the mortgagor's interest in the obligation of the purchaser to pay the purchase price, which was not a right or estate in land but a chose in action. Western Bank vs. Union Bank, 91 Md. 613. See Hebb vs. Moore, 66 Md. 167, 169; Miller's Equity, sec. 488; Hodge & McLane on Attachments, sec. 163; Bennett on Lis Pensens, sec. 189, 188; 1 Daniell's Ch. Pl. & Pr. (6th Am. Ed.), 280, 281.

It is a necessary consequence of the rules discussed that the appellant had neither any legal or equitable lien entitling it to priority in the surplus funds.

2. Through the issue and laying of her attachment Eleanor B. Biggs, the appellee, acquired an inchoate lien upon the equity of redemption of Mary W. F. Speers, a non-resident, in a tract of land which she had mortgaged. The object of the attachment was to induce the appearance in the short note case of the debtor,

by the seizure of her property and to secure payment of the ~~hm~~ debt by acquiring a specific lien on the particular equitable estate attached. Philbin vs. Thurn, 103 Md. 342, 351; Tonn vs. Linders, 116 Md. 52, 54. This lien continues and binds the property attached, and abides the issue of the short note case, unless the debtor appear and give other and better security than the property affords by furnishing a good and sufficient bond, with sureties. If such a bond be not given, the inchoate lien of the attachment is perfected by a judgment of condemnation, which is not for the delivery of the particular property seized to the creditor, but which, in the case of land or an equitable interest or estate in land, is a judgment in rem whereby the land ~~hy~~ or equitable interest or estate in land is rendered liable to execution and sale of the extent necessary for the discharge of the attaching creditor's debt. Compare Western Bank vs. Union Bank, 91 Md. 613, 625, and Rhodes vs. Amsinck, 38 Md. 345; De Bearn vs. Winans, 115 Md. 139, 148, and Martin vs. Grafflin, 68 Md. 545; Early vs. Dorsett, 145 Md. 462, 468. Here the debtor appeared in both the attachment and the short note case. She and a corporation to which she had conveyed one hundred acres of the tract of land attached before the laying of the attachment, moved that the attachment be quashed for reasons which have been stated. Whatever the substance of the several grounds upon which their motions were based, the statute permitted amendments to be made in the affidavit, short note, declaration, voucher, pleadings, interrogatories, and all other papers in the attachment proceedings, and the parties waived any defects by the written agreement which was filed in the attachment case on November 9th, 1922. Code, Art. 9,; DeBearn vs. De Bearn, 119 Md. 418, 429, 430; DeBearn vs. Winans, 115 Md. 139, 148-150; Walter & Company vs. Bickham & Moore, 122 U. S. 320, 30 L. Ed. 1185-1186.

The body of the agreement, which was signed by the respective attorneys of the litigants was of this form: "It is agreed this 9th of November, 1922, that the attachment in this case (No. 130

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Trials, October Term 1922) is released as to the one hundred (100) acres of land conveyed by Mary W. F. Speers to Speers Sand and Clay Works, inc., by and of May 31, 1922, recorded in Liber W.N.W. No. 52 folio 62 etc. among the Land Records of Anne Arundel County, but is retained as a valid attachment against the remainder of the tract of which the said one hundred acres is a part, to avail to the extent of the recovery, if any, of the plaintiff against the said Mary W. F. Speers in the case - (short note case No. 12 Appearances, October Term, 1922 - for trial at April Term, 1923)."

On the day this agreement was filed, the attaching creditor entered on the trial docket in the attachment case an order releasing the specified one hundred acres from the lien and operation of the attachment, and thus performed her part of the contract.

The agreement was upon a valuable consideration, and by its terms described the remaining parcel of about fifty acres of land so as to be susceptible of identification; established that the property had been attached by the sheriff and that it was the mortgaged land of the debtor; and, while leaving its possession in the debtor, promised, in effect, that the mortgagor's specific interest in this particular parcel of land should be held or charged with a subsisting attachment lien as security for the payment of the creditor's claim in the amount thereafter to be adjudged to be due in the trial of the short note case between the creditor and debtor as the litigants. Since this agreement made the effectiveness of the lien intended to be retained dependent upon the establishment of the creditor's claim at law, it would have been premature to have taken any action in the attachment case until a trial and judgment in the short note suit. So, the attaching creditor did not proceed further in the attachment case, but prosecuted her action, and eventually obtained a judgment, in an amount less than her original demand. Compare Hodges & McLane on Attachments, sec. 50.

With the rendition of the judgment in the short note case for the attaching creditor against the debtor, the sole condition was fulfilled for the creditor to receive the benefit of her charge under this agreement upon the debtor's equity of redemption in the mortgaged land, but the equity of redemption had been ended by the foreclosure sale before the appellee's judgment had been ontained. Further, the appellee had relied upon the agreement and neither had sought nor obtained a judgment of condemnation, which would have had merely the effect of adjudicating the property originally attached as that of the debtor and applicable to the satisfaction of the claim of the attaching creditor, and this legal result of a judgment of condemnation is precisely the effect intended to be accomplished by the agreement in the present case. West vs. Wood Company, 140 Md. 514, 521. But this agreement did not authorize the entry of a judgment of condemnation, and it was informal and insufficient at law as a pledge, mortgage or assignment, so no property right in the equity of redemption was acquired at law by the agreement, but it can not be doubted that it was the express object of the contracting parties for the remaining land to be subject to an effective charge or lein which would secure to the creditor the payment of any judgment she might recover on account of the cause of action on which the attachment had been issued, and that this charge or lien was designed to be something in addition to the personal obligation of the debtor to pay. The mortgagor has long since received and enjoyed the consideration for her undertaking, which equity will not permit her now to repudiate. It is an accepted principle of equity that where, as here, the intention to hold and charge a particular interest or estate as security for the payment of a debt or other obligation is clearly mainfested in writing, but frustrated simply through some default of form or in procedure, an equitable lien upon such interest or estate is created, which is enforceable against the property in the hands of not only the original promisor, but as against his heirs, executors, adminis-

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trators, voluntary assigns and purchasers or encumbrancers without notice. See 3 Pomeroy's Equity Jurisprudence (4th Ed.), secs. 1235@1237. Since a judgment is but a general lien and the judgment creditor not a purchaser for value its lien must yield to the superior equity of a prior specific lien. As the prior specific equitable lien in the pending appeal was designed to retain and appropriate the inchoate lien upon particular property of an existing attachment at law as security for the payment of a debt in an amount to be ascertained by litigation between the creditor and debtor, the nature of this equitable lien is closely annalogous to a defective mortgage lien, and, so, as in the case of an equitable mortgage lien, the specific equitable lien created by the agreement will be paramount to a subsequent judgment creditor's who became such on causes of action which existed before the creation of such equitable. Textor vs. Orr, 86 Md. 392, 396-399; Leupold vs. Weeks, 96 Md. 280, 289, 290; Dyson vs. Simmons, 48 Md. 207, 214, 221; Hampson vs. Edelen, 2 H & J 64, 166; Moale vs. Buchanan, 11 C. & J. 314, 326 Knell vs. Building Assn., 34 Md. 67; Carson vs. Phelps, 40 Md. 73, 99; McMechen vs. Maggs, 4 H. & J. 132; Hartsock vs. Russell, 52 Md. 619, 625; Glenn-Morris Co. vs. McColgan, 100 Md. 479; Praeger vs. Implement Co., 122 Md. 303, 308; Cramer vs. Roderick, 128 Md. 422, 428, 429; Getz vs. Johnson, 143 Md. 542, 549; Kretzer vs. Lorshbaugh 117 Md. 562, 568; Economy Sav. Bank vs. Gordon, 90 Md. 486, 505; Goldsborough vs. Tinsley, 138 Md. 411, 419; Hoffman vs. Gosnell, 75 Md. 577, 592.

The equitable lien of the appellee in the equity of redemption was subject to the outstanding mortgage but followed and attached to the fund into which the equitable interest had passed by foreclosure. The mortgagor could not prevent this fund from being applied to the payment of the claim of the appellee and the appellant is in no better position, since when, on November 9th, 1922, the appellee and the mortgagor entered into the agreement in question, the appellant was a subsisting creditor of the

mortgagor, because its later judgment claim was obtained on an unpaid note which was issued by the mortgagor as maker on October 2nd, 1922. The appellant, therefore, ahd neither lien nor equity superior to the specific equitable lien on the appellee and as this is the simple question brought up on appeal the decree of the Chancellor will be affirmed.

Decree affirmed with costs, and

cause remanded.

Filed April 8th, 1927.

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COURT OF APPEALS OF MARYLAND

JANUARY Term 1927

LIBER 18 PAGE 162

Union Trust Company.

vs.

Eleanor B. Biggs.

Appeal from the Circuit Court for Anne Arundel County. Filed December 31st, 1926.

1927 April 8th. Decree affirmed with costs, and cause remanded.

Opinion filed. Op. Parke, J.

To be reported.

1927 April 27th. Decree filed.

1927 May 3rd. Motion for re-argument filed.

1927 May 6th. Motion for re-argument overruled.

Appellant's Cost in the Court of Appeals of Maryland,

Record	$ 70.00	
Brief		
Appearance Fee . .	10.00	
Clerk	1.35	$ 81.35

Appellee's Cost in the Court of Appeals of Maryland,

Brief	$ 8.00	
Appearance Fee . .	10.00	
Clerk	6.40	$ 24.40

STATE OF MARYLAND, Sct:

I, James A. Young, Clerk of the Court of Appeals of Maryland, do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this ninth *day of* May *A. D., 1927.*

COURT OF APPEALS MARYLAND

James A. Young *Clerk of the Court of Appeals of Maryland.*

Union Trust Company

vs.

Eleanor B. Biggs.

In the Court of Appeals of Maryland.

January Term, 1927. No. 30

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THE APPEAL in this case standing ready for hearing, was argued by Counsel for the respective parties, and the proceedings have since been considered by the Court.

It is thereupon this 26th day of April, 1927, by the Court of Appeals of Maryland, and by the authority thereof, adjudged, ordered and decreed that the decree dated November 13th. 1926, of the Circuit Court for Anne Arundel County, be and the same is hereby affirmed with costs, and cause remanded.

Carroll T. Bond

T. Scott Offutt

W. Mitchell Digges

F. Neal Parke

D. Lindley Sloan

Filed April 27th, 1927.

IN THE MATTER OF THE MORTGAGED REAL ESTATE OF MARY W. F. SPEERS;	*	In the Circuit Court for Anne Arundel County,
	*	In Equity, No. 4742.

* * * * * * * * * *

PETITION.

TO THE HONORABLE, THE JUDGE OF THE SAID COURT:-

The Petition of Joseph H. Bilbrey, respectfully shows unto Your Honor:-

1. That on or about the 12th day of Feb., 1924 an Auditor's Account was filed herein distributing certain proceeds of the sale of the property in these proceedings described.

2. That on or about the 5th day of March, 1924, Your Petitioner did file herein his Exceptions to the ratification of the said Auditor's Account, alleging in the said Exceptions that the Attorney conducting the said sale had failed to charge himself with the sum of $640.00 collected by him in addition to the amount of the sale and interest thereon, which said sum of $640.00 this Petitioner did, in the said Exceptions, contend should be accounted for by the said Attorney conducting the said sale, and which said sum he did further contend should have been allowed to him in the said Account.

Filed Aug 9th 1927

3. That on or about the 12th day of November, 1926, this Honorable Court did overrule the said Exceptions filed herein on behalf of Your Petitioner.

4. That on or about the 14th day of December, 1926, Your Petitioner did file herein an Order of Appeal to the Court of Appeals of Maryland, from the said Order of this Honorable Court overruling his Exceptions as aforesaid.

5. That on or about the 9th day of July, 1927, the Court of Appeals of Maryland did hand down an opinion, delivered by the Honorable Carroll T. Bond, Chief Judge of the said Court, reversing the Order of this Honorable Court overruling the said Exceptions and remanding the case for further proceedings in accordance with the said opinion.

6. That in the said Opinion the said Court of Appeals did decide that the said attorney conducting the said sale had no power to charge the said sum of $640.00 collected by him from Your Petitioner and that the said attorney would be required to refund the same, and the said Court of Appeals did further award to Your Petitioner the costs of the said appeal.

7. That Your Petitioner is advised that the proper proceedure in this case is for this Honorable Court to require the said attorney conducting the said sale, John S. Strahorn, Esq., to file herein a new account, charging himself therein with the said sum of $640.00 so collected by him in addition to the said purchase price of the said property and interest thereon, and that the Auditor be instructed to allow to Your Petitioner in the said account the sum of $640.00, with interest from December 30, 1924, together with the costs of the said appeal

due to Your Petitioner, amounting to $195.25.

3.

WHEREFORE Your Petitioner prays Your Honor to pass an Order requiring the said John S. Strahorn, Esquire to file herein a new Auditor's account, charging himself therein, in addition to the sum of $14,982.18, set forth in the first account filed herein, with the sum of $640.00 received from Your Petitioner, and directing the Auditor herein to award to Your Petitioner in the said account the said sum of $640.00, together with interest thereon from December 30, 1924, and the costs of the said appeal due to Your Petitioner amounting to $195.25,

And as in duty bound, etc.,

Edward Strauff
Attorney for Petitioner.

STATE OF MARYLAND,
CITY OF BALTIMORE, ss:-

I HEREBY CERTIFY that on this 6th day of August, 1927, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City, aforesaid, personally appeared Edward A. Strauff, Attorney for Joseph H. Bilbrey and made oath in due form of law that the matters and facts contained in the aforegoing Petition are true to the best of his knowledge and belief,

WITNESS my hand and Notarial seal.

Notary Public.

ORDER.

Upon the foregoing Petition and affidavit, it is this day of August, 1927, by the Circuit Court of Anne Arundel County, Ordered:

1. That John S. Strahorn, Esquire, be and he is hereby ordered to file in this Court a new account, charging himself therein, in addition to the sum of $14,982.18, with the sum of $640.00 collected by him from Joseph H. Bilbrey,

2. That the Auditor be and he is hereby instructed to allow to the said Joseph H. Bilbrey in the said account the sum of $640.00 with interest thereon from December 30, 1924,

3. That the said Auditor be and he is further instructed to allow to the said Joseph H. Bilbrey in the said account the sum of $195.25 for his costs in the Court of Appeals.

IN THE MATTER OF THE MORTGAGED REAL ESTATE OF MARY W. F. SPEERS.

IN THE CIRCUIT COURT for ANNE ARUNDEL COUNTY.

NO. 4742 EQUITY.

TO THE HONORABLE, THE JUDGES OF SAID COURT:-

The petition of John S. Strahorn, Solicitor, respectfully shows:

FIRST

That exceptions were filed to the audit filed herein on the 12th day of February, 1925, and voluminous testimony taken thereunder, and, after this Court had overruled said exceptions, an appeal was taken to the Court of Appeals, in all of which proceedings your petitioner was sole solicitor for the assignee.

Filed Aug. 9th 1927.

SECOND

That one of the reasons for said exceptions, was the collection by your petitioner, as assignee herein, of the sum of $1, 357.18 interest accrued on the deferred payment since the day of sale, which said sum has now grown, by interest additions thereto, to the sum of $1,497.41.

THIRD

That the collection of this accrued interest by your petitioner was sustained by the Court of Appeals in an opinion filed on the 9th day of July, 1927, for the reason, as in said opinion shown, and for that reason only, that all of said interest so collected had been properly audited to the creditors of the mortgagor, Mary W. F. Speers, and that none of it would or should go into the hands of said mortgagor.

FOURTH

That your petitioner alone fought said exceptions, both in this Court and in the Court of Appeals, and he is advised that for this extraordinary service so rendered by him on behalf of the creditors of said mortgagor, he is entitled to be paid, out of the said fund now in his hands due said creditors, a reasonable counsel fee.

Your petitioner, therefore, respectfully prays that an order be passed herein, directing the special auditor of this court, in re-stating the audit herein, to allow him therein a reasonable counsel fee; subject, however, to all proper exceptions.

And he will ever pray, etc.

John S. Strahorn

Solicitor

STATE OF MARYLAND,

ANNE ARUNDEL COUNTY, Sct:

I HEREBY CERTIFY, that on this 4th day of August, 1927, before me, the subscriber, a ~~Clerk of the Circuit Court~~ Notary Public in and for Anne Arundel County, personally appeared John S. Strahorn, the above petitioner, and made oath, in due form of law, that the matters and facts set out in the foregoing petition are true, as therein stated, to the best of his knowledge and belief.

WITNESS my hand and Notarial Seal.

Eleanore Lowe Pyle

Notary Public

The undersigned, members of the Bar of the State of Maryland, hereby certify that we have read the foregoing petition of John S. Strahorn, and, in our opinion, the services rendered

by him as set out in the said petition, should be compensated out of the funds in his hands as Assignee; now due the creditors of Mary W. F. Speers, mortgagor, and we further certify that in our opinion three hundred and fifty dollars is a reasonable counsel fee to be paid the said John S. Strahorn for the said services.

Wilson G. Getty

Bruno R. Andrews

George D. Tullman

Ordered, this 11th day of August, 1927, by the Circuit Court of Anne Arundel County, in Equity, on the foregoing petition and certificate of counsel that the special auditor of this court in re-stating the audit in this case, allow therein a counsel fee of Two Hundred and fifty dollars to John S. Strahorn; subject, however, to all proper exceptions.

Robert Moss, A.J.

Filed Aug 11th 1927

Court of Appeals of Maryland

April Term, 1927

No. 27

Joseph H. Bilbrey,

vs.

John S. Strahorn, assignee of the Mortgaged Real Estate of Mary W. F. Spears.

Filed - Aug. 10, 1927.

Chief Judge Bond delivered the Opinion of the Court.

The appellant is the purchaser of record of mortgaged property at a foreclosure sale made by an assignee of the mortgage for foreclosure under a power contained in it; and he has excepted to the ratification of the auditor's account of distribution of the purchase money because, as he contends, he was improperly required to pay the assignee certain additional amounts in order to obtain a postponement of a resale which had been ordered and advertised, and a repayment of those amounts should be required in this proceeding and should be shown in this account. The trial court overruled the exceptions, and the appeal is from that action.

The mortgage was made by a Miss Mary W. F. Spears, on property in Anne Arundel County, and according to the finding of the court at a previous stage of the proceedings, on her exceptions to the sale, and a statement by the appellant in a letter in the present record, it was bought in for her by him. Testimony on

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his behalf shows that, shortly before the time fixed for the resale, the purchaser's rights were transferred to a corporation, the Atlas Realty Company; but its name was not substituted in the report of sale.

The purchase price at the original sale was $13,625; and Miss Speers excepted to the ratification of the sale, her exceptions were overruled, and she appealed to this court but the appeal was dismissed without hearing. The purchaser was unable to pay the money to complete the purchase, and later, upon petition of the assignee to the court, a resale was ordered and was advertised for December 30th, 1924. Shortly before that date, attorneys applied to the assignee for a substitution of the Atlas Realty Company as purchaser, and for a postponement of the resale to give them a further opportunity to complete the first sale. The name of the corporation was not substituted, but arrangements for a postponement of the resale went forward, and the assignee furnished the attorneys a statement of certain expenses incurred, and of demands for payments for services in connection with the proceedings, and it was arranged, subject to the confirmation of the mortgagee, that upon a total payment of $5000 the resale should be postponed. The mortgagee agreed to the postponement upon condition that interest be paid on the purchase price during the delay caused by Miss Speers' exceptions. Appellant's counsel reached the place of sale with the $5000 only a few minutes before the time fixed for resale, and after some discussion paid the money and took two receipts for it; and the resale was postponed for eleven days. One receipt acknowledged payment of the total of $626, made up of auctioner's fees and advertising expenses for the resale, and amounts for expenses on the first sale, and amounts for the assignee and attorney, Mr. Strahorn, of $169.50 for one-half of commissions on the second sale, $250 as fee for services in the litigation on Miss Speers' exceptions, and for services in connection with the resale, $50, or one-half of the fee specified in the mortgage. The second receipt was for $4374, or the remainder of the sum of $5000 paid, on account of purchase price and interest. The appellant's

testimony is that his attorneys agreed to pay the items amounting to $626 and the interest under protest, and under duress because of their need of the postponement of the sale which was obtainable only on making those payments. The testimony for the appellee denies that there was any protest or disagreement. There was no provision in the mortgage for the payment of expenses on a sale which was advertised but not completed, and this fact, the appellee says, moved him to seek to cover some of the items, at least, by agreement before stopping the resale. The appellant later paid the remainder of the full purchase price and interest, as demanded, that is, paid the full purchase price over and above the interest and $626 demanded, and also paid a final extra amount of $14 for stamps which he contends was likewise paid under protest; and the first sale was completed. It is to the account distributing that full purchase price and interest that the exceptions are now filed.

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The exceptant also filed a petition separately praying for an order for a refund of the amounts claimed, but no action appears to have been taken on the petition, the only order passed having been that overruling the exceptions, and the present appeal being solely from the overruling of exceptions to the auditor's account.

The trial court concluded that as the account was one for the distribution of purchase money only, and the purchaser was not concerned in that distribution and made no objection to it, except in so far as he objected to the charge of interest distributed, he could not have such relief as he prayed, by way of exceptions to that account. Whether his claim for a refund of amounts collected other than interest was well founded the trial court did not decide. The majority of this court have come to the conclusion that the appellant had a well-founded claim for these amounts, and that a refunding should have been ordered and an account of it stated in combination with the account of the distribution of the purchase money. Judge Adkins and the writer of the opinion for the court have not shared in the conclusion.

In the opinion of the majority of the judges two

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principles which lead to this conclusion have been overlooked. The first sale had been duly reported to the Circuit Court for ratification and for distribution of the proceeds, under section 9, of Article 66 of the Code, and it is provided by that statute that after a report of a foreclosure sale under a power "there shall be the same proceedings on such report as if the same were made by a trustee under a decree of said court". And this court in Patapsco Guano Co. v. Elder, 53 Md. 463, said "The object of this provision of the Code was to confer upon courts the same jurisdiction, and to direct that the same proceedings should be had in sales made under a power in a mortgage, as if such sales had been made under a decree of the court". Beetem v. Garrison, 129 Md. 664, 672. The court is of opinion that, under this provision, all proceedings after the report of sale are proceedings by and under the authority of the court, so that in a resale the court becomes the vendor and the assignee ordered to make the resale becomes the agent or trustee of the court executing its orders. And in this connection, it is pointed out that section 239 of Article 16 of the Code, under which the court understands the resale to have been prayed for and ordered at the risk of the first purchaser, provides that the court "may direct the property purchased to be resold, at the risk of such purchaser, upon such terms as the court may direct." This latter section refers in words, only to sales by trustees appointed by the court in the first instance, but it has been held to apply to sales under powers as well. Middendorf v. Baltimore Refrigerating Co., 117 Md. 17, 24. The petition and order for the resale in this case have not been included in the record prepared for the appeal, but from references made to that part of the proceedings it appears that the assignee invoked the authority given to the court by that Section to order a resale at the risk of the purchaser at the first sale, and to order that purchaser to pay any deficiency in the amount brought if the second purchase price should be below the first.

A trustee or agent selling for the court as vendor, has no power to exact consideration for postponement of the sale, and he

would not be entitled to hold any consideration paid for it. Ward v. Hollins, 14 Md. 158, 166. And see Ex parte James, L. R. 9 Ch. 609. In re Thellusson, (1919) 2 K. B. 735. And from the view that in proceeding with the resale ordered in this instance, tha appellee was acting as such a trustee or agent of the court, it is concluded that he had no power to charge the amounts collected from the appellant, and is obliged to refund them.

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As to the interest payment exacted, the purchaser is regularly required to pay interest on deferred payments when the sale is upon credit, and this case seems to come within no proper exception to that rule. The appellant refers to the exception made when a mortgagor has continued to hold the property after the sale and thus keep the purchaser out. The mortgagor in such a case is not permitted to receive the interest on the purchase money as well as to enjoy possession of the property bought. "If the sale, instead of being for cash, had been on credit, and the defendant had refused to give the purchaser possession, until coerced by the authority of the court, it is supposed to be very clear that the purchaser could not be made to pay interest for the time he was deprived of the possession, for the benefit of the defendant. No opinion is expressed with regard to the obligations of the purchaser, under such circumstances, to pay interest so far as creditors are concerned, but if the principle proceeds of sale should be sufficient for their payment, the defendant refusing to surrender the possession of the property, would never be allowed to claim interest as against the purchaser." Barnum v. Raborg, 2 Md. Ch. 515, 533; Miller, Equity, sec. 514. But here the property was bought by the reported purchaser for the benefit of the mortgagor in possession so that there is no question of depriving the purchaser of possession; and, furthermore, all of the interest exacted is, under the account, to be paid to lien creditors, and there is no question of giving the mortgagor the interest for the time she was in possession. The exception to the rule does not include this case and interest was properly added to the purchase money.

The appellee has filed a motion to dismiss the appeal because of the appellant's failure to file an appeal bond with an affidavit that the appeal is not taken for delay, under sections 57 and 58 of Article 5 of the Code P. G. L., and because of lack of interest in the appellant in the auditor's account, and lack of finalty in the order overruling the exceptions. To this it is sufficient to say that the statute does not require the filing of the bond and affidavit as essentials to an appeal, (Humphreys v. Slemons, 78 Md. 606, 608), the appellant, as the purchaser who made the payments complained of is [redacted] decidedly interested in the demand he makes for a refund, even though he is found to have no right to the remedy pursued; and his exceptions were finally overruled.

Motion to dismiss appeal overruled, and order reversed and case remanded for further proceedings in accordance with this opinion, with costs to the appellant.

Filed, July 9th, 1927.

Adkins, J. Dissents.

Joseph H. Bilbrey	(	In the Court of Appeals of
vs.	)	Maryland
John S, Strahorn, assignee	(	No. 27, April Term, 1927

LIBER 78 PAGE 175

The Appeal in this case standing ready for hearing, was argued by Counsel for the respective parties and the proceedings have since been considered by the Court.

It is thereupon this 9th day of July, 1927, by the Court of Appeals of Maryland, and by the authority thereof, adjudged, ordered and decreed that the motion to dismiss appeal be overruled, and that the order dated November 12, 1926, of the Circuit Court for Anne Arundel County, be reversed and case remanded for further proceedings in accordance with the opinion, with costs to the appellant.

Carroll T. Bond
Hammond Urner
Wm. H. Adkins
W. Mitchell Digges
F. Neal Parke
D. Lindley Sloan.

Filed July 9th, 1927.

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COURT OF APPEALS OF MARYLAND

April Term 1927

Joseph G. Bilbrey

vs.

John S. Strahorn, assignee of the Mortgaged Real Estate of Mary W. F. Speers.

Appeal from the Circuit Court for Anne Arundel County. Filed March 19th, 1927

July 9th, 1927, Motion to dismiss appeal overruled, and order reversed and case remanded for further proceedings in accordance with this opinion, with costs to the appellant.

Opinion filed., Op. - Bond, C. J.
To be reported.
July 9th, 1927, Decree filed.

Appellant's Cost in the Court of Appeals of Maryland,

Record	$ 150.00	
Brief	16.50	
Appearance Fee . .	10.00	
Clerk	5.15	$181.65

Appellee's Cost in the Court of Appeals of Maryland,

Brief	$		
Appearance Fee . .	10.00		
Clerk	.80	10.80	$192.45

STATE OF MARYLAND, Sct:

I, James A. Young, Clerk of the Court of Appeals of Maryland, do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this ninth *day of* August *A. D., 192* 7

James A. Young *Clerk of the Court of Appeals of Maryland.*

In the Matter of the
Mortgaged Real Estate of
Mary W. F. Speers,

No. 4742 Equity.

Information for Auditor.

Filed Sept. 15th 1927.

1925 Jan. 8.	Cash in hand, as per statement of assets, filed January 24, 1925,		$14,982.18
	Interest received on Bank balances since January 8, 1925,		618.36
	Cash due Bilbrey, as per Mandate Court of Appeals,		626.00
			$16,226.44

Jno. S. Strahorn
Assignee.

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Office of the
Evening Capital
OLDEST DAILY IN ANNAPOLIS

Published by
THE CAPITAL PUBLISHING CO.

O. & P. Telephone No. 00

LIBER 78 PAGE 178

Annapolis, Md., April 16th, 1923

PUBLISHER'S CERTIFICATE

We hereby certify, That the annexed advertisement Order Nisi in the matter of the sale of the Mortgaged Real Estate of Mary W. F. Speers No. 4742 Equity In the Circuit Court for Anne Arundel County was published in the *"EVENING CAPITAL,"* a daily newspaper published and printed in the City of Annapolis, Anne Arundel County, Maryland, once a week for 3 successive weeks before the 24th day of April 1923 the first insertion appearing on the 23rd day of March, 1923

THE CAPITAL PUBLISHING COMPANY

By Burleigh C. Tooke,
Business Mgr.

Filed Sept. 15, 1927

ORDER NISI

In the Matter of the Sale of the Mortgaged Real Estate of Mary W. F. Speers.

No. 4742 Equity.
In the Circuit Court for Anne Arundel Co.

Ordered, this 22nd day of March, 1923, that the sale of the property, made and reported by John S. Strahorn, Assignee, be ratified and confirmed, unless cause to the contrary thereof be shown on or before the

24th DAY OF APRIL, NEXT;

Provided a copy of this order be inserted in some newspaper published in Anne Arundel county, once in each of three successive weeks before the 24th day of April, next.

The report states the amount of sales to be $13,025.00.

WM. N. WOODWARD, Clerk.

True Copy, Test:
WM. N. WOODWARD, Clerk.

IN THE MATTER OF THE SALE
OF THE MORTGAGED REAL ESTATE
OF MARY W. F. SPEERS.

No. 4742 Equity.
In the Circuit Court for
Anne Arundel County.

To the Honorable, the Judges of Said Court.

The petition of John S. Strahorn, Assignee, respectfully shows:

THAT the opinion filed herein on the 5th day of March, 1924, dismissing the exceptions filed by Mary W. F. Speers to the ratification of the sale made herein by him on March 22nd, 1923, has been extracted from these proceedings and is missing. That the Court Stenographer has supplied to your petitioner the attached carbon original, made simultaneously with said missing opinion, and your petitioner prays the Court to sign and file this carbon duplicate, in lieu of said lost paper.

Filed Sept 15, 1927

AND he will ever pray, etc.

John S. Strahorn
Solicitor for Assignee

State of Maryland,
Anne Arundel County, Sct.

I hereby certify that on this 15th day of September, 1927, before me the subscriber, Clerk of the Circuit Court for Anne Arundel County, personally appeared Juliet D. Strahorn, Court Stenographer in and for Anne Arundel County, and made oath in due form of law, that the carban copy of the opinion of this Court, as mentioned in the above petition and hereto attached was made by her at the time specified in said petition, and is a duplicate original of said opinion.

Frank S. Revell
Clerk.

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IN THE MATTER OF THE SALE OF THE MORTGAGED REAL ESTATE OF MARY W. F. SPEERS.

No. 4742 Equity. In the Circuit Court for Anne Arundel County.

OPINION of COURT.

(Judge Moss.)

In this case Exceptions have been filed to the ratification of a sale made of the property involved in these proceedings, by John S. Strahorn, Assignee, on Thursday, March 22nd, 1923, by Mary W. F. Speers.

Exceptions to this sale are in these words:-

"Mary W. F. Speers, the mortgagor in these proceedings mentioned, excepts to the ratification of the sale made and reported in these proceedings for the following reasons:- That the whole amount secured by said mortgage was paid before said sale, and for other reasons to be shown at or before the hearing of these exceptions."

To these Exceptions the Assignee foreclosing the mortgage, made Answer in which he denied that the whole mortgage debt had been paid, and alleged that there was due at the time of the foreclosure Nine Thousand Dollars with interest from the 15th day of August, 1922.

A large amount of testimony has been taken in the case, and numerous Exhibits and copies of letters, all of which has been

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read and considered by the Court.

It appears from all the facts in the case that Mrs. Margaretta B. Speers was, in the year 1912, seized and possessed of a tract of land in the Third Election District of Anne Arundel County, on the Severn River, on which there was, at that time, two mortgages; and in 1915, Dr. Howard A. Kelley loaned to Mrs. Margaretta B. Speers, at the request of her daughter, the Exceptant, in this case, the sum of Fifteen Hundred Dollars, secured by a third mortgage on this farm; and that later, upon the foreclosure of the first and second mortgages, to protect his interest in the property, he became the purchaser of the whole property, which was duly conveyed to him. That from the time he became the purchaser of this property, until the day she actually became the purchaser of the same, the Exceptant, Mary W. F. Speers, sought to obtain title to the same, and her many endeavors were finally successful when, on the 8th day of December in the year 1919, the property was sold and conveyed to her for the sum of Thirty Thousand Dollars, and on the same day, Miss Mary W. F. Speers mortgaged the property to Dr. Howard A. Kelley for the sum of Twenty nine Thousand dollars, which, by the testimony in the case, was in payment of that much of the purchase money, One Thousand Dollars which she had before this paid to secure an option upon the same, being allowed as the only payment of cash on this Thirty Thousand Dollar purchase of land.

There was inserted in this mortgage, which is filed in the case, a clause by which the mortgagee agreed to release a part of this property from the operation of the mortgage, as follows:- "A part of the mortgaged property containing one hundred acres, more or less, forming the Southeastern portion of the whole tract, and lying next to that of the Brenan Sand Company, to be released, upon the payment of Twenty Thousand Dollars of the mortgage debt, with interest to date of such payment".

On the 24th day of August, 1922, in pursuance of this agreement, Dr. Howard A. Kelley released, in consideration of Twenty Thousand Dollars principal, and Three Thousand Eight Hundred and forty-two Dollars and fifty cents interest, by his Deed of Release, one hundred acres of this land from the operation of this mortgage, a copy of which Release was filed in the papers marked "Examiner's Exhibit B".

It would thus appear that a balance of Nine Thousand Dollars, with accumulated interest up to the day of sale, was due upon this mortgage, at the time of sale, as there is no contention of any other payment.

On the 7th day of February, 1923, Dr. Kelley, by his Deed of Assignment, "Examiner's Exhibit A", assigned this mortgage to Charles A. Pulis, and it was by Pulis assigned to John S. Strahorn, for the purpose of foreclosure, who advertised the same for sale at the Court House in Annapolis City for March 22nd, 1923, and on the same day sold the same to Joseph H. Bilbrey of

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Washington, D. C. at and for the sum of Thirteen Thousand Six Hundred and Twenty-five Dollars, the part of the land sold at that time amounting to Fifty-one and three quarters acres of land, on which a deposit of One Thousand Dollars, as required by the terms of sale, was paid in cash.

In the testimony, Miss Mary W. F. Speers, on Cross Examination, admitted that she was really the purchaser of the property and that Bilbrey merely bid it in for her, at her request, but did not disclose her name, all of which is set out fully in a letter filed in this case, from Bilbrey to Miss Speers, dated March 25th, 1923, and marked "Exhibit Rebuttal B".

Copies of numerous letters from Dr. Kelley to Miss Speers relating to this transaction are filed in the case, with the evident purpose on the part of the Exceptant to show that Dr. Kelley held this property in trust for Miss Speers, and that he did not make his original loan of Fifteen Hundred Dollars, or purchase the property at the foreclosure sale of the first and second mortgages for any purpose of gain, but merely for the purpose of preserving a home for its owner, Mrs. Margaretta B. Speers and her daughters.

These letters are not, in any manner sufficient to create a trust. Mortgagees as a rule do not lend money on third mortgages upon farm property for the purpose of gain, and there is no doubt that Dr. Kelley in making this loan hoped it would

result eventually in Mrs. Speers recovering her home property, and that he was not actuated by motives of gain in any of these transactions, and through the whole matter wished the family well.

On this point, Miss Speers says, in her testimony, page 7, in answer to the third interrogatory,-"Ans. Don't deny he had the mortgage, but Dr. Kelley also took title to the property one time, and it is very material to show that Dr. Kelley held this property for the Speers, not as an investment."

It appears further from the testimony that it was really at the suggestion of Miss Mary W. F. Speers that the property was sold to her at the time she acquired it, she saying, page 12 of the testimony, "I had a large deal on hand at that time, I expected to sell the property and it was in absolute self defense to take it". Thus it will be seen that any trust, had there been testimony sufficient to create one, existing at the time of the sale of this property to Miss Speers, which was to have been, so Miss Speers says, for the benefit of the Speers' family, mother and daughters, was deliberately defeated by the Exceptant, Miss Mary W. F. Speers, to serve a purpose of her own because she had a large deal on hand at that time and expected to sell the property. And it even appears, without the consent of her mother, as far as the testimony shows, she consented to Dr. Kelley holding an acre of the water front out from the sale of the balance of the farm.

It further appears that at the time when she had found a purchaser for one hundred acres of this land at Twenty thousand dollars, that she paid this money to Dr. Kelley, together with accumulated interest, to obtain a release of the same from the operation of his mortgage. It should be borne in mind that Mrs. Margaretta B. Speers does not appear to be a party to these proceedings and has not even testified in the case.

The Court has read the testimony relating to the inadequacy of price at which this property was sold, and it is certainly not sufficient to show such a disparity from its true value as to justify the Court in setting the sale aside. It may be true that this property is valuable for clay and sand, but before a Court could form an estimate of that, it would have to know something of shipping facilities, freight rates and places where it could be sold, as all sand, if properly located for its use, is valuable, but much of it valueless owing to the great cost of getting it to a place of sale.

The Court has, therefore, reached the conclusion not to dwell further upon the facts in this case, first, because if there was any testimony sufficient to establish a trust, Miss Speers, the exceptant, having by her own act defeated the same, could hardly now be heard to deny the deed she accepted, and her Deed of Mortgage which she gave to purchase this property, when she determined she had to have it.

Second, if there was any inadequacy of price she gets the full benefit of it, as she has admitted, in her testimony, she purchased the same at the Assignee's sale.

It was held in

Lawson vs. Mullinix, 104th Md. page 156,

that, "The defendant deed could not be supported by evidence of any other consideration than that stated in the deed". And further on, at page 166, Judge Boyd, in quoting from the Chancellor, in

Sewell vs. Baxter, 2nd Md. Chancery, page 477, says:-

"The decisions in this State are conclusive to show that parol proof is inadmissible to vary the consideration stated in deeds, and, thereby, either to alter their character or to maintain them when impeached for fraud, by showing considerations different from those mentioned in them."

"Where parties have entered into a written agreement it is only reasonable to suppose that they have introduced into it every reasonable and material term and circumstance, and consequently all parol testimony of conversations made by them whether before, or at the time of completing the contract will be rejected."

Lazear vs. Bank, 52nd Md. page 78.

Funk vs. Newcomer, 10th Md., 301.

In 24th Corpus Juris, Page 1068, subject title, Estoppel against Mortgagor, it says:-

"Conforming to the general rule, a mortgagor is estopped to assert anything in derogation of the rights which the instrument purports to convey, as that he had no title at the time of executing the mortgage, that there is an outstanding title in a third person, that the estate mortgaged was other or less than an estate in fee simple, that the instrument was defectively executed, or that the instrument, although running to the mortgagee, was in fact the property of a firm to which the mortgagee belonged. And where a mortgage is given to secure the price of land, and the mortgagor remains in undisputed possession under a deed warranting his title, and no eviction is shown, and no fraud on the part of vendor, the mortgagor cannot set up an outstanding title, or breach of warranty, as a defense to foreclosure, but has his remedy at Law on the broken covenant."

Solicitor for Exceptant relied on

Ruhe vs. Ruhe, 113th Md. 595, but that case is distinguished from the case under consideration by the fact that the Plaintiff, with his earnings and savings, purchased real estate and had it conveyed to his wife for the purpose of a home in their old days, and that, thereafter, his wife attempted to dispose of the same.

There is no suggestion in this case that Dr. Kelley used Miss Speers', or her mother's money in the purchase of this property, or that there was any consideration whatever moving

him in his efforts, as far as he could, consistent with the duty to himself and family, of preserving a home for Mrs. Speers and her daughters.

It follows from the view the Court takes of the case that it is not necessary to notice the Exceptions of the Assignee to Exceptant's testimony, first, because if we consider all of Exceptant's testimony properly before the Court, it is not sufficient to establish or create a trust. Secondly, that the Exceptant is estopped from setting up such a trust.

It follows from what has been said that the Court will dismiss the Exceptions and ratify the sale, which is accordingly done this 21st day of March, 1924.

Robert Moss A.J.

IN THE MATTER OF	)	NO. 4742 EQUITY
THE SALE OF THE	(	IN THE
MORTGAGED REAL ESTATE	)	CIRCUIT COURT FOR
OF MARY F. SPEARS	(	ANNE ARUNDEL COUNTY

Filed 24th Sept 1927

To the Honorable, the Judges of said Court:-

The petitioner, Arthur V. Kaldenburg, respectfully shows:

That he was a preferred creditor holding a judgment, No. 54 Trials, April Term 1923, against the said Mary F. Spears, copy of which has heretofore been filed in this case with the petition of the plaintiff praying the Court to direct John S. Strahorn, the attorney making the sale in the case, to pay the claim of your petitioner without awaiting the result of the contest amongst other creditors, as to priority of their respective judgments and this Honorable Court passed an order directing the said John S. Strahorn to pay to your petitioner the principal of his claim and the costs of his judgment and attachment suit, allowing the interest due to your petitioner to await the further order of the Court and that accordingly your petitioner was paid the sum of one thousand fifty-two dollars and fifty-five cents ($1052.55) for the principal of his claim and the costs, as aforesaid.

That the litigation in the said case is now finally ended and the papers are about to be referred to the auditor to state a final account and there is accordingly due to your petitioner as a preferred claimant, interest on his claim from the date of his judgment, July 14th, 1923, to the date of the payment of the principal thereof, April 16th, 1925, amounting to one hundred five dollars and ten cents ($105.10), and he now prays the Court to pass an order directing the auditor to allow

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the same as a preferred claim, subject nevertheless, to all proper exceptions.

And as in duty, etc.

Solicitor for Petitioner.

ORDERED by the Circuit Court for Anne Arundel County in Equity this 24th day of September 1927, upon the aforegoing petition and in accordance with the order of this Court heretofore passed, that the claim of one hundred five dollars and ten cents ($105.10) of Arthur V. Kaldenburg for interest on his judgment, as set forth in the aforegoing petition and statement of claim accompanying the same, be allowed by the auditor as a preferred claim among judgment creditors, payable out of the surplus proceeds of the sale of the mortgaged property mentioned in these proceedings, subject, nevertheless, to all proper exceptions.

Robert D. Murphy

Filed - Sept 24, 1927

STATEMENT OF CLAIM

ARTHUR V. KALDENBURG	)	NO. 4742 EQUITY
vs.	(	IN THE CIRCUIT COURT FOR
MARY F. SPEARS	)	ANNE ARUNDEL COUNTY, MD.

- Judgment -

No. 54 Trials - April Term 1923

7/14/23 - Judgment for the Plaintiff	$1000.00
Interest from date to 4/16/25	105.10
Costs of suit	52.55
	$1157.65
4/16/25 - By cash from John S. Strahorn, Assignee, paying principal and costs	1052.55
Balance Due	$ 105.10

In the Case of

In the Matter of the Sale of the Mortgaged Real Estate of Mary W. A. Peers

vs.

IN THE

Circuit Court

FOR

Anne Arundel County.

No. 4742 Equity.

To the Honorable, the Judges of said Court:

The Auditor reports to the Court that he has examined the proceedings in the above entitled cause, and from them he has stated the within account

(Report annexed)

18 Oct 1927

Filed

All of which is respectfully submitted.

Auditor.

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Dr. In the matter of the Mortgage Real Estate of Mary W. Speers *in ac.*

	Assignee commission	516	79		
	Attorney fee named in mortgage	100	00		
	Fee allowed John S. Strahorn Atty as per order dated Aug. 11, 1927	250	00	866	79
	Court Costs, viz;				
	Plaintiff's solicitor	10	00		
	Defendants solicitor	10	00		
	Clerk of Court	52	20		
	Premiums on bon five years, 1923, 1924, 1925, 1926, 1927	110	00		
	Auditors fee, first Audit	18	00		
	Auditors fee second Audit	36	00		
	Copies filed (J.S.S. Attorney)	9	00		
	Testimony (Depositions C.H.Pulis)	25	00		
	Stenographer (J.D.S.) testimony on ratification of sale	24	70		
	Examiner (G.E.R.) same	16	00		
	Stenographer (J.D.S.) testimony on ratification of audit	12	50		
	Examiner (G.E.R.) same	8	00		
	Stenographer (J.D.S.) copy testimony for record on appeal of M.W.F.S. from order ratifying Sale	25	00		
	Copy Kelly, testimony (J.S.S.Atty.)	6	25	362	65
	Assignee expenses, viz;				
	Adv. 1st, sale in M. Gazette	28	50		
	" 2nd, " " " "	27	00		
	Hand Bills 1st sale	4	00		
	" " 2nd "	4	00		
	Order Nisis on both report of sales	10	00		
	" " " " Auditors accts	10	00		
	Auctioneer fee 1st, sale & posting bills	31	00		
	" Calling 2nd sale & " "	16	00		
	Amt. pd. Clerk (F.S.R.) by Joseph H. Bilbrey on acct of record on appeal	36	25		

In the Case of

In the Matter of the Sale of the Mentzinger Real Estate

of

Mary M. E. Spears

IN THE

Circuit Court

FOR

Anne Arundel County.

To the Honorable, the Judges of said Court:

The Auditor reports to the Court that he has examined the proceedings in the above entitled cause, and from them he has stated the within account

All of which is respectfully submitted.

George B. Roelfel
Special Auditor.

Dr. in ac.

Amt pd same by J.S.S. Atty. for same	9	00			
Amt. pd Clerk of Court Appeals (J.A.Y.) by J.H.Bilbrey on acct. of record in Court Appeals	125	00	o		
Amt. pd. Clerk of Court Appeals (J.A.Y.) by J.S.S. Atty for same purpose as above	25	00	X		
Appellants appearance fee in Ct of Appeals	10	00			
Appellees " " " " " "	10	00	o		
Clerk of Court Appeals	5	95	o		
Appellants Brief (due J.H. Bilbrey)	16	50	o		
Appellees Brief as above	22	00		390	20
Distribution, viz;					
To Charles H. Pulis, mortgagee in full for mgt. debt and interest from Aug. 15, 1922 to July 8, 1925				10727	99
Cash paid Charles H. Pulis on account of this debt as per order of Court $ 9,000					
To amount due Charles H. Pulis on account of this balance of $ 1727.99 and interest from July 8, 1925 to Oct. 8, 1927				233	28
To Joseph Bilbrey, purchaser as per mandate of the Court of Appeals	626	00	o		
To Arthur Kalenburg amt. allowed on his judgement and costs as per first audit	1052	77			
To Arthur Kalenburg interest thereon as per orde of Court dated Setp. 24, 1927	105	10			
To Mary Biggs judgement creditor	1861	66	o	14606	80
				16226	44

Smith

Cr.

	carried forward			16226	44
				16226	44

with John S. Strahorn, Assignee Cr.

By proceeds from sale of realty	14982	18		
Interest thereon	618	26		
Cash due J.H.Bilbrey as per mandate	626	00	16226	44

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ORDER NISI.

In the Matter of the Sale of the Mortgaged Real Estate of Mary M. F. Speers

VERSUS

IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

No. 4742 Equity.

ORDERED, This 18th day of October 1927, That the Report and Account of the Auditor, filed this day in the above entitled cause, 12

BE RATIFIED AND CONFIRMED, unless cause to the contrary be shown on or before the 19th day of November next; Provided a copy of this Order be inserted in some newspaper published in Anne Arundel County, once in each of three successive weeks before the 19th day of November next.

Frank S. Revell, Clerk.

Filed - 18th October 1927

In the Circuit Court for Anne Arundel County.

ORDERED BY THE COURT, this ..... day of ..... 19 , that the aforegoing Report and Account of the Auditor be and the same is hereby finally ratified and confirmed, no cause to the contrary having been shown, and that the Trustee apply the proceeds accordingly with a due proportion of interest as the same has been or may be received.

IN THE MATTER OF THE	*	
MORTGAGED REAL ESTATE	*	In the Circuit Court for Anne Arundel County,
OF	*	
MARY W. F. SPEERS,	*	
	*	In Equity. No. 4742.

* * * * * * * * * *

EXCEPTIONS OF JOSEPH H. BILBREY.

TO THE HONORABLE, THE JUDGE OF THE SAID COURT:-

Joseph H. Bilbrey respectfully excepts to the ratification of the Auditor's Account filed herein by George B. Woelfel, Esquire, Special Auditor, and for cause of such Exceptions says:

1. That by the said Auditor's Account as filed herein the sum of $626.00 is audited to this Exceptant, no interest thereon being allowed; whereas there should have been audited to him, in addition to other sums as herein set forth, the sum of $626.00 with interest thereon from December 30, 1924 to the date of the filing of the said Auditor's account.

2. That the sum of $7.50 paid by this Exceptant for the stenographic record in preparing his appeal to the Court of Appeals is not allowed to this Exceptant in the said Auditor's Account, whereas such sum should have been so audited to him.

3. That the sum of $14.00 wrongfully exacted from this Exceptant for Revenue Stamps is not allowed to this Exceptant in the said Auditor's Account, whereas such sum should have been so audited to him.

4. And for other and further reasons to be shown at the hearing.

Edw. Arnold

Attorney for Exceptant.

Filed - October 21, 1927.

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In the Matter of	(	No. 4742 Equity
The Sale of the	)	in the
Mortgaged Real Estate	(	Circuit Court for
of Mary F. Speers	)	Anne Arundel County

To the Honorable, the Judges of said Court.

The petition of Eleanor B. Biggs respectfully represents unto your Honors:

1. That your petitioner instituted her original proceeding in attachment in this Court in June, 1922, and that for the space of more than five years, she has endeavored to perfect her claim against the mortgagor, Mary W. Speers, for money and securities advanced the latter early in the year 1921, and that by the last Auditor's Account filed in this proceeding, she has been allowed a balance of $1,861.66 on account of her judgment which today would amount to at least $3,300.

2. That through no fault of her own, the litigation involving the distribution of the balance by John S. Strahorn, Esq., attorney for the mortgage assignee, has twice gone to the Court of Appeals so that today, the balance applicable to her claim as aforesaid has by such litigation been reduced from $2,693.23, as shown by the Auditor's Account in this proceeding filed to the amount of the present allowance as aforesaid.

3. That exceptions have been filed to the last Auditor's Account on behalf of Bilbrey, involving the allowance of interest on $626. ordered to be refunded by the recent decision in the Court of Appeals, and the item of a U. S. Revenue Stamp of $14., and your petitioner feels that this may easily be the beginning of further litigation and necessarily of a postponement in the payment to her in accord with the decision of the Court of Appeals in her favor .

4. That your petitioner is advised that the Court

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has heretofore directed the said John S. Strahorn, Esq. to pay the major part of the mortgage debt in this proceeding as well as the judgment and costs of Kalenburg which was an acknowledged lien upon the fund in his hands, and that upon her petition the Court will direct the said mortgagee-assignee to pay to her from the funds in his hands audited to your petitioner in accordance with recent decisions of the said Court of Appeals, the major part of the sum so audited which part cannot be materially altered or changed by any subsequent action on the part of the creditors or other litigants.

Wherefore your petitioner prays your Honors to pass an order upon this petition directing the said John S. Strahorn to pay unto her, or her solicitor, the sum of $1600. from the amount held by him for this purpose, and permitting the balance of such sum to remain in his hands, until the final ratification of the said auditor's account has been made by this Honorable Court.

And as in duty bound, etc.

David Landau
Solicitor for Eleanor B. Biggs

Filed 9th Nov. 1927

In the Matter of	)	No 4742 Equity
The Sale of the	(	in the
Mortgaged Real Estate	)	Circuit Court for
of Mary F. Speers	(	Anne Arundel County

Order this 9th day of November, 1927 upon the aforegoing petition that John S. Strahorn, Esq., mortgagee-assignee in this proceeding be, and he is hereby ordered to show cause on or before November 23rd 1927, ~~next~~, why the above petition should not be granted; provided a copy of this petition and order be served upon the said John S. Strahorn, Esq., before November 15th, 1927.

Robert F. Moss, A.J.

IN THE MATTER OF THE	*	
MORTGAGED REAL ESTATE	*	In the Circuit Court for Anne Arundel County,
OF	*	
MARY W. F. SPEERS?	*	In Equity, No. 4742.

* * * * * * * *

P E T I T I O N .

TO THE HONORABLE, THE JUDGE OF THE SAID COURT:-

The Petition of Joseph M. Bilbrey, reppectfully represents unto Your Honor:-

1. That by the Corrected Auditor's Account filed herein there is audited to him the sum of $626.00.

2. That exceptions have been filed to the ratification of the said account by Your Petitioner on the grounds that the amount so allowed was not proper, but that Your Petitioner should have been audited the said sum of $626.00 together with interest thereon from December 30, 1924 to the date of the filing of the said Auditor's Account; that Your Petitioner should have been audited the sum of $7.50 paid by him for stenographic record in preparing his appeal to the Court of Appeals of Maryland, and should also have been audited the sum of $14.00 exacted from him for Revenue stamps.

3. That no expections have been filed to the said account which could possibly reduce the amount pf $626.00 so audited to Your Petitioner.

4. That, under the ruling of the Court of Appeals of Maryland, the said sum of $626.00 was unlawfully and wrongfully exacted from Your Petitioner, and that it is manifestly unfair and improper that Your Petitioner should be deprived of the use of the said sum pending the final disposition of his exceptions.

5. That Your Petitioner has been advised that he may obtain an Order from this Honorable Court requiring John S. Strahorn, Esquire, the attorney in whose hands the funds in this matter are being held, to pay unto Edward A. Strauff, as his attorney, the said sum of $626.00; leaving open for the further action of this Honorable Court the contentions of Your Petitioner ~~has raised~~ by the said Exceptions.

WHEREFORE Your Petitioner prays Your Honor to pass an order directing the said John S. Strahorn, Esquire to pay unto the said Edward A. Strauff, Attorney for Your Petitioner, the sum of $626.00, being the amount audited to him by the corrected auditor's account, leaving the questions raised by the exceptions filed herein on behalf of Your Petitioner to be decided by the further order of this Honorable Court,

And as in duty bound, etc.,

Edward A. Strauff
Attorney for Petitioner.

Filed 23rd Nov. 1927

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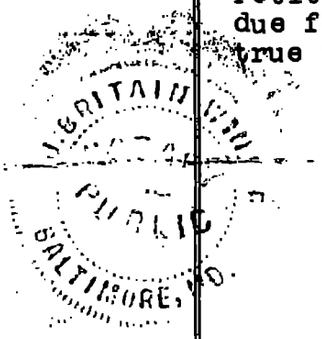
STATE OF MARYLAND,
CITY OF BALTIMORE, s s:-

LIBER 78 PAGE 203

I HEREBY CERTIFY that on this 23rd day of November, 1927, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City, aforesaid, personally appeared Edward A. Strauff, attorney for Joseph H. Bilbrey, the Petitioner named in the foregoing Petition, and he made oath in due form of law that the matters and facts therein contained are true to the best of his knowledge and belief.

WITNESS my hand and Notarial seal.



J. Britain Whites
Notary Public.

J. BRITAIN WHITE NOTARY PUBLIC BALTIMORE, MD.

O R D E R .

29" Upon the foregoing Petition and affidavit, it is this day of November, 1927, by the Circuit Court for Anne Arundel County, Ordered that John S. Strahorn, Attorney, be and he is hereby directed to pay unto Edward A. Strauff, Attorney for Joseph H. Bilbrey, the sum of $626.00 being the amount audited to the said Bilbrey by the corrected Auditor's Account filed herein; such payment however, not to affect the contentions raised by Joseph H. Bilbrey by his expections herein filed. unless cause to the contrary be shown on or before the 28th day of December 1927 provided a copy of this petition and order be served on the said John S. Strahorn Atty on or before Dec 10th 1927

Robert Moss, J.J.

Filed 29 Nov 1927

In the Matter of	)	No. 4742 Equity
The Sale of the	(	in the
Mortgaged Real Estate	)	Circuit Court for
of Mary F. Spears	(	Anne Arundel County

Eleanor B. Biggs, judgment creditor and distributee, under the special auditor's account filed in this proceeding on the 18th day of October, 1927, excepts to the ratification by the Court of that account for the following reasons:

Because the Court has allowed, subject to exception, a fee to John S. Strahorn, Esq.; Attorney, of $250. for services rendered in a proceeding in the Court of Appeals; that such services were those incident to his duties as attorney for the mortgagee-assignee, Pulis, for which services the mortgage provided commission and a special fee of $100., both of which the said Strahorn has received; and because any further allowance to the attorney upon his own petition in that behalf is contrary to numerous decisions in the Court of Appeals of Maryland; and because further, that the legal services rendered by the said Strahorn were not for the benefit of this exceptant, to whom the Court of Appeals of Maryland had already, by its decisions, awarded the full balance in the mortgagee-assignee's hands, as shown by the auditor's account filed heretofore in this proceeding.

Filed - Nov. 30-1927

David K. Randall
Solicitor for Exceptant.

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IN THE MATTER OF THE MORTGAGED REAL ESTATE OF MARY W. F. SPEERS,

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, IN EQUITY, NO. 4742.

- - - - - - - - - - -

To the Honorable, the Judges of said Court.

Filed - 28 Nov. 1927

The Answer of John S. Strahorn, Attorney, mentioned in an order passed herein on the 29th day of November, 1927, requiring him to show cause why certain funds should not be turned over to Edward A. Strauff, Attorney for Joseph H. Bilbrey, respectfully shows:

(1) That prior to the filing of the audit herein on the 18th day of October, 1927, your respondent filed herein on the 15th day of September, 1927, a second report of assets, showing the amount due to said Joseph H. Bilbrey, to which report no exceptions were filed, although it was in court for a considerable length of time prior to the statement of said audit;

(2) That as will appear by reference to the Mandate filed herein on the 10th day of August, 1927, the Court of Appeals did not award interest to the said Bilbrey on the said sum of Six Hundred and Twenty Six Dollars, ($626) nor did it in any manner award to the said Bilbrey either of the other items of Seven Dollars and Fifty Cents,($7.50) and Fourteen Dollars ($14), mentioned in the petition filed herein on November 23, 1927, and likewise mentioned in the excep-

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tions to this audit filed herein on the 21st day of October, 1927.

(3) That as fully appears by reference to the proceedings in this case, the said Joseph H. Bilbrey acted throughout herein as the representative and agent of Mary W. F. Speers; and your respondent is advised that the said funds are in law the funds of said Mary W. F. Speers; and your respondent further shows that he holds said funds as Assignee, and that attachments have been laid in his hands against the said funds so belonging to said Mary W. F. Speers.

(4) And for other reasons to be made known at the hearing hereunder.

Thos. S. Graham
Solicitor for Respondent.

In the Matter of the Mortgaged Real Estate of Mary W. F. Speers.

No. 4742 Equity.
In the Circuit Court
for Anne Arundel County.

Opinion of Court (Judge Moss) .

On August 11th, 1927, the Petitioner, John S. Strahorn, filed his Petition in this Court asking for a fee for services rendered as Solicitor in the case in the matter of the adjustment of the surplus among creditors, after the payment of the mortgage; and upon the certificate of three reputable lawyers the Court granted him a fee of Two Hundred and Fifty Dollars, subject to all proper exceptions.

To this Order allowing said fee, Mrs. Eleanore Biggs, through her Solicitor, Daniel R. Randall, after the statement of the Auditor's Account, filed Exceptions to the allowance of this fee from the surplus after the payment of the mortgage, the remainder of which surplus goes to the said Eleanore B. Biggs as judgment creditor of said Mary W. F. Speers.

Ptd. 21 st March 1928

The facts in the case briefly stated are that Mary W. F. Speers' property was mortgaged for a considerable sum, this mortgage was assigned to John S. Strahorn, by the holder of the mortgage, for foreclosure. He proceeded to foreclose the mortgage; after the foreclosure of the same an Account was filed to which exceptions were filed which the Court below dismissed but the Court of Appeals reversed the lower court and allowed to the purchaser of the property, who was in fact, Miss Mary W. F. Speers, certain moneys that were charged by the Assignee for a withdrawal of the mortgage sale and the extension of the time for the payment of said mortgage, which mortgage not being paid within the time agreed upon, another complete foreclosure was had.

The question with the Court of Appeals was the distribution of the remaining fund after the payment of the mortgage debt and costs, and to this fund there were two separate contentions ,- Solicitor for Mary W. F. Speers, mortgagor, contended that there should be refunded to her in this mortgage foreclosure proceedings the sum of $626. 2nd. That she should not be required to pay interest upon the purchase money during the time

extensive litigation was carried on consuming considerable time. The Court of Appeals in its Opinion charged her with the interest on the purchase money during this period, confirming the lower court as to the interest matter; as to the money charged for the withdrawal of the sale and extension of time for payment of the mortgage, the Court of Appeals found that this money should be refunded to Miss Speers, as not a proper charge under all the circumstances of the case.

The question that now arises is whether this fee shall be allowed or disallowed. The Court, after examining numerous authorities, has reached the conclusion that this fee cannot be allowed as a charge against the surplus from the mortgage foreclosure. This surplus belonged to the mortgagor, Mary W. F. Speers primarily, and so belonging was liable for her debts and thereby liable to attachment, the said Eleanore B. Biggs being the attaching creditor as against this surplus.

In the case of Lyon vs. Hires, 91st Md. 418 the Court said

"It is difficult to perceive any ground, according to well established principles, upon which attorney's fees can in this case be made a charge upon the common fund".

"It is true the suit resulted in a common benefit to both appellees and appellants, but that alone is not sufficient. Before legal charge can be sustained there must be a contract of employment either expressly made or superinduced by the law upon the facts of the case."

McGraw vs. Canton, Co. 74th Md. 559.

In this case the Solicitor who happened to be the assignee for the purpose of foreclosure of the mortgage, was not employed by the mortgagor, Mary W. F. Speers, but as a fact his contentions were antagonistic to her interests.

1st. He contended that the charge of $626 was a proper charge and should not be refunded to her in these proceedings. The contention that it should be refunded to her in these proceedings was supported by her own solicitor employed for that purpose.

2nd. As to the matter of interest Miss Speers' solicitor contended should not be allowed on the purchase money by the assignee, Mr. Strahorn contended it should be allowed. The Court of Appeals supporting the contention of the assignee, Miss Speers was the loser thereby to the extent, in round

numbers, of about $1400. It is perfectly true that in the view taken by the Court of Appeals, Eleanore B. Briggs, attaching creditor was benefitted to the extent of this $1400, yet, at the same time, she did not employ Mr. Strahorn as her attorney, doubt very much if she knew of his employment, or his work in the case, or that she, in any manner, acquiesced or sanctioned his employment, for she had a solicitor of record in this court employed to collect her claim.

The case in many respects resembling the case under consideration is the case of

Karr vs. Shirk, 142nd Md. page 118, in this case the Court says, "The only fund in the case was a surplus remaining after the payment of the mortgage debt and the expenses of the foreclosure, and that fund belonged to the mortgagor and his creditors. There is nothing in the record tending to show that the mortgagor agreed either in the mortgage or in any other way to devote any part of that surplus to the payment of counsel fees to the trustee (in this case assignee) for defending the sale which the mortgagor was trying to strike down, and, in the absence of such an agreement manifestly the Court was not empowered in any exparte proceeding to appropriate that fund to the payment of the trustee's counsel, and that order could not for this reason give the appellants any interest in the fund, and the inquiry comes then finally to this question, 'Had the appellants any interest in the fund in this case because they served as counsel to the trustee in supporting the sale made'".

Without extending the Court's Opinion further the Court has reached the conclusion that the services rendered by the assignee of the mortgage in this case were rendered to the mortgagee and to himself in part, as to the manner of refunding money received already set out in the Opinion, and that, therefore, the Court regrets that under the law of the State, that it must disallow this fee to the assignee whom the Court knows worked zealously in the case for the purpose of enlarging the surplus that ultimately will go to the creditors of the mortgagor, Mary W. F. Speers.

It follows from what has been said that the Court is compelled to sustain the Exceptions to the allowance of the fee and dismiss the Assignee's Petition.

It will not be necessary in this case to have another account stated, the Assignee, at the time of making payment of the funds in his hands is authorized to add to the amount due the judgment creditor, Eleanore B. Biggs, the sum of Two Hundred and Fifty Dollars heretofore allowed in the Auditor's Account, citing the Opinion of the Court for his warrant for so doing.

Robert Mars, A.J.

Filed May 1st 1928

KNOW ALL MEN BY THESE PRESENTS, that I, Elenore B. Biggs, of Washington, D. C., have received from John S. Strahorn, Assignee, in the matter of the sale of the mortgaged real estate of Mary W. F. Speers, No. 4742 Equity, in the Circuit Court for Anne Arundel County, the sum of Two Thousand, One hundred and eleven dollars and sixty-six cents, ($2111.66) being in full for the amount awarded to me in the audit filed in the above entitled case, on the 15th day of October, 1927, wherein I am named as Mary Biggs: to wit, the sum of $1861.66 as therein allowed, plus the further sum of $250.00, being the further amount awarded to me by the opinion of the court, filed in said cause on the 31st day of March, 1928, in the matter of the exceptions to the allowance of a counsel fee for this amount to John S. Strahorn, Solicitor, the said amount, to wit, the sum of $2111.66, being on account of judgment claim in my favor, against the said Mary W. F. Speers, and filed in said cause, No. 4742 Equity, No. 56 Trials, April Term, 1923, a part of which sum, to wit, the sum of $1500.00, having been heretofore, to wit, on the 21st day of December, 1927, ~~xxxxx xxxx~~ received by me on account of said judgment claim; there being due to me, and paid at the time of the signing, sealing and delivery of this release, the sum of $611.66.

And in consideration thereof, I do hereby release, acquit and forever discharge the said John S. Strahorn, Assignee, his heirs, executors and administrators, of and from all and every action, suit, claim and demand, which could or might be brought against him or any of them, for or on account of the said judgment debt due me, principal and

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interest, and I hereby declare myself fully satisfied and paid for, and on account of the above specified sum of Two thousand, one hundred and eleven dollars and sixty-six cents.

Given under my hand and seal this 26th day of April, in the year 1928.

Eleanor B. Biggs (SEAL)

Signed, Sealed and
Delivered, in the
presence of,

Hattie A. Davies

District of Columbia,
City of Washington, SCT.

I hereby certify that on this 26th day of April, 1928, before me, the subscriber, a Notary Public of said District, in and for said city of Washington, personally appeared Elenore B. Biggs, and acknowledged the foregoing release to be her act.

Witness my hand and Notarial Seal.

Hattie A. Davies
Notary Public.

Filed May 1st 1928

KNOW ALL MEN BY THESE PRESENTS, That I, Arthur V. Kaldenburg, of the City of New York, have received from John S. Strahorn, Assignee, in the matter of the sale of the Mortgage Real Estate of Mary W. F. Speers, No. 4742 Equity, in the Circuit Court for Anne Arundel County, the sum of Eleven Hundred, Fifty-Seven Dollars and Eighty-Seven Cents ($1157.87), being in full for principal and interest on judgment, recovered by me against the said Mary W. F. Speers, in the Circuit Court for Anne Arundel County, No 54 Trials, April Term, 1923, a part of which sum, to wit, the sum of $1052.77, having been heretofore, to wit, on the 16th day of April, 1925, paid to me by the said Assignee, therebeing due to me and paid at the time of the signing, sealing and delivery of this release, the sum of $105.10, as shown by the second audit, filed in said cause on the 18th day of October, 1927.

And in consideration thereof, I do hereby release, acquit, and forever discharge the said John S. Strahorn, Assignee, his heirs, executors and administrators of and from all and every action, suit, claim and demand, which could or might possibly be brought against him, or any of them, for and on account of the said judgment debt due me, principal and interest, and I hereby declare myself fully satisfied and paid for and on account of the above specified sum of Eleven Hundred, Fifty-Seven Dollars and Eighty-Seven Cents ($1157.87)

Given under my hand and seal this 21st day of March, in the year 1928.

Signed, Sealed and Delivered, in the presence of,

Arthur V. Kaldenburg (SEAL)

Amelia Mattera

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State of New York,
County of New York, Sct.

I hereby certify that on this 21st day of March, 1928, before me, the subscriber, a Notary Public of the State of New York, in and for said County of New York, personally appeared Arthur V. Kaldenburg, and acknowledged the foregoing release to be his act.

Witness my hand and Notarial Seal.

Aniello Mattera
Notary Public.
County Clerk No 116-
Term Expires March 30th 1928-

KNOW ALL MEN BY THESE PRESENTS, That I, Charles H. Pulis, of the City of Brooklyn, and state of New York, have received from John S. Strahorn, Assignee, in the matter of the Sale of the Mortgaged Real Estate of Mary W. F. Speers, No. 4742 Equity, in the Circuit Court for Anne Arundel County, the sum of Ten Thousand, Nine Hundred and Sixty-one Dollars and Twenty-seven Cents, ($10,961.27) being in full for principal and interest on mortgage for Nine Thousand Dollars, ($9000.) under which said property was sold, the said interest running from the 15th day of August, 1922, to July 8th, 1925, on said principal sum of Nine Thousand Dollars, ($9000.) the said sum of Nine Thousand Dollars, ($9000.) principal having been heretofore, to wit, on the said 8th day of July, 1925, paid over to me by the said Assignee, leaving a balance due on said 8th day of July, 1925, on account of interest, of One Thousand, Seven Hundred and Twenty-seven Dollars and Ninty-Nine Cents, ($1727.99)on which last mentioned sum interest to the amount of Two Hundred and Thirty-three Dollars and Twenty-eight Cents, ($233.28) has been added, from said 8th day of July, 1925, to the 8th day of October, 1927, as set out in the report of the Auditor filed in said cause, No. 4742 Equity, on the 18th day of October, 1927.

Rec'd July 6, 1928

And in consideration thereof, I do hereby release, acquit, and forever discharge the said John S. Strahorn, Assignee, his heirs, executors and administrators of and from all and every action, suit, claim and demand, which could or might possibly be brought against him, or any of them, for and on account of the said mortgage debt due me, principal and interest, and I hereby declare myself fully satisfied and paid for,

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and on account of the above specified sum of Ten Thousand, Nine Hundred and Sixty-one Dollars and Twenty-seven Cents.

Given under my hand and seal this 5 day of March, in the year 1928.

Charles H. Pulis (Seal)

Signed, Sealed and Delivered, in the presence of,

Marshall McLean
Notary Public.

State of New York,
County of Kings, Sct.

I hereby certify that on this 5 day of March, 1928, before me, the subscriber, a Notary Public of the State of New York, in and for said County of Kings, personally appeared Charles H. Pulis, and acknowledged the foregoing release to be his act.

Marshall McLean

Witness my hand and Notarial Seal.

NOTARY PUBLIC, WESTCHESTER COUNTY
CERTIFICATE FILED IN NEW YORK COUNTY No. 268
NEW YORK COUNTY REGISTER'S No. 8192
COMMISSION EXPIRES MAR. 30, 1928

Notary Public.

IN THE MATTER OF THE MORTGAGED REAL ESTATE OF MARY W. F. SPEERS,

In the Circuit Court for Anne Arundel County.

* * * * * * * *

PETITION.

TO THE HONORABLE, THE JUDGE OF THE SAID COURT:-

The Petition of Joseph H. Bilbrey, respectfully shows unto Your Honor:-

1. That on the 21st day of October, 1927 he did file in this Honorable Court his exceptions to the Auditor's Account herein filed.

2. That he desires to have the same set for a hearing.

WHEREFORE he prays Your Honor to set a day for the hearing on the said esceptions.

And as in duty bound, etc.,

Edw. E. Strauss
Solicitor for Petitioner.

Filed - May 14, 1930

ORDER.

Upon the aforegoing Petition it is this 14th day of May, 1930 by the Circuit Court of Anne Arundel County Ordered that the exceptions filed herein by Joseph H. Bilbrey on October 21, 1927 be and the same are hereby set for hearing on the 17th day of May, 1930.

Robert Moss A.J.

Filed May 14, 1930

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In the Matter of the Mortgaged Real Estate of Mary W. F. Speers,

No. 4742 Equity.

In the Circuit Court for Anne Arundel County.

Opinion on Court on Exceptions to Auditor's Account.

In this case, Joseph H. Bilbrey, on October 21st, 1927 filed Exceptions to the Auditor's Account which was filed by the Auditor on October 18th, 1927, as follows:-

1. That by said Auditor's Account as filed herein, the sum of $626 is audited to this Exceptant, no interest thereon being allowed; whereas there should have been audited to him, in addition to other sums, the sum of $626, with interest thereon from December 30th, 1924 to the date of filing such account.

Filed June 10, 1930

2. That the sum of $7.50 paid by this Exceptant for stenographic record in preparing his appeal is not allowed, whereas such sum should have been audited to him.

3. That the sum of $14 wrongfully exacted for Revenue stamp is not allowed to this Exceptant in said Auditor's account, whereas such sum should have been audited to him.

4th. And for other and further reasons to be shown at the hearing.

On Motion of Exceptant filed on May 14th, 1930, the matter of these Exceptions was set down for hearing on the 17th day of May, 1930, at which time they were heard. No testimony was taken, the Exceptant relying on the Law of the case.

It appears, as to the first item, that the Court of Appeals found in Bilbrey vs. Strahorn, 153rd Md. pages 491-493, that there was due to this Exceptant the sum of $626, which, under the decision, was wrongfully exacted from the said Exceptant, without warrant of law. This amount was allowed in the Auditor's Account, but interest was not allowed, and the question now before the Court is whether interest should be allowed from December 30th,

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1924 to the date of the filing of said Auditor's account on October 18th, 1927. The Court of Appeals did not pass upon the question of interest. The question of allowance of interest where money has been wrongfully demanded or taken was reviewed at considerable length in Wendt vs. Southern Trust Company, 112th Md., page 463. The Rule laid down by Judge McSherry in McShane vs. Howard Bank, 73rd Md., 159 seems applicable to this case. He said, "Generally speaking, the Rule is that interest should be left to the discretion of the Jury, but this Rule is not without exception, and among its exceptions are cases on bonds or contracts to pay money on a day certain, and cases where the money has been used. Ridgway improperly and unlawfully took and applied to his own use the money of the Bank, and his obvious duty is to put the bank in the precise position it would have occupied if the money had not been taken and retained by him. The whole sum, and interest on each item, make up the true measure of damages against him for wrongfully taking and detaining, or using the money of the bank."

It follows from what has been said that the Court has reached the conclusion that interest should be allowed on this sum of $626 from December 30th, 1924 to the date of the filing of the Auditor's Account, October 18th, 1927.

It seems to be beyond dispute as to the second exception that the sum of $7.50 paid by this exceptant for the stenographic record in preparing his appeal to the Court of Appeals should be taxed as part of the costs of the case.

As to the Third Item that the sum of $14 wrongfully exacted from the Exceptant as alleged by him, there is some difficulty. The Clerk's office, and the leading practicioners at the Bar, inform the Court, unless there was a contract to the contrary the purchaser of property to be conveyed to them by deed, paid the United States Revenue Tax, but by Section 100 of Article 21 of the Code of P.G.L., Title Conveyancing, it is enacted,- "In every agreement, written or verbal, for the sale or other disposition of real or leasehold property, it shall be presumed, in the absence of provision to the contrary, that the parties to such agreement intended that the cost of any Internal Revenue stamps required under any Tax Law of the United States of America should be equally shared between the grantor and grantee. This Sec-

tion shall only apply until such time as proper officers of the United States of America shall determine whether the grantor or grantee is liable for the costs of such stamps in the State of Maryland, and this Section shall not apply between mortgagor and mortgagee."

It thus appears that in the absence of an agreement at that time, and no agreement, as far as the record shows, had been made, that the costs of Revenue stamps should be borne equally by the purchaser and the seller.

In accordance with theprovisions of the Statute above quoted, the Court has reached the conclusion that the Exceptant should be allowed the sum of $7 as a refund to him.

It follows from what has been said that the Court is compelled to reject the Account as to these items, and to direct the Auditor to re-state the account in accordance with the views of the Court, which is accordingly directed this 10th day of June, 1930.

Albert Mos A.J.

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IN THE MATTER OF THE	*	
MORTGAGED REAL ESTATE	*	In the Circuit Court of Anne Arundel County.
OF MARY W. F. SPEERS,	*	
	*	No. 4742, Equity.

* * * * * * * *

The Exceptions of Joseph H. Bilbrey to the Auditor's account filed herein coming on for a hearing, the papers were read and considered, and the parties heard. It is thereupon, this 25th day of October, 1930, by the Circuit Court of Anne Arundel County Ordered that the said Exceptions be and the same are hereby sustained.

And be it further Ordered that the papers in this case be and they are hereby referred to George B. Woelfel, Special Auditor for the purpose of re-stating the account herein in accordance with the opinion of this Court filed herein on or about June 10, 1930.

Robert F. Moss, A.J.

Filed - 25th October 1930.

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IN THE MATTER OF THE

MORTGAGED REAL ESTATE

OF MARY W. F. SPEERS.

In the
Circuit Court for
Anne Arundel County.

No. 4742 Equity

PETITION.

TO THE HONORABLE, THE JUDGE OF THE SAID COURT:-

The Petition of Joseph H. Bilbrey, respectfully shows unto Your Honor:-

1. That on or about the 30th day of December 1924 John S. Strahorn received the amount of $626.00, the sum of $7.50, and a further sum of $7.00 in the settlement of the property mentioned in these proceedings.

2. That thereafter the Court of Appeals in the case of Joseph H. Bilbrey vs John S. Strahorn, 153 Md. 491, ordered that the money be distributed to Joseph H. Bilbrey, since which time your Petitioner has been attempting to have said money properly paid over to him as Attorney for Joseph H. Bilbrey, but to date has been unsuccessful, the said money still remaining in the possession of the said John S. Strahorn.

3. That in order to facilitate the final payment of this money to Joseph H. Bilbrey, your Petitioner is desirous of obtaining an order of this Honorable Court, directing the said John S. Strahorn to deposit said money, with interest thereon, to the credit of the Clerk of this Court.

WHEREFORE Your Petitioner prays Your Honor to pass an order authorizing and directing said John S. Strahorn to pay to Frank S. Revell, the Clerk of the Circuit Court of Anne Arundel County, the sum of $919.12, said sum to be deposited in the Farmers National Bank of Annapolis to the credit of this cause. bring the amount aforesaid with interest thereon to date

And as in duty bound, etc.,

Edward A. Strauff
Attorney for Petitioner.

STATE OF MARYLAND,
~~CITY OF BALTIMORE, ss:-~~
County of Anne Arundel

I HEREBY CERTIFY that on this 4th day of April 1932, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County ~~Baltimore City~~, aforesaid, personally appeared Edward A. Strauff, Attorney for Joseph H. Bilbrey and he made oath in due form of law that the matters and facts contained in the aforegoing Petition are true to the best of his knowledge and belief.

WITNESS my hand and Notarial Seal.

Lucy F. Loskosky
Notary Public

LUCY F. LOSKOSKY NOTARY PUBLIC ANNE ARUNDEL CO. MD.

Filed - April 4, 1932

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O R D E R.

Filed April 4th 1932.

Upon the aforegoing Petition and affidavit, it it this 4th day of April 1932, by the Circuit Court for Anne Arundel County, Ordered that John S. Strahorn be and he is hereby directed to pay unto Frank S. Revell Clerk for the Circuit Court of Anne Arundel County, the sum of $919.12 to be deposited in the Farmers National Bank of Annapolis, Md. ~~Anne Arundel County~~, to the credit of these proceedings.

Robert F Moss

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IN THE MATTER OF THE	*	NO. 4742 EQUITY
	*	IN THE
MORTGAGED ESTATE OF	*	CIRCUIT COURT
	*	FOR
MARY W. F. SPEERS,	*	ANNE ARUNDEL COUNTY

* * * * * * *

PETITION AND ORDER

* * * * * * *

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The Petition of Kathryn W. Cox and Charlotte W. Main, Trustees for the Estate of Mary W. F. Speers, An Incompetent, respectfully represents unto Your Honors:

1. That by a Decree of this Honorable Court dated February 28, 1950, and passed in a cause therein pending, entitled "In The Matter Of The Estate Of Mary W. F. Speers, An Incompetent", No. 9795 Equity, your petitioners were appointed Trustees for the said Estate and have qualified by filing their duly approved bond.

2. That it appears from the proceedings in the above entitled cause, No. 4742 Equity, that on December 8, 1919, Mary W. F. Speers executed a mortgage in the amount of $29,000.00 to Howard A. Kelly, M.D. on certain property therein described, which said mortgage is recorded among the Land Records of Anne Arundel County in Liber W.N.W. No. 12, folio 295, and that on February 7, 1923, the said mortgage was assigned to Charles H. Pulis.

3. That subsequently the said mortgage was assigned to John S. Strahorn for the purpose of foreclosure and that the said John S. Strahorn sold the property at a public sale.

4. That in an opinion by the Court filed in said cause on March 21, 1928, it is stated on page 2, paragraph 2 of the same, that any supplus from the sale of the property belongs to Mary W. F. Speers, subject to the claim of Eleanor B. Biggs, an attaching creditor. On May 1, 1928, Eleanor B. Biggs filed her release in said cause showing that she had been paid all that was due her.

Filed — May 2, 1950

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5. That it further appears from said proceedings that Joseph H. Bilbrey filed a claim in the amount of $626.00 plus interest. This claim was passed upon by The Circuit Court for Anne Arundel County and The Court of Appeals of Maryland, the mandate of the Court of Appeals dated May 10, 1927, being filed in the proceedings, in which the claim of Joseph H. Bilbrey was allowed without interest. It appears that the sum of $626.00 was money paid to the Assignee to Foreclose for forebearing to sell the property a second time, bein made up of his claim for one half of the anticipated selling commissions, auctioneer and advertising costs, the $626.00 having been paid shortly before, apparently on the same day, the second sale was to be made. That while the said Joseph H. Bilbrey filed his claim for the said $626.00 in said proceedings, it seems nevertheless to have been a claim against the Assignee to Foreclose personally, rather than a claim against any portion actually obtained from the sale of the property.

6. That it appears further from the proceedings:

(a) That upon receipt of the mandate of the Court of Appeals of Maryland, as aforesaid, the Circuit Court for Anne Arundel County passed an Order for a new audit in said cause and thereafter ruled that a further audit was unnecessary.

(b) That upon Petition and Affidavit of Joseph H. Bilbrey, the Court passed an Order on April 4, 1942, directing John S. Strahorn, Assignee for purpose of Foreclosure, to deposit with the Clerk of the Court $919.12 to the credit of said cause.

7. That there are two docket entries in Docket 6, folio 592, reading:

(a) April 8, 1932 Check No. 3523 for the amount of $695.29 deposited in special account F.S. Revell, Clerk in Annapolis Banking and Trust Company.

(b) March 21, 1934 check for $695.29 deposited in Special Account of Wm. Martin Brady, Clerk Circuit Court Anne Arundel County in Farmers National Bank. See Special Account Book in Safe also see letter to Frank S. Revell, Clerk from John S. Strahorn.

8. That the records of John H. Hopkins III, the present Clerk of the Circuit Court for Anne Arundel County show this sum of $695.29 still on deposit, and your petitioners are advised that the Clerk is being pressed by the Auditor to disburse said money or else pay it to the State of Maryland.

9. That there is now due as court costs the sum of $109.80.

10. That as no claim has been made to said money by anyone and it having been on deposit with the Clerk since April 8, 1932, your petitioners believe and aver that the said money belongs to their cestui-que-trustent, namely Mary W. F. Speers. That the proceedings to foreclose the aforeaid mortgage was against "Mary W. F. Speers" but through a clerical error in transposition the money, $695.29, is being held for "Mary M. F. Speers" in said cause.

WHEREFORE, your petitioners pray that an order be passed by this Honorable Court directing John H. Hopkins III, Clerk, to pay to your petitioners the aforesaid sum of $695.29, less the court costs amounting to $109.80 still due and owing.

And as in duty bound, etc.,

Charles W. Main

Kathryn W. Cox

C. Osborne Duvall

Charlotte W. Main

Solicitors for Petitioners

Petitioners

LIBER 78 PAGE 227

IN THE MATTER OF THE	*	NO. 4742 EQUITY
	*	IN THE
MORTGAGED ESTATE OF	*	CIRCUIT COURT
	*	FOR
MARY W. F. SPEERS,	*	ANNE ARUNDEL COUNTY

* * * * * * *

O R D E R

* * * * * * *

Filed - Sept. 5, 1950

UPON the aforegoing Petition, it is this 5th day of September, 1950, ORDERED by the Circuit Court for Anne Arundel County, in Equity, that John H. Hopkins, III, Clerk of the Circuit Court for Anne Arundel County, pay unto Kathryn W. Cox and Charlotte W. Main, Trustees for the Estate of Mary W. F. Speers, the sum of $695.29, less $109.80, now deposited in The Farmers National Bank of Annapolis, and that the said Clerk, John H. Hopkins III pay the costs of $109.80.

Benjamin Michaelson
Judge

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, IN EQUITY.

EX PARTE,
IN THE MATTER OF THE ESTATE OF MARY W. F. SPEERS, AN INCONPETENT. : EQUITY NO. ~~4743~~.

KATHRYN W. COX and CHARLOTTE W. MAIN, TRUSTEES FOR MARY W.F.SPEERS, AN INCOMPETENT, : MOTION TO AMEND PETITION.

VS.

SOLOMON SPEERS? JR. et al. :

TO THE HONORABLE, THE JUDGE OF SAID COURT:-

Kathryn W. Cox and Charlotte W.Main, Trustees for Mary W. F.Speers, by their Solicitors Charles W. Main and C.Osborne Duvall, Respectfully move the Court for leave to amend their Petition heretofore filed herein, wherein they prayed the Court to pass an Order directing the Clerk of Court to pay unto them the sum of $695.29 - less some Court costs -.being money paid into Court on or about April 8, 1932 by John S.Strahorn, Assignee to Foreclose Mortgage against the said Mary W.F.Speers, by filing therewith two Exhibits:-

1. A Release from The Atlas Realty Company releasing all claims to said fund to be marked Petitioner's Exhibit A; and

2. A Release from Joseph H.Bilbrey and Bebe Bilbrey his wife, releasing all claims to said Fund to be marked Petitioner's Exhibit B.

Charles W. Main
Charles W.Main.

C. Osborne Duvall
C.Osborne Duvall.

ORDER OF COURT

Motion granted as made and as though made in Open Court, this 5th day of September, 1951, by the Circuit Court for Anne Arundel County, sitting in Equity.

Benjamin Michaelson
Judge.

Filed Sept. 5-K. 1951

Filed Sept 5, 1951

2.6

LIBER 78 PAGE 229

PETITIONERS' EXHIBIT A.

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, IN EQUITY.

IN THE MATTER OF THE MORTGAGED ESTATE : No. 4742 EQUITY.
OF MARY W. F. SPEERS. :

WHEREAS, John S. Strahorn, the assignee, to foreclose in the above entitled cause deposited with the Clerk of the Court a certain sum of money, to wit: $695.29 on April 8, 1932, and

WHEREAS, the Atlas Realty Company of Baltimore, a body corporate, is mentioned in said proceedings

NOW, THEREFORE, these parties state that the said Atlas Realty Company has no interest in and no muniment of title to the sum of $695.29 or any part thereof deposited with the Clerk for the Circuit Court for Anne Arundel County, April 8, 1932, by John S. Strahorn, assignee to foreclose in the above entitled cause.

AS WITNESS the corporate seal of said body corporate attested by its Secretary and the signature of Loretta P. Strauff Cotter _____ President thereof this 11th day of ~~September~~, 1950.

THE ATLAS REALTY COMPANY OF BALTIMORE,
BY
Loretta P. Strauff Cotter
President.

J. H. BILBREY
ATTORNEY AT LAW
~~WOODWARD BUILDING~~
~~WASHINGTON, D.C.~~
Geneva, Fla.

GENEVA AUG 23 10-AM 1951 FLA.

H. Leslie Prout, Esq.,
618 Court Square Building,
Lexington and Calvert Sts.,
Baltimore 2, Md.

LIBER 78 PAGE 230

PETITIONERS' EXHIBIT B.

FOR VALUE RECEIVED, We the undersigned, Joseph H. Bilbray and Bebe Bilbray his wife, do hereby release any and all claim or claims we had, have or may have to a fund of $695.29 paid into Court by John S. Strahorn on or about April 8, 1932 in Matter of Mortgage Foreclosure sale against Mary W. F. Spears Equity Case No. 4742 In The Circuit Court for Anne Arundel County, State of Maryland, [redacted].

WITNESS our hands and seals this 22nd day of August, 1951.

WITNESS:-

Joseph H Bilbray (SEAL)
Joseph H. Bilbray.

Bebe Bilbray (SEAL)
Bebe Bilbray.

Clare H. Brown
as to both.

LIBER 78 PAGE 231

THIS MORTGAGE made this 8th day of December in the year one thousand nine hundred and nineteen, by and between Mary W. F. Speers, unmarried, of New York City and State, of the first part, and Howard A. Kelly, M. D., of Baltimore, Maryland, of the second part.

W I T N E S S E T H.

WHEREAS the said Mary W. F. Speers is indebted unto the said Howard A. Kelly in the full sum of twenty-nine thousand dollars ($29,000) and as representing the same hath executed and delivered unto him her promissory note under seal of this date, payable one year after date thereof, with interest thereon at six per centum payable one half thereof on June 1st, 1920 and the second half thereof on December 1st, 1920, which note represents an indebtedness due for the purchase of the real estate hereinafter described: and

Filed 28th February 1920.

WHEREAS it was a condition precedent that these presents should be executed the more effectually to secure said note and the interest thereon as above described.

NOW, THEREFORE, THIS MORTGAGE WITNESSETH: that in consideration of the premises and of ten dollars ($10.00) to her paid, the said Mary W. F.Speers doth hereby grant and convey unto the said Howard A. Kelly, his personal representatives and assigns, all that tract of land lying on the North bank of the Severn River in the Third Election District of Anne Arundel County, Maryland, containing one hundred and fifty-one and three quarters (151¾) acres of land, more or less, known as "Earleigh Heights", which was this day by deed conveyed unto her by the said Howard A. Kelly and wife, which deed is recorded or to be recorded among the Land Records prior to these presents.

TOGETHER with the buildings and improvements thereon made and belonging, and all the rights, ways and waters thereunto belonging or in any wise appertaining.

TO HAVE AND TO HOLD the above described tract of

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land with its appurtenances to and unto the said Howard A. Kelly, his heirs, personal representatives and assigns, provided that if the said Mary W. F. Speers, her heirs, personal representatives and assigns, doth pay, or cause to be paid, said mortgage note, at or before maturity thereof and the interest upon the same at the time specified, and shall perform all the covenants herein on her or their parts to be performed, then this mortgage shall be void.

The mortgagee also agrees that the mortgagor or her assigns, shall have the right during the continuance of this mortgage and until default therein, to conduct such mining operations on said property as she or they may see fit and to cut such timber thereon as may be necessary for or ancillary to the conduct of said mining operations.

AND it is agreed, that until default be made in the premises, the said mortgagor shall possess the aforesaid property upon paying. in the meantime, all taxes and assessments, public dues and charges of every kind, levied or assessed, or to be levied or assessed on said hereby mortgaged property; which taxes, assessments, public dues, charges, mortgage debt and interest, the said mortgagor for herself, her heirs, personal representatives and assigns, does hereby covenant to pay when legally demandable:

But if default be made in the payment of said money or the interest thereon to accrue, or any part of either one of them at the time limited for the payment of the same, or in any agreement, covenant or condition of this mortgage, then the entire mortgage debt shall be deemed due and demandable; and it shall be lawful for the said mortgagee, his personal representatives and assigns, or Daniel R. Randall, his attorney and agent, at any time after such default, to sell the property hereby mortgaged, or so much thereof as may be necessary to satisfy and pay said debt, interest and all costs incurred in making such sale, including a commission to the party selling equal to that allowed trustees in sales of real estate, and to grant and convey the said property to the purchaser or purchasers thereof, his, her or their heirs

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or assigns, and which sale shall be made in the manner following: viz: upon giving ten (10) days' notice of the time, place, manner and terms of sale, in some newspaper printed in Anne Arundel County, and such other notice as by the said mortgagee, his personal representatives or assigns, may be deemed expedient; and in the event of a sale of said property, under the powers hereby granted, the proceeds arising from such sale, to apply: first, to the payment of all expenses incident to such sale, including a fee of One Hundred Dollars ($100) and a commission to the party making sale of said property equal to the commission allowed trustees for making sale of property by virtue of a decree of a Court having equity jurisdiction in the State of Maryland; secondly, to the payment of all claims of the said mortgagee, his personal representatives and assigns under this mortgage, whether the same shall have matured or not; and the surplus (if any there be) shall be paid to the said mortgagor, her personal representatives or assigns, or to whoever may be entitled to the same.

AND the mortgagee hereby agrees, to release this mortgage at any time, upon the payment of the mortgage debt and interest to the date of payment; and also to release at any time during the continuance of this mortgage, a part of the mortgaged property containing one hundred acres, more or less, forming the south-eastern portion of the whole tract and lying next to that of the Brenan Sand Company, upon the payment of twenty thousand dollars ($20,000) of the mortgage debt, with interest to the date of such payment.

AND the mortgagor further covenants to insure, pending the existence of this mortgage, the improvements upon the mortgaged property to the extent of five thousand dollars ($5,000), and to assign and deliver such policy to the mortgagee, his personal representatives and assigns.

WITNESS her hand and seal.

Mary H. F. Speers (SEAL)

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STATE OF MARYLAND
:SS:
CITY OF BALTIMORE

I HEREBY CERTIFY that on this 8th day of December, 1919, before me the subscriber, a Notary Public of the State of Maryland, in and for the City aforesaid, personally appeared MARY W. F. SPEERS and acknowledged this mortgage to be her act and deed. And before me also appeared DANIEL R. RANDALL, agent and attorney for the mortagees and made oath in due form of law that the consideration named in the aforegoing mortgage is true and bona fide as therein named, and that he is the agent of the mortgagee and authorized to make this affidavit.

AS WITNESS my hand and seal notarial.

M. Marie Shriver
Notary Public.

M. MARIE SHRIVER NOTARY PUBLIC BALTIMORE

~~For value received I hereby the within mortgage and the note hereby secured.~~

~~AS WITNESS my hand and seal this First day of March, 1920.~~

~~Howard A Kelly~~ (~~SEAL~~)

~~WITNESS:~~

~~Donald B. Van Hollen~~

For value received I hereby assign the within mortgage and the debt thereby secured to Charles H. Pulis. Witness my hand and seal this seventh day of February A.D. 1923

Witness
Laura C. Hartze

Howard A Kelly M.D. (Seal)

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I hereby assign the within mortgage to JOHN S. STRAHORN, for purposes of foreclosure.

WITNESS my hand and seal, this 26th day of February, nineteen hundred and twenty-three.

WITNESS

Charles H. Pulis (Seal)

Benj. Fabian

KNOW ALL MEN BY THESE PRESENTS. that we, John S. Strahorn, as principal, and The Maryland Casualty Company, of Baltimore, Maryland, a body corporate, authorized by its charter to become surety on bonds, are held and firmly bound unto the State of Maryland, in the full and just sum of Ten Thousand Dollars ($10,000.00), to be paid to the said State or its certain Attorney to which payment well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, administrators, successors or assigns, jointly and severally firmly by these presents.

SEALED WITH OUR SEALS AND DATED THIS 28th Day of FEB., 1923

WHEREAS, the above bounden, John S. Strahorn, by virtue of the power contained in a mortgage from Mary W. F. Speers, dated , recored amoung the Land Records of Anne Arundel County in Liber W. N. W. No. 12, folio 295, is about to sell the land and premises described in said mortgage, default having been made in the payment of the money as specified, and in the conditions and covenants therein contained.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the above bounden, John S. Strahorn, does and shall well and truly and faithfully perform the trust reposed in him under the mortgage aforesaid, and shall abide by and fulfill any order or decree which shall be made by any Court of Equity in relation to the sale of said mortgaged property, or the proceeds thereof, then the above obligation to be void, otherwise to be and remain in full force and virtue in law.

Filed 28th February 1923

Signed, sealed and delivered in the presence of

Augusta Brown

Jno. S. Strahorn (SEAL)

The Maryland Casualty Company of Baltimore City, Maryland.

By Chas. F. Lee & Co. Agents.

Wm. G. Gott Countersigned.

ATTORNEY IN FACT.

MARYLAND CASUALTY COMPANY ACCIDENT INSURANCE COMPANY ... INCORPORATED

IN THE MATTER of the MORTGAGED REAL ESTATE of Mary W. F. Speers.

LIBER 78 PAGE 237

In the Circuit Court for Anne Arundel Co.

No. 4747

IN EQUITY.

- -

Statement of amount due on mortgage from Mary W. F. Speers, bearing date the 8th day of December, 1919, recorded in Liber W. N. W. No. 12, folio 295, etc., to Howard A. Kelly, M. D.

Mortgage debt, - - - - - - - - - - - - - - - - - - -	$29,000.00
Interest thereon to August 15, 1922 - - - - - - -	4,673.83
	33,673.83
By cash paid on account of mortgage debt and interest, to Dr. Kelly, on August 15, 1922, - - - - - - - - - - - - - - - - -	24,673.83
Balance due on mortgage debt and interest on August 15, 1922, - - - - - - - - - - -	9,000.00

Total amount now due on said mortgage, $9,000.00, plus interest thereon, at the rate of six per cent, from August 15, 1922 to date.

Filed 25th February 1923

_____
Assignee.

State of Maryland,

Anne Arundel County, Sct.

I hereby certify that on this 28th day of February, 1922, before me, the subscriber, a Notary Public of the said State, in and for the said county, personally appeared John S. Strahorn, Assignee, and made oath in due form of law that the matters and things set out and alleged in the foregoing statement of mortgage indebtedness are true as therein stated, to the best of his knowledge, information and belief.

WITNESS my hand and Notarial Seal.

JULIET D. STRAHORN NOTARY PUBLIC ANNE ARUNDEL COUNTY, MD.

Juliet D Strahorn
Notary Public.

W. H. MOSS - - - - LIBER - 78 PAGE 238 - - - - - Auctioneer.

Mortgagee's Sale

— OF VALUABLE —

Fee-Simple Real Estate

IN THE THIRD ELECTION DISTRICT OF ANNE ARUNDEL COUNTY, MARYLAND, ON THE NORTH SHORE OF THE SEVERN RIVER AND NEAR ROBINSON'S STATION ON THE SHORT LINE RAILROAD

Under and by virtue of a power of sale contained in a mortgage from Mary W. F. Speers to Howard A. Kelly, M. D., bearing date the 8th day of December, 1919, and duly recorded among the land records of Anne Arundel county, Maryland, in Liber W. N. W. No. 12, folio 295, etc., said mortgage being now in default, the undersigned, John S. Strahorn, Assignee, thereof for purposes of foreclosure, will sell, at public auction, at the Court House Door in the City of Annapolis, Maryland, on

filed March 22, 1923

Thursday, March 22, 1923

AT 12 O'CLOCK, NOON

the following described real estate, situate, lying and being on the North side of the Severn River in Anne Arundel county near Whitney's Landing, and lying between the land formerly owned by said mortgagor and conveyed by the above mortgage but now owned by the Speers Sand and Clay Works, Inc., and land at said Whitney's Landing now owned by Morgan and Roberts, the land hereby advertised for sale consisting of 51 3-4 acres, more or less.

Being the residue of the tract of land formerly owned by Solomon Speers and now occupied by his widow, Margaretta B. Speers and which formerly contained 167 3-4 acres of land, more or less, and from which last named acreage the following tracts have heretofore been deducted, to-wit: 15 acres, on the west side of said whole tract, conveyed to R. Jennie Speers by deed of June 1, 1912, recorded in Liber G. W. 94, fo. 435; 100 acres, more or less, on the east side of said whole tract, conveyed to the Speers Sand & Clay Works, Inc., by Mary W. F. Speers, by deed of May 31, 1922, and recorded in Liber W. N. W. No. 52, fo. 62, etc.; and one acre, more or less, on the river shore, reserved to the said Doctor Kelley in his deed to the said Mary W. F. Speers of the whole tract containing 151 3-4 acres conveyed by the aforesaid mortgage, dated the 1st day of December, 1919, and which deed was recorded, just prior to the said mortgage among the aforesaid land records in Liber W. N. W. No. 12, fo. 294, etc. The property hereby offered for sale being subject to all the rights of ingress and egress belonging to the said one acre tract (For a full description of said one acre tract, see above deed, recorded in Liber W. N. W. No. 12, fo. 294.)

This property is beautifully situated on a high bluff overlooking the Severn River, is improved by a substantial two-story frame dwelling house, known as the Speers Homestead, together with two small frame cottages and a large frame building used by the Government as a recreation building for disabled soldiers during and immediately after the War, is well fitted for development as a summer colony, being not more than two miles from Robinson Station on the Annapolis Short Line Railroad, with half hourly service each way during the day.

TERMS OF SALE:—Cash on ratification of sale. A deposit of one thousand dollars will be required on day of sale. Deferred payment to bear interest from day of sale and to be secured to the satisfaction of the undersigned. Taxes, insurance and all other charges to be adjusted to day of sale. For further particulars, address the undersigned. Plat of said property can be seen at office of the assignee.

JOHN S. STRAHORN, Assignee,
161 South Street, Annapolis, Md.

4742 Eq.

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Filed with Examiner Feby 2, 1926 as Respondent's Exb. H.

(I omitted next one J.)

George E. Tullman
Examiner

No. 4742 Equity

In the Matter of the [illegible]

LIBER 78 PAGE 239

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Filed 22 March 1923

Annapolis, Maryland
March 22, 1923.

I have this day bought the property advertised for sale on the reverse side of this sheet, from John S. Strahorn, Assignee, at and for the sum of Thirteen Thousand, six hundred and twenty five dollars ($13,625.00) and agree to comply with all the terms of [illegible] 1.75 4 [illegible] advertisements.

[illegible]

Purchaser
424 Colorado Bldg
Washington, D.C.

I have this day sold the within property to Joseph H. Bilbrey the above named purchaser, at and for the sum of Thirteen Thousand six hundred and twenty five dollars ($13,625.00), at public sale at the Court House Door, Annapolis, [illegible] terms of the within advertisement [illegible] the highest bidder.

William H. Moss
[illegible]

IN THE MATTER of the Mortgaged Real Estate of Mary W. F. Speers.

LIBER 78 PAGE 240 No. 4742 Equity.

In the Circuit Court for Anne Arundel County.

- - - - - - - - - - - - - - -

To the Honorable, the Judges of said Court.

The report of John S. Strahorn, Assignee for purposes of foreclosure of a mortgage from Mary W. F. Speers to Howard A. Kelly, M. D., bearing date the 8th day of December, 1919, and recorded among the land records of Anne Arundel County, Maryland, in Liber W. N. W. No. 12, folio 295, etc., respectfully shows, that by and under an assignment of the said mortgage, he, the said John S. Strahorn, was empowered to make sale of the property therein mortgaged, on default being made in certain payments therein specified, as will more fully and at large appear from said mortgage (original) filed herewith as a part of this report, as well as from the mortgage statement filed among these proceedings, said mortgage being in default under its terms at the time of the filing of these proceedings.

Filed 23rd March 1923

That after giving bond, with approved security, for the faithful discharge of his trust, as required by law, and after giving notice of the time, place, manner and terms of sale by advertisements in The Maryland Gazette, a newspaper printed and published in Anne Arundel County, for more than ten (10) days before the day of sale, as well as by hand-bills extensively circulated throughout said county and the City of Baltimore, he, the said John S. Strahorn, Assignee, did, pursuant to said advertisements, attend at the Court House Door, in the City of Annapolis, Anne Arundel County, Maryland, , on Thursday, the 22nd day of March, 1923, at twelve o'clock, Noon, and then and there proceeded to sell said property, consisting of fifty one and three quarters (51 3/4) acres, more or less, as will more fully and at large ap-

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pear by reference to a plat of said property filed herewith, as a part of this report of sale, marked " Assignee's Exhibit No. 1," as well as another plat, marked " Assignee's Exhibit No. 2," showing the one acre mentioned in the advertisement of sale; and sold the said property to J. H. Bilbrey, of Washington, D. C., at and for the sum of Thirteen Thousand Six Hundred and Twenty Five Dollars ($13,625.00), he being then and there the highest bidder therefor; and the said Assignee files herewith a copy of the said advertisement, being one of the said hand-bills mentioned; ~~showing that~~ and the said J. H. Bilbrey has paid the sum of one thousand dollars in cash for and on account of said purchase price, and offers to comply with all the terms of sale mentioned in the advertisement thereof; as well as the certificate of the Auctioneer, William H. Moss, showing that the said J. H. Bilbrey was the highest bidder therefor.

Respectfully submitted,

_____

Assignee.

State of Maryland,

Anne Arundel County, Sct.

I hereby certify that on this 22nd day of March, 1923, before me, the subscriber, a Notary Public of the said State, in and for the said County, personally appeared John S. Strahorn, Assignee named in the foregoing report of sale, and made oath in due form of law, that the matters and things stated in the foregoing report are true, to the best of his knowledge and belief; and that the sale therein reported was fairly made.

WITNESS my hand and Notarial Seal.

JULIET D. STRAHORN NOTARY PUBLIC ANNE ARUNDEL COUNTY, MD.

Juliet D. Strahorn

Notary Public.

(COPY ORDER NISI)

In the matter of the Sale of the Mortgaged Real Estate of Mary W. J. Lee

VERSUS

LIBER 78 PAGE 242 IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

No. 4742 Equity

Ordered, this 22nd day of March, 1923, That the sale of the property made and reported by John S. Strahorn Assignee ~~Trustees~~,

Filed March 22, 1923

BE RATIFIED AND CONFIRMED, unless cause to the contrary thereof be shown on or before the 24th day of April next; Provided, a copy of this Order be inserted in some newspaper published in Anne Arundel County, once in each of three successive weeks before the 24th day of April next.

The report states the amount of sales to be $ 13,625.00

Wm. H. Woodward Clerk.

TRUE COPY,

TEST: Wm. H. Woodward Clerk.

(Final Order.)

In the Matter of the Mortgaged Real Estate of Mary W. J. Lee

VERSUS

IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

In Equity, No. 4742

Term, 192

Filed March 5, 1924

ORDERED BY THE COURT, This 7th day of March, 1924 that the sale made and reported by the ~~Trustee~~ Assignee aforesaid, be and the same is hereby Ratified and Confirmed, no cause to the contrary having been shown, although due notice appears to have been given as required by the Order Nisi, passed in said cause; and the ~~Trustee~~ Assignee allowed the usual commissions and such proper expenses as he shall produce vouchers for to the Auditor.

Robert Mace, J.

Recorded

LIBER 78 PAGE 243

In the Matter of the Mort- ; No. 4742 Equity
gaged Real Estate of : In the Circuit Court for Anne
Mary W. F. Speers : Arundel County.

---------oOo---------

Filed April 23rd 1923

To the Honorable, the Judges of the said Court.

Mary W. F. Speers, the Mortgagor in these proceedings mentioned, excepts to the ratification of the sale made and reported in these proceedings for the following reasons:

That the whole amount secured by the said mortgage was paid before the said sale.

And for other reasons to be shown at or before the hearing of these exceptions.

Mary W. F. Speers.

James A. Carley
Sol'r. for Mary W. F. Speers.

State of Maryland, Baltimore City, to wit:

I hereby certify that on this 21st day of April, 1923, before me, the subscriber, a Notary Public of the State of Maryland, in and for the said City, personally appeared Mary W. F. Speers and made oath in due form of law that the matters and things stated in the foregoing exceptions are true to the best of her knowledge and belief.

Witness my hand and Notarial Seal.

William A. Levy
Notary Public.

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ELEANOR B. BIGGS, EXCEPTANT

VS.

MARY W.F.SPEERS

- - - -

-EXCEPTANT'S BRIEF

STATEMENT OF FACT.

Suit was instituted by the plaintiff on June 2nd,1922, in the Circuit Court for Anne Arundel County, in a proceeding of attachment against a nonresident, and the same day a writ of attachment was issued by the Court and placed in the hands of Sheriff Levely. Meanwhile, the Sheriff was furnished with a discription of fifty-two and one-half acres of land lying in the Third Election District, and he was directed to attach the equity of redemption of the defendant Speers in such property.

It appears from the testimony later given to the Court, and as well by the sworn motion to quash,filed by the defendant October 7th,1922, that the Sheriff visited the property between the twenty-third and thirtieth day of June,1922, and affixed a copy of the proceeding to the house upon the property. At the hearing of this motion, which was overruled by the Court, an agreement was filed between counsel for attaching creditors Kaldenburg and Biggs and counsel for the defendant Speers, that appearances would be then and there entered in the short note case and the same set for trial at the coming April term, provided a release of the attachment was given to a certain one hundred acres conveyed by the defendant to a sand and gravel company. These agreements were drawn in open Court and filed, and Messrs. James W. Owens and Albert S.J.Owens entered their appearances in the short note cases.

Hearings in the Kaldenburg and Biggs cases came before the Court in July, 1923, and witnesses were examined and verdicts given in favor of Kaldenburg for one thousand dollars ($1,000) and of Biggs for twenty-five hundred and twenty-five dollars and sixty cents ($2525.60),with costs. Motion for new trial was entered by the defendant in the Biggs case, though never prosecuted, and judgements were endered upon the verdicts rendered by the Court as above.

Between the levying of the attachments and the entering of judgements by the Court in the cases of Kaldenburg and Biggs, two judgements by confession were entered against the defendant , that of the Union Trust Company of Baltimore being placed upon record May , 1923, for about nine hundred dollars (900), represented by Mr. Melvin, and another judgement for represented by Mr. Cott.

The proceedings of foreclosure conducted by Mr. Strahorn having been concluded, and a Balance of about thirty-seven hundred dollars ($3700) remaining in his hands for distribution among creditors, the Court referred the proceedings to a special auditor for distribution of the balance among creditors, according to their priorities, and the auditor has stated his account, wherein he has allowed the Kaldenburg judgement in full, the Union Trust Company's in full, and the balance to the exceptant Biggs. Since the statement of that account and the exceptions filed to it, the other judgement creditor has come into the proceeding, and the question before the Court now is as to the proper and legal distribution of the balance remaining in Mr. Strahorn's hands according to legal priorities.

ARGUMENT

The exceptant, Mrs. Biggs, urges as the law in the case that the Kaldenburg judgement, by virtue of being the first proceeding brought uponwhich attachment issued , is the first judgement of record against the defendant, and holds prior claim to full payment of its judgement interest and costs; and further, that her own judgement, recovered upon the second suit in attachment, comes next in order of priority, even tho the actual levying upon the real estate was made by Sheriff Lovely in the two cases upon the same day. In Ginsberg vs. Pohl, 35 Md.505, the Court held that the law holds two attachments levied the same day are presumed to have been levied at the same time; but in May vs. Buchanan River Lumber Company, 70 Md. 448, the Court further says that it is

the Sheriff's duty to make the first levy on the property of the debtor under the writ first placed in his hands.

LIEN OF ATTACHMENT

The law is well settled in Maryland that a party acquires an inchoate lien on property by the levy under a writ of attachment.

Poe's "Practice" Section 690
Curtis vs. Moore, 20th Md. 93
Foley vs. Bittor, 34th Md. 650
Cooke vs. Cooke, 43rd Md. 539
Western Natl. vs. Union Bank,
91 Md. 622.

Mr. Poe declares that the object of an attachment upon real or leasehold property is merely to obtain thereby an inchoate lien, and thus to secure the plaintiff's claim to the extent of the value of the property attached. This inchoate lien remains until the trial of the cause, and becomes consummated by a final judgement of condemnation, and a specific lien of this final judgement against the attached property relates back to the time when the attachment was first laid. He quotes with approval the law in Cockey vs. Milne, 16th Md. 200. In this case the Court held that this being a proceeding in rem, and the judgement one by condemnation of the particular property levied upon by the Sheriff, the lien of the judgement is a specific lien upon such property, and relates back to the time when the attachment was laid. This is approved in Rhodes vs. Ansick, 38th Md. 353, and Morton vs. Graflin, 63th Md. 500.

In the "Law of Attachment" by Hodge & McLane, Section 192, we find "where the specific property or lands are attached, an inchoate lien is secured from the levying of the attachment, which remains until the trial of the cause; and by a final judgement of condemnation this lien relates back to the time when the attachment was laid, and cuts out all intermediate claims." This rule of law is further discussed and approved in Western National vs. Union

Bank, 91st Md.623. There two attachments issued on the same date and were levied, as in the case at bar, upon the defendant's interest in land, the Court hold that the judgements obtained upon the short note cases constituted specific liens on the property, and related back to the time when the attachments were levied.

In the latter case the Court further declares that the lien of attachment, when subject to the operation of a decree for the sale of the land attached, is transferred to the defendant's share of the proceeds of sale. This rule was first declared in Ford vs. Philpot, 5 H&J, 312. (See also Corpus Juris 205 & 297) The latter authority declares that an attaching creditor succeeds to all the rights of the debtor in the property, and all the rights acquired subsequent thereto are subordinated. The attachment takes priority over any lien or encumbrances subsequently acquired.

(6 Corpus Juris, 289.)

UNION TRUST COMPANY'S JUDGMENT.

The Union Trust Company's judgement was recovered by confession more than a year after the interest of the defendant in the real estate on Severn River had been attached in both the Waldenburg and Biggs cases. Indeed, the note upon which that judgement is predicated was not even due at the time the inchoate lien of this attachment was placed upon the property, and generally speaking, the same is true of the judgement represented by Mr. Gott. The rule of Court in Maryland, without exception, is that intermediate claims or liens are cut out by the attachments brought prior to them, even though such judgements upon attachments are not recovered until subsequently. (Cockey vs. Milne, 16th Md. 200)
(Western Natl vs. Union Bk.91 Md. 628)
(Poe's Practice, Section 690)
(Hodge & McLane-"Law of Attachment"-Sec.192)
(6 Corpus Juris, 289)

COLLATERAL ATTACKS ON LIEN

This, like a fi fa, is a species of proceeding in rem against the land, and places such land in the possession of the Court, to be dealt with as the Court may direct. Such possession, therefor, is looked upon as a proceeding to enforce a judgement lien, and is entitled to all the presumptions in favor of judicial sales, and should not be criticized or attacked in a collateral proceeding. The failure of the Sheriff to seize, schedule or appraise the attached property does nottinjure the debtor's claim. Bedding Co. vs. Wareham Co. 146 Md. 487-8
Menton vs. Hoyt, 43 Md.254 (261)

Neither the garnishee nor the judgement debtor will be permitted to reopen or retry the issues or question the determination between the parties in a judgement from which no appeal has been taken.

Peters vs. League, 13 Md. 58
Farley vs. Colver, 113Md.384
Groome vs. Lewis, 23 Md.137

If the defendant appears, a judgement is entered against him in the short note case, the judgement will not be arrested on any ground accompanying a motion to quash.

Philbin vs. Thurn, 103 Md.351.

In conclusion, the exceptant respectfully urges that the auditor's account should be restated under an order of Court so directing, in order that her judgement, with its costs and interest, should be allowed as a second prior lien to the funds in the hands of the mortgagee-attorney, with such additional costs as may have since accrued by reason of the attachment in the hands of the mortgagee-attorney.

PREFERENCE AS TO CREDITORS.

Upon the return day of the summons in the short note case the defendant and garnishee and counsel appeared in Court, having previously filed a motion to quash the writ of attachment in this case on the ground of certain alleged irregularities. That motion is filed with the proceedings, sworn to by the defendant Speers and signed by her attorneys wherein she admits, (a) that the Sheriff made a levy upon the real estate by going upon it in person; (b) that he affixed a copy of the declaration and other papers to the front door of the house; and (c) that he made a return to the Court of his proceedings; but alleged in each instance that the act performed by the Sheriff was irregular and not according to statutes. The plaintiff produced the Sheriff, who testified that the service of process was made in this case as in that of Kaldenburg and that identical returns were made in each case to this Court; whereupon the Court dismissed the motion to quash and the case arose on its merits. The Court having passed, therefore, upon the merits of the matter, it is res adjudicata, and cannot now be raised by the Trust Company in a second and collateral attack upon the Sheriff's proceedings.

State vs. Brown, 64 Md. 199.

Even though the Trust Company was not technically a party of record, it is bound and concluded by the result of the Court's decision upon this very point.

Parr vs. State, 71 Md. 226

"After the question (of service or return of process) has been raised and determined on motion to quash, it cannot be again again raised by answer."

32 Cyc. 526

"The appearance and agreement filed in the case waive all defects and irregularities in the process, service or return".

32 Cyc. 527

There is every evidence in consequence, presumptive and

otherwise, that the Sheriff performed his full duty in the premises, and the admission of the defendant in her sworn motion sustains that assumption. Following this action of the Court the Messrs.Owens entered their appearance for the defendant, Mary W.F.Speers, and an agreement under date of November 9th,1922, was prepared in open Court and filed in Kaldenburg and Mrs. Biggs' cases wherein, in consideration of the release by the attaching creditors of a hundred acres previously sold by the defendant to the Speers Sand and Gravel Company, from the operation of the attachments, the defendant agrees that the attachments shall be good as against the balance of said property, amounting to fifty-two and a half acres, such agreement being in the following form:

> ".. that the attachment in this case (No.130 trials, Oct.1922), is released as to 100 acres....but is retained as a valid attachment against the remainder of the tract of which the 100 acres was a part to avail to the extent of the recovery, if any, by the plaintiff against the said Mary W.F.Speers in the case (short note case No.12 Ap. Oct. term 1922."

The defendant's counsel, moreover, agreed in open Court that the issue of fact should be tried before the Court at its April term.

The legal result from such an agreement was to establish, rectify and validate the attachment proceeding in this case, regardless of the fact whether the Sheriff had in point of fact failed to make a proper return to the Court upon his attachment. The appearance of the defendant in person and by solicitor is a waiver of defects in the service of process.

Stigers vs. Brent, 50 Md. 214
Ireton vs. City of Baltimore, 61 Md.432.

We therefore submit that a subsequent creditor has no right at this stage of the proceedings to collaterally attack the returns of the Sheriff, even if he had proved (which he has not) that there was a technical failure of duty upon the officer's part. It was wholly within the province of the defendant to exercise her common

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law right of choosing one creditor in preference to another, though in the case at bar there were at the time resting upon the attached property mortgages to the amount of Twenty-five Thousand Dollars ($25,000) and judgements and tax liens of many thousands more. These were later paid off, except as to the balance of the mortgage debt, by the sale of the 100 acres to the Sand & Gravel Company at Thirty-five Thousand Dollars ($35,000).

At the time that the agreement was made and filed in this proceeding (November 9,1922) the claims of the Union Trust Company and subsequent creditors had not materialized, nor had suits been brought in any of these cases. Consequently, any preference shown by the defendant to Mrs. Biggs was not to the hurt or injury of such subsequent judgement creditors, was done for a good and bona fide consideration and cannot now be attacked by such subsequent creditors as an evidence of unlawful preference, or as an effort to validate an invalid statutory act of the Sheriff.

Totten et al. vs. Brady et al. 54 Md.170
Thompson vs. Williams, 100 Md. 195.

The alleged preference was upon good consideration and without fradulent intent, and at the time worked no injury to the Trust Company or subsequent creditors.

This exceptant therefor prays the Court to pass an order in this cause upon her exceptions, directing the Special Auditor to state and file herein a new account and distribution of the balance remaining in the hands of the Mortgagee-Attorney, allowing the judgment claim of Eleanor B. Biggs, with interst and costs as second only to the claim of Kaldenburg and prior to that of the Union Trust Company or susequent judgment creditors.

Respectfully Submitted
Daniel K. Randall
Solicitor of Eleanor B. Biggs, Exceptant

IN THE MATTER of the Mortgaged Real Estate of Mary W. F. Speers.

No. 4742 Equity.
In the
Circuit Court for
Anne Arundel County.

To the Honorable, the Judges of this Court.

The answer of John S. Strahorn, Assignee, to the exceptions of Mary W. F. Speers; filed in this case on April 23, 1923, respectfully shows.

Filed 4th May 1923

1- That he denies that the whole amount secured by the mortgage in this case was paid before the sale herein made, and shows, as appears by the statement of mortgage indebtedness filed herein on the 28th day of February, 1923, that at the time of said sale there was due and owing on said mortgage, the sum of nine thousand dollars, ($9000.00) with interest thereon from the 15th day of August, 1922, which amount of principal, towit, nine thousand dollars, ($9000.00) and accrued interest thereon from the 15th day of August, 1922, your respondent, as attorney for Charles H. Pulis, his assignor herein, paid, on the 7th day of February, 1923, to Dr. Howard A. Kelly, in consideration of which payment the said Dr. Howard A. Kelly, on said last mentioned date, assigned the said mortgage to the said Charles H. Pulis, as shown by the original mortgage herein; and this respondent further shows that he as such attorney conducted for the said Charles H. Pulis all the nogotiations leading up to said assignment as aforeshown, and had full knowledge of said transaction.

2- This respondent further shows, that if at the time of the said transfer from Dr. Howard A. Kelly to the said Charles H. Pulis, any credit on said original mortgage indebtedness, not shown by said statement herein, was due the said Mary W. F. Speers from the said Dr. Howard A. Kelly, neither he nor his said assignor had any knowledge thereof; and your respondent further shows that since said assignment of February 7, 1923, nothing has been paid by the said Mary W. F. Speers, or by anyone on her behalf, on account of said mortgage indebtedness; and that there is now due and owing thereon the sum of nine thousand dollars, ($9000.00), with interest from the 15th day of August, 1922, as well as all the costs of this proceeding.

Respectfully submitted

Assignee

State of Maryland

Anne Arundel County, Sct.

I hereby certify that on this 5th day of May, 1923, before me, the subscriber, a Notary Public of the said State, in and for the said County, personally appeared John S. Strahorn, and made oath in due form of law, that the matters and facts set out and alleged in the aforegoing answer are true, as therein stated, to the best of his knowledge, information and belief.

WITNESS my hand and Notarial Seal.

Juliet D. Strahorn
Notary Public

LIBER 78 PAGE 254

IN THE MATTER of the Sale of the Mortgaged Real Estate of Mary W. F. Speers,

No. 4742 Equity.
In the
Circuit Court for
Anne Arundel County.

- - - - - - - - - - - - - - - - - -

To the Honorable, the Judges of the said Court.

The petition of John S. Strahorn, Assignee in the above entitled case, respectfully shows:-

1. That no action, looking to the presentation of proof in support of the exceptions filed in this case to the ratification of the sale made by your petitioner herein, has been taken, although the said exceptions were filed on the 23rd day of April, 1923, and your petitioner's answer was filed thereto on the 5th day of May, 1923, as will fully appear by reference to these proceedings.

Filed April 23, 1923

Your petitioner, therefore, respectfully prays that an order be passed herein by this Honorable, Court, requiring said exceptant, Mary W. F. Speers to complete the presentation of her proof in support of said exceptions with a reasonable time to be named herein.

And he will ever pray, etc.

Jno S Strahorn Assignee.
Petitioner.

ORDERED, by the Circuit Court for Anne Arundel County, In Equity, on the foregoing petition, this 19th day of May, 1923, that Mary W. F. Speers complete the taking of her testimony in support of the said exceptions mentioned in the foregoing petition and file the same in this Court on or before the 12th day of June, 1923; provided a copy of this petition and order be served on the said Mary W. F. Speers, or her attorney of record, on or before the 25th day of May, 1923.

Filed May 19, 1923

Robert Moss, Jr.

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In the Matter of the Sale of : In the Circuit Court for Anne
the Mortgaged Real Estate of : Arundel County in Equity.
Mary W. F. Speers : No. 4742 Equity.

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To the Honorable, the Judges of the said Court.

The petition of Mary W. F. Speers respectfully shows:

1. That under an order passed in this cause on the 19th day of May, 1923, she is required to complete her testimony in support of the exceptions filed by her in this cause on or before June 12th, 1923.

2. That by reason of her inability to locate and secure the attendance of non-resident witnesses, who are material to her contention, she will be unable to complete the taking of her testimony by June 12th, 1923.

3. That she has no desire to delay or unnecessarily prolong the proceedings in this cause, but is imbued with the purpose of taking and returning to this Honorable Court, as speedily as possible, the testimony which she believes will support and maintain the exceptions filed herein.

Your petitioner, therefore, prays the Court to pass an order extending the time within which she may complete her testimony to such date as may seem reasonable to this Honorable Court.

And as in duty bound, etc.

Filed June 11, 1923

James P. Gorter
Sol'r. for Mary W. F. Speers.

Ordered by the Circuit Court for Anne Arundel County, sitting in Equity, upon the foregoing petition, this 11th day of June, 1923, that the time granted Mary W. F. Speers to complete taking her testimony in support of the exceptions filed in the above cause be and the same is hereby extended to Friday, June the 22nd 1923

Robert Moss, A.J.

Filed June 11, 1923

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In the Matter of the Sale of : In the Circuit Court for Anne
the Mortgaged Real Estate of : Arundel County in Equity.
Mary W. F. Speers : No. 4742 Equity.

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To the Honorable, the Judges of the said Court.

The petition of Mary W. F. Speers respectfully shows:

1. That under an order passed in this cause on the day of June, 1923, she is required to complete her testimony in support of the exceptions filed by her in this cause by June 22nd, 1923.

2. That she desires to take the testimony of non-resident witnesses, material and necessary to her contention in this cause, and believing she had arranged to do so gave notice thereof, in accordance with the law, but subsequently learned that she could not secure the attendance of her witnesses on the day for which said notice was given, to wit, June 21st, 1923.

Filed 22nd June 1923

3. That she has employed the law firm of Guthrie, Jerome, Rand & Kresel, of New York City, to conduct the examinations of witnesses to be examined in said City, who respectfully suggest to the Court that they desire an extension of time for taking testimony, as will appear from the affidavit of one of the attorneys associated with said firm filed herewith as part hereof, marked "Exhibit No. 1".

Your petitioner, therefore, prays the Court to pass an order extending the time for completing her testimony to such date as may to the Court seem reasonable.

And as in duty bound, etc.

James A. Easley
Sol'r. for Mary W. F. Speers.

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Fol.1.

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

----------x

MARY W. [illegible] SPRUNG,

Plaintiff,

-against-

JOHN F. STRANAHAN,

Defendant.

----------x

AFFIDAVIT.

EASTERN DISTRICT OF VIRGINIA,

STATE OF NEW YORK,) SS.:

" 2. COUNTY OF NEW YORK.

Filed 2d June 1923

MURRAY D. WELCH, being duly sworn, deposes and says that he is an attorney-at-law associated with Guthrie, Jerome, Rand & Kresel, attorneys-at-law of the City of New York, with offices at No. 37 Wall Street. Said firm of attorneys have been retained by plaintiff herein to represent her in the taking of certain testimony of certain witnesses in the City of New York. Deponent has charge of said matter and makes this affidavit as the party

" 3. most familiar with the above-entitled cause. Said firm was retained on June 14th.

This affidavit is made for the purpose of seeking from this court an extension of time for the taking of testimony of certain witnesses in the City of New York in the above-entitled cause. The action is an involved action, and deponent has not had an opportunity to examine the facts, nor any of the witnesses. Deponent is informed and verily believes that one or two of the witnesses are at the present time away from the City of New York, and it would be impossible for at least one of them to be in New York ~~on~~ until July 2nd or after. Deponent must have an oppor-

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" 4.

tunity to examine the witnesses for the taking of said depositions.

It is therefore respectfully requested that an extension of time be granted to the plaintiff herein for a reasonable time after July 2nd, in order that the said firm of attorneys may have had a reasonable opportunity to examine the witnesses and to prepare for the taking of said testimony in the City of New York.

Murray B. Welch

SWORN to before me this
19th day of June, 1923.

M Rosalie Maser

NOTARY PUBLIC
New York County Clerk's No. 317
New York County Register's No. 5268
Commission expires March 30th, 1925

ROSALIE M. MASER NOTARY PUBLIC N.Y. COUNTY CLERK'S NO.

Filed with Court Stenog in #4742 Eq July 21/23
Ex #36

D.D.B.

THIS AGREEMENT made this Third day of April, A. D. 1919 by and between GILPIN LOVERING of Philadelphia, State of Pennsylvania, A N D M. W. F. SPEERS of New York, State of New York, WITNESSETH:

That WHEREAS the said M. W. F. Speers is the equitable owner of a certain piece or parcel of land, situated on the North bank of the Severn River in the Third Election District of Anne Arundel County, in the State of Maryland, consisting of one hundred and fifty-two acres more or less, the legal title of which is now in Dr. Howard A. Kelly of Baltimore, Maryland, subject to the payment by Miss Speers of a certain sum of money amounting to between Twenty Thousand Dollars ($20,000.) and Twenty-five Thousand Dollars ($25,000); and

WHEREAS M. W. F. Speers desires to pay to the said Dr. Howard A. Kelly the sum or sums of money due him under the trust under which said property is held by him and thereby secure the legal title to said property in her or her assigns; and

WHEREAS the said Gilpin Lovering desires to secure an interest in the sale or operation of said piece or parcel of land as a mining operation; and

WHEREAS the said M. W. F. Speers desires that the said Gilpin Lovering shall have such an interest upon terms herein agreed upon.

NOW, THEREFORE, in consideration of the premises and in the further consideration of One Dollar ($1.00) paid by each of the parties hereto unto the other party hereto and of further good and valuable considerations passing from each party hereto

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unto the other party hereto, it is agreed by and between the parties hereto as follows, to-wit:

FIRST: The said Gilpin Lovering doth hereby agree that if certain investigations proposed to be made by him relative to said property shall prove satisfactory to him that he will, on or before the Eleventh day of April A. D. 1919 advance to the said M. W. F. Speers, to be held by Marvel, Marvel, Layton & Goldsborough, attorneys-at-law, Wilmington, Delaware, in her behalf, the sum of Twenty-five Thousand Dollars ($25,000) upon the following conditions of trust:

SECOND: The said M. W. F. Speers hereby agrees that if on or before the said Eleventh day of April A. D. 1919 the said Gilpin Lovering advances to her the sum of Twenty-five Thousand Dollars ($25,000) to be held as aforesaid that she will do and perform as follows, to-wit:

(a) That said money shall be held in trust for the said Gilpin Lovering, subject to the following terms and conditions,-

(b) The said M. W. F. Speers will with said fund or such portion thereof as may be necessary immediately make legal tender to Dr. Howard A. Kelly of the sum of money due the said Dr. Howard A. Kelly under the terms of trust aforesaid and demand a transfer of the legal title to said property to the said M. W. F. Speers or to such person or corporation as she may designate in writing.

(c) That the person or corporation taking the legal title as aforesaid shall immediately make, execute and deliver unto the said Gilpin Lovering a bond for the said sum of Twenty-five Thousand Dollars, secured by a mortgage upon all of said piece or parcel of land, conditioned upon the

payment of said Twenty-five Thousand Dollars ($25,000) within eighteen months from the date of the same, with interest thereon payable semi-annually at the rate of six per centum until paid.

(d) That if said legal title in Miss Speers or her assigns and the securing of said loan by a mortgage upon said property by the said Miss Speers or her assigns, shall not be made, done and concluded within six months from the Eleventh day of April A. D. 1919, then and thereupon the said Twenty-five Thousand Dollars ($25,000) shall be returned to the said Gilpin Lovering, with such interest as is allowed by the Wilmington Trust Company upon the same while on deposit, unless by a consent in writing, he agrees that it should be held for a further period.

The said M. W. F. Speers further agrees that upon the securing of legal title to said land in herself or her assigns and upon the securing of the loan aforesaid by the mortgage as aforesaid, that she will contemporaneously therewith make, execute and deliver, or have made, executed and delivered by her assign, to whom such legal title may be conveyed, unto the said Gilpin Lovering an agreement with him as follows:

That the said Gilpin Lovering shall have the sole and exclusive right to sell all of said property except fifty-two acres more or less, indicated on the plot hereto attached, by the land on the Southwesterly portion of said plot from a point beginning at the Northwesterly corner of Lot No. 537 on that plot running to the Northeast corner of lot No. 424; and thence in a continuation of said line to the Severn River, for the sum of Eight Million Dollars ($8,000,000.); the said Gilpin Lovering to have as his compensation for said sale all sum or sums of money, or other consideration secured by him in said sale, over and above the said Eight Million Dollars ($8,000,000.) and the said Gilpin Lovering shall have the sole and exclusive right to negotiate and secure an agreement for the lease of said

property, exclusive of said fifty-two acres, to be used and operated for the purpose of mining sand, clay, gravel or other earthen products, under the terms of which lease the lessee shall agree to mine at least seventy-five thousand tons of earthen products from said property each and every year for a period of at least ten years, and pay for said lease at least the sum of Two Dollars ($2.00) for each ton of earthen products so mined, of which rental so fixed the said Gilpin Lovering shall receive ten per centum (10%) during the period of said lease as his compensation for negotiating said lease. It being understood that in event of a sale, no consideration other than cash will be accepted by the owner of the property, unless said terms may be varied at that time and no lease will be made except with a lessee who at the time of executing said lease shall give bond with some bonding company authorized to do business in the State of Maryland, as surety therefor in the sum of One Hundred Thousand Dollars ($100,000.), conditioned upon the faithful performance by said lessee of the terms thereof.

IT IS FURTHER AGREED that the said Gilpin Lovering shall have a period of nine months from the securing of said legal title, the execution and delivery of said mortgage to secure said loan, for the negotiation of said sale or said lease as may be negotiated by him, and unless said sale is made or said lease is negotiated within a period of nine months from said date, his sole and exclusive right to negotiate the same shall thereupon terminate and determine.

IN WITNESS WHEREOF, the parties hereto have

hereunto set their hands and seals at Wilmington, Delaware, the day and year first above written.

SEALED AND DELIVERED
IN THE PRESENCE
OF:

M. M. Dugay
C. C. Fitzpatrick

Gilpin Lovering (SEAL)

M. W. F. Speers (SEAL)

STATE OF DELAWARE,)
: ss.
NEW CASTLE COUNTY,)

BE IT REMEMBERED, That on this Third day of April A. D. 1919, personally came before me, the subscriber a Notary Public for the State and County aforesaid, GILPIN LOVERING and M. W. F. SPEERS, parties to this Agreement, known to me personally to be such, and acknowledged this Agreement to be their act and deed.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

John J. Jolls
Notary Public.

THIS DEED OF ASSIGNMENT made this seventh day of February in the year 1923, by and between Howard A. Kelly, M. D. of Baltimore, Maryland, of the first part, and Charles H. Pulis of the second part, Witnesseth:

Whereas by a certain deed of mortgage, dated the 8th. day of December, 1919, a certain Mary W. F. Speers, unmarried, conveyed unto the said Howard A. Kelly a tract of land lying on the north bank of the Severn River in the Third Election District of Anne Arundel Co. County, Maryland, containing one hundred and fifty one and three quarters acres, more or less, and known as "Earleigh Heights" for the purpose of securing the payment of a sealed promissory note of the said Mary W. F. Speers of that date for the sum of Twenty Nine Thousand Dollars, payable one year after the date thereof, as will more at large appear by reference to said deed of mortgage of record among the Land Records of said County in Liber W. N. W. # 12 Folio 295 and recorded the 9th. day of December, 1919, and

Filed August 15, 1923

Whereas said mortgage contained a covenant which provided that at any time the mortgagor might secure the release of one hundred acres of the mortgaged property which formed the southeast portion of the whole tract and lying next to that of the Brenan Sand Company upon the payment of Twenty Thousand Dollars of the mortgage debt with interest to the date of such payment, and in compliance with that agreement, the mortgagor paid unto the said mortgagee the sum of Twenty Thousand Dollars with interest upon the whole mortgage debt to August 15th. 1922, and secured a release of the hundred acres so stipulated to be released as will appear by deed of partial release from Howard A. Kelly, dated August 24th. 1922, and recorded among said Land Records in Liber W. N. W. 52, Folio 472, and the mortgage note secured by the same having been endorsed with such payment and thereby reduced to Nine Thousand Dollars; and

Whereas the said Charles H. Pulis hath purchased of the said Howard A. Kelly an assignment of the balance of said mortgage now due and in default, amounting as aforesaid to Nine Thousand Dollars

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with interest thereon from August 15th. 1922, and is entitled to a free and full assignment of said notes and the mortgage securing the same.

NOW THIS DEED WITNESSETH: That in consideration of the premises and of Nine Thousand Dollars ($9000.) and accrued interest to the date of these presents to him paid, the said Howard A. Kelly doth by these presents assign, set over and release unto the said Charles H. Pulis or his assigns all the unpaid balance due and owing upon the note of the said Mary W. F. Speers aforesaid and secured by the mortgage aforesaid, free and clear of all claim or demand of any character by or on the part of the said Howard A. Kelly.

And as well all the right and estate, both at law and in equity of the said Howard A. Kelly in and to the said note and the deed of mortgage securing the same, hereby subrogating the said Charles H. Pulis or his assigns in and to all the rights and powers in said mortgage reserved.

And the said Howard A. Kelly doth by these presents covenant that there is now owing upon said mortgage, without offset or defence of any kind, the principal sum of Nine Thousand Dollars with interest thereon at six percentum per annum from the 15th. day of August, 1922, and that he hath not done nor permitted to be done any act or thing adverse to the said mortgage debt or his assignment thereof.

As Witness the hand and seal of the said Howard A. Kelly the day and year first hereinbefore mentioned.

Attest:- Howard A. Kelly M. D. (Seal)

Laura E. Hartge.

State of Maryland, Baltimore City, to-wit;-

I hereby certify this 7th. day of February, 1923, that before the subscriber, a Notary Public of the State of Maryland, in and for the City aforesaid, personally appeared Howard A. Kelly and acknowledged the aforegoing assignment to be his act and deed.

As Witness my hand and seal Notarial.

(Notary Seal)

Laura E. Hartge
Notary Public

Recorded 7th. February 1923, at 3-45 o'clock P. M. LIBER 78 PAGE 266

State of Maryland, Anne Arundel County, to-wit;-

I hereby certify, that the aforegoing Deed of Assignment was truly taken and copied from Liber W. N. W. No. 60, folio 56 Etc. One of the Land Record Books for Anne Arundel County.

In Testimony Whereof I hereunto set my hand and affix the seal of the Circuit Court for Anne Arundel County this 15th. day of August, A. D. 1923.

Wm. N. Woodward. CLERK.

Filed with Examiner August 15, 1923 as "Examiners Ex A."

THIS PARTIAL RELEASE OF MORTGAGE, made this 24th day of August, 1922, by HOWARD A. KELLY, of the City of Baltimore in the State of Maryland.

WHEREAS, on the 8th day of December, 1919, Mary W. F. Speers executed her promissory note to Howard A. Kelly, secured by a certain mortgage, which said mortgage is duly recorded among the Land Records of Anne Arundel County, in the State of Maryland, in Liber W.N.W., No. 12, folio 295, etc. : and

WHEREAS, said mortgage provided that upon the payment of twenty thousand ($20,000) Dollars and interest, the said Kelly would release from the operation and effect of said mortgage a portion of the property therein described; and

Filed: August 15, 1923

WHEREAS, the said mortgagee claims that the interest provided to be paid by said provision means interest on the entire amount in said mortgage specified; and

WHEREAS, the said Mary W. F. Speers has conveyed to the Speers Sand and Clay Works, Incorporated, the hereinafter described property, subject to the lien of said mortgage; and

WHEREAS, the Speers Sand and Clay Works Incorporated, has this day paid to the said Howard A. Kelly the sum of twenty thousand ($20,000) dollars and three thousand, eight hundred and forty-two dollars and fifty cents ($3,842.50) interest due on the entire amount specified in said mortgage; wherefore this Partial Release of Mortgage is executed.

NOW, THEREFORE, THIS PARTIAL RELEASE OF MORTGAGE WITNESSETH: that, in consideration of the premises and of the sum of one dollar, the said Howard A. Kelly does hereby grant and release unto the said Speers Sand and Clay Works, Incorporated, all that lot of ground and premises hereinafter described, being

a part of the lot of ground and premises mentioned, limited and mortgaged by the mortgage aforesaid, and which is described by metes and bounds as follows, to wit:

ALL that tract of land lying on the North Bank of the Severn River, in the Third Election District of Anne Arundel County, State of Maryland, laid out to contain one hundred acres of land, more or less; beginning for the same at a stone, situated North, twenty-five degrees west one hundred and thirty-four and eight-tenths feet from the northwest corner of a Roman Catholic Church (said stone being south twenty-one degrees west one hundred and twenty-six and seven-tenths perches from a stone planted at the end of the fourteenth line of Robinson's Morning Walk land); thence running South twenty-one degrees west one hundred and eighty-four and twenty-five one hundredths perches to the North side of the Severn River, thence west along this River thirty-one perches to a point in a ravine leading from said River, thence up this ravine North four degrees thirty minutes west thirty-one and eight-tenths perches, thence north three degrees west one hundred and ninety-one and four-tenths perches to a point; thence running north twenty-five degrees forty-five minutes east twenty-three perches to a stone; thence south sixty-two degrees east one hundred and twenty-three perches to the place of beginning.

TO HAVE AND TO HOLD the hereinbefore described portion of the aforesaid mortgaged premises unto and to the use of the said Speers Sand and Clay Works, Incorporated, its successors and assigns, free and clear from the lien and legal operation of said mortgage and in the same manner as if the same had never been executed.

AS WITNESS, the hand and seal of the said Howard A. Kelly.

Witness)
Edmund Kelly)
)
Will McLain)
)
TEST:)

Howard A. Kelly (seal)

DOMINION OF CANADA)
) to wit:
PROVINCE OF ONTARIO)

I HEREBY CERTIFY that on this 24th day of August, in the year 1922, before me, the subscriber, a Notary Public, personally appeared Howard A. Kelly, the Releasor named in the aforegoing Release of Mortgage, and acknowledged the said Release to be his act.

WITNESS my hand and Notarial seal.

SEAL

W. C. Brown.
Notary Public.

Recorded September 7" 1922. 12 noon

State of Maryland, Anne Arundel County, To Wit:-
I Hereby Certify, that the aforegoing Partial Release of Mortgage is truly taken and copied from Liber W. N. W. No. 52, folio 472, one of the Land Record Books for Anne Arundel County.

In Testimony Whereof I hereto set my hand and affix the Seal of the Circuit Court for Anne Arundel County, this 15th. day of August, 1923.

Wm. N. Woodward, Clerk.

Filed with Examiner
Aug. 15/23 "Examiner's Exh B."

TESTIMONY of DR. HOWARD A. KELLEY, taken in the Circuit Court for Anne Arundel County, in Equity, before Judge Robert Moss, on September 29th, 1921, filed in said Court on the 12th day of November, 1921, at 11 A.M.

Assignee's Examiner's Exhibit B--1.

Cost due Clk $6.25 — Paid by John S Shalmer 20 Aug 1923

(93)

A I didn't get that far. It depends upon how much money you have got to improve it.

THE COURT: There isn't any limit is there to what you would be willing to make out of it?

A No, sir.

The witness was thereupon excused and Dr. Howard A. Kelly took the stand.

MR. RANDALL: May it please your Honor, Dr. Kelly has come to make certain corrections in his statements. He has four little corrections he wants to make in his testimony.

THE COURT: Proceed, Dr. Kelly.

DR. KELLY: The first is that the price for the deed Dr. Kelly to Speers was $30,000 and not $29,000. I wish to state that $29,000 represented the balance due and $100 due to Mr. Marvel. (? Mr. Randall ?)

On page 12. The second is also on page 12, that the original $1500 mortgage loan was made to Mary Speers. It was really ~~there~~ made to the then owner, Mrs. Margaret B. Speers.

The third is on page 13: That I had received an offer of $26,000 for the property and I wish to state that later on I received a tentative offer of $26,000 to run for five years with a small cash payment to be made to promote a real estate firm, that is on page 13.

Now on page 30, I wish to correct the statement that several thousand dollars were paid by me for the camp buildings and the Delco system. I made no statement at that time as to what should be paid. I do not remember the amount and the amount was left in Mr. Randall's hands. The amount was, I believe something like $365 to be used for the benefit of (94) soldiers at Ft. McHenry, to purchase flowers ~~and~~ monthly for them.

Then on page 32, I wish to correct the answer that I didn't get

the property at $10,000 by stating that the property was bought and by my attorney at $10,000 which was the highest bid in the sale.

I am awfully busy with things involving people's lives every moment that I am awake and I don't carry these things in my head. I have to leave all such matters to my secretaries, and it is sometimes difficult to answer things point blank.

CROSS EXAMINATION BY MISS COTTLE

MISS COTTLE: You were not here this morning, I believe?

DR. KELLY: No.

MISS COTTLE: When your attorney stated that there is a certain paper you have, from which alone you are able to testify about as to expenses, outlays, etc.

DR. KELLY: Yes, I have such a paper here.

MISS COTTLE: May I see it?

DR. KELLY: Certainly.

MISS COTTLE: Now, Dr. Kelly, you have submitted here a paper signed by no one, not dated, and purporting to contain memoranda in reference to the Speers Estate, the total of which amounts to $22,865. Will you kindly tell me from what sources these amounts were made up?

DR. KELLY: The large cash payments on the 8th I think were payments by Miss Speers, $1500, August 8, 1915. The second is the cost of the property bought by me, June 30, 1916, amounting to $14,310. I have item here taken from my check book which were made out by my daughter who is now in Europe. (95)

MR. KALDENBURG: We object to that, your Honor.

THE COURT: Let him read the items.

DR. KELLY: Made out by my daughter, now in Europe, amounting in all to

14th of September 1916-$3617. There are these four to be noted.

The second item, Jan. 2, 1917		4755
The third item, June 27,	$	
from Mr. Herbert Brune		4948.36

MR. RANDALL: One thousand-

DR. KELLY: One thousand deposited July 1st, 1916 from

Daniel R. Randall, Doubtless this was for the Delco $365. Now I don't do this once in ten years. I pay no attention to all such business matters. I simply haven't time for it.

MISS COTTLE: Dr. Kelly, as a matter of fact, you can not of your own knowledge testify as to the items that go to make up the $29,000 mortgage. Do I understand right?

DR. KELLY: Yes and no. I have my books to verify the statement I make. I don' carry those things in my head. I have many interests. I have interests all over the world, in India, in China, in Russia, in South America, in Central America, in Maryland, in Pennsylvania and Canada and I couldn't remember all these details.

MISS COTTLE: Now in all that, Dr. Kelly, your attorney should not be opposed to Miss Speers interests?

DR. KELLY: No.

MISS COTTLE: As a matter of fact, according to your own testimony, have not these items been made up by other persons who you think will agree exactly with you in these matters?

DR. KELLY: I give it to my secretary. Then she (96) attends to the bookkeeping of these particular amounts. I believe she prepared the paper you have in your hands.

MISS COTTLE: You would testify that they are absolutely true?

DR. KELLY: Absolutely true.

MISS COTTLE: Do you keep your own check book?

DR. KELLY: My daughter makes them out when she posts the balance, and my other secretaries when they pay the balance.

MISS COTTLE: And your daughter keeps your books?

DR. KELLY Yes, until she went to England last July.

MISS COTTLE And when away these previous things came up?

DR. KELLY: Previous to that.

MISS COTTLE: Items of funds testified to by you. Dr. Kelly those items were all paid by your daughter?

DR. KELLY: I cannot say who made them up - they were prepared for me to testify from. It might have been Miss Black, my librarian.

MISS COTTLE: When were they made up?

DR. KELLY: Within a few days.

MISS COTTLE: Your books were kept by your daughter. Where are these books?

DR. KELLY: In my library.

MISS COTTLE: And your daughter is in England? And you cannot produce her?

DR. KELLY: No.

MR. RANDALL: The whole purpose of this is to protect Dr. Kelly's payments for this property. I have compiled and(97) I admit the allegation of compiling that statement having gotten the payment of interest from Dr. Kelly and Mr. Brune. What has all this to do with anything?

MR. KALDENBURG: Mr. Randall, have you made up one of these statements also? If so, let me call your attention to the fact that you have not figured your interest correctly. Now all these amounts here of cheques drawn - do you know how they were made, Dr. Kelly?

DR. KELLY: They go through the bank. They come back.

MR. KALDENBURG: Do you know what constitute the items for which you drew those cheques? Didn't you just tell us that your daughter made them? You don't know of your own personal knowledge?

DR. KELLY: Well, I know in a general way.

MISS COTTLE: Now, as a matter of fact, Dr. Kelly, youare one of the most celebrated surgeons in this part of the country are you not?

DR. KELLY: You flatter me.

MISS COTTLE: Your time is taken up a great deal of the time with operations?

DR. KELLY: All the time.

MISS COTTLE: You are very much interested in the work that

concerns human beings and that was one of the reasons why you agreed to make this loan to Mrs. Speers was to assist her and her family in retaining this property at the time she came to you originally, she was in danger of losing it? Is that correct?

DR. KELLY: Yes, that was one of the reasons.

MISS COTTLE: No, you are wrong in that - it was the (98) only reason wasn't it? Do you recall, Dr. Kelly, your conversation with Miss Speers at the time?

DR. KELLY: Somewhat.

MISS COTTLE: Will you state it?

DR. KELLY: Miss Speers told me she had left a property which was all her family possessed; that a real estate agent, I think his name was Martin or some such name, had gotten a mortgage on the property for a sum far below its value; that he was going to sell them out if she could not produce $1500 within a brief specified time and would I loan her that sum.

MISS COTTLE: What did you say?

DR. KELLY: I told her I would inquire into the property. I asked Mr. Brune and he said that he believed that the property was worth the amount of the mortgage as well as any loan I might make. I then made the loan to Miss Speers.

MISS COTTLE: At the time that you made this loan what if any statement did you make to Miss Speers in regard to your profiting from the transaction?

DR. KELLY: My original attitude and what I told her was that she had my confidence and trust and I used that word in the same sense that I would when I say I trust you.

MISS COTTLE: Well, will you be a little more explicit, Dr. Kelly, and state exactly what you did say to Miss Speers when she came to you and you told her that you were not interested in this property as a matter of profit to yourself?

DR. KELLY: Why, I stated, I suppose, Miss Speers, I am glad to help you out in this matter and it is not a matter (99) of making

money out of Miss Speers. But Miss Speers made definite promises that at certain times she would fulfill certain obligations.

MISS COTTLE: Did you tell her that you would be glad to hold the property for her and her family and return it to her later?

DR. KELLY: No, I don't remember making any such statement. I loaned her $1500 which was secured by the property.

MISS COTTLE: You had her note?

DR. KELLY: No, I simply wanted to protect her from being robbed by a shark of a real estate agent.

MISS COTTLE: Now, at a later date, do you recall that after Miss Speers came to you and said that she would like to have you become the purchaser of this property and to turn over the property to her. Is that correct?

DR. KELLY: I don't remember ever having heard such a proposition in my life.

MISS COTTLE: Wasn't there some talk about willingly investing in this mortgage in order to help keep the property even if allowed to lapse so that the property could be foreclosed when the time came to transfer it to Miss Speers?

DR. KELLY: No, there wasn't any such talk about anything. Most of my relations with Miss Speers were the briefest conversations. I couldn't get any details from her by letter. I have a volume of letters from her.

MISS COTTLE: QUESTIONS BY MISS COTTLE
ANSWERS BY DR. KELLY.

Q Do you recall what conversations actually took place (100) in regard to this Martin-Speers mortgage?

A The mortgage was given to Mr. Martin for a certain sum specified, I forget what it was now and they were fully prepared to pay it in a short time and it would be immediately refunded to me. That was in 1915 - August 1915.

Q Well, what actually did take place in regard to this Martin-Speers mortgage?

A What actually took place was that I lived on promises for six years. I had to foreclose finally. I had to buy in the property

in order to protect my mortgage investment. And on the money loaned I lost a pretty bit of interest.

Q Was the interest allowed to lapse?

A As I have indicated.

Q Is that what actually happened and the interest had lapsed.

A I think one payment was made.

Q Now just a moment, Dr. Kelly. Are you testifying from your own knowledge. I want to know whether you are familiar with this particular item?

A No, but if you want to salvage this case, I will gladly give you the interest.

Q I want to know if any of these items are known to your personal knowledge? Were you present when this particular transaction took place - in regard to the Martin mortgage, the mortgage for $1500.

A No, I received the papers.

Q Were you there and did you see Miss Speers at the time and talk with her at the time?

A She came to my office and I loaned her the $1500. I drew a cheque for it and had no further relations personal or (101) indirect with them.

Q What actually took place in connection with the mortgage? That is what I am trying to get at Dr. Kelly?

A I had to buy it up.

Q You bought it up at public sale?

A Yes.

Q Were either Miss Speers or Mrs. Speers present?

A I don't know.

Q Was Miss Speers present?

A I don't know.

Q Was her mother present?

A I don't know.

Q You dont know the details --

THE COURT: Of which mortgage are you speaking?

MISS COTTLE: The first mortgage, your Honor. Where the interest was allowed to lapse and Dr. Kelly bought in the property and then later sold it to Miss Speers. Our position is that there was a trusteeship between Dr. Kelly and Miss Speers that the interest should be allowed to lapse and that Dr. Kelly--

THE COURT: You don't mean that Dr. Kelly was to foreclose Mr. Martin's mortgage?

DR. KELLY: Now I can answer that, sir for it deals with a matter of general policy and of principle. Absolutely no.

MISS COTTLE: I show you a letter dated Oct. 19, 1917.

MR. RANDALL That letter has been shown Dr. Kelly.

MISS COTTLE: Never mind, I want to show it to him again and ask him one question:

DR. KELLY: Yes, yes, that was when Miss Speers owed Mr. Marvel for individual loans never obtainable. (102)

MISS COTTLE: I want to know what you mean there by the expression: "I took this property to hold it to provide a home for Mrs. Speers and her daughters who are now without a natural guardian and protector?"

A My relation was one of confidence. If I hadn't had confidence in her I would have been a fool to give her a sum of money.

Q Now at later dates, Dr. Kelly, where figures were somewhat variable, at one time you agreed to accept a certain amount to clear the property of all its encumbrances --

A You have me there --

Q Will you state your reasons for the sudden change for the loan made by you to clear the property?

A Was this before the sale? I am inclined today to put the price at $100,000 since I heard Mr. Meigs' testimony.

Q You know that it is considerably more valuable than when you bought it in at the time of the sale. Do you or do you not think it is more valuable than at the time you bought it in?

A If I do I have more confidence in these experts I have heard here today.

Q Do you regard them as experienced men?

A Oh, most certainly.

Q At the time this property was sold, Dr. Kelly, I presume you had visited the estate and were acquainted with the character of the property.

A Only in a general way. I have no expert knowledge of such matters.

Q At the time of the sale what did you actually know of the property?

A Why only as a real estate proposition, but as a mining proposition I knew nothing except as to Miss Speers assurances as to the property running into millions. (103)

Q Well, when you went over this property in the first instance, what did you observe as to its character?

A That it had a sandy soil and that it had no value at all but would only appeal to someone who would desire to settle and it was unfortunately quite remote from any acceptable point from which it could be visited from the cars.

Q Did you notice at that time any evidence of clay and of a very sharp kind of sand?

A No.

Q Did you go down to the water front where the sand clay quarries were located?

A Oh I went down there because I am interested in scenery?

Q Have you ever visited this property with an expert who would have knowledge of sand and clay products?

A I went there with someone from Annapolis, I have forgotten his name, I don't know how much of an expert he was. He wouldn't appear to be an expert.

Q Do you recall visiting these premises with a man named Miller from Baltimore?

A I think that was his name.

Q Well, what was his business?

A Building projects, I think.

Q How did he come to go there?

A He wanted to go down there and see the place with me.

Q When was this?

A Last Spring, I believe.

Q As a matter of fact, when you brought in this property, you were familiar with the value of it as a mining property / were you not, Dr. Kelly?

A As a matter of fact, I was not. (104)

Q You didn't make any extensive inspections along these lines when you went there with Mr. Miller from Baltimore?

A Possibly he gave me the idea as to some value but if so I lost it - fact I forgot all about it.

Q Did you have any conversation over ~~this~~ the property with any persons who desired to buy it.

A Except something I may have had with Mr. Randall. But that is not my work. I am not a real estate agent. I do not handle these things. I turn them over to these who are my confidential advisers and agents. I don't have time.

Q Do you remember testifying at the instance of your counsel at 712 Keyser Building, Baltimore March 2, 1921?

A Oh I remember testifying.

Q I ask you if you remember the circumstances?

A Oh yes I remember making a statement. I read it today coming down on the car.

Q And do you remember stating that if you could get out in the neighborhood of $26,000 you would be happy?

A If you find it in the stenographic record I suppose it is correct.

Q You now wish to correct your testimony so as to make it read that the highest offer you ever received for this property was $18,000.

A No I don't remember that. I don't wish to make any statement about that. I would have to be absolutely sure as to that.

Q Well you have it just right here on the statement to that effect. Now, which is it, Dr. Kelly. You stated to me that you had

your deposition here of Mrch 2, 1921. (105)

MR. RANDALL: We made a correction, yes sir.

MISS COTTLE: And now he says he doesn't recall what it is. I will read it. (Reads corrections cited on pages 85 and 86 of this transcript).

MISS COTTLE: Will you kindly tell me, Dr. Kelly, whether you know that these corrections that have been made on the paper from which you have read earlier in this testimony here were the result of changes which Mr. Randall suggested?

A No, he told me I had made a mistake.

Q Was that when you testified as to the offer you had received?

A Yes that came from Mr. Randall and he told me that I hadn't testified correctly.

Q Do you mean to tell me that you didn't know anything about these offers? That you hadn't met any of these persons?

A My dear young lady I have repeatedly told you that I know nothing about the details of my affairs, only in a general way.

Q You have left all these matters to your counsel, Mr. Randall?

A No, every action Mr. Randall Communicates to me - he calls me up and consults me. But I don't charge my memory with such details.

Q As a matter of fact, your change of attitude toward Miss Speers has been considerably affected, has it not, by the antagonism between Mr. Randall and Miss Speers?

A Absolutely no, because of my own personal antagonism which I don't wish to enter into, if you please.

Q And so you left it with Mr. Randall? (106)

A I have endured much for a great many years and don't wish any such thing to drag on. I stated that Mr. Randall always consulted with me before doing anything. He sends me letters or calls me up.

Q Yet you have stated that you have no personal knowledge of these facts?

A I stated that I don't carry them in myhead.

Q And you said that Mr. Randall had told you that you had made an error in your previous testimony?

A Three times I have so statedX here. Is that sufficient?

Q Now, Dr. Kelly, that item of $29,000 was exactly the amount of the mortgage was it not?

A No. I have said so before. No. NO.

Q This transaction was carried on by your attorney, Mr. Randall and you left the matter entirely in his hands to make arrangements?

A T"at is correct.

Q Well in making out the mortgage of $29,000--

A Yes, he consulted with me. Mr. Randall always consults with me.

Q He tells you about any steps you are to take? You knew at the time that Mr. Randall had a judgment against Miss Speers and that further Miss Speers ought to know?

A I don't know.

Q Well, how was it, you say that Mr. Randall always consulted you about everything when you have just testified that here was a $29,000 mortgage you knew nothing about.

A You ask Mr. Randall, he will tell you I don't bother about such things more than to confer about them. (107)

Q You had some kind of a memorandum, had you not, Dr. Kelly, at the time you testified in Mr. Randall's office on March 22, 1921.

A I must have had, I couldn't have testified about nothing.

Q Where is that memorandum?

A I haven't the slightest idea.

Q Did you have it to testify today to those items? Could you have testified as to those items of your own knowledge?

A I testified here today.

Q I wish to read you the third question. That third question which you asked the Court for permission to change.

"When was the third mortgage loan made by you?"

Were you asked that question?

A I don't know what you are calling a mortgage loan. I loaned $1500. (12)

Q Dr. Kelly, just one moment, If you will just refer to that third question, the maximum --- by your counsel --- the transcript in this copy by Mr. Randall's stenographer does not correspond with mine. The questions and answers are different. "When was the third mortgage loan made by you?" You were asked that question at the time of this examination.

A Yes.

Q I show you this, your answer - "August 8, 1915, according to my memorandum which can be substantiated by documents." That was your answer?

A Possibly, I couldn't say.

Q You couldn't say?

A Well, there began shortly after that an interminable correspondence with Miss Spears who had suddenly got hold of (108) different people, very prominent people in various parts of the country with whom she claimed close relationship --

Q The next important date which I have to ask you about is June 30, 1916, when there was being sold by Mr. Randall the property which he purchased at $13,850., the sale being ratified August 11th, 1916. Before taking judgment on this sale there was a claim of $13,677., Is that your answer?

A It evidently was.

Q May I see that memorandum that you have referred to here in testifying?

A Certainly.

Q You have read from that paper, you know, Dr. Kelly, that this item of forced sale of the property on June 30, 1916 brought $14,310. Now, how do you male that statement agree with the preceding one. How did you make up that statement?

A I didn't make it up at all except if it was made up from my checkbook stubs.

Q You didn't account for the discrepancy in the answer to that question in your testimony of March 22nd.

MR. RANDALL: There is no discrepancy.

(13)

DR. KELLY: Just a moment Mr. Randall, she is trying to show that the $13,310 ---

MISS COTTLE: Mr. Randall you are not testifying at the moment. We object to this your Honor, We object to the prompting of the witness by the interruption. We are simply tryingX to ascertain whether or not this is a third mortgage. We show this mortgage is in reference to the actual amount of money due Dr. Kelly. If it is conceded that Miss Speers was forced (109) to give up as she has testified without the chance to preserve her property, she was obliged to go on a misrepresentation. Now, we want to find out from Dr. Kelly if that mortgage of August was the one really giving him the place for loans made to Miss Speers and for expenses involved in his carrying out his mortgage.

DR. KELLY: Your Honor, the question seems to be where I stand in this matter? The question is if I own the property or not?

MR. KALDENBURG: You have sworn here today that you paid $14,310., also you have sworn that you paid $14,350., for the same piece of property.

MR. RANDALL: You haven't got sense to see the distinction between the price -- and interest.

MR. KALDENBURG: We know nothing about that your Honor.

MR. RANDALL: The interest from the day of sale added to the purchase price ---

THE COURT: Mr. Randall didn't write interest to Dr. Kelly -

DR. KELLY: No, there was nothing about interest on the paper ---

THE COURT: We have thought, Mr. Randall, it would clear the record if you would have Dr. Kelly file a statement and let him swear to it that the error may be corrected by attaching his check stubs.

MR. KALDENBURG: This testimony is given in contradiction ~~of~~ to

of testimony previously given.

THE COURT: It does appear so on some points but Dr. Kelly (110) is not altogether certain as to what he has just sworn to.

DR. KELLY: Yes, that is just it, I don't quite understand-

MR. KALDENBURG: Well, your Honor, I don't know how it is in your part of the country, but in my part of the country if you buy a certain piece of property to be paid for at the end of a year, your interests are absolutely protected. This procedure is quite unheard of to me. I am dealing in matters of many hundreds of thousands of dollars a year --

THE COURT: You understand, Doctor, that they allege that there is a trust somewhere in connection with this. It would be better for you to get up a document and turn your books over to Mr. Randall and get up a statement to set forth how it stood on the day of sale - just the circumstances, Miss Cottle, have you any suggestions?

MISS COTTLE: Your Honor, I don't know anything about it. $500 of that money was Randall's fee - he has so stated. Beyond that I am at a loss.

MR. RANDALL: I will prepare the statement, your Honor.

THE COURT: That will fix it.

MISS COTTLE: That is what we want your Honor, - an accounting of the whole business.

MR. KALDENBURG: 1920, 1921 and all the way back.-

THE COURT: Dr. Kelly, there are some buildings on this property are there not?

DR. KELLY: Yes.

THE COURT: And were some of these buildings erected during the time the Government was using the property?

A They are still on the property. I haven't been there (111) for some months. I presume they are still standing.

Q Did you have to pay the Government any money for these buoldings?

A I don't know whether I did or not. I paid the government a sum of money which amounted to $365 for some heating arramgement but so far as I know that is all I paid.

MR. RANDALL: Now, if your Honor please, I am very anxious to close this matter. I wat a to file for Dr. Kelly this statement showing the items of interest showing the total is $14,310 and I will file it at any time you see fit, his cancelled check stubs attached, to be filed with the testimony.

THE COURT: That seems to be proper, Mr. Randall. There is no more questioning, I believe, and if you choose to do this, it will take very little time. I should think, and will be good to have on the day of argument. Now, I believe that closes the testimony.

MR. KALDENBURG: Your Honor, Dr. Kelly, Miss Speers has stated that you admitted to her the purchase price of $30,000 with a mortgage back of $29,000, which was executed December 21, 1919. I want to ask you whether the offer of $30,000 for the property which your agent offered Miss Speers is a purchase price.

DR. KELLY: I have always understood that she was the one who suggested it. She declared that the property was worth millions and that anything was a mere bagatelle compared to its enormous value and would be well taken care of. Did she not? (To Mr. Randall)

MR. RANDALL: She did. (112)

MISS COTTLE: How do you know that, Dr. Kelly?

DR. KELLY: I have her letters and have listened to her conversations.

MISS COTTLE: You don't recall whether those conversations were made to you personally or not, do you, or made through your attorney and transmitted to you?

DR. KELLY: They were made to me personally as well as many letters

MR. KALDENBURG: Your attorney has those letters if there are any in existence.

SENATOR BRADY: Then we request Your Honor that any letters of that nature by the purchaser be transmitted to the exceptants' counsel.

(16)

We wish to thank Your Honor and will wait Your Honor's convenience for the dey of argument.

MR. RANDALL: Right here I will ask Dr. Kelly whether he has in his possession the original letter of December 5, 1919, or whether he recognizes the carbon copy as the copy of a letter I wrote him on that date?

DR. KELLY: Well - let me see --

MR. KALDENBURG: We object to that if your Honor please. It is a communication between counsel and exceptee and highly improper to bring forward.

THE COURT: Miss Cottle, were you seeking to get something in evidence?

MISS COTTLE: Miss Speers wished an opportunity to rebut Dr. Kelly's previous testimony but before Miss Speers takes the stand we object to the letter which Mr. Randall is endeavoring to offer. (113)

THE COURT: Proceed, Miss Speers.

(Miss Speers on the stand)

Filed with Examiner August 15, 1923 as Examiners Ex. B-1.

I, William N. Woodward, Clerk of the Circuit Court for Anne Arundel County do certify the aforegoing to be a full and complete copy of the testimony of Dr. Howard A. Kelley taken before Judge Robert Moss in this Court, in Equity, on September 20th, 1921, and filed in this Court on November 12th, 1921, at 11 A. M., in Equity cause No. 4511, beginning near the top of page 93 and ending at the bottom of page 112.

In testimony whereof I hereunto set my hand and affix the seal of the Circuit Court for Anne Arundel County this 20th day of August, 1923.

Wm. N. Woodward

Clerk of the Circuit Court for
Anne Arundel County.

November 18th, 1919.

Miss Mary P. Spoors,
St. Paul Street,
City.

Dear Miss Spoors:

I spent part of Thanksgiving afternoon with Dr. Kelly and have accomplished by that interview much that you wanted done, certainly the main features of your request, but a number of conditions are attached to any grant of the property by Dr. and Mrs. Kelly to you. As these conditions are vital to further business along the lines of your suggestion, I shall name them at once.

(1) The mortgage is to be a purchase money mortgage given for the period of twelve months, dated December 1st, with interest payable at 6% on June 1st and December 1st, following; default in the payment of interest or any other condition is to be followed by immediate foreclosure after ten days' public notice only. The mortgage is to be payable at any time after date, without notice.

(2) The property is to cost you $20,000, and the mortgage is to secure that payment.

(3) The contract of purchase, in default since September 15th, is to be surrendered by you and reassigned to Dr. Kelly or to me on his representative.

(4) An acre of water front on the point where the little hut stands is to be reserved from a conveyance to you and held in fee by Dr. Kelly with the right of egress by any one of the road-ways now entering the property to and from it, and the right to use the spring.

(5) Mr. Josiah Marvel is to write a letter to me or to Dr. Kelly wherein he will set forth the fact that upon the execution of the deed to you of the one hundred and fifty-two acre tract, immediate steps will be taken to legally organize the Land Company, and further, he is to state that he himself, or Mr. Dupont, is to take enough of the capital stock of the Company to warrant the payment of the Kelly mortgage at or before maturity.

I believe these conditions are all in the interest of fair dealing and justice and are open to no good objection. The grant of the acre to Dr. Kelly is in accordance with your expressed

Filed Aug. 15, 1923.

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wish. It is possible that he may not care to use it and might enter into a contract not to alienate it without giving you the first opportunity to purchase.

The letter from Mr. Marvel or Mr. Dupont is an absolute essential condition that those gentlemen intend to back your enterprise at least to the extent of the Kelly mortgage and is along the line of my frequent demand that you furnish us with information from a reliable source as to this matter.

In order to secure the sale of the property to you, subject to those conditions, I had to stipulate with Dr. Kelly that in the event of a foreclosure proceeding, due to the failure of your contract, I would revest him with the property without expense. In doing this I assume a large contract and an extensive outlay in funds. Consequently my own condition is that you pay half of the agreed fee to me at the time of the execution of the deed and mortgage (or give me a note for that amount, payable thirty days thereafter, which note is to bear the endorsement of some person agreeable to me and ample to secure the note) and the balance of the agreed fee to be paid at the time that the Kelly mortgage is paid off, this amount to be also secured by note as above indicated unless paid in cash.

I leave the matter now in your hands with this stipulation that it can go through at any moment that all the conditions named herein are met.

Very truly yours,

DFR/B.

Filed with Examiner
Aug. 15, 1923
"Examiner's Exh. 6"

LJER 78 PAGE 291

In the Matter of the Mortgaged real Estate of Mary W. F. Speers.

No. _____ Equity.

In the Circuit Court for Anne Arundel County.

To the Honorable, Robert [illegible], Judge of said Court.

The petition of Howard A. Kelly, M. D., mortgagee in this proceeding, respectfully shows:-

(1) That your petitioner hath entered into an agreement with the mortgagor extending the due date of the mortgage note filed in this proceeding and secured by a mortgage also filed herein for Twenty Nine Thousand Dollars ($29,000.00), upon the payment of the costs of this proceeding and of a substantial and agreed sum to be credited upon the interest in default and upon certain judgments recovered against the mortgagor and her mother, and of record in this Court, and upon which payment that these proceedings should be dismissed without prejudice to the rights of the parties hereto.

(2) That your petitioner desires an order of Court granting permission to your petitioner to dismiss the proceeding foreclosure and to withdraw from the papers in this cause, the original mortgage and the note secured by the same.

WHEREFORE, your petitioner prays the Court to pass this order to that end.

And as in duty bound, etc.

(Signed) Daniel R. Randall,
Solicitor for Howard A. Kelly, M.D.

I hereby assent to the passage of the order prayed.

(Signed) Mary W. F. Speers,
Mortgagor.

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over

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In the Matter of the Mortgaged Real Estate of Mary W. F. Speers.

No. 4511 Equity.

In the Circuit Court for Anne Arundel County.

ORDERED, this 6th day of December, 1921, by the Circuit Court for Anne Arundel County, upon the aforegoing petition and consent that this proceeding be dismissed without prejudice to the rights of the parties to the same, and that the mortgagee be and is hereby authorized to withdraw his mortgage and note filed herein.

(Signed) Robert Lees, A. J.

State of Maryland,
Anne Arundel County, Sct.

I, William N. Woodward, Clerk of the Circuit Court for Anne Arundel County, Maryland, do hereby certify that the foregoing and within is a true and complete copy of petition, consent and order of Court thereon, filed in No. 4511 Equity, in this Court, on the 6th day of December, 1921.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of the said Court affixed this 19th day of June, 1923.

Wm. N. Woodward
Clerk.

Filed with Examiner
Aug. 18, 1923
"Examiner's Exh. D"

WHEREAS, an agreement has been entered into this 5th day of December, 1921, under and by which, upon the payment of the sum of three thousand ($3,000) dollars, the mortgagee, Dr. Howard A. Kelly, in the case of "IN THE MATTER OF THE MORTGAGED REAL ESTATE OF MARY W. F. SPEERS, No. 4511 Equity, In the Circuit Court of Anne Arundel County" (State of Maryland), has agreed to dismiss said case and reinstate said mortgage, and has also agreed that he will not in any manner attempt to foreclose the said mortgage until after July 1st, 1922, and that at any time in the interval between the date of this agreement and July 1st, 1922, he will receive in full settlement of the said mortgage debt the amount then due together with the interest properly chargeable thereon, and release said mortgage, or if desired assign the same without recourse to any person designated by the said Mary W. F. Speers:

NOW, THEREFORE, in consideration of the premises and of the sum of one ($1.00) dollar to her in hand paid, the said Mary W. F. Speers does hereby agree that in the event she does not pay the mortgage debt and interest, properly due on said mortgage, on or before July 1st, 1922, that she will at that time execute and deliver to the said Mortgagee, Dr. Howard A. Kelly, a deed of all her right, title and interest in said property.

AND IT IS FURTHER AGREED, that upon the release of said mortgage by said Kelly, he will execute and deliver to the said Mary W. F. Speers a deed in fee of the point of land containing an acre of land more or less, together with the rights and appurtenances thereto belonging, formerly a portion of the tract in said mortgage described and excepted from said tract. See Deed from Howard A. Kelly to Mary W. F. Speers, dated December 1st, 1919, and duly recorded among the land records of Anne Arundel County in Liber W. N. W. No. 12, folio 294, etc. aforesaid

AS WITNESS the hands and seals of the parties hereto.

WITNESS:	Mary W. F. Speers	(SEAL)
Marion Weston Cottle	Howard A. Kelly	(SEAL)
(to M.W.F.S. and H.A.K.)		

State of Maryland, Anne Arundel County, To Wit:-

I Hereby Certify, that the aforegoing Agreement is truly taken and copied from Liber W. N. W. No. 60 folio 228, one of the Land Record Books for Anne Arundel County.

In Testimony Whereof, I hereto set my hand and affix the Seal of the Circuit Court for Anne Arundel County this 15th. day of August 1923.

Wm. N. Woodward, Clerk.

Filed with Examiner
"Examiner's Exh. E"

No. 4742 Equity.

In the Matter of the Mortgaged Real

Estate of Mary W. F. Speers.

In the Matter of Exceptions filed to

the Ratification of the Sale

No. 4742 Equity.

DEPOSITION OF CHARLES H. PULIS.

EDWARD G. ALSDORF,
Notary Public,
44 Wall Street,
New York City.

No. 4742 Equity.

In the Matter of the Mortgaged Real
Estate of Mary W. F. Speers.

In the Matter of Exceptions Filed to
the Ratification of the Sale
No. 4742 Equity.

Filed 31st Aug. 1923.

Deposition of Charles H. Pulis taken this 24th day of August, 1923, at 44 Wall Street, in the City and State of New York, before Edward G. Alsdorf, Esquire, a Notary Public in and for the County of Nassau, State of New York, a certificate having been duly filed in the office of the Clerk of the County of New York authorizing him to act as Notary within the County of New York, said deposition being taken pursuant to notice duly given to J. P. Curley, Esquire, of Baltimore, Maryland, attorney for the Exceptant.

APPEARANCES:

Messrs. Mc Lean & Ferris,

By Marshall Mc Lean, Esq., appearing
on behalf of the plaintiff mortgagee.

Messrs. Guthrie, Jerome, Rand & Kresel,

By Murray D. Welch, Esq., appearing
on behalf of the defendant exceptant.

CHARLES H. PULIS, having first been duly sworn, in response to the following questions, duly answered as follows:

Mr. Welch states for the record that all objections noted, except as to the form of the questions, will be reserved for the Court.

DIRECT EXAMINATION BY MR. Mc LEAN:

Q. Mr. Pulis, where do you reside?

A. 688 East 22nd Street, Borough of Brooklyn.

Q. You were the purchaser of a certain mortgage which is the subject matter of this foreclosure action?

A. I was.

Q. From whom did you purchase it?

A. Dr. Howard Kelly of Baltimore, Maryland.

Q. And about what time, if you remember?

A. Around the first week in February, 1923.

Q. Will you state, as fully as you can remember, Mr. Pulis, the facts and circumstances surrounding the purchase of this mortgage by you from Dr. Kelly?

A. I went down to Baltimore, went down to Annapolis, looked at the property, then went down first to see Mr. Strayhorn and asked him to go with me to look at the property and we got a real estate man whom he recommended, I can't recall now, who was familiar with values and I took him along. We went down to the property and went all over it. I came back and wrote John S. Strayhorn. He went to see Dr. Kelly and arranged for the purchase of the mortgage. I signed a check for $500. on account, told him to search the title to see if the mortgage was a first lien and I would be down on a certain date to pay the balance, which was, I think, the first week in February. I went down to Baltimore and went to Dr. Kelly's attorney.

Q. What was his name?

A. Randall,- Daniel R. And after preparing all the papers we got in a

cab and went out to Dr. Kelly's home, where the papers were executed and I turned over the money.

Q. Were the papers executed in your presence?

A. In my presence.

Q. And what money did you turn over?

A. I turned over a check for $500. drawn to the order of John S. Strayhorn, attorney. $9,000. was the mortgage, with interest I think, if my memory serves me right, from August the year previous. I went down to Strayhorn and there was some little adjustment of cash, the adjustment of which I paid also.

Q. Can you give us approximately the amount you paid there?

A. It seems to me -

Q. You recollect that the balance of the principal due on the mortgage was $9000.?

A. And there was a computation of interest from some time in August until the date of closing.

Q. And that you are not exactly definite about?

A. No sir.

Q. The balance due on the mortgage was $9000.?

A. Yes.

Q. And interest $259.50?

A. Yes, approximately.

Q. So that approximately the amount paid on this mortgage was $9,259.50?

A. As near as I can recall.

Q. Had you ever known Dr. Kelly before this occasion?

A. Never.

Q. Or Mr. Randall?

A. No sir.

CROSS EXAMINATION BY MR. WELCH:

Q. What is your business?

A. Real estate.

Q. How long have you been in business?

A. Thirty years, around that.

Q. You buy and sell mortgages?

A. I do.

Q. Where is your business confined?

A. To my office.

MR. Mc LEAN: I object to that as immaterial.

A. Why wherever the propesition may come up.

Q. You buy and sell mortgages in Maryland?

A. I do.

Q. You say, Mr. Pulis, that you first sent Mr. Strayhorn the check for $500.

A. Yes.

Q. Had you ever had any dealings with Mr. Strayhorn before this transaction?

A. No sir.

Q. How did you get in touch with Mr. Strayhorn?

A. Around Annapolis I found him, I went in and asked him a question.

Q. You had never heard of him?

A. No sir.

Q. Nobody sent you to Strayhorn?

A. No.

Q. Did Mr. Randall at the time you had the conversation with him say anything to you about a litigation between Miss Speers and Dr. Kelly?

A. No sir, he did not.

Q. Did Dr. Kelly or Mr. Randall ever state to you that Miss Speers claimed that he was holding this property as trustee?

A. He did not.

Q. At no time?

A. At no time.

Q. At the time you bought this mortgage you knew it was over due?

A. I did.

Q. You were in the habit of buying over-due mortgages?

A. That doesn't bother whether I ever do or not.

Q. You didn't buy it with a speculation, there was some other reason that you bought it?

MR. Mc LEAN: I object to that on the gound that it is immaterial.

Q. When you went to look at this property, had you previously been informed that there was certain deposit in this property that might be of considerable value?

A. I had not.

Q. Well, at the time you looked at the property, did you discover that there was certain valuable deposits there?

A. I did not, I did not know anything about it.

Q. Did not Mr. Strayhorn tell you that there were certain valuable deposits there?

A. He said there were sand banks there and I went out to look at them and didn't think they were of any value. He referred to some sand

bank on the opposite side that had been used.

Q. Couldn't you see that some of the property there had been worked?

A. Not for years.

Q. In your conversation with Dr. Kelly did he state to you that this property was potentially of much greater value?

A. Never referred to the value of the property.

Q. What do you base your value of the property on?

A. My experience in real estate.

Q. How many acres are there?

A. Approximately fifty.

Q. Had you had experience as to the value of property in that locality before?

A. Not in that particular locality. I took with me a real estate man. I believe his name is Lee. I paid him $30. and he gave me an appraisal.

Q. What was his appraisal?

A. $15,000., I think. I have it.

Q. Did he look at the sand and gravel deposits?

A. He went all over the property, I presume.

Q. What did he say to the value of the sand and gravel.

A. He didn't mention it.

Q. What other properties have you bought in Maryland?

A. None.

Q. This is the first piece of property you ever bought in Maryland?

A. It is, I bought the one acre besides this.

Q. How much did you pay Dr. Kelly for that one acre?

A. $2000.

MR. Mc LEAN: I object to that as immaterial and irrelevant, but we will let the answer stand.

Q. That was one of the conditions of your buying the mortgage, the deeding of this property to you, that one acre?

A. No, I didn't say so.

Q. What are the facts with relation to the purchase of this one acre?

MR. Mc LEAN: I object to that as immaterial and irrelevant.

A. The corner piece of property comes out on a point and on a bluff and it was essential to get that.

Q. Does this adjoin the other piece of property?

A. Right up to it.

Q. Mr. Pulis, were you buying this property for yourself?

A. I did.

MR. Mc LEAN: I object on the ground that the question is immaterial.

Q. Who advanced the money for you to purchase this plot?

MR. Mc LEAN: I object to that as incompetent, immaterial and irrelevant and instruct the witness not to answer. I object on the further ground that no proper foundation for such a question has been laid.

Q. Now, Mr. Pulis, on what bank did you draw these checks for $9,250.

A. I don't know whether it was on the Brooklyn Trust Company or Mechanics Bank, I have forgotten.

Q. Would you be willing to produce those checks?

A. They are in evidence, Mr. Strayhorn has them. The checks were sent to Mr. Strayhorn.

Q. Will you produce before the Court your deposit books showing deposits of your accounts in these banks prior to the giving of these checks?

A. I will not.

MR. Mc LEAN: I note an objection to that question as incompetent, immaterial and irrelevant, no proper foundation having been laid for it.

Q. Have you the deposit books showing the deposits made just prior to the time you made this payment to Mr. Strayhorn?

MR. Mo LEAN: Same objection.

A. I have.

Q. Do they show the deposit made to your account prior to this time when you made these payments for this mortgage?

MR. Mc LEAN: Same objection and request that the witness do not answer.

Q. What are the names of the two banks?

A. Mechanics Bank.

Q. Where is that located?

A. Brooklyn.

Q. Where about in Brooklyn?

A. Montague and Court.

Q. And the other?

A. Brooklyn Trust Company.

Q. Where is that located?

A. Montague and Clinton.

Q. Now Mr. Pulis, do you know one George D. Pratt?

A. I know of him, yes, I know the whole family.

Q. Do you know, or did you know in February, that he was interested in property adjoining this property?

A. Never knew it. I haven't spoken to Mr. Pratt in two years.

Q. When was the first time you knew he was interested in the corporation that owned property adjoining it?

MR.McLEAN: I object to this as incompetent, irrelevant and immaterial.

MR. WELCH asks these questions for the purpose of showing that he had knowledge of the relations between Dr. Kelly and Miss Speers.

BY MR. Mc LEAN:

Q. Mr. Pulis, at the time you purchased this mortgage, did you have any knowledge of any relation between Dr. Kelly and Miss Speers or Miss Speers and Mr. Pratt?

A. I had none whatsoever.

BY MR. WELCH:

Q. When was the first you ever learned that Miss Speers contended Dr. Kelly held this property as trustee?

MR. Mc LEAN: I object to that as incompetent, and immaterial, but you can answer it.

A. July of this year.

Q. Now Mr. Pulis, go back to the question that Mr. Mc Lean objected to in the beginning. How did you happen to hear of this property?

MR. Mc LEAN: I object to that as incompetent, immaterial and irrelevant and request witness not to answer.

Q. Did Mr. Strayhorn write to you stating that this mortgage was for sale?

A. He did not.

Q. In the general course of business how do you become acquainted with mortgages for sale and other estates?

A. In various ways.

Q. State some.

A. Too numerous to go into here.

Q. I would like to have him go into some of them.

MR. Mc LEAN: I object to this as incompetent, irrelevant and immaterial. If he doesn't want to answer, he should not be compelled to. You can answer if you wish.

A. Sometimes we pick them up through Ads, sometimes by acquaintances, who are hard up and want money. There are dozens of ways.

Q. State some of the other dozens.

A. Friends coming to you and telling you. There are numerous ways you hear of them.

Q. You say Ads, acquaintances and friends, what other ways? That is not sufficient, you say there are dozens of ways, what are some of the ways?

Q. That is all that I am going to name.

MR. WELCH: I don't like the attitude of the witness, Mr. Mc Lean.

MR. Mc LEAN: Tell him all you can. It is immaterial, I think. If he wants to know, let him know. Can you think of any other way?

A. Lists publishing mortgages for sale, property for sale.

Q. Was this mortgage advertised for sale?

A. It was not, not to my knowledge.

Q. Did you become acquainted with this mortgage published in the list of mortgages sent out by brokers.

A. It was not.

Q. No broker sent the facts of this mortgage to you?

A. No sir.

Q. Did you become acquainted with this mortgage through friends?

A. Through a friend.

Q. Did your friend tell you it was a pretty good buy?

A. He wanted me to go down and look it over and went with me.

Q. Who was it?

MR. Mc LEAN: I object on the ground that it is incompetent, irrelevant and immaterial and request witness not to answer.

Q. You say he went down with you to look at it?

A. He did.

Q. And there were you and this friend and Mr. Lee looked at this property?

A. And Mr. Strayhorn.

Q. Has this friend any knowledge of real estate value at all?

A. He has.

Q. Is he a real estate man?

A. You wouldn't call him a real estate man, he speculates. He isn't a broker.

Q. He is a broker or not a broker?

A. Not a broker.

Q. This friend know Strayhorn?

A. I couldn't answer for that.

Q. Who paid this friend's expenses on the trip down there?

MR. Mc LEAN: I object to that as incompetent, irrelevant and immaterial and request witness do not answer, and object to any further testimony or questions along this line for the reason that they are immaterial, irrelevant and no proper foundation for them has been laid.

Q. Did this friend want to get your opinion as a real estate man as to the value of the property?

MR. Mc LEAN: Same objection and request witness do not answer.

Q. I ask you if this friend was Mr. George E. Pratt?

A. It is not

MR. Mc LEAN: Same objection.

Q. Have you ever bought or sold any property or mortgages for Mr. Pratt?

MR. Mc LEAN: I object on the ground that it is immaterial, incompetent and no proper foundation having been laid and request that witness do not answer.

Q. Do you know a Mr. Johnson, an engineer in Philadelphia?

A. I do not.

Q. Do you know a Mr. Meggs?

A. I do not.

Q. Had you ever had any communications with Mr. Daniel R. Randall, or Mr. Howard A. Kelly before the time that you say you went to see them with Mr. Strayhorn?

A. No sir.

Q. Never had any communications?

A. No.

Q. Had you ever instructed Mr. Strayhorn to have any communication with them?

A. I did, the day of my visit to Annapolis.

Q. After you had seen the property?

A. Yes.

Q. Never before?

A. No sir.

Q. Go back to Strayhorn a minute, you say you just wandered into Annapolis and say you saw John S. Strayhorn.

A. No, I think this friend of mine had some knowledge that he was a pretty lively man.

Q. Had this friend ever had any dealings with Strayhorn?

A. No.

Q. This friend recommended you to go there?

A. Yes.

Q. Well, when you went in to see Strayhorn your friend was with you. From the glance that Strayhorn gave to this friend, did you form the im-

pression that Strayhorn had known this friend before?

MR. Mc LEAN: I object on the ground that it is incompetent and irrelevant, no foundation having been laid for it and request witness do not answer.

Q. I will ask you again, what was the name of the friend?

MR. Mc LEAN: Same objection and request witness do not answer.

Q. What is your opinion as to the value of the property at the present time, Mr. Pulis?

MR. Mc LEAN: I will object to that as immaterial, but you can answer.

A. I figure around $12,000.

Q. $12,000.?

A. Yes.

Q. You had never seen the engineer's reports on the property?

A. No sir.

Q. Not interested in it?

A. No sir:

Q. Are you still the owner of this one acre of property?

A. I am.

Q. I want to ask you again about this conference. Who was present at the conference between yourself and Dr. Kelly, who else was there?

A. Mr. Strayhorn and Mr. Randall/Dr. Kelly and Dr. Kelly's secretary.

Q. How many conferences did you have?

A. One.

Q. At conference you arranged to purchase the mortgage?

A. That was at the closing conference when I took an assignment of the mortgage.

Q. Had you ever seen Mr. Randall before the closing of the mortgage?

A. No sir.

RE-DIRECT EXAMINATION BY MR. Mc LEAN:

Q. Mr. Pulis, Mr. Welch asked you when you first had knowledge that Miss Speers contended that Dr. Kelly held this mortgage in trust and you said some time in July

A. Mr. Strayhorn was on here in July and I think it was at the time he had a hearing in Jerome's office. Well that was the date when he came over to see me.

Q. And that was subsequent to the foreclosure of this mortgage?

A. This was in July, the foreclosure took place in March. Whatever the date of that hearing when he came on here then he came over to my office and we had lunch.

Q. So that it is a fact, is it not, Mr. Pulis, that at the time you took this mortgage, you had no knowledge of any claim of equity existing in favor of Miss Speers with the relation to this mortgage?

A. None whatsoever.

Sworn to before me this
29th day of August, 1923.

Charles N. Pulis

Edw Alsdorf
Notary Public Nassau Co. N. Y.
Certificate filed with
County Clerk N. Y. Co. 162 Register 4135
County Clerk Queens Co. 921

LIBER 78 PAGE 309

IN THE MATTER of the Sale of the Mortgaged Real Estate of Mary W. F. Speers, No. 4742 Equity. In the Circuit Court for Anne Arundel County.

Filed 1st Oct. 1923

To the Honorable, the Judges of the said Court.

The petition of John S. Strahorn, Assignee in the above entitled case, respectfully shows:-

That your petitioner has closed his rebuttal testimony, and so notified the exceptant's attorney, about two weeks ago, and at the time of such notice to her attorney, he was advised that she intended to take further testimony in the case; and your petitioner therefore prays, that an order be passed herein, requiring said exceptant to take whatever further testimony she desires, and file the same in this Court, within a reasonable time to be named herein.

And he will ever pray, etc.

John S. Strahorn

John S. Strahorn, Assignee
Petitioner.

ORDERED, by the Circuit Court for Anne Arundel County, in Equity, on the foregoing petition, this 1st day of October, 1923, that Mary W. F. Speers complete the taking of her testimony in support of the said exceptions mentioned in the foregoing petition and file the same in this Court on or before the 23rd day of October, 1923; provided a copy of this petition and order be served on the said Mary W. F. Speers, or her attorney of record, on or before the 12th day of October, 1923.

Filed 1st Oct. 1923

Robert Moss A.J.

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Daniel R. Randall, Esq., a witness of lawful age, produced on behalf of the Assignee of the mortgage, being first duly sworn, says:-

Filed 30th Oct 1923

(By Mr. Strahorn.)

1. State your name, residence and occupation?

A. Daniel R. Randall, Baltimore, Maryland, Attorney-at-Law.

2. Do you know the parties to this suit, Mary W. F. Speers and Charles H. Pulis?

A. I do.

3. How long have you known Miss Speers?

A. Miss Speers I have known since girlhood, Mr. Pulis I met within the past six months.

4. Where did you first meet Mr. Pulis?

A. Mr. Pulis was introduced to me at my office in Baltimore by Mr. Strahorn.

5. Please state whether or not the time Mr. Pulis was introduced to you was the day on which the Kelley mortgage was assigned to Mr. Pulis if you recall?

A. It was. By pre-arrangement Mr. Strahorn brought the assignee of the mortgage to my office.

6. You mean the proposed assignee?

A. I did not know at the time to whom the mortgage was to be assigned but merely that it was an accomplished fact, and that Dr. Kelley should receive the full balance due him of mortgage and interest, and Mr. Pulis proved to be the person to whom the mortgage was to be assigned, and his certified check payable to Dr. Kelley was handed me in exchange for a mortgage and mortgage note assigned to him without recourse, interest was calculated to the date of transfer.

7. Do you recall from what date?

A. I do not.

8. Do you recall whether it was from the 22nd of August, 1922, the date of the partial release to the Speers Sand and Clay Company?

A. I do recall that interest was calculated from the 22nd of August

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9. So that Mr. Pulis paid to Dr. Kelley through your hands on the day of the transfer of the mortgage to him, how much money, the balance of how much money?

A. The mortgage note was $29,000, and $20,000 had been previously paid, leaving $9,000 principal, and the interest I cannot state as to the amount.

10 But it was interest from the 22nd of August, 1922 down to the date of transfer?

A. It was and I have so stated.

11. On the day that this mortgage was assigned what formalities were gone through with touching the assignment, I mean was there more than the short assignment of the mortgage, if you recall?

A. I cannot at this moment recall but I believe that Dr. Kelley executed, in the presence of a Notary, a formal transfer, at his residence, as well as his short assignment of the original mortgage. We went to Dr. Kelley's house for that purpose, and by assignment, or appointment, and the papers were signed.

12. I show you a certified copy of the Deed of Assignment of February 7th, 1923, between Howard A. Kelley, M.D. and Charles H. Pulis, and ask you if you recognize that as one of the papers that was executed on that date?

A. This is, to the best of my belief, a copy of the paper that was executed on February 7th by Dr. Kelley in my presence at his residence and before Miss Hartge, his Secretary and a Notary Public.

*******Assignee's Solicitor here files with the Examiner a certified copy of the Deed of Assignment from Dr. Kelley to Charles H. Pulis marked "Examiner's Exhibit A".

********Assignee's solicitor also files with the Examiner a certified copy of the partial release of mortgage mentioned by this witness from Dr. Kelley to the Speers Sand and Clay Company dated August 24th, 1922 and marked "Examiner's Exhibit"B".

13. Were you present at the taking of testimony in No. 4511 Equity, taken before Judge Moss, at the time that proceeding was pending on Exceptions by Miss Speers, about the 1st of November, 1921, when Dr. Kelley testified in Annapolis?

A. I was present on that occasion, as well as on a previous occasion when Dr. Kelley gave testimony in Baltimore.

14. Dr. Kelley did testify in your office in Baltimore? Twice before me as Examiner?

A. He did the testimony being taken by a young man who was stenographer for Col. Hill, and Mr. Strahorn as Examiner.

*******Assignee's solicitor here states that that testimony cannot be found among the said proceedings but shows it is referred to in the following testimony which he now offers,

****Objected to by Mr. Curley.

15 Do you recall the purpose of Dr. Kelley's testimony taken here in Annapolis to which I have referred?

A. Dr. Kelley's testimony in my office was taken upon special request because he was ill and had to leave Baltimore and we rather hurried the matter and took that testimony under an Order of Judge Moss in the presence of the Examiner, Mr. Strahorn, myself, and Miss Speers and her Counsel. That there was a second taking of testimony in my office I cannot recall, but I think it was of Dr. Kelley a second time, to supplement his testimony, or for cross examination.

16. I show you certain testimony filed in No. 4511 Equity on the 12th of November, 1921 at 11 A.M. on the back of which testimony is endorsed "September 29th, 1921" beginning at page 93 and ask you to glance over that page and see whether or not the testimony there refreshes your recollection as to the purpose of Dr. Kelley's testifying at the time set out in that testimony?

A. I remember all the facts set out and don't need any refreshment of memory. I also note an error in the statement there that there was $100 due Mr. Marvel, it should read $1,000, it is a typographical error I presume.

17. You know that of your own knowledge?

A. I handled the money.

18. Were you not Dr. Kelley's advisor throughout his relations with Miss Speers touching this property, she has so stated, is that correct?

A. It is correct in part. Herbert M. Brune, Esq., of Baltimore was and is Dr. Kelley's Counsel in general matters, but following the first loan made by Dr. Kelley of $1500 upon a third mortgage, and his subsequent purchase of the mortgaged estate I became, at Mr. Brune's request Dr. Kelley's special counsel in this matter, and remained so until Dr. Kelley was paid off, and concluded his relations with the whole affair.

19. You spoke of being paid all of the transaction had by Mr. Pulis on February 7th?

A. That, plus the $20,000 payment made the previous August.

20. Miss Speers has testified that Dr. Kelley would do nothing in the matter without first consulting you, is that correct?

A. That is correct. Dr. Kelley wrote some letters without my knowledge or approval, but generally speaking he made no move in the matter even to the writing of a letter or answering a communication without consulting me.

*********Assignee's Solicitor here files with the Examiner the testimony of Dr. Kelley taken at Annapolis, presumably on September 29th 1921, filed November 12th, 1921 at 11 A.M. beginning with page 93 of said Testimony and ending with page 117, as a part of his proof in this case, marked Examiner's Exhibit B--1.**********

*****Objection on the part of Exceptant to the introduction of this testimony.*********

21. On the next to the last page same being 116 of this testimony which I have just filed, you seem to have made a statement, "All I ask is to prove that before Dr. Kelley signed his name to this paper in regard to the sale of this property, that this woman made her proposition and submitted it to Dr. Kelley. And now all she has gone into the record to say that all that went on before is absolutely false. That $30,000 was the price named by her and that certain other statements emanated from her and were finally caught by Dr. Kelley and all

that statement that she has made to this Court that she was forced to get the property back by offering $30,000 was absolutely false every word of it." You seem to have made that statement while Dr. Kelley was a witness,

*****Objection.

Please state, if you will, the circumstances under which Miss Speers got this property from Dr. Kelley at the time the mortgage in this case was given, to-wit, December 1st or 8th, 1919?

A. Dr. Kelley had been the owner of 152 3/4 acres on the Severn River formerly the property of Mrs. Margaretta B. Speers since June 30th, 1916, having purchased it on that day from E. J. W. Revell, Attorney, at the price of $13,850. The debt due Dr. Kelley at that time was slightly over $16,000, he held it until the deed to which you refer was executed by him and Mrs. Kelley, dated December 1st or 8th 1919. Between those dates, however, the property had been for sale to various people and at various prices, first, before the sale was ratified and Dr. Kelley required to pay Mr. Revell it was offered to Miss Speers or any person whom she might name as a substituted purchaser for Dr. Kelley at a price sufficient to leave him out clear of all advances, which, as I said before, we estimated at slightly over $16,000. She made various other and later efforts to purchase, and finally in the Spring of 1919 secured a signed option of the property at, I think $20,000. Upon this option there was paid $1,000, advanced by Mr. Josiah Marvel, of Wilmington, Delaware. That option expired and there came a period of two or three months when both Dr. Kelley and I were endeavoring to sell the property to other parties. On or about the 23rd of November, 1919, Miss Speers, without previous arrangement, came to my office in the Keyser Building, Baltimore, Md. and again stated the off told tale that she had secured a purchaser for the property, and while she was aware that her option had expired, she wanted me to secure from Dr. Kelley another chance. I advised her at once that Dr. Kelley would have no dealings with her and it was a vain effort for reasons which I then stated. She pleaded very earnestly and said that

she was willing to give $30,000 for a deed of the property, giving back a mortgage for the unpaid purchase money. This was a larger price than she had ever offered before and I was persuaded to take it up with Dr. Kelley, Miss Speers agreeing to pay me a substantial fee if I should secure for her a deed under the terms and conditions which she named. I then asked her to put her proposition in writing which she did on the back, as I recollect it, of a handbill of the sale of the property, in pencil and signed by her, and, armed with that, I went to see Dr. Kelley on Thanksgiving Day of that year. He absolutely refused to have any dealings with Miss Speers, particularly as so little money was to pass in the transaction, and he believed that any offer ~~effort~~ she made at this time would only result as all previous offers had resulted in failure and distress to all concerned. He later wrote me a letter to come to see him, and named certain conditions under which he would sell her the property at $30,000. Those conditions are embodied in a letter which I wrote to Miss Speers immediately after.

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22. Do you recall the date of that letter?

A. November 28th, I think. I have a carbon copy of it in my posses sion which I have taken from my files today, and now hand it to you.

*******Assignee's Solicitor here calls on Exceptant's attorney to produce the original of the letter of November 28th, 1919 mentioned by this witness, notice for which produ ction was duly served on him. Exceptant's solicitor says he is not able at this time to produce the original. *******Assignee's solicitor here files with the Examiner the carbon copy of the letter mentioned marked "Examiner's Exhibit C"

23. Please state whether or not the original of that letter which you have just handed to me and which has just been filed as Exhibit C was to your knowledge delivered into the hands of Miss Speers and if so when?

A. The letter was written on November 28th, 1919 and was about to be mailed to her at a St. Paul street boarding house, the number of which I did not at that time know, when Miss Speers called at my office, or called me up, and I was enabled to deliver it into her hands, and so did that day. Time was most important to her and I lost none in carrying out her wishes.

23. Does that letter embody the same conditions as were set out in the agreement signed by her in pencil which you have mentioned or what is the situation in that regard?

A. In part but not whole.

24 What changes were brought about and by whom?

A. Dr. Kelley presumed that the purchase price of $30,000 would be secured by a mortgage of that amount, but Miss Speers insisted that the $1,000 paid the previous Spring for the option, should be credited as payment on account of the purchase money and Dr. Kelley finally acquiesced, and the second provision or condition of the letter was changed to make the actual cost and mortgage $29,000. Her original proposition which she wrote as I have described was, I thought, filed in the proceedings, it was used when the testimony was taken and referred to, I had seen it frequently but it cannot now be found, it only contained a proposition to purchase the 152 and a fraction acres the whole property, at $29,000 and to give a mortgage for a short period to secure the purchase price.

25. The $29,000 was additional to the $1,000 already paid, making a purchase price of $30,000?

A. That is correct. Of course the $1,000 had been forfeited but Dr. Kelley was agreeable to allowing that on the price.

26. When you speak of "Option" do you refer to the same Option spoken of a moment ago?

A. I do.

27 I show you Exhibit No. 19 filed by Miss Speers in this case being an agreement of the 26th day of June, 1919 between Howard A. Kelley and wife and Mary W. F. Speers touching the purchase of this property at an agreed sum of $25,000. you have testified you thought the agreed

price was $20,000, does that refresh your recollection?

A. This does, and I desire to correct my testimony in that respect, both as to the date of the option and the amount.

28. That is the agreement entered into?

A. That is.

29 At whose instigation was that agreement drawn up?

A. It was prepared I think by Miss Speers' counsel, at the time, Mr. Josiah Marvel of Wilmington. The $1,000 was paid to me in two checks of $500 each by Mr. Marvel, and the original contract remained in my safe at the time of the execution of the deed, and was in my safe at the time of the execution of the deed and mortgage referred to in this proceeding, December 1st, 1919, and in conformity to the third condition of my letter to Miss Speers, paragraph 3, I had Miss Speers assign that original contract back to Dr. Kelley. That paper is not in my possession now nor do I know where it is, but thought it was filed as an Exhibit with Dr. Kelley's testimony at the time it was taken in my office.

30 That is the testimony mentioned a moment ago?

A. Yes.

31 It is not found now among the papers in No. 4511 Equity?

A. So you have informed me. I am quite certain quite positive this assigned option or contract of purchase was in my possession and filed in that proceeding with the Examiner.

32. You testify positively that in accordance with paragraph 3 of your letter of November 28th, it was at the time the property was conveyed, assigned by Miss Speers to Dr. Kelley?

A. I am positive, remember it well and was myself a witness to the fact.

33. And that agreement so far as you know has been lost, anyhow it is out of your possession?

A. It was filed with the Examiner I am positive in the proceeding, bearing her original signature.

****Objection to all testimony bearing on the missing paper.

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34. Some testimony has been introduced touching the one acre reserved please state, if you know, at whose suggestion this one acre was reserved by Dr. Kelley when he conveyed the property to Miss Speers?
A. Dr. Kelley had been offered a piece of the water front by Miss Mary Speers very early in the proceeding, and he had never taken any steps about it because he owned all the property and it was hardly in her power to give or withhold any acre of it. When the proposition was but by me to Dr. Kelley for an actual sale to Miss Speers at $30,000 Dr. Kelley named that as a condition of his agreement that he would reserve the point jutting into the Severn Rivernand estimated to contain one acre, and that condition is condition number four in that letter to Miss Speers of November 28th, 1919. She most grudgingly agreed to that, but it was so reserved in the deed and she made in my office a plat and description of the one acre point from which the reservation is made in the deed from Dr. Kelley to herself. It is a very bad description but it was sufficient for the purpose of making a proper reservation. I had for many years that plat but do not know where it is today though I believe I could find it. The condition set out in paragraph 5 of this letter of November 28th, in regard to writing of a letter by Mr. Marvel to Dr. Kelley was waived by Dr. Kelley because Mr. Marvel refused point blank to write any such letter assigning that his reasons were abundant and Dr. Kelley would have to waive that as far as he was concerned.

35 Did you ever tell Miss Speers that Dr. Kelley was exacting the last pound of flesh when he required her to allow him to reserve one acre of land in this transaction?
A. When she protested against the reservation of any of this she stigmatized Dr. Kelley's action as that of a Shylock, at which I smiled knowing the sacrifice that he had made for her benefit and her mother's, but did not allow it to interfere with business that was before us. Naturally I would not say of my client anything of that sort, and his whole position in the matter was one of indulgence and generosity throughout the whole proceeding for which I have one hundred letters if need be to prove, and I could cite twenty five instances where Dr. Kelley yielded to the gentler impulses where business would

have required him to deal harshly, or with probably harshness towards this older woman and her family.

36. Throughout your conduct of this matter for Dr. Kelley can you recall any instance where Dr. Kelley had any consideration passing to him, or was it not a fact that in every instance all considerations were passing to Miss Speers? Was he not, from the beginning, protecting her, as he has testified to on cross examination by Miss Cottle, from Land sharks, or trying to help her complete her schemes for the flotation of her Sand Companies?

A. I recall it as if it had occurred yesterday, the day Dr. Kelley appeared at the office of Brown, Marshall and Brune, as his Attorneys, to consult Mr. Brune in regard to the $1500 third mortgage loan to redeem the Speers property from sale. I was a member of that fir, and was called in by Mr. Brune to advise Dr. Kelley and advised Dr. Kelley to make no such loan, that the mortgages upon the property were then in the neighborhood of $12,000, I had a judgment myself of about $2,000 which would be prior to his loan. Nevertheless, he persisted that it was a case where he could hardly do anything else than make an earnest effort to save the property from a sale then in contemplation by Mr. Morton. The mortgage was prepared in our office, and the money $1500 paid out by the former's check. From that date, February 19th, 1915, until the release of the 100 acres to the Speers Sand and Clay Company, in 1922, Dr. Kelley was constantly contributing an outlay of money which had at that time become very large, without receiving one cent of return or profits, interest or income, unless you can call a few specimens of frog stools and fauna that he collected within that period. The property had been increased in value by the construction of buildings for the soldiers to the extent of $11,000.

37 Had Miss Speers contributed anything to this expense?

A. Miss Speers had never contributed anything to this expense except six months payment of interest on the mortgage debt due July 1st or 8th, 1920, that was the mortgage for $29,000 in question. That interest payment was made under great stress, and from funds borrowed, into which I need not now go, but Dr. Kelley got the benefit of that six months interest on his $29,000, paid without protest and which I

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credited on the original mortgage note. During this period Dr. Kelley paid all insurance premiums and taxes until 1919, and gave the family free use of the property. I should qualify that statement to this extent that I was appointed Receiver in the mortgage proceedings and received from the rent of the cottage and water front about $165 from which, however, Dr. Kelley received no benefit, that money being largely expended in the payment of Miss Speers' own costs taxed by the Clerk in the proceedings No. 4511 Equity.

38 Was this or not done under an agreement between Miss Speers and Dr. Kelley?

A. No, Miss Speers resented the appointment of a Receiver, and it was only done to endeavor to secure some return for the buildings and water front values of the property pending her appeals to the Court of Appeals which, howver, were never taken.

39. When this property was advertised in 4511 Equity you were Attorney still?

A. I was.

40 You had the property advertised as Kelley's attorney?

A. I did.

41. Do you recall when the exceptions to the same made in that case were dismissed, the circumstances surrounding the agreement which were then reached, do you recall that?

A. Very well indeed.

42 I show you the original agreement entered into at that time and ask you to state whether or not you stated at the time that that agreement was entered into, anything which could be properly construed as an opinion on your part, that that mortgage was in any sense not a valid mortgage? *****Objection.**** Miss Speers has stated in her testimony on page 21 on Cross Examination, that she signed this agreement with the distinct understanding it could not operate and make valid the mortgage. "I did it with the assurance of my attorney and of Mr. Randall", did you give her any such assurance that that mortgage was not a valid mortgage at that time, or any other time?

A. Never, under any circumstances, did I give any such opinion, knowing as I well did, to the contrary, and having been paid, or promised payment for my services as her attorney in the matter.

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*****Assingnee's solicitor here files with the Examiner the Petition of Dr. Kelly in No. 4511 Equity, filed through Daniel R. Randall, Solicitor, assented to by Mary W. F. Speers, mortgagor, on which, on the 6th of December, 1921, the Court passed the Order, permitting the said proceedings to be dismissed without prejudice, and the original mortgage withdrawn, which is marked "Examiner's Exhibit D".

43. At the time this mortgage proceeding was dismissed under this Order just filed, was there in contemplation between the parties any suggestion of doubt about the validity of that mortgage?

A. None in the world except such as Miss Speers had in open court testified to at the time exceptions were filed by her.

44. Was there or not any agreement which ante-dated this dismissal petition of Dr. Kelley, entered into between Dr. Kelley and Miss Speers touching the dismissal of these proceedings, if you know?

A. Yes, that of December 5th, 1921.

45 The agreement of December 5th, 1921? This dismissal petition was predicated on the agreement between Dr. Kelley and Miss Speers of December 5th, 1921?

A. Yes, and it was signed by both parties in Dr. Kelley's house in my presence and in the presence of Miss Cottle.

*****I show you a certified copy of the agreement of December 5th, 1921 between Dr. Kelley and Miss Speers, witnessed by Miss Cottle ~~in the agreement in the dismissal petition~~ and ask you if this is the agreement on which this dismissal petition was predicated?

A. Yes, that is a copy of the agreement. That agreement was the result of a conference held in Mr. Albert S. J. Owens' office, he and Miss Cottle and a Senator from the far West were present representing Miss Speers while I represented Dr. Kelly and my own claim against the property. That meeting was held on the 4th of December a I recall it, and the agreement signed, was prepared by Mr. Owens and signed the

following day when Miss Cottle secured from a Bank in New York a check for $3,000 payable to her own order and it was delivered to Dr. Kelley as consideration for the dismissal of the pending foreclosure proceeding. That $3,000 was distributed under an agreement, I getting myself the major part of it, $500 was paid to Dr. Kelley on account of interest and costs advanced and insurance and taxes, and $500 more for the payment of the costs of the mortgage foreclosure proceeding. The latter fund was placed, at the suggestion of Miss Speers' counsel largely in her hands, and she has not yet complied with the Order of Court, or that agreement, in paying the costs, there being large bills for the stenographic work taken in Annapolis, Wilmington and New York.

*****Assignee's solicitor here files with the Examiner, certified copy of the agreement mentioned by witness, dated December 5th, 1921, between Dr. Kelley and Miss Speers marked "Examiner's Exhibit E"

46. State, if you know, what the original loan made by Dr. Kelley was made for, was it or not made to save Miss Speers or her property, or her mother's property from sacrifice?

A. I can only say it was made to save it from a hasty foreclosure sale. Whether it had been sacrificed or not I cannot say, but Mrs. Speers who was the owner of the title believed it would be sacrificed and so told me and so impressed Dr. Kelley. A major part of the $1500 was paid to Mr. Morton as interest on the Platt mortgages which were in default, and probably for taxes.

No Cross Examination.

To the general question under the rule witness says:-

A. I would like to state that the whole theory that Dr. Kelly purchased that property at public sale, acting in a fiduciary capacity to hold it for the good and benefit of the mortgagor, was never heard of until years after he had been its owner and had endeavored, as others had, to sell it.

Never by any word, or expression, from the mortgagor, or her daughter, Miss Speers, nor from Dr. Kelley himself had there ever been made to him any declaration of the existence or intention of such a trust, as was later claimed by Miss Mary W. F. Speers in this case. The original investment was made by him against the advice of counsel, and when the mortgagor's daughter was unable to effect any one of one hundred plans to get Dr. Kelley out of the impending loss, as it then appeared, he made every effort to sell the property and get himself out. He entered into a contract with the Government for the use of the soldiers, agreed to a price that the government might own the property, and it was placed upon sale with a number of real estate men in Baltimore and with me, in the hope that it could be sold and his claim and my own as liens on the property paid off. No opportunity came to realize on this until the formation of the Speers Sand and Clay Company which let him out by their purchase of 100 acres, and the later assignment to Mr. Pulis of the $9,000 balance of the mortgage debt. That sale to Miss Speers was made upon her own solicitation and never was any question but that the mortgage debt of $29,000 was due and owing, and she paid with avidity the first six months' interest on that debt and without any plea at the time that it was not bona fide in every particular. Any question as to the bona fideness of that transaction was only raised when the property was again offered for sale. I can think of nothing else.

*****Objection to answer noted by Mr. Curley.*****

There being no other witnesses to be examined and no further time being desired the within testimony is herewith closed and returned to the Court this 30th day of October 1923.

George S. Sullivan (Seal)
Examiner.

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In the Matter of the Mortgaged Real Estate of Mary W. F. Speers,

No. 4742 Equity.
In the Circuit Court for Anne Arundel County.

Filed 30th Oct. 1923

In the matter of the Exceptions to the ratification of the sale, filed by Mary W. F. Speers.

Testimony taken on behalf of the Exceptant, before the Court (Judge Moss), July 10th, 1923.

PRESENT:- Judge Robert Moss sitting.

Curley, Esq., Attorney for Exceptant, Mary W. F. Speers.
John S. Strahorn, Esq., Attorney for Mortgagee, Assignee,
Juliet D. Strahorn, Court Stenographer.

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Witness.	Examination.	Cross Examination.
Wm. E. Ferguson,	2 to 3	3 to 4
W.C.Pinkard,	5	6
Mary W. F. Speers,	7 to 16	16 to 21.

General Question usually propounded to all witnesses, and the signatures waived by agreement of all parties.

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William E. Ferguson, a witness of lawful age, produced on behalf of the Exceptant, being first duly sworn says:-
(By Mr. Curley.)

1. State your name and residence?

A. William E. Ferguson, live in Baltimore City, Maryland.

2. What is your occupation?

A. Real estate broker of 23 to 25 years experience.

3. Do you know the property on the Severn River commonly known as the Speers property, which happens to be the property in question?

A. I do, am interested in a piece I have had 10 or 12 years on the opposite side.

4. Been on this property recently, on the other side ?

A. On there yesterday.

5. For what purpose did you go?

A. To look it over for the purpose of putting a value on it.

Objection.

6. What value did you put on it?

Objection.

A. I understand this property has about 50 acres, and has about 2000 feet of water front, I was not able to get a blue print to see the definite lines, but just the value for development purposes is on the water front, I figure is worth about $20,000, if it is 50 acres and 2000 feet of water front.

7. What amount of money would you recommend to loan on that property?

Objection. Sustained.

8. Do you happen to know whether there is any sand deposit on this land?

A. There is.

9. Do you know anything about the value of that?

Objected to. Sustained.

10. Have you ever developed sand property?

A. No, I have made quite a lot of investigation as to the sand possibilities on the place on the other side of the river and know quite a little about it, I would not say I was an expert on judging of sand, I have investigated quite a bit on the other side of the river and know something about it. I know a very fine deposit of sand there that runs from 98 to 99 5.10 pure silica, only deposit of this character of sand in this part of the country, that is in the Eastern part of Maryland.

Motion to strike out and objection noted.

(By the Court.)

The testimony goes in subject to Exception.

11. I understand you to say you know of this by reason of your personal investigation?

A. Yes that is true, the sand strata, the situation down there as I understand it from investigations I have made, runs from the property across the river, the same situation existing on this side with the peak of mountain of sand right in this area, and that deposit runs from 98 to over 99 pure silica, used for a great many purposes, including glass, silica, soda, water glass and filtration.

12. Have you any idea as to value from that point of view as to the sand proposition?

A. No, I have not.

Motion to strike out testimony in regard to sand.

(By the Court.) The testimony is all taken subject to exception.

Cross Examination.

(By Mr. Strahorn.)

1. You are not a mining engineer?

A. No sir.

2. You speak of this tract having about 2000 feet of water front, have you measured that?

A. No sir.

3. In your valuation of $20,000 for development purposes do you take in all of the water front?

A. No sir, I understood the original was 2800 feet and 800 feet afterwards the lower end towards Annapolis was not inoluded.

4. That is the part sold off some months ago, the part towards Annapolis, and the rest was what?

A. Was about 2000 feet.

5. Then all from that piece to Whitney's landing you take in, in the 2000 feet?

A. Yes sir.

6. If I tell you that one-half of that not sold under this mortgage, do you know that?

A. No sir.

(By the Court.) He said "If there was such and such"

7. If I told you that about one-half of that point is not inoluded in this mortgage, would that make any difference?

A. That would have to come off.

8. What difference in valuation would that make assuming that all that point, with about 800 feet of water front containing 1 acre of land is not contained in this mortgage, what, if any reduction would that cause for development purposes?

A. You mean to take this 1 acre off, the main point that projects out .

9. The main point that projects out about midway between the spring and around to the Whitney's Landing property. You know where the spring is?

A. No sir, I know the pipe going towardxWhitney's landing.

10 From that pipe about 800 feet of water front with 1 acre of land back of it exoepted from the whole acreage, what reduction would that make?

A. I should think if we had rights over the balanoe of the property as a lot proposition, so men could have egress and ingress that the one acre possibly would see for $1500 or maybe $2,000.

W. C. Pinkard, a witness of lawful age, produced on behalf of the Exceptants, being first duly sworn, says.

(By Mr. Curley.)

1. State your name, residence and occupation?

A. W. C. Pinkard, Riderwood, Baltimore County, been in the real estate business a little over five years in Baltimore City.

2. Have you seen the Speers property which is the property we are talking about?

Objected to.

3. Are you familiar with country properties?

A. Very great deal, specialize great deal in it.

4. Where?

A. I have sold a good bit of property on the Severn river, and all around Baltimore, all suburban property.

5. Have you seen the property known as the Speers property on the Severn River?

A. Yes.

6. When?

A. Yesterday.

7. For what purpose did you go over there?

A. For the purpose of putting a valuation on it.

8. What value did you put on it?

A. $400 an acre for development purposes.

9. Assuming it has the water front?

A. I went over it with Mr. Ferguson and taking into consideration there is 2000 feet of water front and 52 acres, I should say the same as he did.

10 Do you know anything about sand deposit that may be there?

A. I know nothing about sand deposits.

Cross Examination.

1. (By Mr. Strahorn.)

1. You heard Mr. Ferguson's testimony?

A. Yes.

2. Would the fact that there is one acre covering the main point which I presume you recognize, Inthink has a water front somewhere around 800 feet, would that make any reduction?

A. It would make some, not a great deal.

3. What valuation would you put on that one acre occupying that point?

A. I think Mr. Ferguson said, I think we all heard his, I think $1500 or $2000 also.

Mary W. F. Speers, the Exceptant in this case, being first duly sworn says:-

State your name, and residence?

A. Mary W. F. Speers, I presume you want my business address, my home address is rather uncertain as I am moving about so much, my office address is 342 Madison avenue, New York, N. Y.

2. You are the Miss Speers who filed these exceptions to the mortgage sale of your real estate made by John S. Strahorn, Assignee?

A. I am.

3. Tell the Court how Doctor Kelly came to hold this property of yours?

(By the Court.)

You don't deny he had the mortgage?

A. Don't deny he had the mortgage, but Dr. Kelly also took title to the property at one time and it is very material to show that Dr. Kelly held this property for the Speers and not as an investment.

The testimony will be taken subject to exceptions. (By the Court.)

A. (continued.) In 1913, I called on Dr. Kelly because there was a foreclosure of this mortgage at that time advertised, and I asked Dr. Kelly to take an assignment of that mortgage. At that time I had not previously known Dr. Kelly, but he had operated upon two relatives of mine, he knew them very well, and he got a rather fabulous fee from them for doing so, and he seemed very much interested, and went immediately to his Attorney's office, Mr. Brune's, at that time Mr. Daniel R. Randall was associated with Herbert Brune in his office, and he ordered Mr. Randall to take an assignment of that entire mortgage, then in the hands of a Mrs. Platt. There were two mortgage, Mr. Randall conferred with Mr. Brune and advised Dr. Kelly to lend $1500 for the paying off of the claims against Margaretta B. Speers, in whose name the title stood at that time, and to re-instate those mortgages, which was done. In April, 1916, a judgment was made against my mother, Margaretta B. Speers, in which the Title Company of Baltimore City possibly clouded the title to this property, it did not cloud it exactly but the fact was the same, there was no possible means of raising money while

the tale was being told and instigated by Daniel R. Randall. I believed Dr. Kelly to be entirely a friend of mine, I was advised by my counsel that as long as those circumstances existed we would never be able to operate the property and borrow money, and as long as the cloud rested on the property the only thing to do was to place the property in the hands of Dr. Kelly, as long as he held the other mortgage, to have the property sold to him. I was told by Francis Henks, who sat for three hours , with Francis Jenks ready to put up all the money necessary to clear the title absolutely, that the Title Guaranty Company said we won't guarantee the title, and Mr. Jenks said, can't you or won't you, and they said we won't, and that hour Mr. Jenks advised me to pass title to Dr. Kelly as a mutual friend and he replied to the Vice President of the Trust Company, he said, before I was in Wall street, I was a lawyer, and common sense tells me this claim does not operate against Mary W. F. Speers any more than against the Casualty Company, for she is not responsible for more than $818, and with the payment of that judgment the whole title is clear, but Jenks said pass this title to Dr. Kelly they can't say under a foreclosure sale but that this title is absolutely clear, and they will not dare to say Kelly's title is not clear, and I walked into Mr. Morton's office, who represented Mrs. Platt, and I said to him, here is the interest on this mortgage but I want it foreclosed, I am personally paying this interest, I am carrying this burden, I am not bound by the judgment and I can't keep it up any longer it is a white elephant, with this false reported tale, the only way of clearing it is under foreclosure sale and I want it closed; he looked up and said, Has the weather gone to your head, this mortgage is a regular meal ticket, I don't want to do it, I replied, but I want it sold to Dr. Kelly and he and I will have a release clause in the mortgage whereby he can release it and pay it off, and if you don't do it I will have Dr. Kelly pay you off, and if you do, you get a selling fee in it; he said if you let Dan Randall foreclose this mortgage as Kelly's lawyer, you will be fleeced out of the whole business, I said, that is why I am having you do the whole thing, but I can trust Dr. Kelly. The property was closed to Dr. Kelly and I want to offer a little statement Mr. Randall gave me in 1920, months after the foreclosure sale, and I want to ask that that Auditor's account be offered in evidence.

8

*******Copy of Aocount now filed with Court marked Exhibit No. 1, I want to make this statement, it was not done to avoid any debt, it wae done strictly for the purpose of olearing the title.

Here is the original paper, thie is a memorandum of that sale made by Daniel R. Randall, which eaye the property will stand Dr. Kelly $13,850, reads the same, being Exhibit No. 1. Dr. Kelly held at that time a $15,000 mortgage, that is that $15,350.

The actual ooet to Dr. Kelly, the recorde of the eame will ehow, wae $13, 850, Dr. Kelly had had $1500 at that time, $15,350, every penny he put in that mortgage purchaee prioe, all he has subeequently paid is eome insurance on it, and I think he has paid no taxes, but there might be a year or so; the reason that was made to Fogarty, he was a Naval Officer a cousin of mine whose Power of Attorney I hold, and it wae not decided whether Dr. Kelly or Fogarty should act ae Trustee.

Q. As I underetand it, your contention is thie was the amount it etood Kelly at the time of the eale, $15,350?

A. Yee eir, with some interest.

(By Exceptant.)
I want now to offer varioue oorrespondence in here in detail or in lump, to prove Dr. Kelly held this thing in trust.

The following moetly photostat copiee of letters, one original, now offered in evidence and marked by the Court Stenographer, as "Filed with the Court, July 10th, 1923", and numbered consecutively,

No. 2 Letter of July 6, 1916, eigned by Dr. Kelly.

No. 3 July 10th, 1916, same.
No. 4, 1.8.16 Indian Point on letter head.
No. 5, letter to Mr. Wattenscheidt, ~~[illegible]~~.

reads eame and files original.

No. 6 Sept. 21, 1916,

No. 7, Ootober 11, 1916

No. 8 July 5th, 1917

No. 9 Ootober 4th, 1917

No. 10 October 9th, 1917

No. 11 Ootober 15th, 1917.

No. 12 Ootober 19th, 1917

No. 13 Febry. 6, 1918.

No. 14 Telegram (copy)

During the war I felt that I wanted to do something for the soldiers, so I wrote to Dr. Kelly offering the property for a hospital for the soldiers, I knew Dan Randall was knifing in the back every person who came to him in regard to that title but I did not believe Dr. Kelly would allow himself to be influenced by him, I did not expect him to double cross me, but every human soul that property was put up to would go to Dan Randall for the title and every one of them got sent back. After they took the soldiers down there Dr. Kelly said he was getting a lot of thunder for a great deal of generosity, and the papers wrote it up as "Kelly's donation", when it was my offer and my property, and then Kelly decided to decide the property was his own , so far as I knew that was the first period, but it was due to the advertisement that the soldiers gave for his generosity on my property, and over $1700 worth of wood consumed by the soldiers off my property without any cost to Dr. Kelly, and with entire cost to myself.

(By Mr. Strahorn.)

Q. Dr. Kelly had a deed for this property at this time, didn't he?

A. It stood in his title.

Filed letter of May 13th, 1918, marked No. 15

Filed letter of May 22, 1918, marked No. 16

(By Miss Speers) This is the first time I discovered that Dr. Kelly decided to keep the property for his own self.

Filed Letter of June 5th, 1918, marked number 17

Filed letter of June 25th, 1919, marked No. 18.

(By Miss Speers.) This is a mistake, I ordered the government use of it myself.

Filed Agreement of June 26th, 1919 as Exhibit No. 19.

(By Miss Speers.) I hope my lawyers will be allowed to introduce such evidence as is relative to this case from that other case, No. 4511 Equity?

(By the Court.) In this option what did you agree to pay for the property?

A. $25,000.

Agreement filed with the Court, marked No. 19.

(By Miss Speers.) I want to state that every time I raised the money, they raised me $5,000 and I would have to go out and raise some more and all that time it was Mr. Randall, his opportunity to get next to the people and queer it.

(By the Court.)

Q. It was not purchased under this $25,000?

A. Eventually it was but more added to it as they were systematically doing.

(By Miss Speers). I would like to have offered in evidence an option filed in No. 4511 Equity, April 4rd, 1919, option to buy the property at $8,000,000 net, and he was taking it expecting to market this property as fullers earth deposit was on it, used in refining oil, it was signed by a man worth millions , I was to get it from Dr. Kelly at one figure and they raised another $5000 I could not extract the title at the time and somebody queered Lovering, at the time Kelly got ill in Canada, and later on he withdraws. There has been a determined, concerted effort to prevent me owning this property. The reason that contract was not consummated, Kelly was in Canada, and I have two letters from Kelly's Hospital and from Randall which shows he was not here to receive the money, and when Kelly came back in September they had succeeded in changing DuPonts' mind on the subject, that has been the entire history from that day to this, and I propose to offer Notary's copies,-

Objected to

The agreement to set aside the sale was reached on the 6th of December, 1921, and that very day he wrote a letter to the Banker whose expenses I had paid to come down here to investigate this thing,-

Q. Go to the contract you entered into?

A. About the 8th of November, 1919, I went to Mr. Randall and I said I want this property, I don't want to go into Court to fightnover it, I can't save any money, it will cost me more to do it, and if it is necessary to pay you a fee of $1,000 I want the title transferred from Dr. Kelly to me according to the contract, I am talking about the original trust [redacted] entirely established by these letters, I did not think it necessary to have the originals.

(By the Court.)

Q. And that is the trust established by these letters?

A. It was more or less a verbal contract, the evidence of an existing trust by these letters. Dr. Kelly in the meantime had shown every indication he was simply referring the thing up to Randall, making apologies for Randall,

he did not want a law suit, he was telling me this, but he actually wanted that property , and I have letters from my lawyers telling me ,- but they are not relevant to the case. Mr. Randall prepared the deed from Dr. Kelly at $30,000, and absolutely required $30,000, said he would not sell it, he told me that he told Dr. Kelly that I had him by the throat and this was one way I could shake him loose, and I would not be able to carry the interest. I took the deed because it was all I could do. I had a large deal on hand at that time, I expected to sell the property, and it was in absolute self defense to take it. At the last meeting Kelly withdrew from the deed the valuable point of land, it is not 800 feet, it is between 300 and 400 feet, supposed to contain one acre. He held the deed and when it came down to me it did not have it in, and was a point I, under no circumstances, would have sold, he said I had originally offered him a piece and he had decided now to take it.

Objected to.

Q. How did you come to accept this proposition of Dr. Kelly to transfer this property to you at this figure of $30,000?

A. I could not get it any other way, he refused to give it under any other circumstances, he refused to give the deed to the point, I raised objection on that point and Randall said he told Dr. Kelly he was extracting the last pound of flesh.

Q. How much money did you actually pay Dr. Kelly at that time?

A. I did not pay him any cash at that time.

Q. How much money over this period of the general transaction that you paid Dr. Kelly?

A. On June 26th, 1919 I had paid to him $1000 on that contract, then he took the mortgage for $29,000.

Q. You did not pay it?

A. Marvel did as my attorney, he loaned it to me, I had to return it to him he did not have any claim on it, it was a personal loan to me which I paid Kelly.

Q. How much did that property stand Dr. Kelly, if you know?

A. Exactly $15,350

Q. Have you any figures on that proposition?

A. The sale of the property, as I asked to have entered in here as a part of this.

Q. Have you any statements you have made in regard to what the property stands Dr. Kelly which are responsible? Where is your statement you prepared?

A. I would like to have this carried in the way I itemized it, the figures are correct.

Q. What is the total?

A. That is a statement Miss Speers has prepared showing from her papers and her information what Dr. Kelly has in the property,

Q. You mean what he had in it up to the time he was paid off in full?

A. To August 14th, 1922. Offered for the purpose of showing if that were the fact that Dr. Kelly held the property in trust he was only entitled to get back what he had in it.

Q. What amount?

A. $18526.38.

Q. When did he foreclose the other mortgage?

A. He did not, Revell did, 30th June, 1916 **Filed with Court Exhibit No. 20

Objection to her statement being filed.

Here is a certified copy filed by Dr. Kelly in No. 4511, in the statement he says, agrees to foreclose proceedings on December 6th, 1921, $3000 was paid, out of that $500 allowed for these costs, added in the statement is the purchase of the Delco Lighting Plant $365, Dr. Kelly did not buy the lighting plant or anything else, he got $365 Chaplain fund, he charged that up to me. Insurance too paid, taxes paid out $500, etc. ***Filed as Exhibit No. 21

Q. How much does that show he had in the property?

A. Our Corporation the Speers Sand and Clay Co. paid to Charles H. Hodges, the Treasurer, taxes, 8.12.20, 8.15.22, & 10.1.22, total taxes paid $138.90 and $109.35, referring to taxes, I want to say Margaretta B. Speers was charged for taxes a year and a half after the property was sold from her and deducted out of her returns from the sale, so that that $500 can be questioned as to Dr. Kelly paying those taxes.

Q. (By the Court.)

(By the Court.)

Put into the record what you paid for the property and what mortgage you gave and how long it was to run, you don't deny there was a mortgage?

A. (By Miss Speers). If that was a valid mortgage.

August 14th, 1922.

Albert S. J. Owens, Esq.,

Baltimore, Md. In re. Speers mortgage and costs.

The following are the costs as I calculate them.

Mortgage debt,-------		$20,000.00
Interest on $29,000, 6.1.20 to 8.15.22 26 1/2 mo.		3,842.
Auctioneer per agreement,----------		20.00
Anne Arundel Advertiser,----------		40.00
Costs of Court,----------		12.50
1/2 comms. on $3,000----------	$120.00	
3% on $29,900----------	$897.00	
Total comms. on $32,900,---------	$1,017.00	
1/2 of total comms,----------	508.50-------	508.50
		$24,423.00

Q. What was it Randall added to require you to pay?

A. There was $3000 paid on the 6th of December, 1921, he required me to pay $500 costs out of that, he required $1500 was to be paid to him for a judgment he got against me for his own fee in this transaction, and some judgments he agreed to sell to me against my mother, totalling $1500, that was out of the $3,000 put up by Miss Cottle on the 6th of December, 1921. At the time this money was paid I objected to the payment of this money without a settlement at that time, but the corporation had received a subscription in which we had to give a first mortgage title to that within thirty days to George D. Pratt, and when the release came down it came on this 100 acres; Albert S. J. Owens was acting as corporation counsel and he said let this thing go through this way and I will file a Bill against Dr. Kelly asking for an accounting and get back your point of land, and let this thing go through this way, I said if it goes through it goes through by the corporation not by me or my consent, I have personally nothing whatever to do with it.

(By the Court.)

Let the witness get to the point where she gave the mortgage and what she paid on it.

A. The papers speak for themselves, dated in December 1919.

(By the Court.)

Q. You bought the property at what?

A. According to that deed it was stated $29,000, though it was $30,000, because Mr. Randall said was no use paying any higher stamp tax and the mortgage was placed for $29,000. At that time I personally excepted to Albert S. J. Owens doing it.

Q. Any record of that?

A. I had nothing to do with it, the corporation put it through, Daniel R. Randall was Kelly's counsel. We could not get any action at that time because Dr. Kelly was in Canada, it was because the corporation losing $50,000 subscription, they took the bit and paid it off, $24,423 on the mortgage, in order to get their 100 acres so their bond issue could go through.

(By the Court.) That left a balance of what?

A. $9,000

(By the Court) How was it done by paying off all the mortgage and putting a new mortgage, or just releasing the 100 acres upon paying $20,000 and $4000 accrued interest on the $29,000?

A. I did not see any of the transaction so I can't say. Mr. Owens said when Dr. Kelly returned he would file a Bill asking for an accounting. On January ~~21st~~ 30th, 1923, Mr. Owens received this letter from Mr. Randall.

Reads letter of January 30th, 1923, filed with the Court, No. 22

Letter of February 2nd, 1923, filed with the Court No. 23

Letter of February 14th, 1923, filed with the Court. No. 24.

Q. Did you know Mr. Pratt, who is he?

A. He was at one time Director for the Speers Sand and Clay Works, incorporated.

Q. Do you know Mr. Pulis?

A. No, I have not met him.

Q. Do you know who he is?

A. I have not met him.

Q. Know if he has any connection with Mr. Pratt?

A. I understand he acts as side agent for Mr. Pratt.

Cross Examination.

(By Mr. Strahorn.)

1. Were you present in Annapolis on the day of the sale of this property by me?

A. Yes.

2. Were you at the Court House door when the property was sold?

A. Yes.

3. Where were you five minutes before the sale was called that day?

A. I don't know exactly, but shortly before the sale I served notice on you that the sale was irregular and the money had been paid in full.

4. Who was with you?

A. Mr. Winston G. Gott and Mrs.G. C. Deppe.

5. What was said in that conversation in my office that day? You remember it?

A. Yes sir. Mr. Gott, as Counsel for me, notified you that the money had been paid in full.

6. What did I say?

A. You said did I want to announce that at the Court House door?

7. Before the sale was called?

A. I told you that was your job.

8. Did you consent or refuse to do it?

A. You said you were not going to do it, and Mr. Gott said it was not my business.

9 Did I not specifically say you go ahead and make it if you wish and did not he refuse?

A. He said it was not out place to do it.

10. Did I not tell you to make it if you wanted to and did you not refuse?

A. We were not making the sale.

11. Did I not say there was the opportunity go ahead? And go ahead and make it before the sale was called?

A. Yes.

12. And you refused to do it?

A. I did not, Mr. Gott replied it was not his place.

13. Did I not say to Mr. Gott your Counsel that he could make the announcement?

A. He said it was not his place we did not refuse.

14. Neither one made the announcement?

A. No announcement was made.

15. You went straight from my office to the Court House door and the property was sold, that all happened in a few minutes?

A. In a very short time.

16. You were present at the sale?

A. I was.

17. Do you know who bought the property?

A. Mr. Bilbry bid it in.

18. Do you know him?

A. I do.

19. How long before had you known him?

A. I don't know. I don't know how long before the sale.

20. Where did he get the $1,000 cash paid on the property that day?

A. I suggest that you ask him.

21. Do you know where he got the money?

A. I don't know whether that is relative or not.

Court rules it is.

22. Do you know where he got the money?

A. Mr. Bilbry bought the property in so far as I know, I understood he bought it in.

23. The Court says you shall answer my question, do you know where he got the $1,000 which he paid on the property that day?

A. I presume I do.

24. Where did he get it? A. Do I have to answer?

25. Did not Mr. Bilbry buy the property in for you, and have you not so stated?

A. Yes.

26. You were the purchaser at that sale were you not?

A. I expect to be.

27. Were you not the purohaser at that sale through Mr. Bilbry?

A. Yes I was, had no other way to protect my interest.

28. Then you are here objecting to the ratification of the sale of property which you have purohased yourself?

A. I have no other means to protect my own interest.

29. Had you not been advised how to ~~protect~~ protect your interest, had you not been advised to bring an injunction to stop the sale?

A. On condition that I had to put up $20,000 in security or give bond, or put up $12,000 in oash.

30 Was that the real reason?

A. That was the only reason.

31 Did you not go to the Judge of the United States District Court for Maryland the day before the sale, and ask for an injunction and did he not tell you that he would not at that late hour grant an injunction?

A Not to my knowledge.

32. Did not your lawyers tell you that?

A. Not that I know of.

33. Who was your attorney?

A. Mr. Owens was to file these exceptions, and he brought into the case Mr. Albert S. J. Owens, and he had told me from the start that he would file a Bill against Dr. Kelly that would set this thing straight.

34 I am talking about the Bill for Injunction to stop my sale, did you not go to Judge Soper in the United States District Court and try to get an Injunction to stop the sale?

A. I never saw him, never laid eyes on him.

35. Did you go, through your attorney, Mr. Brady, and ask for an injunction and did he not say he would not grant it?

A. Not to my knowledge, Mr. Brady told me he expected to, but I would have to put up that collateral and I said it is cheaper to put up the $1000, buy the property and except to the sale.

36. Then you went to New York and employed counsel in this case?

A. Yes, Associate Counsel.

37. Who did you employ?

A. W. G. Jerome and associates, 37 Wall street, New York City.

38 Did you not serve notice on me that you expected to take testimony there?

A. Yes I believe Mr. Curley did, as far as I know, yes.

39. Two notices were served were they not to that effect?

A. Yes.

40. And were the witnesses you were going to examine there?

A. I had every reason to expect Miss Cottle to be there.

41. Who were the other witnesses?

A. Mr. Brooks and Elizabeth Collier.

42. Do you know whether or not we had a date set for last Friday, at 10:30 to take testimony, July 6th, in New York City?

A. I understood it was.

43. Were you there?

A. I was in my lawyer's office.

44. Was any testimony taken?

A. He came back and said they had agreed with you not to take it, I was not present.

45. Were you not present with Jerome, Curley, and Welch on Thursday afternoon in consultation?

A. No.

46 Were you present at a conference on Friday morning?

A. Not with Jerome.

47 Was he present at all?

A. No.

48 You know anything about Mr. Jerome in this case, did Jerome advise you in this case himself?

A. Not so far.

49 Do you know that he gave certain advice touching your case?

A. No.

50. You do not know that Mr. Jerome told Mr. Curley those witnesses knew nothing?

A. About Miss Cottle he could not say that, because she has all the papers in the case.

Objected to.

(By Miss Speers.) Kelly guarantees this money to the purchaser, the man is not a loser, he can't lose under the assignment from Kelly, if Dr. Kelly assigned this mortgage to a man under a guarantee for the money, he can recover from Dr. Kelly.

Q. Did you enter into an agreement with Dr. Kelly when he had this property advertised once before under this same mortgage, whereby for certain considerations you withdrew all objection to the proceedings?

A. No, I had an agreement in which it was distinctly stipulated that it was without prejudice to the rights of either party.

Q. Did that recite that in consideration,-- Was the mortgage stated to be $29,000 there?

A. Miss Cottle has the original paper.

Q. Don't you recall that the mortgage was recited as $29,000.

A. I raised the suggestion of doubt.

Q. You signed the paper?

A. No, I don't know that I did. Under advice of counsel I was informed it did not affect me I had every right but I would not sign it, and I declined under any other circumstances.

Q. You did sign it?

A. I was assured by my own counsel that it did not operate against me.

Q. It does recite that the mortgage is $29,000, and upon payment of certain costs of proceedings and of substantial and agreed sum to be credited upon the interest in default and upon certain judgments recovered against the mortgagor and her mother of record in this court, and upon which payment that theseproceedings should be dismissed without prejudice to the rights of the parties hereto?

A. It was dismissed by Dr. Kelly?

Q. No, dismissed by Order of the Court.

Q. Dr. Kelly re-instated the mortgage and you agreed to it?

A. With the understanding that it did not operate to the prejudice of my rights.

Q. He re-instated the $29,000 mortgage upon adjustment of certain interest charges and judgments against you?

A. I don't know anything about it¾

Q. I tell you it is such and you signed it?

A. I signed it with the distinct understanding it could not operate and make valid the mortgage. I did it with the assurance of my attorney and of Mr. Randall.

Q. That is not in the record is it?

A. I don't know. I know Miss Cottle was due to be here today and somebody has sidetracked her.

Q. Did Mr. Jerome tell you her testimony amounted to nothing?

A. He did not.

Q. What did he tell you? You were in Mr. Jerome's suite of rooms when this testimony was to be taken?

A. I never said a word to Mr. Jerome. I did not know the meeting was to be called off until it was announced you had left.

According to agreement with the Court, the following exhibits were filed with the Court Stenographer, July 24th, 1923, same having been sent by mail to Clerk of Court, per letter attached dated July 23rd, 1923.

Letter dated Nov. 21, 1916, Exhibit No. 25

Letter dated 10 Jan. 1917, Exhibit No. 26

Letter dated Febry. 13, Exhibit No. 27

Letter dated Sept. 13, 1919 Exhibit No. 28

Letter dated Sept. 16th, 1919, Exhibit No. 29

Letter dated Dec. 11, 1919, Exhibit No. 30

Letter dated Sept. 24, 1921, Exhibit No. 31

No. 32 not in.

Letter dated December 10th, 1921, Exhibit No. 33

Letter July 5th, 1922 (copy) Exhibit No. 34

Letter Febry. 15th, 1923, Exhibit No. 35.

Filed with Court stenographer, July 27th, 1923, the original agreement between Gilbert Lovering andM. W. F. Speers , same being option for $8,000,000.

LIBER 78 PAGE 346

In the Matter of the Mortgaged Real Estate of Mary W. F. Speers,

In the Matter of Exceptions filed to the ratification of the sale. No. 4742 Equity.

August 15th, 1923.

Testimony on behalf of the Assignee of the Mortgage.

Present:-

Mr. Curley, Attorney for Mary W. F. Speers, Exceptant.

Mr. John S. Strahorn, Attorney for Assignee of Mortgage.

George E. Rullman, Esq., Examiner.

Juliet D. Strahorn, Court Stenographer.

WITNESS.

Daniel R. Randall, Esq.,

In the Matter of the Mortgaged Real Estate of Mary W. S. Speers,

No. _____ Equity.

In the Circuit Court for Anne Arundel County.

December 6th, 1923.

Testimony in Rebuttal by Plaintiff. Announced by Mr. Curley, Plaintiff's Attorney.

PRESENT:

Messrs. Curley and Strahorn, Attorneys for Plaintiff and Defendant,

George S. Rullman, Esq., Examiner in Chancery.

Juliet D. Strahorn, Court Stenographer.

Filed 10th Dec. 1923

Marion Weston Cottle, witness for Plaintiff, being first duly sworn, says.

Defendant's Solicitor objects to all testimony of this witness for the reason, among others, that the testimony of this witness, as understood by defendant at this point, is not rebuttal testimony, but testimony in chief, she having been designated by the Exceptant herein as a witness in Chief whose testimony was not taken although notice to the effect that it was to be taken In New York was heretofore given, said notice applying to the testimony of the exceptant in chief and not in rebuttal.

Counsel for Exceptant states that this testimony produced at this time is taken under the understanding had with the Court on November 17th, 1923,

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when he understood the Court to state that any testimony taken to be returned by the 6th of December, 1923, would be considered.

Marion Weston Cottle, witness produced:-

(By Mr. Curley.)

1. Where do you reside?

A. 57 County Road, Chelsea, Mass.

2. What is your occupation?

A. Attorney and Counsellor-at-Law.

3. State how long you have been a member of the Bar?

A. Been practicing about fifteen years, member of the Bar of the State of New York, of New Hampshire, of Mass. of Maine, of California and of the United States Supreme Court.

4. Do you know Miss Mary V. F. Speers?

A. I do.

5. Have you represented her?

A. I have.

6. When and for what length of time?

A. For a period of about two years from May 1921 to about May, 1922.

7. In what matter did you represent her?

A. In matters relating to property owned by Miss Speers in Anne Arundel County, Maryland, particularly that property on which Dr. Howard A. Kelly of Baltimore held a mortgage.

8. Do you know just about where that property was located?

A. Yes, at Earleigh Heights, Maryland, I have been there personally, it contained about 150 acres prior to the time Miss Speers conveyed title to the Speers Sand and Clay works Incorporated.

9. Were you representing Miss Speers at that time in connection with this property?

A. I was.

10 Did you have any interviews or business relations with Dr. Kelly representing Miss Speers affecting this property?

A. I did.

11 Will you state what that was?

A. I had personal interviews with Dr. Kelly on various occasions beginning with the summer of 1921 and continuing until the time that the 100 acres on which Dr. Kelly held a mortgage were cleared of this mortgage, which I believe, ------

By Mr. Strahorn:- What is that you have in your hand?

Miss Cottle:- I have some notes from my Lawyer's Diary, I am not reading from those notes,-

witness continues:-

which I believe was in August 1922.

Mr. Strahorn, Attorney, insists that the notes be filed or used.

Witness:- I was in Court on various occasions between May, 1921 and May, 1922 representing Miss Speers, I cannot today give the exact dates of those appearances in Court without referring to my notes to refresh my memory, but I can say that I talked with Dr. Kelly at his place of residence at these various dates, which I can give if I am given an opportunity to refer to my

record taken from my Lawyer's Diary, the records having been made personally by me while I was in Baltimore and Annapolis transacting business in connection with the Kelly matter for Miss Mary J. F. Speers. In the Fall of 1921 I examined the testimony which had been introduced under Miss Speers' exceptions to the foreclosure and sale of the Howard A. Kelly mortgage, and ascertained that Dr. Kelly had not submitted a statement of the exact amount he claimed to be due him under this mortgage. I received from Dr. Kelly a letter dated October 14th, 1921 in which he stated specifically the amounts he claimed to be due under his mortgage, Miss Speers, mortgagor, to October 14th, 1921. This letter I hold in my hand contains a reference to personal matters with Miss Speers, I feel, as her former attorney, I cannot allow this to go in as a formal exhibit but I can testify that I know the signature of Dr. Howard A. Kelly, I have been a witness to documents he has signed, that this is his signature on that letter, and I should like to read into the testimony this part of the letter.

12. The letter you produce is a letter purporting to be from Dr. Howard A. Kelly dated October 14th, 1921?

A. Yes.

13. Purports to be signed by Howard A. Kelly?

A. Yes.

14. Do you know his signature?

A. Yes, that is I have seen him write it.

15. Is there anything in that letter in relation to the financial arrangement in regard to the sale of this particular property?

A. There is.

16. Read everything in that letter in relation thereto?

A. In connection with Dr. Kelly?

17. Yes.

A. "You will realize that I have had some years of experience, and have reached my conclusions forced by the logic of fact. At first I went into what looks now like a foolish quixotic arrangement to take a third mortgage on a piece of property I had never seen, simply with a desire to reserve save it for a widow and her two children."*******Then there is a reference to personal matters concerning Miss Speers; then a last paragraph which I shall read in full,

"I enclose a copy of a statement carefeully prepared for filing at Annapolis as ordered by the Court, which while giving you every credit, claims only the interest on the sum represented by my purchase of June 30, 1916, & leaves a sum due me of $20, 477.23. Should I accept this am't for myself, waiving all claim for legal interest due on the $29,000 obligation I could not accept less than this sum plus the admitted claim of Mr. Randall, an aggregate of $24,158.76. Unless this sum is secured I must await the decision of the Court as to my status in the matter. The date of the hearing is for the 26th, only (3 hrs. granted)" end of the paragraph relating to Miss Speers' matter.

18 After the receipt of that letter what, if any interviews did you have with Dr. Kelly in relation to this property representing Miss Speers?

A. I had a telephone interview with Dr. Kelly from the Hotel Emerson in Baltimore on December 6th, 1921 in which I reminded him of the fact that he

had agreed to reserve from the original mortgage deed to Miss Speers one acre of land on the Severn River which had not been done. I stated to Dr? Kelly I would like to hear from him whether or not he was still willing to have that acre of land conveyed to Miss Speers, he stated he was and he would so instruct Mr. Randall that this acre was to be conveyed to Miss Speers.

******OBjection on the ground that the acre in question is not before the Court in this proceeding.

I had various other conversations with Dr. Kelly in connection with the mortgage matter, and on the 5th of December, 1921, I was present at his house when an agreement was signed ,

*****Objection, asked to produce the agreement,

an agreement was signed between Howard A. Kelly, M. D. and Mary F. F. Speers in reference to the Speers property. Miss Speers was not present at that time, but she signed the agreement before me previous to the time that I met Dr. Kelly and Mr. Randall at Dr. Kelly's residence in the evening of December 5th. I witnessed Dr. Kelly's signature and that of Miss Speers. The next day Mr. Randall, Miss Speers and I went to Annapolis to the office of Hon. Theodore Brady where Mr. Randall received from me $3,000 for which he gave me a receipt showing the application to be made of the $3,000 on the mortgage,

*****Objection, the receipt should be produced.

19 What was the date?

A. On the 6th of December, 1921 this receipt was signed by Mr. Randall in my presence in the office of Senator Brady in Annapolis.

20 You have referred to a recipt from Mr. Randall for $3,000 dated December 6th, 1921, is this the receipt?

A. It is, signed in my presence by Mr. Randall, at the office of Senator Brady, at Annapolis.

****Objection to same.

"In the Matter of the Mortgaged Real Estate of Mary J. F. Speers. No. 4511 Equity. In the Circuit Court for Anne Arundel County.

December 6th, 1921.

Received this day from Marion Weston Cottle, the sum of Three Thousand Dollars ($3,000) per an agreement executed between Howard A. Kelly, M.D. and Mary J. F. Speers, of December 5th, 1921, under which agreement from this payment are first to be paid the costs as taxed by the Clerk of the Circuit Court in this proceeding, and the balance is to be applied to the interest in arrear due Howard A. Kelly, mortgagee, and to the judgments of Daniel R. Randall against Marguerretta B. Speers and Mary J. F. Speers, of record among Judgments in said County.

Daniel R. Randall, Atty. for Howard A. Kelly, M.D."

*******Defendant's Solicitor objects to the paper writing unless it is filed in the papers in the case.

21. You have testified that Miss Speers had signed that contract December 5th, 1921 in your presence?

A. Yes.

22 Do you recall whether or not she signed it without protest?

A. Yes, I do recall that she signed it under protest.

23. What do you recall was her contention at that time?

Objection because it is not the best evidence, it is hearsay.

A. Her contention, made to me personally, was there were unreasonable demands contained in this agreement which extended the time for the payment of Dr. Kelly's mortgage to July 1st, 1922.

24. Did Miss Speers sign that paper do you recall without protest?

A. I have testified to that, yes.

25 Do you know what objection she made?

Objection.

A. That there were unreasonable demands made on her in connection with this agreement, she claimed Dr. Kelly would, by this dismissal of the foreclosure and sale have a continuance of his mortgage right to July 1st, 1922, and that then he could foreclose if the money remaining to be paid was not paid, and there were additional terms put in the agreement which were not necessary to protect his interests but simply to force Miss Speers to enter into a contract which was unfair.

26. Do you know, or recall why, if Miss Speers objected to signing that paper, she did object?

A. Nothing more than what I have stated.

No Cross Examination.

To the general question under the rule the witness says:-

A. I can state that I called at the office of Mr. Daniel R. Randall, Attorney for Dr. Howard A. Kelly, on an occasion which to the best of my recollection was in the Fall of 1921, and I asked him at that time if he would make some arrangement to extend the Kelly mortgage so Miss Speers might obtain a loan to either pay off the entire mortgage or make a substantial

payment on it, he said, at that time, he would do nothing . He appeared very angry, his face was flushed, and he spoke in an exasperated manner, he said "I tell you, Miss Cottle, if I can help it, Mary Speers will never get this property back into her hands again". Even on the date when, according to the agreement, we appeared at Mr. Randall's office, Miss Speers and I and Judge Burpee of New York, with $3,000 to obtain an extension of time to have Miss Speers pay off her indebtedness to Dr. Kelly, Mr. Randall objected to carrying through the agreement and raised various unexpected points. He gave us a memorandum at his office, I have not it with me at the present time,-

Objection unless produced,

I have not it, but I think I can state generally,-

he raised or ~~produced~~ proposed conditions entirely outside of those which had been agreed upon in the office of Albert S. J. Owens two weeks before when this agreement between Dr. Kelly and Miss Speers was signed on the 5th of December, 1921. I can testify that Mr. Randall's general attitude throughout the transaction, so far as I had anything to do with him, was to prevent Miss Speers from paying off this Kelly indebtedness.

Signatures waived by agreement.

9

Mary J. F. Speers, the Exceptant in this case, having been heretofore sworn, says:-

(By Mr. Curley.)

1. Have you read any of Mr. Daniel R. Randall's testimony in this case?

A. I have read a part of it, I have been unable to get it except when coming down on the train, and then only got as far into it as I saw and could.

2. Mr. Randall testified there was $100 due Mr. Marvell, and later recalled that that was an error and it was $1,000, state whether or not there is any amount due Mr. Marvell?

Objected to as not relevant to this issue.

A. Mr. Marvell paid to Dr. Kelly $1,000 as my Attorney and no money was due to be returned by Dr. Kelly to Mr. Marvell.

3. Mr. Randall testified that Dr. Kelly generally speaking could make no move in the matter or write letters without communicating with him, Mr. Randall, do you recall when you received the last letter from Dr. Kelly?

A. The last communications I had with Dr. Kelly wasprior to any arrangements that were subsequently made with Mr. Randall, Mr. Randall was not present at any inerview Dr. Kelly and I had from the beginning until the deed to me, in fact he never was present except on the one interview when the $1500 was loaned, he never had any transaction with Dr. Kelly and myself being present or any other way. Mr. Randall arranged the deed, I had no communications with Dr. Kelly direct at the time the deed was arranged December, 1919, it was the deed returning the property to me, December 8th or 9th, 1919.

4. Was it or not your proposition to purchase from Dr. Kelly the 152 and 3/4 acres at $29,000?

A. That was the point, they would sell it to me under, and I could get it under no other circumstances, and I protested, but that was what I signed at $30,000, included the $1,000 Mr. Randall stated under option, there was no option, it was a direct contract of sale when the $1000 was paid as part of the purchase money, there was never an option given I refused to accept it as an option and made him re-write it as a contract of sale and I paid him $100 for preparing it.

5 When was that?

A. On the 26th of June, 1919.

6 What happened then after you signed that agreement at $29,000 in reference to this transaction, did you make any effort to modify the contract?

A. I was ready to pay the contract on the date settled, but Dr. Kelly was supposed to have a broken leg in Canada and not here to receive the money, I have offered letters to prove Mr. Randall wrote to Mr. Marvell, my Counsel, that Dr. Kelly was not ready to receive it and when I found that out I filed that contract myself here in Annapolis to keep that valid, and when they finally came back with the deed it was under much argument and I simply concedded it, being adverse to litigation.

7. Will you state, if you recall, under what condition you signed the agreement of December 5th, 1921?

A. I protested very severely at signing that agreement. I argued with Mr. Owens, Miss Cottle, Mr. Burpee, Senator King that I did not want to give up any right to dispute the validity of this mortgage, and under the assurance of all counsel present, ****Objected to

under assurance of all counsel present that a document should be entered up in the record that it was without prejudice to either party did I consent to sign it and no other, and I so understood it was in the record.

8. It is in the record that way?

A. It was signed at night, and done in the morning. I never gave up my rights to dispute it and I still maintain my cestui qui trust is still alive.

No Cross Examination.

To the general question under the rule the witness says:-

A. I would like to say that there has been a concerted effort on the part of a prejudiced witness, Mr. Daniel R. Randall, to prohibit in any measure my getting back in any measure this property which was lawfully mine. He has made every effort to stop money to be produced, and I ask to offer letters to prove he is a prejudiced witness

Objection to all outside stuff being offered

and it is only one of concerted efforts over a period of a number of years of Mr. Randall to prevent this property coming back to me and of my paying off any moneys that might be due upon it.

I will offer as evidence that this is a prejudiced witness a letter marked "Confidential" addressed to J. A. Walter, 419 W. Philadelphia st., York, Pa. dated April 16th, 1923, being a photostat copy. The letter is from Mr. Daniel R. Randall,

****Objection to witness interpreting the letter it speaks for itself.

In the letter it states that a Philadelphia Promoter purchased this property.

I want to offer in evidence also this letter from Mr. Joseph H. Bilbree to Miss Mary M. F. Speers, dated March 25th, 1923. I deny all the statements in that letter and offer this as part proof of them.

******Objection to second letter offered by withess.

I want to offer in evidence a letter from the Secretary of Dr. Howard A. Kelly signed by Laura E. Hartge dated April 25th, 1923 addressed to Mr. A. E. Walter 419 N. Philadelphia st., York, Pa.

*****Objection to admissibility of letter for reasons to be stated later.

This is done to show the system by which moneys were prevented from being loaned to me.

Signatures waived by agreement.

There being no further testimony in this case the same is now closed and returned to this Court. December 10th 1923.

George S. Pullman (Seal)

Examiner.

IN THE MATTER of the
Sale of the Mortgaged
Real Estate of
Mary W. F. Speers,

No. 4742 Equity.
In the
Circuit Court for
Anne Arundel County.

- - - - - - - - - - - - - - - -

To the Honorable, the Judges of said Court.

Filed 19th Dec. 1923

The petition of John S. Strahorn, Assignee, respectfully shows:-

That rebuttal testimony was taken in this case on the 6th of December, 1923, and notice given to the Examiner, by exceptant's attorney, that no further time was desired, whereupon the testimony was closed and returned to the court on the 10th day of December, and the case is now ready for final determination.

And your petitioner therefore respectfully prays. That an order be passed herein, setting this case down for final hearing.

And he will ever pray, etc. John S. Strahorn, Assignee.

Filed 19 Dec. 1923

ORDERED, by the Circuit Court for Anne Arundel County, In Equity, this 19th day of December, 1923, on the foregoing petition, that this case be, and it is, hereby set down for ~~final hearing~~ argument before the court, on the 2nd day of January 1924. at 10 A.M.

Robert Magruder A.J.

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FRANK H. CLARK : LIBER 78 PAGE 362 IN THE CIRCUIT COURT

VS. : OF BALTIMORE CITY

CAROLINE H. CLARK, an Infant ; No. 10,527 Equity

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To the Honorable, the Judge of said Court:

Your Orator complaining says:

1. That Mary C. H. Clark, late of Baltimore City, deceased, died on or about the 11th day of June, 1890 leaving a Last Will and Testament duly executed to pass real estate in this State, which Will has been admitted to probate by the Orphans Court of Baltimore City and is now of record in the office of the Register of Wills of the same in Wills Liber R. T. B. No. 65 folio 65; a certified copy of said Will marked "Exhibit A" being filed herewith and prayed to be taken as part hereof.

Filed 22 July, 1952

II. That by the twelfth item of said Last Will and Testament the said Mary C. H. Clark provided as follows:

"All of the rest and residue of my estate which for convenience I will call my "Trust Estate" real, personal, and mixed I give, devise and bequeath unto my sister Susannah I. Henderson in trust and confidence as hereinafter stated that is to say: In Trust for the use and benefit of my Son, Frank, for the term of his natural life, my said trustee shall pay out of the income of my said trust estate such sum or sums of money as she shall think proper for his maintenance and education, and the balance of the income, if any, shall be added to my trust estate.

And when my said son shall arrive at the age of twenty-one years, my said trustee shall pay to my said son the entire amount of the income of my said trust estate, in monthly instalments; and from and after the death of my said son, my trust estate shall go to and become the property of his children per stripes.

In the event of my son departing this life without issue living at the time of his death then I give to my husband two thousand dollars and the balance of my property shall go to and become

the property of my said sister, Susannah I., if she be living, but if she be dead then to her child or children, if she have any. But if my sister be dead leaving no child or children at the death of my son, as aforesaid, then I bequeath the sum of five hundred dollars to Harriet Smith of New Jersey; five hundred dollars to Annie S. Grant of Philadelphia; five hundred dollars to Josephine Blackman of New Jersey; one thousand dollars to Susannah M. Hugg and the balance of my said trust Estate to Mary Margaretta Hugg."

III. That Frank Clark, son of the said Mary C. H. Clark, and devisee for life under said Last Will and Testament departed this life on or about the 2nd day of April 1906 leaving the said Frank H. Clark and Caroline H. Clark as his only children, heirs at law and sole distributees.

IV. That among the properties owned by the said Mary C. H. Clark at the time of her death and devised by her as aforesaid to the said Frank Clark (now deceased) for life with the remainder over to his children are the following:

A. An annual ground rent of Forty-eight Dollars, ($48.00) issuing out of a lot of ground lying on the northwest side of Clifton Avenue, Baltimore City, beginning at the distance of sixty feet four inches southwesterly from Mary Street and having a frontage southwesterly on the northwest side of Clifton Avenue of eleven feet seven inches with an even rectangular depth of seventy feet to a nine foot alley; the improvements thereon being known as No. 311 Clifton Avenue; said annual rent having been acquired by the said Mary C. H. Clark, (called in said Deed Mary C. Clark) under and by virtue of a Deed from George R. Clark and wife dated February 23, 1887 and recorded among the Land Records of Baltimore County in Liber J. W. S. No. 158 folio 514.

B. Five annual ground rents of Thirty-six Dollars ($36.00) each, issuing out of five lots of ground lying on the north side of Belt Street, Baltimore City, beginning at the respective distances of seventy-eight feet eleven and one-quarter inches, ninety feet,

eleven and one-quarter inches, one hundred two feet, eleven and one-quarter inches, one hundred fourteen feet, eleven and one-quarter inches and one hundred twenty-six feet, eleven and one-quarter inches westerly from the York Road, each of said lots of ground having a frontage westerly on the north side of Belt Street of twelve feet with an even rectangular depth of eighty-nine feet to the south side of a ten foot alley; the improvements thereon being known as Nos. 434, 432, 430, 428 and 426 Belt Street, respectively; said annual ground rents having been acquired by the said Mary C. H. Clark (called in said Deed Mary C. Clark) under and by virtue of a Deed from Francese L. Turnbull and husband, dated October 23, 1886, and recorded among the Land Records of Baltimore County in Liber J. W. S. No. 156 folio 360.

V. That in addition to the above referred to properties the said Frank H. Clark and Caroline H. Clark are seized and possessed of the following properties and securities, as tenants in common, said properties and securities being investments made by the guardian of the said Frank H. Clark and Caroline H. Clark out of funds derived under the Twelfth item of said Last Will and Testament of the said Mary C. H. Clark.

A. An annual ground rent of Ninety Dollars ($90.00) issuing out of a lot of ground lying in Anne Arundel County, State of Maryland, being at the northeast corner of Catalpa and Maple Roads, and having a frontage on the east side of Catalpa Road of Seventy-five feet with an even rectangular depth of one hundred feet; said annual ground rent having been acquired by the said Frank H. Clark and Caroline H. Clark under and by virtue of a deed from D. Frank Clarke and wife dated September 30th, 1912 and recorded among the Land Records of Anne Arundel County in Liber G. W. No. 94 folio 405.

B. An annual ground rent of Ninety-six Dollars ($96.00) issuing out of a lot of ground lying in Anne Arundel County, State

of Maryland, beginning on the south side of Poplar Street at a point three hundred and twenty-three feet westerly from Walnut Street having a frontage westerly on the south side of Poplar Street of four hundred and eighty feet with an even rectangular depth of two hundred and fifty feet; said annual rent having been acquired by the said Frank H. Clark and Caroline H. Clark under and by virtue of a Deed from David J. Herrington, dated June 20th, 1914 and recorded among the Land Records of Anne Arundel County in Liber G. W. No. 109 folio 73.

C. An annual ground rent of Sixty Dollars, ($60.00) issuing out of a lot of ground lying in Anne Arundel County, State of Maryland, beginning on the south side of Maple Avenue seven hundred and thirty-one feet easterly from Hammond's Ferry Road having a frontage easterly on the south side of Maple Avenue of one hundred and sixty feet with an irregular depth said annual rent having been acquired by the said Frank H. Clark and Caroline H. Clark under and by virtue of a Deed from Wallace Morris, dated August 28th, 1919 and recorded among the Land Records of Anne Arundel County in Liber W.N.W. No. 19 folio 252.

D. An annual ground rent of Ninety Dollars, ($90.00) issuing out of a lot of ground lying in Anne Arundel County, State of Maryland, beginning on the south side of Maple Avenue at the distance of One hundred and sixty-two feet eight inches westerly from Maryland Avenue, having a frontage westerly of seventy-five feet on the south side of Maple Avenue with an even rectangular depth of one hundred and forty-five feet; said annual rent having been acquired by the said Frank H. Clark and Caroline H. Clark under and by virtue of a Deed from John H. Geis and wife dated November 15th, 1918 and recorded among the Land Records of Anne Arundel County in Liber W.N.W. No. 26 folio 213.

E. A Mortgage debt of Five hundred Dollars, ($500.00) secured by a mortgage from Benjamin H. Somers and wife to the said

Frank H. Clark and Caroline H. Clark dated April 16th, 1912 and recorded among the Mortgage Records of Baltimore County in Liber W.P.C. No. 382 folio 422; the mortgaged premises being on the north side of Oella Factory Road, Baltimore County, State of Maryland.

F. Nineteen (19) shares of Merchants Mechanic's National Bank stock.

G. One Virginia Funded Debt.

VI. That the said Frank H. Clark and Caroline H. Clark are the only persons entitled to the aforesaid properties, mortgage debt and securities.

VII. That a partition of said properties, mortgage debt and securities among the persons entitled thereto according to their respective interests therein as aforesaid can be made without loss or injury to them; but that the said Caroline H. Clark being an infant under the age of twenty-one years, said partition cannot be made without the aid of this Court.

To the end therefore:

I. That a decree may be passed by this Court for a partition of said properties, mortgage debt and securities among the persons entitled thereto according to their respective interests as aforesaid.

II. That your Orator may have such other and further relief as his case may require. May it please your Honor to grant unto your Orator the writ of subpoena directed to the said Caroline H. Clark, an infant, residing at No. 2716 N. Calvert Street, Baltimore City, commanding her to be and appear in this Court at some certain day, to be named therein, and answer the premises and abide by and perform such decree as may be passed therein.

AND as in duty bound, etc.

McKee & Bullock

Solicitors for Plaintiff.

LIBER 78 PAGE 367

FRANK H. CLARK	:	IN THE CIRCUIT COURT
VS.	:	OF
CAROLINE H. CLARK, an infant	:	BALTIMORE CITY

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To the Honorable, the Judge of said Court:

The subscriber, three of the Commissioners appointed by the Commission issued out of the Circuit Court of Baltimore City, in the above entitled cause, and which Commission is hereto annexed, do certify that, after having taken the oath annexed to said Commission by us to be taken and given notice to the parties of the time and place of our meeting, we did, in pursuance of said Commission, on the 15th day of April, 1922, walk over and examine all the real estate, and mortgaged premises, and examined all the securities mentioned therein, being the real estate, mortgage debt and securities of which Frank H. Clark and Caroline H. Clark are seized and possessed as tenants in common, and have valued and appraised said real estate, mortgage debt and securities (being the real estate, mortgage debt and securities mentioned in the Bill of Complaint herein) at $10843.82 and have divided the same into two equal parts, having regard to the quality and quanity thereof; the particulars whereof will appear by the Schedule hereto annexed, forming part of this return, and containing "Divisions A and B".

Filed 22 July, 1922.

And we do further certify that we have, as directed by said Commission, alloted "Division A" to the Plaintiff, Frank H. Clark, and "Division B" to the Defendant, Caroline H. Clark.

And we do further certify that the schedule hereto annexed, and made a part of this return, contains a full and accurate description of said real estate, mortgaged premises and securities, valued and appraised by us as aforesaid, and the valuation of each part and parcel thereof and the particulars of the descriptions and valuations of said property as divided by us as aforesaid.

All of which proceedings, with the sechedule and the afore-

said Commission, we return under our hands and seals this 25th day of April, 1922.

S. Colquitt Pardee (SEAL)
Richard C. Roberts (SEAL)
George R. Johnson (SEAL)

SCHEDULE

No. 1.

An annual ground rent of Forty-eight dollars ($48.00) issuing out of a lot of ground the improvements thereon being known as No. 1560 Clifton Avenue, Baltimore City.

BEGINNING for the same on the northwest side of Clifton Street at the distance of sixty feet four inches southwesterly from the corner formed by the intersection of the northwest side of Clifton Street with the southwest side of Mary Street, and running thence southwesterly on Clifton Street eleven feet seven inches thence northwesterly parallel with Mary Street seventy feet to a nine foot alley there situate; thence northeasterly bounding thereon with the use thereof in common eleven feet seven inches, and thence southeasterly parallel with Mary Street seventy feet to the place of beginning.

Valued at	$ 800.00	
Accrued rent	16.00	$816.00

No. 2.

An annual ground rent of Thirty-six dollars ($36.00) issuing out of a lot of ground the improvements thereon being known as No. 434 Belt Street, Baltimore City.

BEGINNING for the same on the north side of Percy Street seventy-eight feet eleven and one-quarter inches westerly from the northwest corner of the York Road and Percy Street, which place of beginning is designed to be at the northwest corner of Percy Street and a ten foot alley situate sixty-eight feet

eleven and one-quarter inches west of the York Road and running parallel with Barclay Street, and running thence northerly binding on the west side of said ten foot alley parallel with Barclay Street with the use thereof in common with the other lots binding thereon eighty-nine feet to the south side of a ten foot alley parallel with Percy Street, and running thence westerly binding on the south side of said ten foot alley parallel with Percy Street with the use thereof in common with the other lots binding thereon twelve feet; thence southerly parallel with Barclay Street eighty-nine feet to the north side of Percy Street and thence easterly binding on the north side of Percy Street twelve feet to the beginning.

Valued at $600.00

Accrued rent 12.00 $612.00

No. 3.

An annual ground rent of Thirty-six dollars, ($36.00) issuing out of a lot of ground the improvements thereon being known as No. 432 Belt Street, Baltimore City.

BEGINNING for the same on the north side of Percy Street ninety feet eleven and one-quarter inches westerly from the northwest corner of the York Road and Percy Street and running thence northerly parallel with Barclay Street eighty-nine feet to the south side of said ten foot alley parallel with Percy Street, thence westerly binding on the south side of said ten foot alley parallel with Percy Street, with the use of said alley in common with the other lots bounding thereon twelve feet; thence southerly parallel with Barclay Street eighty-nine feet to the north side of Percy Street; thence easterly binding on the north side of Percy Street twelve feet to the beginning.

Valued at $600.00

Accrued rent 12.00 $612.00

No. 4.

An annual ground rent of Thirty-six dollars, ($36.00) issuing out a lot of ground the improvements thereon being known as No. 430 Belt Street, Baltimore City.

BEGINNING for the same on the north side of Percy Street one hundred and two feet eleven and one-quarter inches westerly from the northwest corner of the York Road and Percy Street and running thence northerly parallel with Barclay Street eighty-nine feet to the south side of said ten foot alley parallel with Percy Street, thence westerly binding on the south side of said ten foot alley parallel with Percy Street with the use of said alley in common with the other lots binding thereon, twelve feet thence southerly parallel with Barclay Street eighty-nine feet to the north side of Percy Street and thence easterly binding on the north side of Percy Street twelve feet to the beginning.

Valued at	$600.00	
Accrued rent	12.00	$612.00

No. 5.

An annual ground rent of Thirty-six dollars, ($36.00) issuing out of a lot of ground the improvements thereon being known as No. 428 Belt Street, Baltimore City.

BEGINNING for the same on the north side of Percy Street one hundred and fourteen feet eleven and one-quarter inches westerly from the northwest corner of the York Road and Percy Street and running thence northerly parallel with Barclay Street eighty-nine feet to the south side of said ten foot alley parallel with Percy Street, thence westerly binding on the south side of said ten foot alley parallel with Percy Street with the use of said alley in common with the other lots binding thereon twelve feet; thence southerly parallel with Barclay Street eighty-nine feet to the north side of Percy

Street and thence easterly binding on the north side of Percy Street twelve feet to the place of beginning.

Valued at $600.00

Accrued rent 12.00 $612.00

No. 6.

An annual ground rent of Thirty-six dollars, ($36.00) issuing out of a lot of ground the improvements thereon being known as No. 426 Belt Street, Baltimore City.

BEGINNING for the same on the north side of Percy Street one hundred and twenty-six feet eleven and one-quarter inches westerly from the northwest corner of the York Road and Percy Street and running thence northerly parallel with Barclay Street eighty-nine feet to the south side of said ten foot alley parallel with Percy Street, thence westerly binding on the south side of said ten foot alley parallel with Percy Street with the use of said alley in common with the other lots binding thereon twelve feet thence southerly parallel with Barclay Street eighty-nine feet to the north side of Percy Street thence easterly binding on the north side of Percy Street twelve feet to the beginning.

Valued at $600.00

Accrued rent 12.00 $612.00

No. 7.

An annual ground rent of Ninety dollars, ($90.00) issuing out of a lot of ground lying in Anne Arundel County, State of Maryland.

BEGINNING for the same at the northeast corner of Catalpa and Maple Roads and running thence in a northerly direction on the east side of Catalpa Road seventy-five feet to Lot No. 31 thence easterly binding on Lot No. 31 one hundred feet to Lot No. 29 thence southerly binding on Lot No. 29 seventy-five feet to Maple Road, thence westerly on the

north side of Maple Road one hundred feet to the place of beginning.

Valued at	$1500.00	
Accrued rent	7.50	$1507.50

No. 8.

An annual ground rent of Ninety-six dollars, ($96.00) issuing out of a lot of ground lying in Anne Arundel County, State of Maryland.

BEGINNING for the same on the south side of Poplar Street as laid down on the Plat of Kinsloch Farms, said plat being filed among the Land Records of Anne Arundel County, see Liber G. W. No. 105 folio 311, at a point three hundred and twenty-three feet westerly from the corner formed by the intersection of the south side of Poplar Street and the west side of Walnut Street, and running thence westerly four hundred and eighty feet, thence southerly at right angles to Poplar Street two hundred and fifty feet, thence easterly parallel with Poplar Street four hundred and eighty feet, thence northerly in a direct line to the place of beginning, being Lots Nos. 19, 20 and 21 on the said Plat of KINSLOCH FARMS.

Valued at	$1600.00	
Accrued rent	40.00	$1640.00

No. 9.

An annual ground rent of Sixty dollars, ($60.00) issuing out of a lot of ground lying in Anne Arundel County, State of Maryland.

BEGINNING for the same on the south side of Maple Avenue at a point distant easterly from the east side of Hammonds Ferry Road seven hundred and thirty-one feet thence easterly binding on Maple Avenue one hundred and sixty feet thence southerly at right angles to said Maple Avenue in a straight line to the southern boundary line of the whole tract shown on said

plat; thence northeasterly along said boundary line to the point of intersection with a line drawn southerly from the place of beginning at right angles to said Maple Avenue; thence along said last mentioned line to the place of beginning. Containing one and twenty-two one hundredths acres.

Valued at	$1000.00	
Accrued rent	10.00	$1010.00

No. 10.

An annual ground rent of Ninety dollars, ($90.00) issuing out of a lot of ground lying in Anne Arundel County, State of Maryland.

BEGINNING for the same on the south side of Maple Avenue distant one hundred and sixty-two feet eight inches westerly from the intersection of the south side of Maple Avenue and the west side of Maryland Avenue as laid down on the said plat; running then westerly binding on the south side of Maple Avenue seventy-five feet; thence southerly at right angles with Maple Avenue one hundred and forty-five feet; thence easterly parallel with Maple Avenue seventy-five feet thence northerly in a straight line to the place of beginning.

Valued at	$1500.00	
Accrued rent	41.25	$1541.25

No. 11.

A mortgage debt of Five hundred dollars, ($500.00) secured by a mortgage from Benjamin H. Somers and wife to the said Frank H. Clark and Caroline H. Clark, dated April 16, 1912 and recorded among the Mortgage Records of Baltimore County in Liber W. P. C. No. 382 folio 422 on the following property:

BEGINNING for the same at a point on the north side of the Oella Factory Road, it being at the end of a line drawn eighty feet 70 1/2 east from a stone marked 11, planted in the ground

at the southeast corner of the original lot of No. 11, it being in this partition designated Lot No. 76, and running thence and binding on the road north 80 1/2 degrees east 70 feet, north fourteen degrees east 150 feet to a branch thence down the same north 81 3/4 degrees west 63 feet, thence south fourteen degrees west 170 feet to the place of beginning, containing one acre of land more or less.

Valued at	$500.00	
Accrued Interest	1.17	$501.17

No. 12.

Nineteen (19) shares Merchants Mechanics' National Bank Stock,

Valued at	$361.00	
Accrued dividend	1.90	$362.90

No. 13.

One Virginia Funded Debt,

Valued at	$400.00	
Accrued interest	5.00	$405.00
Total Valuation		$10843.82

DIVISION "A"

Allotted to Frank H. Clark.

1. Annual ground rent of forty eight dollars ($48.00) issuing out of a lot of ground, the improvements thereon being known as #1560 Clifton Avenue, Baltimore City. $816.00

7. Annual ground rent of ninety dollars ($90.00) issuing out of a lot of ground at the northeast corner of Catalpa and Maple Roads, Anne Arundel County. See schedule for description. $1507.50

8. Annual ground rent of ninety-six dollars ($96.00) issuing out of a lot of ground on the south side of Poplar Street, Anne Arundel County. See schedule for description $1640.00

10. Annual ground rent of Ninety dollars ($90.00) issuing out of a lot of ground lying on the south side of of Maple Avenue, Anne Arundel County. See Schedule for description. $1541.25

$5504.75

Less Owelty due to Division "B" $82.84

$5421.91

DIVISION "B"

Allotted to Caroline H. Clark.

2. Annual ground rent of thirty-six dollars ($36.00) issuing out of a lot of ground, the improvements thereon being known as 434 Belt Street, Baltimore City. $612.00

3. Annual ground rent of thirty-six dollars ($36.00) issuing out of a lot of ground, the improvements thereon being known as 432 Belt Street, Baltimore City. $612.00

4. Annual ground rent of thirty-six dollars ($36.00) issuing out of a lot of ground, the improvements thereon being known as 430 Belt Street, Baltimore City. $612.00

5. Annual ground rent of thirty-six dollars ($36.00) issuing out of a lot of ground, the improvements thereon being known as 428 Belt Street, Baltimore City. $612.00

6. Annual ground rent of thirty-six dollars ($36.00) issuing out of a lot of ground, the improvements thereon being known as 426 Belt Street, Baltimore City. $612.00

9. Annual ground rent of sixty dollars ($60.00) issuing out of a lot of ground on the south side of Maple Avenue, Anne Arundel County. See schedule for description. $1010.00

11. Mortgage debt of five hundred dollars ($500.00) secured by mortgage on lot of ground on the north side of Oella Factory Road, Baltimore County. See schedule for description. $501.17

12. Nineteen shares Merchants Mechanics National Bank stock. $362.90

13. One Virginia funded debt $405.00

$5339.07

Plus Owelty due by Division "A" $82.84

$5421.91

FRANK H. CLARK	:	IN THE CIRCUIT COURT
VS.	:	OF
CAROLINE H. CLARK, an infant	:	BALTIMORE CITY

- - - - - -

This cause standing ready for hearing and being submitted and no exceptions having been taken to the return of the Commissioners appointed to make partition of the real estate mentioned in these proceedings, as allowed by the rules of this Court, the proceedings were read and considered.

It is, thereupon, this 12th day of June, 1922, by the Circuit Court of Baltimore City, Adjudged, Ordered and Decreed that the return of the Commissioners appointed to make partition of the real estate in these proceedings mentioned and the partition thereof by them made, be and the same is hereby ratified and confirmed.

And it is further Adjudged, Ordered and Decreed that the plaintiff, Frank H. Clark, his heirs and assigns, shall hold in severalty and not jointly, or in common with the other party to this suit all those lots of ground in these proceedings mentioned which are described in the said return of said Commissioners in Division "A" and so allotted in said return and therein described by metes and bounds, being and comprising Lots numbers 1, 7, 8 and 10; and, further, the said plaintiff, Frank H. Clark, his heirs or assigns shall pay by way of owelty, as provided by said return, and this Decree, the sum of eighty-two dollars and eighty-four cents ($82.84) to the defendant, Caroline H. Clark, and,

It is further Adjudged, Ordered and Decreed that the defendant, Caroline H. Clark, shall hold in severalty and not jointly or in common with the other party to this suit, all those lots of ground, mortgage debt and securities in these proceedings mentioned which are described in the said return of said Commissioners in Division "B" and so alloted in said return and therein described by metes and bounds, being and comprising Lots numbers 2, 3, 4, 5, 6, 9, 11, 12 and 13; and further, the said defendant, Caroline H.

Filed 22 July, 1922.

Clark, shall receive by way of owelty, as provided by said return, and this Decree, the sum of Eighty-two dollars and eighty-four cents ($82.84) from the plaintiff, Frank H. Clark, and

It is further Adjudged, Ordered and Decreed that the costs of these proceedings be paid equally by the parties hereto.

Carroll T. Bond

This is a proper decree to be passed in this case.

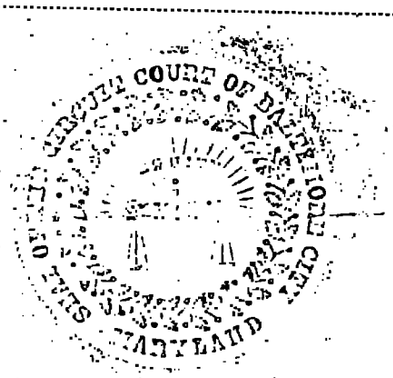
Ward B. Coe

Auditor and Master.

State of Maryland,
City of Baltimore, ss:

I, HENRY J. RIPPERGER, Clerk of the Circuit Court of Baltimore City, do hereby certify that the above is a true copy of the original Bill of Complaint, Return of Commission and Decree of Court

now on file in this office in the cause therein entitled as above



In Testimony Whereof, I hereto set my hand and affix the seal of the said CIRCUIT COURT, this 4th day of June A. D., 1952.

Henry J. Ripperger
Clerk.

Melvin Diggs, Route 1, Box 134, Mecca, N. C. and Percy Smith, 1935 Loretta Avenue, Baltimore, Md.	:	No. 10,360 Equity
vs.	:	In the Circuit Court for
William Smith, Cherry Hill, 143 Reedbird Ave., Baltimore, Md. and Florine Butler, Crownsville State Hospital, Crownsville, Maryland.	:	Anne Arundel County

Filed 7 Nov 1951

Bill of Complaint

To the Honorable, the Judge of said Court:

Your Orators humbly complaining say:

1.

That Louise Diggs during her lifetime and at the time of her death which occurred February 12th, 1935, was seized and possessed of the following parcel of real estate lying, being and situate in Anne Arundel County, City of Annapolis, Maryland, and described as follows:

Beginning for the same on the southeast side of Calvert Street at the northwest corner of the property formerly owned by Jennie G. Woodward and running thence along the line of Calvert Street south 23° 14' west 23.7 feet, thence south 66° 25' east 101.59 feet, thence north 24° 7' east 23.72 feet, thence north 66° 25' west 101.95 feet to the place of beginning, being improved by a two story frame house known as No. 32 Calvert Street.

Being the same property which was conveyed unto the said Louise Diggs by Benjamin Michaelson, Trustee, by deed dated the 17th day of May, 1934, and recorded among the Land Records of Anne Arundel County in Liber W.M.B. No. 126, folio 107, a certified copy of said deed being filed herewith as Plaintiffs' Exhibit No. 1.

2.

That being so seized and possessed the said Louisa Diggs died intestate and left surviving her as her only heirs at law to whom the title to the said realty devolved by operation of law:

(a) A husband, William Smith, adult.
(b) A son, Melvin Diggs, adult.
(c) A daughter, Florine Diggs, who married one Woods Butler, adult.
(d) A son, Percy Smith, adult.

3.

That the said property cannot be divided in kind without material loss or injury.

4.

That no letters of administration were taken out on the estate of Louise Diggs and the said Louisa Diggs left no personal property.

To the end, therefore:

1. That a trustee may be appointed to make sale of the real estate in these proceedings mentioned for the purpose of partition.
2. That the money arising from the said sale may be divided amongst the parties entitled thereto.

And as in duty bound, etc.

George B. Woelfel

George B. Woelfel
Solicitor for Plaintiffs
9-11 School Street
Annapolis, Md.

(Int. Rev. Stamps $1.50)

THIS DEED, made this 17th day of May, in the year nineteenten hundred and thirty-four, by and between Benjamin Michaelson, Trustee, party of the first part, Grantor, and Louisa Diggs, party of the second part, Grantee, both of Anne Arundel County, State of Maryland.

WHEREAS by a decree of the Circuit Court of Anne Arundel County dated March 19, 1934, and passed in a cause in said Court pending, entitled "Mary Duvall Diggs, et al, Plaintiffs", vs Joseph Duvall and Mamie Duvall, his wife, Defendants", the said Benhamin Michaelson was appointed trustee to make sale of the property mentioned in said proceedings, and

Filed 7 Nov 1934
Re-filed 18 Feb, 1935

WHEREAS, after having given bond and having complied with all the other requisites of said decree, the said Benjamin Michaelson, Trustee, did, on the 10th day of April,1934, sell the property hereinafter described to Louisa Diggs at Public Sale for the sum of Twelve Hundred and Ten Dollars ($1210.00), she being the highest bidder therefor, and said sale having been duly reported to and ratified by said court, and the purchase money fully paid to the said Trustee, said purchaser is entitled to a deed for the same.

NOW, THEREFORE,THIS DEED WITNESSETH: That in consideration of the premises and of the sum of Twelve Hundred and Ten Dollars, paid by the said party of the second part to the said party of the first part, the receipt whereof is hereby acknowledged, the said Benjamin Michaelson, Trustee, as aforesaid,in pursuance of the power and authority vested in him by said decree, does hereby grant and convey unto the said Louisa Diggs, her heirs and assigns, in fee simple, all of the right, title and interest of all the parties to the aforesaid cause in and to all that lot or part of a lot or parcel of land, situate, lying and being in the City of Annepolis, and described as follows:

Examiner's Exh. 1

Plaintiffs' Exhibit No. 1.

BEGINNING for the same on the south east side of Calvert Street, at the northwest corner of the property formerly owned by Jennie G. Woodward and running thence along the line of Calvert Street South, twenty-three degrees fourteen minutes west twenty-three and seven-tenths feet, thence South sixty-six degrees twenty-five minutes East, one hundred and one and fifty-nine one hundredths feet; thence North twenty-four degrees seven minutes east twenty-three and seventy-two one hundredths feet, thence North sixty-six degrees twenty-five minutes west one hundred and one and ninety-five one hundredths feet to the place of beginning.

BEING the same property which was conveyed by Jennie G. Woodward and William N. Woodward, her husband, to Joseph Duvall by deed dated January 21, 1909, and recorded among the Land Records of Anne Arundel County in Liber G. W. No. 66, folio 186, etc..

TOGETHER with the buildings and improvements thereon erected, made or being and each and every the rights, roads, ways, waters, privileges, advantages and appurtenances to the same belonging or in anywise appertaining.

TO HAVE AND TO HOLD THE ABOVE DESCRIBED PROPERTY UNTO and to the proper use and benefit of the said Louisa Diggs, her heirs and assigns, in fee simple.

WITNESS the hand and seal of the said party of the first part, Grantor.

Test: Benjamin Michaelson, (Seal)
Trustee.

Angela C. Hughes.

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, TO WIT:

I HEREBY CERTIFY that on this 17th day of May, 1934, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Benjamin Michaelson, Trustee, and duly acknowledged the aforegoing instrument to be his act and Deed as said Trustee.

WITNESS my hand and Notarial Seal.

Mary M. Munroe,

Notary Public.

(NOTARIAL SEAL).

Recorded-May-17-1934-3 p.m.

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, SCT:

I HEREBY CERTIFY, that the aforegoing Deed is truly taken and copied from Liber W. M. B. No. 126, folio 107, one of the Land Record Books for Anne Arundel County.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the Seal of the Circuit Court for Anne Arundel County, this 7th day of November, A. D., 1951.

John N. Hopkins 3d CLERK.

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Melvin Diggs, et al	:	No. 10,360 Equity
	:	In the
vs.	:	Circuit Court
	:	for
William Smith, et al	:	Anne Arundel County
	:	

: : : : : : : : : :

A S S I G N M E N T

I, the undersigned, hereby assign all my right, title and interest in this case and the proceeds arising therefrom to the extent of seven hundred dollars ($700) plus interest at the rate of six per cent from this date to the final ratification of the auditor's account, unto George B. Woelfel.

Melvin Diggs

Filed 9 Nov., 1951

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CROWNSVILLE STATE HOSPITAL
CROWNSVILLE, MARYLAND

JACOB MORGENSTERN, M.D.
SUPERINTENDENT
ELIZABETH MOSS
ADMINISTRATIVE ASS'T

TELEPHONE: SOUTH SHORE 2751

November 13, 1951 LIBER 78 PAGE 385

No. 10,360
Equity

Mr. John H. Hopkins, Clerk
Circuit Court for Anne Arundel County
Annapolis, Maryland

Filed Nov. 16, 1951

Dear Mr. Hopkins: RE: Florine Butler

This patient is too confused mentally to comprehend the meaning of the papers to be served on her in the case of a property settlement which has been requested by her brothers, Melvin Diggs and Percy Smith.

Very truly yours,

Jacob Morgenstern

Jacob Morgenstern, M.D.
Superintendent

JM/s

LIBER 78 PAGE 386

MELVIN DIGGS Rt. 1, Box 134 Mecca, N. C.	*	IN THE
and	*	CIRCUIT COURT
PERCY SMITH 1935 Loretta Ave. Baltimore, Md.	*	FOR ANNE ARUNDEL COUNTY
vs	*	
WILLIAM SMITH 148 Reedbird Ave. Baltimore, Md.	*	No. 10360 Equity
and	*	
FLORINE BUTLER Crownsville State Hosp. Crownsville, Maryland	*	

* * * *

ANSWER

Filed 14 Dec., 1951

TO THE HONORABLE, THE JUDGE OF SAID COURT:

Now comes William Smith by his Solicitor William H. Murphy, and for Answer to the Bill of Complaint heretofore filed against him says:

1. That the Defendant admits the allegations contained in Paragraphs One, Two, Three and Four of said Bill of Complaint.

That having answered insofar as he has been advised, the Defendant joins with the Plaintiffs in praying that the relief prayed for in said Bill of Complaint be granted.

And as in duty bound, etc

William H. Murphy

William H. Murphy
Solicitor for Defendant
14 E. Pleasant St.
Baltimore 2, Md.

I HEREBY CERTIFY that a copy of the above Answer was mailed to George B. Woelfel, Solicitor for Plaintiffs, at 9-11 School St., Annapolis, Md., this 13th day of December, 1951.

William H. Murphy

William H. Murphy

Melvin Diggs, et al	:	No. 10360 Equity
	:	In the
vs.	:	Circuit Court
	:	for
William Smith, et al	:	Anne Arundel County
	:	

: : : : : : : : : : :

Petition for appointment of guardian ad litem and order of Court thereon

: : : : : : : : : : :

To the Honorable, the Judge of said Court:

The petition of Melvin Diggs respectfully shows:

1.

That Florine Butler, one of the defendants, was duly summoned but being confined in the Crownsville State Hospital on a charge of non compos mentis she can neither answer nor defend the suit.

Wherefore, your Petitioner prays:

1. That a guardian ad litem be appointed to answer and defend the suit for and on behalf of the said Florine Butler.

And as in duty bound, etc.

George B. Woelfel

George B. Woelfel
Solicitor for Plaintiff
9-11 School Street
Annapolis, Md.

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, to wit:

I hereby certify that upon this 18th day of December, in the year 1951, before me, the subscriber, a Notary Public of the State of Maryland, in and for Anne Arundel County aforesaid, personally appeared George B. Woelfel who made oath in due form of law that the matters and facts set forth in the aforegoing petition

Filed 21 Dec., 1951

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are true to the best of his knowledge and belief.

Witness my hand and seal Notarial.

Mary M. Duff
Notary Public

Filed 21 Dec., 1951

ORDER OF COURT

Upon the aforegoing petition, it is this 21st day of December, in the year 1951, by the Circuit Court for Anne Arundel County, in equity, ADJUDGED, ORDERED and DECREED that Robert E. Dammeyer be, and he is hereby appointed guardian ad litem for Florine Butler to answer and defend said suit for and on behalf of the said Florine Butler.

Benjamin Michaelson
Judge

LIBER 78 PAGE 389

Melvin Diggs, et al	:	No. 10360 Equity
	:	In the
vs	:	Circuit Court
	:	for
William Smith, et al	:	Anne Arundel County
	:	

: : : : : : : : : : :

ANSWER OF FLORINE BUTLER BY GUARDIAN AD LITEM

To the Honorable, the Judge of said Court:

The answer of Robert E. Lammeyer, - - - - - - - - - - - guardian ad litem of Florine Butler, respectfully shows:

1.

That said Defendant being confined in the Crownsville State Hospital for the insane can neither admit nor deny the allegations contained in the said bill of complaint and she submits her rights hereunder to the protection of this Honorable Court.

Robert E. Lammeyer
Guardian Ad Litem

Filed 27 Dec, 1951.

//

Melvin Diggs, et al, : No. 10360 Equity
: In the
vs : Circuit Court
: for
William Smith, et al. : Anne Arundel County
:

PETITION TO TAKE TESTIMONY AND ORDER OF COURT THEREON

To the Honorable, the Judge of said Court:

The petition of Melvin Diggs respectfully shows:

1.

That he has filed his bill of complaint in this Honorable Court and all of the Defendants have been duly summoned and have answered the same.

Wherefore, your Petitioner, prays:

1. That leave may be granted to him to take testimony before any one of the standing examiners of this Court.

And as in duty bound, etc.

George B. Woelfel
Solicitor for Petitioner
9-11 School Street
Annapolis, Md.

ORDER OF COURT

Upon the aforegoing petition it is this 28th day of December, in the year 1951, by the Circuit Court for Anne Arundel County, in Equity, ADJUDGED, ORDERED and DECREED that leave be, and the same is hereby granted to the parties to this cause to take whatever testimony they may desire before any one of the standing examiners of this Court.

Benjamin Michaelson
Judge

Filed 27 Dec., 1951.

Filed 28 Dec., 1951.

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MELVIN DIGGS AND	:	IN
PERCY SMITH,	:	THE CIRCUIT COURT
PLAINTIFFS,	:	FOR
VS.	:	ANNE ARUNDEL COUNTY
WILLIAM SMITH AND	:	
FLORINE BUTLER,	:	No. 10,360 Equity
DEFENDANTS.	:	
	:	

::::::::::::::::::::::::::::::::

TESTIMONY ON BEHALF OF THE PLAINTIFFS

February 11, 1952

Present:

Mr. George B. Woelfel, Solicitor for Plaintiffs.

Mr. William H. Murphy, Solicitor for William Smith, Defendant.

Mr. Robert E. Dammeyer, Guardian Ad Litem for Florine Butler.

Mr. Emanuel Klawans, Examiner.

Mrs. Katharine H. McCutchan, Court Stenographer.

Witnesses:

Melvin Diggs, pages 2, 3, 4.

Carroll H. Hynson, pages 4, 5.

William H. Smith, pages 5, 6, 7.

SIGNATURES WAIVED BY CONSENT OF COUNSEL

Filed 18 Feb. 1952

Melvin Diggs, a witness of lawful age, being first duly sworn, deposes and says:

(Mr. Woelfel)

1. State your name and address.

A. Melvin Diggs, 1935 Loretta Avenue, Baltimore; my North Carolina address is Box 132 Warrenton.

2. You and your brother, Percy Smith, are plaintiffs in this case, are you not?

A. Yes.

3. Did you know Louisa Diggs?

A. She was my mother.

4. Did she have any real estate in Anne Arundel County?

A. Yes.

5. Tell where it is located?

A. 32 Calvert Street, Annapolis, Maryland.

6. Is that the same property she acquired by deed dated 17 May 1934 and recorded among the Land Records of Anne Arundel County in Liber W.M.B. No. 126, folio 107?

A. Yes.

(CERTIFIED COPY OF DEED FILED AS PLAINTIFFS' EXHIBIT NO. 1 MARKED EXAMINER'S EXHIBIT 1)

7. Is Louisa Diggs now living or dead?

A. She is dead.

8. When did Louisa Diggs die?

A. 12 February 1935.

9. Where did she die?

A. In Baltimore, Maryland.

10. She left this property after her death?

A. Yes.

11. Did Louisa Diggs leave a Will or die intestate?

A. She died intestate.

12. Have Letters of Administration ever been taken out on her estate?

A. No.

13. Did she leave any other personal property?

A. No.

14. Did your mother leave a house at the time of her death?

A. Yes.

15. How many children were born to your mother?

A. Three.

16. What are their names and ages?

A. Melvin Diggs, 33; Florine Diggs, 28; and Percy Smith, 26 or 27.

17. Where is Florine Diggs now?

A. Crownsville.

18. Has she ever been adjudicated insane?

A. Not to my knowledge.

19. What does this property consist of?

A. It consists of a lot of ground 23.7 feet fronting on Calvert Street and 101.59 feet in depth.

20. Is it improved by a dwelling?

A. Yes.

21. How large is the dwelling?

A. It is a two story frame house containing six rooms and bath.

22. Does the house take up most of the lot?

A. No there is a four foot alley on the front.

23. Can this property be divided in kind among the parties in interest without material loss or injury?

A. No.

24. Why not?

A. Because it can't be divided into four parts; it would not be worth anything.

25. Do you believe it is necessary to sell the property and divide the money?

A. Yes.

26. What do you think is the fair market value of this property?

A. I would say about $5000.00.

27. Who has collected the rents from the property since your mother's death?

A. My aunt, she is my mother's sister, Margaret Harris, and Lizzie Boston.

28. What is the rent?

A. $30.00 a month.

(Mr. Murphy, Cross Examination)

1. In your bill of complaint you have indicated a defendant named Florine Butler, is she the same person you named previously as Florine Diggs?

A. That's right.

2. What, if anything, has been done with the rent money?

A. Well the lady who lives there has been behind in the rent; when she paid, the taxes and water rent were paid and they had the chimney fixed.

3. Has any accounting ever been made concerning the rents?

A. We have a bank book in the executors' name; every time the lady pays rent, something is fixed but she is always back in the rent.

(Mr. Klawans)

To the General Question under the Rule, the witness answers "No".

****

Carroll H. Hynson, a witness of lawful age, being first duly sworn, deposes and says:

(Mr. Woelfel)

1. State your name and address.

A. Carroll H. Hynson, 62 Calvert Street, Annapolis, Maryland.

2. What is your occupation?

A. Real Estate Broker and Appraiser.

3. How long have you been engaged in that business?

A. Twelve years.

4. Where do you maintain your offices?

A. 62 Calvert Street, Annapolis, Md.

5. In your opinion, are you qualified to give the fair market values in Anne Arundel County?

A. I am.

6. Have you seen the property known as No. 32 Calvert Street?

A. I have.

7. When did you see it last?

A. About a half an hour ago.

8. Describe the property?

A. The house is approximately 60 years old, very run down, bad condition, contains 6 rooms and bath and heating plant not in operation, has not been used for five years, has all the radiators; I would not consider it modern in improvements. I put a value on it of $3800.00.

9. How much frontage has the house?

A. About 25 feet on Calvert Street and about 105 feet deep,more or less, I would say.

(Mr. Murphy)

1. You did observe that the house contains a heating system although it is not in operation?

A. Yes.

2. Is it hot air?

A. It is hot water steam heat.

3. Coal furnace?

A. Yes.

4. Is the cellar cemented?

A. Dirt floor.

(Mr. Woelfel)

1. Does the roof leak?

A. There is a leak in the dining room in certain driving rains.

(Mr. Klawans)

To the General Question under the Rule, the witness answers "No".

****

William H. Smith, a witness of lawful age, being first duly sworn, deposes and says:

(Mr. Murphy)

1. What is your name and address?

A. William H. Smith, 148 Reedbird Avenue, Baltimore 25, Maryland.

2. Did you know Louisa Diggs?

A. That was my wife

3. When did you marry her?

A. August 28, 1926 in Baltimore, Md.

(CERTIFIED COPY OF MARRIAGE CERTIFICATE MARKED EXAMINER'S EXHIBIT 2 AND FILED HEREWITH)

4. Were you single at the time you applied for a marriage certificate to marry Louisa Diggs?

A. Yes.

5. Had you been married prior to that time?

A. Yes.

6. Your first wife died prior to that marriage?

A. Yes.

7. As a result of your marriage how many children were born?

A. One, Percy Smith.

8. Is he living now and over 21?

A. Yes.

9. Were you ever divorced?

A. No.

10. Did your wife die?

A. Yes.

11. When did she die?

A. February 12, 1934.

12. Did you or anyone else to your knowledge take out Letters of Administration on her estate?

A. No.

13. Did she leave a Last Will and Testament?

A. No.

14. Do you feel that this house known as 32 Calvert Street could be divided among the heirs of Louisa Diggs?

A. No.

15. Why is it that you don't think it could be divided?

A. Because it would destroy the property.

16. Do you feel this house should be sold and the proceeds divided among those entitled to receive?

A. That's right.

(Mr. Woelfel, Cross Examination)

1. Tell us what was the name of your first wife?

A. Bessie Spriggs.

2. You married her in Baltimore?

A. That's right.

3. Do you remember the year you were married to her?

A. I was only 18 at that time.

4. She died where?

A. In Baltimore.

5. When did she die?

A. It was two years before I married Louisa Diggs.

6. What do you think is the value of the property, that is the house?

A. I agree with him; he said $5000.00.

7. Do you think that is the fair market value of the property?

A. I do.

8. I understood you to say that in your judgment the property could not be divided in kind without material loss or injury to the parties to the same?

A. Yes.

(Mr. Klawans)

To the General Question under the rule, the witness answers "No".

****

There being no further witnesses to be examined on behalf of the Plaintiffs at this time, and no further testimony desired in their behalf, this testimony is now closed, and at the request of Plaintiffs' Solicitor is returned to the Court.

Witness my hand and seal this 18th day of February, 1952.

Emmanuel Clausen (SEAL)
Examiner

E. K. $10.00
K.H.McC. $7.00

Melvin Diggs, et al,	:	No. 10360 Equity
	:	In the Circuit Court
vs.	:	for
Will Smith, et al	:	Anne Arundel County
	:	

: : : : : : : : : : :

DECREE

This cause standing ready for hearing and being submitted, the proceedings were read and considered by the Court and it appearing to the Court that the real estate in this cause mentioned cannot be divided in kind without material loss or injury

It is thereupon this 3rd day of March, in the year 1952, by the Circuit Court for Anne Arundel County, in Equity, ADJUDGED, ORDERED and DECREED that the real estate described in these proceedings be and the same is hereby decreed to be sold and that George B. Woelfel and William H. Murphy be, and they are hereby appointed trustees to make sale of the realty in these proceedings mentioned and their course and manner shall be as follows: They shall first file with this Court or the Clerk thereof, a bond to the State of Maryland, executed by themselves and a surety in the penal sum of Five Thousand ($5000) Dollars, to be approved by this Court or the Clerk thereof, conditioned for the faithful performance of the trust reposed in them by this decree or to be reposed in them by any future decree or order in the premises; the said Trustees shall then proceed to make sale having given at least three weeks notice of the sale by advertisement published in the Evening Capital, a daily newspaper, printed and published in Anne Arundel County, stating the time, place, manner and terms of the sale, which terms shall be as follows: a deposit of five hundred ($500) dollars shall be required of the purchaser or purchasers on the day of sale, balance to be paid in cash upon the ratification of the sale, deferred payments to bear interest at the rate of 6% per annum or all cash at the option of the purchaser or

Filed 3 Mar., 1952.

purchasers and the said Trustees shall thereupon make a full and ample report of the sale with an annexed affidavit of the truth thereof and of the fairness of said sale and after the said sale shall have been reported and duly ratified by this Court and the full purchase price paid, the said Trustees shall, by a good and sufficient deed to be executed, acknowledged and recorded according to law, convey to the purchaser or purchasers thereof his, her or their heirs or assigns, the property and estate to him, her or them sold free, clear and discharged from all claims by, from or under them, or either of them; and the said Trustees shall bring into this Court the money arising therefrom to be distributed under the direction of this Court after deducting the costs of this suit and such commission to the said Trustees as this Court shall think proper to allow in consideration of the skill, attention and fidelity wherewith they shall appear to have discharged their trust.

Benjamin Michaelson
Judge

G 22056

LIBER 78 PAGE 401

GLOBE INDEMNITY COMPANY

HEAD OFFICE: NEW YORK — A NEW YORK CORPORATION

A STOCK COMPANY

#10,360 Equity

KNOW YE, ALL MEN BY THESE PRESENTS: That We George B. Woelfel and William Murphy as Principals and The Globe Indemnity Company a body corporate, duly authorized to do business in the State of Maryland as surety are held and firmly bound unto the State of Maryland, in the full and just sum of Five thousand ($5,000) Dollars current money to be paid unto the said State of Maryland, or its certain attorney; to which payment well and truly to be made and done we bind ourselves and each of us, our and each of our heirs, executors, administrators, successors and assigns joint ly and severally by these presents.

Sealed with our seals and dated this 31st day of March 1952.

WHEREAS by virtue of a Decree of the Circuit Court for Anne Arundel County passed in a cause therein pending wherein Melvin Diggs et al were Plaintiffs and Will Smith et al were Defendants, the undersigned Principals were duly appointed Trustees to sell the real estate in said proceedings mentioned and

WHEREAS said Trustees are now about to execute the trust reposed in them and sell aforesaid real estate.

Now the conditions of the above obligations are such that if the said Trustees shall well and faithfully perform the trust reposed in them by aforesaid decree or to be reposed in them by any future decree or order passed in the premises then the above obligations shall be void; otherwise of full force and effect.

Witness
Mary M. Hoff
Mary M. Hoff

Witness
Eamoy R. Cale
Eamoy R. Cale

Attest
Virginia Merritt
Virginia Merritt

George B. Woelfel (SEAL)
George B. Woelfel, Principal

William Murphy (SEAL)
William Murphy, Principal

GLOBE INDEMNITY COMPANY, a body corporate.
By John H. Hopkins 1V
Its attorney in fact
John H. Hopkins 1V

Surety.

Approved this 1 Apr, 1952.
John H. Hopkins, 3rd, Clerk

Filed 1 Apr, 1952.

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GEORGE SCIBLE - - - - - LIBER 78 PAGE 402 - - - - Auctioneer

PUBLIC SALE

OF

Property No. 32 Calvert Street

Under and by virtue of a Decree of the Circuit Court for Anne Arundel County, dated the 3rd day of March, 1952, and passed in a cause therein pending wherein Melvin Diggs, et al., were Plaintiffs, and Will Smith, et al., were Defendants, the undersigned as Trustees, will offer for sale at Public Auction at the Court House Door in the City of Annapolis, on

Tuesday, April 15th, 1952

AT 10 O'CLOCK, A.M.

All that lot of ground situate on the southeast side of Calvert Street having a frontage thereon of 23.7 feet and an equal depth of 101.95 feet. Being the same property conveyed by Benjamin Michaelson, Trustee to Louisa Diggs by deed dated the 17th day of May, 1945, and recorded among the Land Records of Anne Arundel County in Liber W. M. B. No. 126, Folio 107.

IMPROVEMENTS: This property is improved by a two-story shingle house No. 32 Calvert Street, having a living room, dining room, kitchen on first floor, three bedrooms and bath on the second floor, and an improved attic, with a cemented cellar under approximately one-half the house, running hot and cold water, electricity, hot water heat. It is thought however that a water tube in the boiler is broken and in need of repair.

TERMS OF SALE: A deposit of five hundred dollars will be required of the purchaser on the day of sale, balance to be paid in cash upon the ratification of sale or all cash at the option of the purchaser. The deferred payments to be secured to the satisfaction of the Trustees, and to bear interest at the rate of 6% per annum.

For further particulars apply

WILLIAM MURPHY,
GEORGE B. WOELFEL,
9-11 School Street,
Annapolis, Maryland.

Filed 24 Apr. 1952

13

(over 14)

Melvin Diggs et al.

vs.

William Smith et al.

No. 10360 Euity.

In the Circuit Court

for

Anne Arundel County.

Auctioneer's certificate and Purchasers Agreement

I hereby certify that I have sold the within described property unto John Prann and Martha Prann his wife, Oscar Prann and Edith Prann his wife at and for the sum of Four thousand six hundred fifty ($4,650) Dollars they being at that figure the highest bidder therefor.
WITNESS MY HAND AND SEAL PLACED HEREON THIS 15th day of April 1952.

Witness
George B. Woelfel

Auctioneer (SEAL)

Filed 24 Apr. 1952

We hereby certify that we have purchased the property described on this hand bill from George B. Woelfel and William H. Murphy Trustees at and for the sum of Four thousand six hundred fifty ($4,650) Dollars on account of which purchase price we have deposited Five hundred ($500) dollars as a deposit and we agree to comply with the temms of sale
WITNESS OUR HANDS AND SEALS PLACED HEREON THIS 15th DAY OF APRIL 1952

John Prann (SEAL)
John Prann

Martha Prann (SEAL)
Martha Prann by John Prann Agent

Oscar Prann (SEAL)
Oscar Prann by John Prann Agemt

Edith Prann (SEAL)
Edith Prann by John Prann Agent

Witness
George B. Woelfel

14

(over for 13)

Melvin Diggs et al. " No. 10,360 Equity
" In the Circuit Court
vs. " for
" Anne Arundel County.
William Smith et al. "
"

Trustees Report of Sale.

To the Honorable the Judges of said Court:

The Report of William Murphy and George B. Woelfel, Trustees appointed by Decree of this Honorable Court dated the 3rd day of March 1952 and passed in the above entitled cause, to make sale of certain real estate therein mentioned, respectfully shows:-

That after giving bond with security for the faithful performance of the trust ~~of the trust~~ reposed in them, and after having complied with all other prerequisites, as required by law and by said decree, and after giving notice of the time, place, manner and terms of sale by advertisement in the Evening Capital, a daily newspaper, printed and published in the City of Annapolis, for three successive weeks before the day of sale, they did pursuant to said notice attend at the Court House Door on Tuesday, April 15, 1952 at 10 A.M. and then and there proceeded to sell said real estate in a manner as follows:, that is to say:

Your Trustees offered at Public Sale to the highest bidder the property mentioned in said decree, situate on the east side of Calvert Street in said city aforesaid and is more particularly described as follows:

Beginning for the same on the South east side of Calvert Street, at the northwest corner of the property formerly owned by Jennie G. Woodward and running thence along the line of Calvert Street South 23 degrees fourteen minutes west, 23 and seven-tenths feet, thence South 66 degrees twenty-five minutes East, one-hundred and one and fifty-nine one-hundredths feet; thence North twenty-four degrees seven minutes east, twenty-three and seventy-two one hundredths feet, thence North sixty-six degrees twenty-five

Filed 29 Apr., 1952.

26

15

minutes west, one hundred and one and ninety-five one-hundredths feet to the place of beginning.

Being the same property which was conveyed by Jennie G. Woodward, and William N. Woodward, her husband, to Joseph Duvall by deed dated January 21, 1909, and recorded among the Land Records of Anne Arundel County in Liber G.W. No. 66, folio 186, etc.

Being the same property conveyed by Benjamin Michaelson, Trustee, to Louise Diggs by deed dated the 17th day of May, 1934 and recorded among the Land Records of Anne Arundel County in Liber W.M.B. No. 126 folio 107.

And your Trustees sold aforesaid property to JOHN PRANN and MARTHA PRANN, wife, and OSCAR PRANN and EDITH PRANN, his wife, at and for the sum of $4,650, they being at that figure, the highest bidder. Therefore, and on account of which said purchase price, they have deposited with the said trustees the sum of $500 in cash and have agreed to comply with the terms of same, which is the balance to be paid upon the ratification of the sale with interest thereon at 6% per annum.

RESPECTFULLY SUBMITTED,

William N. Murphy

George B. Woelfel

STATE OF MARYLAND
CITY OF BALTIMORE, to wit:

I hereby certify upon this 24th day of April, 1952, before me the subscriber, a Notary Public for the State of Maryland and for the City of Baltimore, aforesaid personally appeared WILLIAM MURPHY, on of the Trustees who made oath in due form of law that the matters and facts stated in the aforegoing Report of Sale are true to the best of his knowledge and belief, and that Sale therein reported was fairly made.

WITNESS MY HAND AND SEAL NOTARIAL.

EUGENIA ADELE BOURNE NOTARY PUBLIC BALTIMORE, MD.

Eugenia Adele Bourne
Notary Public

STATE OF MARYLAND
ANNE ARUNDEL COUNTY, to wit:

I hereby certify that on the 24th day of April, 1952, before me the subscriber, of in and for the County aforesaid, personally appeared before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared George B. Woelfel, the other Trustee who made oath in due form of law that the matters and facts set forth in the aforegoing Report of Sale are true to the best of his knowledge and beliefs and that the Sale therein reported was fairly made.

WITNESS MY HAND AND SEAL NOTARIAL.

Mary M. Munroe
Notary Public
Mary M. Munroe

NOTARY PUBLIC ANNE ARUNDEL CO. MD.

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LIBER 78 PAGE 407

ORDER NISI

Melvin Diggs and
Percy Smith

versus

William Smith and
Florine Butler

IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

No. 10,360 Equity

Filed 29 Apr., 1952.

Ordered, this 29 day of April, 19 52, That the sale of the Real Estate in these Proceedings mentioned, made and reported by William Murphy and George B. Woelfel, Trustees,

BE RATIFIED AND CONFIRMED, unless cause to the contrary thereof be shown on or before the 2 day of June next; Provided, a copy of this Order be inserted in some newspaper published in Anne Arundel County, once in each of three successive weeks before the 2 day of June next.

The report states that the amount of sales to be $ 4,650.00.

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John H. Hopkins, 3rd, Clerk.

True Copy,

TEST: ..... Clerk.

(Final Order)

Melvin Diggs and
Percy Smith

versus

William Smith and
Florine Butler

IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

..... Term, 19

Filed 5 June, 1952.

ORDERED BY THE COURT, This 5th day of June finally, 1952, that the sale made and reported by the ~~Trustee~~ Trustees aforesaid, be and the same is hereby Ratified and Confirmed no cause to the contrary having been shown, although due notice appears to have been given as required by the Order Nisi, passed in said cause; and the Trustees allowed the usual commissions and such proper expenses as he shall produce vouchers for the Auditor.

Benjamin Michaelson
Judge

29

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LIBER 78 PAGE 408 FICE OF

Maryland Gazette

Published by

THE CAPITAL-GAZETTE PRESS, INC.

(HOLDER OF CONTRACT FOR ANNE ARUNDEL COUNTY ADVERTISING)

CERTIFICATE OF PUBLICATION

Annapolis, Md., June 4, 1952

We hereby certify, that the annexed Order Nisi

Sale - Equity 10,360

Melvin Diggs

was published in

Maryland Gazette

a newspaper published in the City of Annapolis, Anne Arundel County, Maryland, once a week for 4 successive weeks before the 2nd day of June, 1952. The first insertion being made the 1st day of May, 1952.

THE CAPITAL-GAZETTE PRESS, INC.

By Bethi L. Carlson

No. MG 7951

Filed 5 June, 1952.

ORDER NISI

IN THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
No. 10,360 Equity
MELVIN DIGGS and PEROY SMITH
Vs.
WILLIAM SMITH and FLORINE BUTLER.

Ordered, this 20th day of April, 1952, That the sale of the Real Estate in these Proceedings mentioned, made and reported by William Murphy and George B. Woelfel, Trustees, BE RATIFIED AND CONFIRMED, unless cause to the contrary thereof be shown on or before the 2nd day of June next; Provided, a copy of this Order be inserted in some nowspaper published in Anne Arundel County, once in each of three successive weeks before the 2nd day of June next.

The report states that the amount of sales to be $4,650.00.

JOHN H. HOPKINS, 3rd., Clerk.

True Copy, TEST:
JOHN H. HOPKINS, 3rd., Clerk.

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Melvin Digges, et al,	:	No. 10360 Equity
	:	In the Circuit Court
vs.	:	for
William Smith, et al	:	Anne Arundel County
	:	

: : : : : : : : : :

PETITION FOR A FEE AND ORDER OF COURT THEREON

Filed 5th June, 1952.

To the Honorable, the Judge of said Court:

The petition of George B. Woelfel respectfully shows:

1.

That his services were sought by one Melvin Digges who informed your Petitioner that his mother Louisa Digges, then deceased, was the owner of a parcel of land situate on Calvert Street which had been claimed by his grandfather John T. Digges who also died.

2.

That your Petitioner then examined title in order to ascertain the status of the property and discovered that Louisa Digges was the owner of the parcel of ground. Your Petitioner was then informed that there was one sister who was insane and another brother who lived in Baltimore; that the two brothers wanted their share and that there was a possibility that his mother was married to one William Smith.

3.

That your Petitioner then filed a bill of complaint on behalf of the two brothers against the husband and insane sister. That after service was had upon the sister your Petitioner prepared the petition for the appointment of a guardian ad litem together with the answer of the guardian ad litem, set down the case for the taking of the testimony and required the alleged husband to produce his marriage certificate and to testify so as to leave no doubt as to the validity of his claim.

That your Petitioner then prepared the submission for a

decree of court, the decree of court and after visiting the premises prepared the advertisement of sale. That your Petitioner then attended the sale and together with the assistance of his co-trustee, sold the property for forty-six hundred fifty dollars.

4.

That your Petitioner then prepared and filed the report of sale, the order nisi and procured the final decree for the ratification of the sale.

5.

That the Trustees' commission totals $171.57 out of which said sum each of the Trustees will receive $85.78 which said amount your Petitioner believes is not adequate compensation for his services rendered in this case for which, up to this time, he has received no compensation whatsoever.

Wherefore your Petitioner prays:

1. That an order may be passed by this Honorable Court allowing your Petitioner such sum or sums on money for a fee as will compensate him for his work done.
2. And for such other and further relief as his case may require.

George B. Woelfel
Petitioner

We, the undersigned, members of the Anne Arundel County Bar, do hereby certify that we have looked into the work done in this case by the Petitioner George B. Woelfel and firmly believe and do earnestly recommend that a fee of One Hundred Fifty Dollars be allowed the Petitioner by this Honorable Court.

Albert J. Goodman

William W. Townshend

Filed 5 June, 1952.

Filed 6 June, 1952.

ORDER OF COURT

Upon the aforegoing petition and recommendation of two members of the Anne Arundel County Bar, it is this 6th day of June, 1952, by the Circuit Court for Anne Arundel County, ADJUDGED, ORDERED and DECREED that the Petitioner George B. Woelfel be, and he is hereby allowed a fee of One Hundred Fifty Dollars for his services rendered and performed in this case, said fee being subject to the usual exceptions.

Benjamin Richardson
Judge

In the Case of

Melvin Diggs,
et al

VS.

William Smith,
et al

In the

Circuit Court

For

Anne Arundel County

No. 10,360 Equity

To the Honorable, the Judges of said Court:

The Auditor reports to the Court that she has examined the proceedings in the above entitled cause, and from them she has stated the within account.

Filed 17 June, 1952.

June 13, 1952.

All of which is respectfully submitted.

Laura R. Jackling
Auditor.

21
22
24

Dr. Melvin Diggs, et al vs. William Smith, et al in ac.

To Trustee for Commissions, viz:	170	21		
To Trustees for Fee, (Order 6/6/52)	150	00	320	21
To Trustee for Court costs, viz:				
Plaintiffs' Solicitor's appearance fee	10	00		
Defendants' Solicitor's appearance fee	10	00		
Clerk of Court - Court costs	44	25		
Jos. W. Alton, Jr. - Sheriff's costs	2	90		
Jos. C. Deegan - Sheriff's costs	3	25		
Robert E. Dammeyer - Guardian ad Litem's fee	4	00		
Emanuel Klawans - Examiner's fee	10	00		
Katharine H. McCutchan - Stenographer's fee	7	00		
Auditor - stating this account	22	50		
			113	90
To Trustee for Expenses, viz:				
Capital-Gazette Press - advertising sale	28	76		
Capital-Gazette Press - handbills	10	20		
Capital-Gazette Press - order nisi (sale)	8	00		
Capital-Gazette Press - order nisi (acct)	6	00		
Globe Indemnity Co. - bond premium	20	00		
George W. Scible - auctioneer's fee	25	00		
Clerk of Court - Certified copy of deed	1	50		
One-half Federal revenue stamps	2	75		
One-half State revenue stamps	2	75		
			104	96
To Trustee for Claims Filed, viz:				
Elizabeth Boston and Margaret Harris - amounts advanced for taxes:				
1951 Annapolis City taxes	33	63		
1952 County and State taxes	38	47	72	10
To Trustee for Benefit Charges, viz:				
Annapolis Water Co. - ($6.85 -adjusted)	1	42	1	42
Balance for Distribution - $4,095.41				
Distributed to heris at law of Louisa Diggs, who died 2/12/35, viz:				
William Smith, widower - one-third	1,365	14		
Florine Butler, daughter - two-ninths	910	09		
Percy Smith, son - two-thirds	910	09		
Melvin Diggs, son - two-ninths - $910.09				
Less Amount assigned to George B. Woelfel ($700.00 with interest from 2/2/52 to 6/9/52) 714.93	195	16		
To George B. Woelfel, Assignee of Melvin Diggs - amount paid Annapolis Banking & Trust Co.	714	93	4,095	41
			4,708	00

with George B.Woelfel, Trustee

Cr.

LIBER 78 PAGE 414

1952					
Apr.	15	Proceeds of Sale	4,650	00	
		Interest on deferred payment to 5/20/52	23	51	4,673 51
		Refund 1951 City of Annapolis taxes ($33.63 - adjusted)	7	20	
		Refund 1952 State and County taxes ($38.47 - adjusted)	27	29	34 49
					4,708 00

Filed 22 July, 1952. Filed 17 June, 1952.

LIBER 78 PAGE 415

ORDER NISI

Melvin Diggs,
et al

VERSUS

William Smith,
et al

In the
CIRCUIT COURT
For
ANNE ARUNDEL COUNTY

No. 10,360 Equity.

ORDERED, This 17 day of June, 1952, That the Report and Account of the Auditor, filed this day in the above entitled cause,

BE RATIFIED AND CONFIRMED, unless cause to the contrary be shown on or before the 21 day of July next; Provided a copy of this Order be inserted in some newspaper published in Anne Arundel County, once in each of three successive weeks before the 21 day of July next.

John H. Hopkins, 3rd, Clerk.

In the Circuit Court for Anne Arundel County

ORDERED BY THE COURT, this 22d day of July, 1952, that the aforegoing Report and Account of the Auditor be and the same is hereby finally ratified and confirmed, no cause to the contrary having been shown, and that the Trustee apply the proceeds accordingly with a due proportion of interest as the same has been or may be received.

Benjamin Michaelson, A. J.

Filed 21 July, 1952.

Evening Capital

Published by

THE CAPITAL-GAZETTE PRESS, INC.
(HOLDER OF CONTRACT FOR ANNE ARUNDEL COUNTY ADVERTISING)

CERTIFICATE OF PUBLICATION

Legal Notices

ORDER NISI

IN THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
No. 10,360 Equity

MELVIN DIGGS, et al
Vs.
WILLIAM SMITH, et al.

Ordered, this 17th day of June, 1952, That the Report and Account of the Auditor, filed this day in the above entitled cause BE RATIFIED AND CONFIRMED, unless cause to the contrary be shown on or before the 21st day of July next; Provided, a copy of this Order be inserted in some newspaper published in Anne Arundel County, once in each of three successive weeks before the 21st day of July next.

JOHN H. HOPKINS, 3rd., Clerk.

True Copy, TEST:
JOHN H. HOPKINS, 3rd., Clerk.
Jy-2

Filed 21 July, 1952.

Annapolis, Md., July 18, 1952

We hereby certify, that the annexed Order Nisi
Aud. Acct. Equity 10360
Melvin Diggs, et al

was published in

Evening Capital

a newspaper published in the City of Annapolis, Anne Arundel County, Maryland, once a week for 3 successive weeks before the 21st day of July, 1952. The first insertion being made the 18th day of June, 1952.

THE CAPITAL-GAZETTE PRESS, INC.

No. E. C. 4227

By Bettie K. Carlin 23

OTWAY B. ZANTZINGER, JR. ANTHONY VALENTI 5815 Baltimore Avenue Riverdale, Maryland Plaintiffs	:	NO. 10,441 EQUITY
vs.	:	IN THE
WALLACE A. HOOVER, SR. 10502 Malane Street Cheston Ridge Silver Spring, Maryland Defendant	:	CIRCUIT COURT FOR ANNE ARUNDEL COUNTY

Filed 19 Mar., 1952.

BILL OF COMPLAINT FOR SPECIFIC PERFORMANCE

To the Honorable, the Judges of said Court:

Your Orators complaining say:

1. That by virtue of a deed from George Hannon and wife dated January 7 , 1947, and recorded among the Land Records of Anne Arundel County in Liber J.H.H. No. 377, folio 174, they became owners of a tract of land containing 47.58 acres located in the Seventh Election District of Anne Arundel County, Maryland, and have since been in possession of same.

2. That the said Hannon and wife derived their title from Grover W. Norris, single, by deed dated August 29, 1946, recorded among said Land Records in Liber J.H.H. No. 371, folio 229.

3. That the said Norris derived his title from John T. Brooks, jr., widower, by deed dated March 26, 1927, recorded as aforesaid in Liber F.S.R. No. 14, folio 331.

4. That the said Brooks derived his title from John Hemsley Johnson by deed dated May 17, 1890, recorded as aforesaid in Liber S.H. No. 37, folio 122.

5. That the said Johnson derived his title from Artridge F. Norris Wood and husband, by deed dated May 13, 1890, recorded as aforesaid in Liber S.H. No. 37, folio 113, and from Florence Norris Brooks and husband, by deed dated May 17, 1890, recorded as aforesaid in Liber S.H. No. 37, folio 121, both of whom were named as contingent beneficiaries under the Will

EUGENE M. CHILDS
ATTORNEY AT LAW
ANNAPOLIS, MARYLAND

of Edward Norris, deceased, recorded among the Testamentary Records of Anne Arundel County in Will Book R.I.D. No. 1, folio 246, a certified copy of same being filed herewith and marked "Complainants' Exhibit A".

6. That heretofore, on October 7, 1951, your Orators entered into a written contract for the sale of said property to Wallace A. Hoover, Sr., for the cash price of fifteen thousand dollars ($15,000.00), of which one hundred dollars ($100.00) was paid upon signing of the contract. The original Contract is filed herewith and marked "Complainants' Exhibit B".

7. That although your Orators have been ready, willing and able to perform their part of the contract and have tendered the Respondent a deed for said property conveying to him fee simple title to the same, the Respondent refuses to take title to said property averring that said title is defective owing to the language contained in the Last Will and Testament of Edward Norris, to wit:

> "I devise and bequeath to my daughter, Florence Virginia Norris all the property real, personal and mixed of which I may die possessed in fee simple, provided that if my said daughter should die before attaining majority or should die leaving no children and at the time of her thus dying, my sister Elizabeth Hooper should be living, then in that case I devise to her the said Elizabeth Hooper all the property I have hereinbefore devised to my daughter to be held and enjoyed by her during her natural life and at the death of my sister or at the death of my daughter, should she survive my sister, and leave no children surviving her, then I direct that all the property devised by this Will shall be placed in the hands of a trustee to be appointed by the Orphans Court of Anne Arundel County, and I hereby request the said Court to appoint the said trustee, whose duty it shall be to take charge of said property and appropriate the income arising therefrom toward enclosing in a substantial manner the burying ground as laid off in accordance with the Will of my father, Joseph Norris, on

EUGENE M. CHILDS
ATTORNEY AT LAW
ANNAPOLIS, MARYLAND

the land now occupied by Richard Connor and to keeping said enclosures in repair and also to keeping the ground within the enclosure in neat and clean condition."

the said Respondent claiming that the property under the terms of the Will is subject to the operation and effect of a trust which was attempted to be created by the Testator, but which was never carried out, and that the title does not rightfully vest in your Orators, but in a non-existent Trustee for said cemetery, owing to the fact that the said Florence Virginia Norris survived the said Elizabeth Hooper, but died leaving no children surviving her.

8. That although your Orators admit the said Florence Virginia Norris survived the said Elizabeth Hooper and died childless, they contend that the attempt to create said trust failed for the following reasons:

(a) Said Will attempted to create a trust which at the time the Will became operative was in violation of the rule against perpetuities.

(b) Said Will directed that the Trustee be appointed by the Orphans Court, which Court had no jurisdiction to appoint a Trustee.

(c) The provision with reference to the cemetery is void for uncertainty.

(d) Even if the provision with reference to the cemetery could be carried out, said cemetery has since become obliterated and cannot now be located, although reasonable efforts have been made to locate the same.

(e) Said Testator attempted to create an entailed estate, which estate, under Chapter 23 of the Acts of 1782, resulted in creating a fee simple estate in the daughter of the Testator.

(f) The words "in fee simple" vested an absolute estate in the Testator's daughter, and the later attempt to qualify said estate was repugnant to the fee created and therefore void.

(g) And for other good and sufficient reasons to be given at the hearing of these presents.

EUGENE M. CHILDS
ATTORNEY AT LAW
ANNAPOLIS, MARYLAND

TO THE END, THEREFORE, May it please your Honors:

1st. To inquire into and consture the Will of the said Edward Norris.

2nd. To inquire into the status of the title of your Orators.

3rd. In the event your Honors find the title of said tract of land, described in the attached contract of sale, to be vested in your Orators, then to Decree specific performance of the contract of sale between the parties hereto.

4th. And for such other and further relief as their case may require.

Respectfully submitted.

Otway B. Zantzinger, Jr.

Anthony Valenti

Eugene M. Childs, SOLICITOR
192 Duke of Gloucester Street
Annapolis, Maryland

EUGENE M. CHILDS
ATTORNEY AT LAW
ANNAPOLIS, MARYLAND

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IN THE NAME OF GOD, AMEN:

I, Edward Norris, of Anne Arundel County in the State of Maryland, being feeble in body, but of sound disposing mind, memory and understanding, and being desirous to arrange my worldly affairs, do make and publish this as and for my last will and testament, in manner and form following, to wit:

I devise and bequeath to my daughter, Florence Virginia Norris, all the property, real, personal and mixed of which I may die possessed, in fee simple, provided that if my said daughter should die before attaining her majority, or should die leaving no children, and at the time of her thus dying my sister Elizabeth Hooper should be living, then in that case I devise to her the said Elizabeth Hooper, all the property I have herein before devised to my daughter, to be held and enjoyed by her during her natural life, and at the death of my said sister, or at the death of my daughter, should she survive my sister, and have no children surviving her, then in that case I direct, that all the property devised by this will, shall be placed in the hands of a Trustee, to be appointed by the Orphans Court of Anne Arundel County, and I hereby request the said Court to appoint such Trustee, whose duty it shall be to take charge of said property and appropriate the income arising therefrom, towards enclosing in a substantial manner the burying ground as laid off in accordance with the will of my Father Joseph Norris, on the land now occupied by Richard Conner and to keeping said inclosure in repair, and also to keeping the ground within the enclosure in neat and clean condition.

If from any cause whatever, the provision in this will just hereinbefore recited, cannot be carried into effect, then it is my desire, and I hereby direct, that, at the death of my sister Elizabeth Hooper, or of my daughter Florence Virginia the latter leaving no children, my neice Artridge Norris, daughter of my late brother William Norris, shall take in fee simple all the property devised by this Will.

Filed 19 Mar., 1932.

COMPLAINANT'S EXHIBIT "A"

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I request that my daughter Florence Virginia, shall remain in the charge of my sister Elizabeth, and request the Orphans Court to appoint her the said Elizabeth Hooper to be the Guardian of said daughter.

Lastly, I constitute and appoint Samuel M. Parrott to be the sole Executor of this my last will and Testament.

In Testimony of all which I have hereunto attached my name and affixed my Seal this Twenty-first day of January in the year of our Lord Eighteen Hundred and seventy three.

* The interlineation of the eighth and ninth lines of the second page made before signing and sealing.

Edward Norris (SEAL)

Signed, sealed, published, and declared by the above named Testator as and for his last will and Testament in the presence of the undersigned, who, at his request and in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses, the day and year above written.

T. J. Franklin

J. A. Franklin

Thomas H. Phipps

James H. Bullen
William Crandell

ANNE ARUNDEL COUNTY, Sct: February 21, 1873

Then came Thos. J. Franklin and J. A. Franklin two of the subscribing witnesses to the aforegoing last will and testament of Edward Norris and made oath on the Holy Evangely of Almighty God that they did see the testator sign and seal this will that they heard him publish pronounce and declare the same to be his last Will and testament and that at the time of his so doing he was to the best of their apprehension of sound and disposing mind, memory and understanding and that they with the other subscribing witnesses to the said will respectively subscribed their names as witnesses thereto at the request of the testator and in his presence and all in the presence of each other.

Test Wm. Bryan Register of Wills
A. A. County.

Filed February 19, 1873

Wm. Bryan Register of Wills
A. A. County.

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LIBER 78 PAGE 422

STATE OF MARYLAND

Anne Arundel County

I, R. GLENN PROUT, Register of Wills, and by law Keeper of the Seal and of the Records, and of the Original Papers of the Orphans' Court of Anne Arundel County, do hereby certify that the aforegoing is a true and full copy of the Last Will and Testament of Edward Norris *late of said County deceased* together with the proof and probate thereof *taken from* the original being one of the records filed, recorded and *Kept in the Office of Register of Wills for Anne Arundel County.*

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court this 19th *day of* March *in the year of our Lord, nineteen hundred and* ~~forty~~ fifty-two.

R Glenn Prout

Register of Wills for Anne Arundel County

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LIBER 78 PAGE 423

FARMS
ACREAGE
LOTS

J. B. ZANTZINGER, JR.

INSURANCE - REAL ESTATE - LOANS

Telephone WArfield 1819 — Residence, WArfield 4053
5815 Baltimore Ave.
Riverdale, Md.

INSURANCE
APPRAISALS

FILE.....

Date Oct. 7, 1951

RECEIVED OF Wallace A. Hoover, Sr.
One hundred-------Dollars ($100.00)
being a deposit to be applied as part payment in the purchase of the following property:
Lot No. 47 acres (more or less) in Block or Square No. as described on back hereof
with improvements thereon, known as No. South Creek in West River (fully described on the back hereof)
at the price and on the terms following:
PURCHASE PRICE OF PROPERTY, $15,000.00 of which amount all cash
shall be paid in cash including the above deposit when Deed is delivered, or sale closed; balance payable as follows:

Filed 19 Mar., 1952.

Deferred payments to be represented by interest bearing notes of the Purchaser and secured by Deed of Trust or Mortgage on the property above described. The title is to be good of record or deposit refunded, subject, however, to covenants and restrictions of record as running with the land. Taxes, interest, rent, insurance and special assessments shall be adjusted to date of transfer. The risk of loss or damage to said premises by fire until the delivery of the Deed is assumed by the seller.

Examination of title, Notary fees, revenue stamps, recording fees and all costs of conveyancing shall be paid by the purchaser. The Deed shall contain the usual covenants of special warranty of title. The terms of sale shall be complied with within sixty days from the date hereof, or as soon thereafter as title can be secured. If default be made by the purchaser, the deposit may be forfeited and O. B. Zantzinger, Jr., is to be allowed one-half of said deposit as compensation for services rendered. Should the said deposit not be forfeited, the seller may avail himself of any legal or equitable rights which he may have under this Contract. This Contract is made subject to ratification and acceptance of its terms by the owner of the above property and contains the entire agreement between the parties hereto, and neither party shall be bound by any terms, conditions or representations, oral or written, not herein contained. Settlement is to be made at the office of O. B. Zantzinger, Jr.

O. B. ZANTZINGER, JR., Agent.

By .....
Salesman

I, We, do hereby agree to purchase the property described in the foregoing receipt upon the terms therein set forth.

Wallace A. Hoover, Sr.
Purchaser

I, We, do hereby ratify the foregoing Contract of Sale and agree to sell and convey the property therein described upon the terms set forth. Possession of property is to be surrendered not later than five days after sale is closed.

I, We, do also agree to pay O. B. Zantzinger, Jr., at the time the sale is closed the usual commission of none per cent on amount of purchase price as compensation for services rendered in affecting the sale.

S. Valenti — Salvatrice Valenti
Owner

Witness: Edward B. Zantzinger — M. D. Zantzinger
Owner's Wife

Note: Make memorandum on back of this sheet of any information to be used in making closure. Full name of purchaser and seller and how the title is to be taken, etc.

Household Furniture and Automobile Insurance

COMPLAINANT'S EXHIBIT "B"

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DESCRIPTION OF 47.58 ACRES ON SOUTH CREEK, 7TH DISTRICT, A.A.CO.

Beginning for the same at a stone set on the west side of the right of way leading from the County Road to the herein described property, said stone being at the end of the South 15° 30' West 130 perch line of the conveyance from George J. Hannon and Marquerite, his wife, to O. B. Zantzinger, by deed dated January 7, 1947, and recorded among the Land Records of Anne Arundel County in Liber J.H.H. No. 377, folio 174, and running from thence and with said line, as corrected for magnetic variation, North 18° 18' East 1936 feet to the waters edge of South Creek, thence with the same the following 17 courses and distances: North 28° 15' East 100 feet, North 03° 43' West 103 feet, North 63° 05' East 207 feet, South 48° 22' East 353 feet, thence crossing the mouth of a marsh area, South 18° 58' East 275 feet, thence still with the Creek/South 37° 30' East 118 feet, South 53° 31' East 89 feet, South 15° 01' East 257 feet, South 49° 50' East 153 feet, South 69° 17' East 135 feet, South 11° 16' West 11 feet, South 44° 42' West 71 feet, South 58° 42' West 87 feet, South 27° 51' West 133 feet, South 13° 27' East 46 feet, South 69° 05' East 22 feet, South 05° 44' West 62 feet, thence leaving the shore line and running with a line of fence, South 21° 54' West 807 feet to a stone at the northeast corner of the conveyance from Selah Kelly to Mathilda Kirby, by deed dated July 31, 1830, and recorded among said Land Records in Liber W.S.G. No. 15, folio 392, thence with the north and west lines of said conveyance North 62° 07' West 221 feet to a stone and South 24° 50' West 302 feet to a stake in a fence line, thence with said fence line North 78° 42' West 867.5 feet to the place of beginning, containing 47.58 acres.

Being all of the above mentioned conveyance from Hannon to Zantzinger and as described by J. R. McCrone, Jr., Registered Professional Engineer and Land Surveyor in October 1950, from a survey by McCrone made in June 1947.

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OTWAY B. ZANTZINGER, Jr., et al.	:	NO. EQUITY
		IN THE CIRCUIT COURT
VS.	:	
		FOR
WALLACE A. HOOVER, Sr.	:	ANNE ARUNDEL COUNTY

:::::::

ANSWER TO BILL OF COMPLAINT

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The answer of Wallace A. Hoover, Sr., to the bill of complaint filed against him in this cause exhibited, respectfully represents:

FIRST: That inasmuch as the allegations contained in Paragraph One of said bill of complaint are matters of record, he assumes them to be true and, therefore, neither admits nor denies the same. He admits the complainants' having been in possession of said property since they acquired the same.

SECOND: That inasmuch as the allegations contained in Paragraph Two of said bill of complaint are matters of record, he assumes them to be true and, therefore, neither admits nor denies the same.

THIRD: That inasmuch as the allegations contained in Paragraph Three of said bill of complaint are matters of record, he assumes them to be true and, therefore, neither admits nor denies the same.

FOURTH: He admits the allegations contained in Paragraph Four of said bill of complaint.

FIFTH: That inasmuch as the allegations contained in Paragraph Five of said bill of complaint are matters of record, he assumes them to be true and, therefore, neither admits nor denies the same.

SIXTH: He admits the allegations contained in Paragraph Six of said bill of complaint.

SEVENTH: He admits the allegations contained in Paragraph Seven of said bill of complaint.

EIGHTH: He neither admits nor denies the allegations contained in Paragraph Eight of said bill of complaint but demands strict proof thereof.

And having fully answered said bill of complaint, he begs to be hence dismissed with his reasonable costs.

AND AS IN DUTY BOUND, ETC.

Albert J. Goodman
12 Church Circle
Annapolis, Maryland
Solicitor for Respondent

I hereby certify that on this 14th day of April, 1952, I mailed a copy of the foregoing answer to Eugene M. Childs, solicitor for the complainants, 182 Duke of Gloucester Street, Annapolis, Maryland.

Solicitor for Respondent

In the name of God, Amen, I, Joseph Norris of Anne Arundel County, in the State of Maryland, do make and ordain, this my last Will and Testament, revoking and annulling all others by me heretofore made as follows to wit.

Rl. 642

After the payment of my just debts, I give and dispose of my Estate in the manner hereinafter directed.

I give and bequeath unto my son Thomas Travers Norris and his heirs forever, all that piece or parcel of land which I purchased of John Mayor's heirs, and on which the said Thomas now resides lying on the North East side of a creek called Broad Water, at a line beginning at the north prong of said creek at the run and running a north course up to Francis Crandall's line, lying between Francis Crandall's land and the land of A lexander Franklin except the old family burying ground, which is hereby reserved for a family burying ground forever, the said burial ground to commence at the Creek near a large cedar tree, and running past the end of the said grave yard, then with another line so as to form a square, and to contain one acre acre, then to the creek, and with the Creek to the beginning, provided the said Thomas T. Norris pay to my Executrix hereinafter named the sum of three hundred and seventy six dollars, with interest from 31st October 1851, and in the event of my said son Thomas Travers Norris, refusing or failing to pay the sum above mentioned, then it is my Will and desire that my Executrix shall dispose of the land above devised for the benefit of my estate.

Filed 22 May, 1852

I give and bequeath unto my son William M. Norris, twenty five cents, and no more.

I give and bequeath unto my son Edward Norris, one cow and no more.

I give and bequeath unto my son Jacob Norris, one cow and no more.

I give and bequeath unto my wife Ann Norris the land on which I now reside and all the residue of my personal property as it stands, during her life, securing a home and support, with their aid and assistance, to my daughters Sarah Henrietta Norris, Rebecca Anne Norris and Margaret Frances Norris during their simgle life, with their mother,

and in the event of their marrying, and their husbands dying without leaving them a home it is my will and desire that they have a home as before their marriage, and in the event of the death of the husband of my daughter Elizabeth Hooper without having her a home, or a comfortable support, that it is my wish and desire that she have a home with her mother upon the same terms, and in like manner with her sisters.

I give and bequeath to my wife Ann Norris, the land on which my son William M. Norris resides, for the purpose of aiding in paying my debts, and in case they can be paid without selling the said land, then I give and bequeath the said land to my said wife in fee simple to use or dispose as she may think proper.

At the death of my said wife Ann Norris, I give to my son Joseph Alexander Norris the land I now reside on, to him and his heirs forever, provided that he remain with his mother during her life, and provided also, that his sisters have the same assistance and privilege from him as is secured to them from their mother, and in case my said son Joseph Alexander Norris should die without heir, then it is my Will and desire the land devised to him, shall be the property of my three daughters, Sarah Henrietta Norris, Rebecca Ann Norris and Margaret Frances Norris to be for their support and maintenance, as long as they may live single. My design is, that neither one shall be permitted to sell or make any other disposition of said land, or the proceeds thereof, so long as they or either of them shall be single and resides upon the same. And it is further my Will and desire that at the death of my wife Ann Norris, that my present property be equally divided between Joseph Alexander Norris, Sarah Henrietta Norris, Rebecca Ann Norris and Margaret Frances Norris.

And lastly, I hereby constitute and appoint my wife Ann Norris my sole Executrix of this my last Will and Testament.

Joseph Norris (Seal)

Signed, sealed, published and declared by Joseph Norris, the above named testator as __ for his last Will and Testament, in the presence of us, who at his request, in his presence, and in the presence of each other have subscribed our names as witnesses thereto, this second

day of September, in the year of our LORD, one thousand eight hundred and fifty two.

Gassaway Winterson
Wm. H. Birkhead
John Atwell

STATE OF MARYLAND

Anne Arundel County

I. R. GLENN PROUT, Register of Wills, and by law Keeper of the Seal and of the Records, and of the Original Papers of the Orphans' Court of Anne Arundel County, do hereby certify that the aforegoing is a true and full copy of the Last Will and Testament of Joseph Norris

late of said County deceased said Will was *taken from* Will Records B.E.G. No. 1 folio 189

Kept in the office of Register of Wills for Anne Arundel County.

IN TESTIMONY WHEREOF, I hereunto subscribed my name and affix the seal of said Court this 22nd *day of* May *in the year of our Lord, nineteen hundred and fifty* ~~two.~~

R Glenn Prout

Register of Wills for Anne Arundel County

OTWAY B. ZANTZINGER, JR. ANTHONY VALENTI Plaintiffs	:	NO. 10,441 EQUITY IN THE
vs.	:	CIRCUIT COURT
	:	FOR
WALLACE A. HOOVER, SR. Defendant	:	ANNE ARUNDEL COUNTY

Filed 22 May, 1952

STIPULATION

The parties hereto, by their Counsel, Eugene M. Childs and Albert J. Goodman, do hereby stipulate and agree that the Plaintiffs in this cause are now in possession of the property, which is the subject of this suit, and that they derived their title thereto in the manner set forth in paragraphs 1, 2, 3, 4, and 5, of the Bill of Complaint filed herewith.

It is further stipulated and agreed that Florence Virginia Norris (Brooks), daughter of Edward Norris, survived the testator's sister, Elizabeth Hooper, but died in Baltimore, December 5, 1926, leaving no children surviving her.

Eugene M. Childs
Eugene M. Childs
Counsel for Plaintiffs

Albert J. Goodman
Albert J. Goodman
Counsel for Defendant

EUGENE M. CHILDS
ATTORNEY AT LAW
ANNAPOLIS, MARYLAND

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IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, IN EQUITY

OTWAY B. ZANTZINGER, JR., and ANTHONY VALENTI, PLAINTIFFS.	:	
VS.	:	NO. 10,441 EQUITY
WALLACE A. HOOVER, SR., DEFENDANT.	:	

:::::::

O P I N I O N

Filed 5 June, 1952

This is a suit for the specific performance of a contract for the sale of land brought by the vendors against the purchaser. The defendant admits the making of the contract, and asserts his ability to comply therewith, but says that the plaintiffs do not have a good title to the property. The question before me, accordingly, is, are the plaintiffs in a position to convey the property to the defendant by a good and merchantable title? If they are, they are entitled to a decree; if not, the bill must be dismissed.

The property in question belonged to a certain Edward Norris, who died seized thereof in 1873, leaving a will, the material part of which is in these words, namely:

> "I devise and bequeath to my daughter, Florence Virginia Norris, all the property, real, personal and mixed of which I may die possessed, in fee simple, provided that if my said daughter should die before attaining her majority, or should die leaving no children, and at the time of her thus dying my sister Elizabeth Hooper should be living, then in that case I devise to her the said Elizabeth Hooper, all the property I have herein before devised to my daughter, to be held and enjoyed by her during her natural life, and at the death of my said sister, or at the death of my daughter, should she survive my sister, and have no children surviving her, then in that case I direct, that all the property devised by this will, shall be placed in the hands of a Trustee, to be appointed by the Orphans Court of Anne Arundel County, and I hereby request the said Court to appoint such Trustee, whose duty it shall be to take charge of said property and appropriate the income arising therefrom, towards enclosing in a substantial manner the burying ground *as laid off in accordance with the will of my Father Joseph Norris, on the land now occupied by

Richard Conner and to keeping said inclosure in repair, and also to keeping the ground within the enclosure in neat and clean condition.

If from any cause whatever, the provision in this will just hereinbefore recited, cannot be carried into effect, then it is my desire, and I hereby direct, that, at the death of my sister Elizabeth Hooper, or of my daughter Florence Virginia the latter leaving no children, my neice Artridge Norris, daughter of my late brother William Norris, shall take in fee simple all the property devised by this Will."

The said Florence Virginia Norris, the testator's daughter in said will named, intermarried with one Brooks, survived said testator's sister, Elizabeth Hooper, and departed this life December 5, 1926, leaving no descendant or descendants her surviving. She and her husband had, however, conveyed said property to John Hemsley Johnson by deed dated May 17, 1890. Artridge Norris, the testator's niece named in said will, intermarried with a man named Wood, and, with her said husband, conveyed any interest she might have had in said property to the said John Hemsley Johnson by deed dated May 13, 1890. The said John Hemsley Johnson, by deed dated May 17, 1890, conveyed the property to John T. Brooks, Jr., who by deed dated March 26, 1927, conveyed it to Grover W. Norris, who by deed dated August 29, 1946, conveyed it to George Hannon and wife, who by deed dated January 7, 1947, conveyed it to the plaintiffs. The plaintiffs, accordingly, have a good title, unless the trust, which the said Edward Norris, by the above quoted portion of his said will, attempted to create for the care and maintenance of the burial ground therein mentioned, was valid.

It is, first, suggested that, as the property was, by said will, given to the said Florence Virginia Norris <u>in fee simple</u>, any limitation over was void. I cannot follow the plaintiffs in that. Executory limitations, variously called springing or shifting uses or executory devises depending on how they are created, have been recognized in Maryland from

the earliest times. (Venable, Real Property, pp. 83-89; Tiffany, Real Property, Second Edition, section 160; Starr vs. Starr M. P. Church, 112 Maryland 171; McMahon vs. Consistory of Saint Paul's Reformed Church, 75 Atlantic 2d 122). There is no objection to what the testator attempted to do, from that angle.

Another contention is that the trust, which said testator attempted to set up, was void as violating the rule against perpetuities. I think that position is well taken. In American Colonization Society vs. Soulsby, 129 Maryland 605, property was conveyed to trustees to collect the rents and profits thereof, and to pay over the same to the American Colonization Society for the transportation to Liberia of such colored persons as might desire to emigrate to that country. After reviewing a number of authorities, the court said:

> "Whatever may be the law elsewhere, we, following the decisions of this Court, must hold the trust in this case to be void because it is a perpetuity in that it attempts to create an active trust which is required to continue beyond the period limited by the rule."

(See also Ortman vs. Dugan, 130 Maryland 122, 124; Missionary Society vs. Humphreys, 91 Maryland 131; Barnum vs. Barnum, 26 Maryland 119; Deford vs. Deford, 36 Maryland 178).

This is in accord with the law in most other jurisdictions. In 70 Corpus Juris Secundum, Perpetuities, section 29, p. 612, the rule is laid down thus: "Trusts of indefinite duration for the care or maintenance of property not devoted to charitable uses, such as trusts for the care of a grave or monument, are invalid". The American Law Institute refers to trusts of this nature as "Honorary Trusts", and declares them invalid under the circumstances depicted by the record before me. (Restatement, Property, section 379). Comment c, subjoined to said section throws a little more light on the subject. It is in these words:

"The objective most commonly sought to be attained

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> by the creation of an honorary trust is the care and maintenance of a burial plot. Other objectives are provision for the care of specific animals, the perpetuation of the memory of a deceased person by a recurrent furnishing of flowers at some place of public gathering, or by a periodic holding of a memorial service, or by the erection of a tomb or statue (see, also, Restatement of Trusts, section 124, Comment d). Compliance with the wishes thus expressed by the conveyor depends on the 'honor' of the person to whom the power is given. Perhaps in this fact, is the basis for the colloquial designation of this relationship as an 'honorary trust.'"

Then, there is another principle which, likewise, requires the striking down of this provision, namely, the principle that a trust cannot be upheld unless it be of such a nature that the cestui que trust be capable of enforcing its execution by a proceeding in a court of equity. In the old and leading and very familiar case of Dashiell vs. The Attorney-General, 5 Harris & Johnson 392, the devise was for "poor children belonging to the congregation of St. Peter's Church, etc.", and it was held void as too indefinite, and because it created a perpetuity. In Needles vs. Martin, 33 Maryland 618, the devise was for a charitable purpose, and was, likewise, held void because it was too vague, as well as because it was a perpetuity. One of the latest cases on the subject is Salem Church vs. Numsen, 191 Maryland 43, where Judge Collins reviewed many of the former decisions on the question, and held the trust then before the court void because the designation of the beneficiary was too vague and indefinite.

None of the statutory enactments which have been called to my attention have any bearing on the question. What is now section 331 of Article 93 of the Code, providing that no devise or bequest, in trust or otherwise, for the purpose of providing perpetual care, etc., of burial plots, etc., shall be held void as offending the rule against perpetuities, was not enacted until 1906, and is not retroactive. What is now section 279 of Article 16 was only enacted by the

Act of 1931, Chapter 453, and would not apply even if we could call this a trust for "charitable purposes".

I hold that, as the plaintiffs claim under both Florence Virginia Norris and Artridge Norris, they are in a position to convey the property to the defendant by a good and merchantable title. (McMahon vs. Consistory of Saint Paul's Reformed Church, supra; Starr vs. Starr M. P. Church, supra; Tiffany, Real Property, Second Edition, sections 174, 175 and 176, pp. 586-590).

5 June 1942

Judge.

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IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, IN EQUITY

OTWAY B. ZANTZINGER, JR., and ANTHONY VALENTI,

PLAINTIFFS.

VS.

NO. 10,441 EQUITY

WALLACE A. HOOVER, SR.,

DEFENDANT.

:::::::

D E C R E E

Filed 5th June, 1952

This case coming on for hearing, and being submitted, testimony was taken in open court, counsel were heard, and the proceedings read and considered.

It is, thereupon, this fifth day of June, 1952, by the Circuit Court for Anne Arundel County, sitting in Equity, ADJUDGED, ORDERED and DECREED that the plaintiffs are in a position to convey the property mentioned in these proceedings to the defendant by a good and merchantable title; that the contract mentioned in these proceedings, and filed with the bill of complaint marked "Complainants' Exhibit B", be specifically enforced; that the defendant pay to the plaintiffs, or bring into this court to be paid them, the unpaid balance of said purchase money within thirty days from this date, and that, thereupon, the plaintiffs convey said property to the defendant; and that this court expressly retains jurisdiction of this case with the right to pass such other orders or decrees as may be necessary to enforce the payment of said balance in the event the defendant fails to pay the same.

And it is further ADJUDGED and ORDERED that the defendant pay the costs of this case.

James C. Cook

Judge.

18

JOHN H. HOPKINS, IV 15 School Street Annapolis, Maryland	)	
vs.	)	
WILLIAM R. CARR and SAMUEL E. CARR, his son R.F.D. 2, Annapolis, Md., WALTER S. MCDOWELL and LOUISE M. MCDOWELL, his wife 3344 Denver Street, S.E. Washington, D.C. ELLA M. VERMILLION 4819 Western Avenue Baltimore, Maryland, JOHN MASON COOK 1305 North Adams Street Arlington, Virginia, LAWRENCE E. REED 4304 North 18th Street Arlington, Virginia HARRY GEORGE MANTAKOS and AGLAEA STELLA MANTAKOS, his wife Odenton, Maryland, GLENN R. SHAFFER and GLORIA M. SHAFFER, his wife C/o Callahan and Company 19 E. Lexington Street Baltimore, Maryland, AND THEIR heirs at law, both known and unknown, and all other persons having or claiming to have any interest in the properties hereinafter described.	)	IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY No. 10,287 EQUITY

Filed 3 Aug. 1951

: : : : : : : : :

BILL OF COMPLAINT

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The Plaintiff, complaining, says:

1. That on or about the 10th day of October, 1949, the Certificates of Tax Sale attached hereto were issued by Joseph H. Griscom, Sr., Collector of Taxes for the State of Maryland and Anne Arundel County. Said Certificates are prayed to be taken as a part hereof.

2. The property mentioned in said Certificates is described as follows:

Certificate #1340-

That lot of ground and improvements situate near St. Margaret's, Third Election District of Anne Arundel County, as described in deed from Joseph H. Pepper, et al., to William R. and Samuel E. Carr, his son, dated March 7, 1944, and recorded among the Land Records of said County in Liber J.H.H. 428, folio 346. Assessed on the date of the Collector's Sale to William R. and Samuel E. Carr, whose last known address was R.F.D. #2, Annapolis, Maryland, The amount due on date of sale was $10.90.

Certificate #1345-

Those lots Nos. 11 and 12 in Block 56 of Avalon Shores, Seventh Election District of Anne Arundel County, as shown on plat recorded in Cabinet 1, Rod A-6, Plat 16 of the Plat Records of said County. Assessed on the date of the Collector's Sale to Walter S. and Louise M. McDowell, whose last known address was 3344 Denver Street, S.E., Washington, D.C. The amount due on date of sale was $7.13.

Certificate #1346-

That lot No. 168, Selby Heights, First Election District of Anne Arundel County, as shown on a plat recorded in Cabinet 1, Rod Z, Plat 11 of the Plat Records of said County. Assessed on the date of the Collector's Sale to Ella M. Vermillion, whose last known address was 4819 Western Avenue, Baltimore, Maryland. The amount due on date of sale was $7.41.

Certificate #1344-

Those lots Nos. 16 and 18 in Block 45 of Section B, Avalon Shores, Seventh Election District of Anne Arundel County, as shown on a plat recorded in Cabinet 1, Rod A-5, Plat 11 of the Plat Records of said County. Assessed on the date of the Collector's Sale to John Mason Cook, whose last known address was 1305 North Adams Street, Arlington, Virginia. The amount due on date of sale was $6.47.

Certificate #1335-

That lot No. 1 in Block H, Section 1, of Loch Haven Beach, First Election District of Anne Arundel County, as shown on a plat recorded in Cabinet 3, Rod E-7, Plat 11 of the Plat Records of said County. Assessed on the date of the Collector's Sale to Lawrence E. Reed, whose last known address was 4304 North 18th Street, Arlington, Virginia. The amount due on date of sale was $16.80.

Certificate #1341-

That lot No. 3, containing 1.58 acres, near Odenton, Fourth Election District of Anne Arundel County, as shown on a plat recorded in Cabinet 3, Rod E-5, Plat 7 of the Plat Records of said County. Assessed on the date of the Collector's Sale to Harry G. and Aglaea S. Mantakos, whose last known address was Odenton, Maryland. The amonnt due on date of sale was $8.48.

Certificate #1342-

Those lots Nos. 1 and 2 in Block O, Glen Oak Heights, Fifth Election District of Anne Arundel County, as shown on a plat recorded in Cabinet 1, Rod I, Plat 9 of the Plat Records of said County. Assessed on the date of the Collector's Sale to Glenn R. Shaffer and Gloria M. Shaffer, his wife, whose last known address was C/o Callahan & Co., 19 E. Lexington Street, Baltimore, Maryland.

3. Said properties have not yet been redeemed by any party in interest, although more than one year and one day from the date of sale has expired.

2

4. The Plaintiff prays for process directed to the above named Defendants whose last known addresses are set out with their names after the description of each property. A copy of this Bill of Complaint has been mailed to the aforesaid Defendants at the aforesaid addresses.

5. The Plaintiff prays for an order of publication directed to all parties in interest in the various properties.

6. Attached hereto as Exhibit "A" are the aforesaid Certificates of Tax Sale.

7. To redeem the properties it is necessary for the Defendants to pay the sums as set out after the description of each property, with interest from October 10, 1949, all taxes interest and penalties accruing subsequent to the day of sale which have actually been paid by the Plaintiff under Sections 90-J and 90-K of the Annotated Code of Maryland.

8. The Plaintiff prays the Court to pass a final decree foreclosing all rights of redemption of the Defendants in and to the properties described herein.

And, as in duty bound, etc.

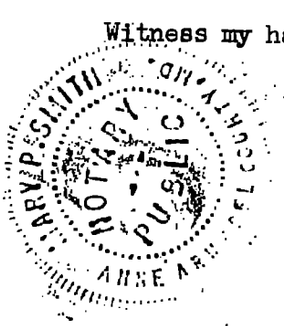
Witness:
Mary P. Smith

John H. Hopkins, IV, Plaintiff

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, TO WIT:

I HEREBY CERTIFY that on this 3rd day of August, 1951, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared John H. Hopkins, IV, the Plaintiff herein, and made oath in due form of law that the matters and things set forth in the foregoing Bill of Complaint are true to the best of his knowledge and belief.

Witness my hand and Notarial Seal.



Mary P. Smith, Notary Public

1340 LIBER 78 PAGE 440

CERTIFICATE OF TAX SALE

I, JOSEPH H. GRISCOM, Sr., County Treasurer, Collector of Taxes for the State of Maryland and the County of Anne Arundel, hereby certify that on October OCT 10 1949, I sold to John Hopkins Annapolis at public auction for the sum of 35 Dollars and 00 Cents, of which 10.90 Dollars has been paid as a deposit on the property in 3 Dist described as Lot & Improvements situated near St. Margarets, A. A. Co.

and assessed to Wm. R. & Samuel Carr

Filed 3 Aug., 1951

The property described herein is subject to redemption. Upon redemption the holder of this certificate will be refunded the sums paid on account of the purchase price together with interest thereon at the rate of six per cent per annum from the date of payment to the date of redemption, together with all other amounts specified by Chapter 761 of the Acts of 1943, and acts amendatory thereof. The balance due on account of the purchase price and all taxes, together with interest and penalties thereon, accruing subsequent to the date of sale, must be paid to the Collector before a deed can be delivered to the purchaser. After October OCT 11 1950, a proceeding can be brought to foreclose all rights of redemption in the property. This certificate will be void unless such a proceeding is brought within two years from the date of this certificate.

Witness my hand and seal, this OCT 10 1949 day of ..... 19.....

..... Collector.

JOSEPH H. GRISCOM, Sr.
County Treasurer

State of Maryland, Anne Arundel County, Sct: OCT 10 1949

I hereby certify, that on this ..... day of October, ..., before me, the subscriber, a Notary Public for the State of Maryland, in and for Anne Arundel County, personally appeared, JOSEPH H. GRISCOM, Sr., County Treasurer, Treasurer and Collector of Taxes for Anne Arundel County and the State of Maryland, and acknowledged the aforegoing certificate to be his act.

Witness my hand and seal Notarial,

[signature] Notary Public.

MAY 7 1951

My Commission Expires .....

Exhibit a.

4

1345 LIBER 78 PAGE 441

CERTIFICATE OF TAX SALE

JOSEPH H. GRISCOM, Sr.
County Treasurer

I, ..., Collector of Taxes for the State of Maryland and the County of Anne Arundel, hereby certify that on October OCT 10 1949, I sold to John Hopkins Annapolis at public auction for the sum of 10 Dollars and 00 Cents, of which 7.13 Dollars has been paid as a deposit on the property in 7 Dist described as Lots 11-12 [illegible] 56 as shown on the plat of Avalon Shores, A. A. Co.

and assessed to Walter S. & Louise W McDonnell

The property described herein is subject to redemption. Upon redemption the holder of this certificate will be refunded the sums paid on account of the purchase price together with interest thereon at the rate of six per cent per annum from the date of payment to the date of redemption, together with all other amounts specified by Chapter 761 of the Acts of 1943, and acts amendatory thereof. The balance due on account of the purchase price and all taxes, together with interest and penalties thereon, accruing subsequent to the date of sale, must be paid to the Collector before a deed can be delivered to the purchaser. After October OCT 11 1950, a proceeding can be brought to foreclose all rights of redemption in the property. This certificate will be void unless such a proceeding is brought within two years from the date of this certificate.

Filed 3 Aug. 1951

Witness my hand and seal, this OCT 10 1 day of ..... 19.....

..... Collector.

JOSEPH H. GRISCOM, Sr.
County Treasurer

State of Maryland, Anne Arundel County, Sct:

I hereby certify, that on this ..... day of October, 1949, ..., before me, the subscriber, a Notary Public for the State of Maryland, in and for Anne Arundel County, personally appeared, JOSEPH H. GRISCOM, Sr. County Treasurer, Treasurer and Collector of Taxes for Anne Arundel County and the State of Maryland, and acknowledged the aforegoing certificate to be his act.

Witness my hand and seal Notarial,

[signature]
Notary Public.

My Commission Expires MAY 7 1951

Exhibit A.

5

1346 LIBER 78 PAGE 442

CERTIFICATE OF TAX SALE

I, JOSEPH H. GRISCOM, Sr., Collector of Taxes for the State of Maryland and the County Treasurer
County of Anne Arundel, hereby certify that on October OCT 10 1950, I sold to John Hall
Annapolis at public auction for the sum of 8 Dollars and 00
Cents, of which 7.41 Dollars has been paid as a deposit on the property
in 1 Dist described as Lot 168 as shown
on the plat of Selby Heights A.
A. Co

and assessed to Ella M. Winebrenner

Filed 3 Aug. 1951

The property described herein is subject to redemption. Upon redemption the holder of this certificate will be refunded the sums paid on account of the purchase price together with interest thereon at the rate of six per cent per annum from the date of payment to the date of redemption, together with all other amounts specified by Chapter 761 of the Acts of 1943, and acts amendatory thereof. The balance due on account of the purchase price and all taxes, together with interest and penalties thereon, accruing subsequent to the date of sale, must be paid to the Collector before a deed can be delivered to the purchaser. After October OCT 11 1950, a proceeding can be brought to foreclose all rights of redemption in the property. This certificate will be void unless such a proceeding is brought within two years from the date of this certificate.

Witness my hand and seal, this OCT 10 1950 day of 19

JOSEPH H. GRISCOM, Sr. Collector.
County Treasurer

State of Maryland, Anne Arundel County, Sct:

I hereby certify, that on this day of October, , before me, the subscriber, a Notary Public for the State of Maryland, in and for Anne Arundel County, personally appeared, JOSEPH H. GRISCOM, Sr., Treasurer and Collector of Taxes for Anne Arundel County
County Treasurer
and the State of Maryland, and acknowledged the aforegoing certificate to be his act.

Witness my hand and seal Notarial,

Notary Public.

MAY 7 1951

My Commission Expires

Exhibit a.

6

1344

LIBER 78 PAGE 443

CERTIFICATE OF TAX SALE

I, JOSEPH H. GRISCOM, Sr., County Treasurer, Collector of Taxes for the State of Maryland and the County of Anne Arundel, hereby certify that on October OCT 10 1949, I sold to J. Hopkins Annapolis at public auction for the sum of 7 Dollars and 00 Cents, of which 6.47 Dollars has been paid as a deposit on the property in 7 Dist described as Lots 16, 18 Block 45 as shown on the plat of Avalon Shores A A Co.

and assessed to John Mason Cook

The property described herein is subject to redemption. Upon redemption the holder of this certificate will be refunded the sums paid on account of the purchase price together with interest thereon at the rate of six per cent per annum from the date of payment to the date of redemption, together with all other amounts specified by Chapter 761 of the Acts of 1943, and acts amendatory thereof. The balance due on account of the purchase price and all taxes, together with interest and penalties thereon, accruing subsequent to the date of sale, must be paid to the Collector before a deed can be delivered to the purchaser. After October OCT 11 1950, a proceeding can be brought to foreclose all rights of redemption in the property. This certificate will be void unless such a proceeding is brought within two years from the date of this certificate.

Filed 3 Aug. 1951

Witness my hand and seal, this OCT 10 1949 day of ..... 19.....

JOSEPH H. GRISCOM, Sr.
County Treasurer

State of Maryland, Anne Arundel County, Sct:

I hereby certify, that on this ..... day of October, ..., before me, the subscriber, a Notary Public for the State of Maryland, in and for Anne Arundel County, personally appeared, JOSEPH H. GRISCOM, Sr., County Treasurer, Treasurer and Collector of Taxes for Anne Arundel County and the State of Maryland, and acknowledged the aforegoing certificate to be his act.

Witness my hand and seal Notarial,

Notary Public

My Commission Expires MAY 7 - 1951

Exhibit A.

7

1335

LIBER 78 PAGE 444

CERTIFICATE OF TAX SALE

I, JOSEPH H. GRISCOM, Sr., Collector of Taxes for the State of Maryland and the County Treasurer, County of Anne Arundel, hereby certify that on October OCT 10 1949, I sold to [illegible] Annapolis at public auction for the sum of 19 Dollars and 00 Cents, of which 16.80 Dollars has been paid as a deposit on the property in 1 Dist described as Lot 1 Block 24 Section 1 situated at Lake Shore Beach Inc. Co.

and assessed to Lawrence E. Reed

Filed 3 Aug. 1951

The property described herein is subject to redemption. Upon redemption the holder of this certificate will be refunded the sums paid on account of the purchase price together with interest thereon at the rate of six per cent per annum from the date of payment to the date of redemption, together with all other amounts specified by Chapter 761 of the Acts of 1943, and acts amendatory thereof. The balance due on account of the purchase price and all taxes, together with interest and penalties thereon, accruing subsequent to the date of sale, must be paid to the Collector before a deed can be delivered to the purchaser. After October OCT 11 1952, a proceeding can be brought to foreclose all rights of redemption in the property. This certificate will be void unless such a proceeding is brought within two years from the date of this certificate.

OCT 10 1949

Witness my hand and seal, this ..... day of ..... 19.....

JOSEPH H. GRISCOM, Sr. Collector.
County Treasurer

State of Maryland, Anne Arundel County, Set:

I hereby certify, that on this ..... day of October, OCT 10 1949, before me, the subscriber, a Notary Public for the State of Maryland, in and for Anne Arundel County, personally appeared, JOSEPH H. GRISCOM, County Treasurer, Treasurer and Collector of Taxes for Anne Arundel County and the State of Maryland, and acknowledged the aforegoing certificate to be his act.

Witness my hand and seal Notarial,

Notary Public.

My Commission Expires MAY 7 1951

Exhibit A.

8

1341 LIBER 78 PAGE 445

CERTIFICATE OF TAX SALE

I, JOSEPH H. GRISCOM, Sr. County Treasurer, Collector of Taxes for the State of Maryland and the County of Anne Arundel, hereby certify that on October OCT 10 1949, I sold to John Hopkins at public auction for the sum of 12 Dollars and 00 Cents, of which 8.48 Dollars has been paid as a deposit on the property in 4 Dist described as Lot 3 situated near Odenton A. A. Co.

and assessed to Harry G + Aglaea Mintakos

Filed 3 Aug. 1951

The property described herein is subject to redemption. Upon redemption the holder of this certificate will be refunded the sums paid on account of the purchase price together with interest thereon at the rate of six per cent per annum from the date of payment to the date of redemption, together with all other amounts specified by Chapter 761 of the Acts of 1943, and acts amendatory thereof. The balance due on account of the purchase price and all taxes, together with interest and penalties thereon, accruing subsequent to the date of sale, must be paid to the Collector before a deed can be delivered to the purchaser. After October OCT 11 1950, a proceeding can be brought to foreclose all rights of redemption in the property. This certificate will be void unless such a proceeding is brought within two years from the date of this certificate.

Witness my hand and seal, this OCT 10 1949 day of ..... 19.....

JOSEPH H. GRISCOM, Sr.
Collector.
County Treasurer

State of Maryland, Anne Arundel County, Set:

I hereby certify, that on this OCT 10 1949 day of October, ..., before me, the subscriber, a Notary Public for the State of Maryland, in and for Anne Arundel County, personally appeared, JOSEPH H. GRISCOM, Sr. County Treasurer, Treasurer and Collector of Taxes for Anne Arundel County and the State of Maryland, and acknowledged the aforegoing certificate to be his act.

Witness my hand and seal Notarial,

Notary Public.

My Commission Expires MAY 7 1951

Exhibit A.

9

1342

LIBER 78 PAGE 446

CERTIFICATE OF TAX SALE

I, JOSEPH H. GRISCOM, Sr., County Treasurer, Collector of Taxes for the State of Maryland and the County of Anne Arundel, hereby certify that on October OCT 10 1949, I sold to John Hyatt, Annapolis at public auction for the sum of 11. Dollars and 00 Cents, of which 5.78 Dollars has been paid as a deposit on the property in 5 Dist described as Lots 1-2 Block O situated near Glendale Terrace A.A. Co.

and assessed to Glenn R. Shaffer & Wife.

Filed 3 Aug., 1951

The property described herein is subject to redemption. Upon redemption the holder of this certificate will be refunded the sums paid on account of the purchase price together with interest thereon at the rate of six per cent per annum from the date of payment to the date of redemption, together with all other amounts specified by Chapter 761 of the Acts of 1943, and acts amendatory thereof. The balance due on account of the purchase price and all taxes, together with interest and penalties thereon, accruing subsequent to the date of sale, must be paid to the Collector before a deed can be delivered to the purchaser. After October OCT 11 1950, a proceeding can be brought to foreclose all rights of redemption in the property. This certificate will be void unless such a proceeding is brought within two years from the date of this certificate.

Witness my hand and seal, this OCT 10 1949 day of ..... 19.....

JOSEPH H. GRISCOM, Sr
County Treasurer
Collector

State of Maryland, Anne Arundel County, Sct:

I hereby certify, that on this ..... day of October, OCT 10 1949, before me, the subscriber, a Notary Public for the State of Maryland, in and for Anne Arundel County, personally appeared, JOSEPH H. GRISCOM, Sr., Treasurer and Collector of Taxes for Anne Arundel County and the State of Maryland, and acknowledged the aforegoing certificate to be his act.

Witness my hand and seal Notarial,

JOSEPH H. GRISCOM, Sr.
County Treasurer

Notary Public

My Commission Expires MAY 7 1951

Exhibit A.

10

JOHN H. HOPKINS, IV 15 School Street Annapolis, Maryland	‖	
vs.	‖	
WILLIAM R. CARR and SAMUEL E. CARR, his son R.F.D. 2, Annapolis, Md., WALTER S. MCDOWELL and LOUISE M. MCDOWELL, his wife 3344 Denver Street, S.E. Washington, D.C., ELLA M. VERMILLION 4819 Western Avenue Baltimore, Maryland, JOHN MASON COOK 1305 North Adams Street Arlington, Virginia, LAWRENCE E. REED 4304 North 18th Street Arlington, Virginia, HARRY GEORGE MANTAKOS and AGLAEA STELLA MANTAKOS, his wife Odenton, Maryland, GLENN R. SHAFFER and GLORIA M. SHAFFER, his wife C/o Callahan and Company 19 E. Lexington Street Baltimore, Maryland, AND THEIR heirs at law, both known and unknown, and all other persons having or claiming to have any interest in the properties hereinafter described.	‖	IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY No. 10,289 EQUITY

: : : : : : : : : : :

Filed 3 Aug 1951

ORDER OF PUBLICATION

The object of this proceeding is to secure the foreclosure of all rights of redemption in the following properties situate in Anne Arundel County, sold by the Collector of Taxes for the County of Anne Arundel and the State of Maryland to the Plaintiff in this proceeding:

1. That lot of ground and improvements situate near St. Margaret's, Third Election District of Anne Arundel County, as described in deed from Joseph H. Pepper, et al., to William R. and Samuel E. Carr, his son, dated March 7, 1944, and recorded among the Land Records of said County in Liber J.H.H. 428, folio 346.

2. Those lots Nos. 11 and 12 in Block 56 of Avalon Shores, Seventh Election District of Anne Arundel County, as shown on plat recorded in Cabinet 1, Rod A-6, Plat 16 of the Plat Records of said County.

11

3. That lot No. 168, Selby Heights, First Election District of Anne Arundel County, as shown on a plat recorded in Cabinet 1, Rod Z, Plat 11 of the Plat Records of said County.

4. Those lots Nos. 16 and 18 in Block 45 of Section B, Avalon Shores, Seventh Election District of Anne Arundel County, as shown on a plat recorded in Cabinet 1, Rod A-5, Plat 11 of the Plat Records of said County.

5. That lot No. 1 in Block H, Section 1, of Loch Haven Beach, First Election District of Anne Arundel County, as shown on a plat recorded in Cabinet 3, Rod E-7, Plat 11 of the Plat Records of said County.

6. That lot No. 3, containing 1.58 acres, near Odenton, Fourth Election District of Anne Arundel County, as shown on a plat recorded in Cabinet 3, Rod E-5, Plat 7 of the Plat Records of said County.

7. Those lots Nos. 1 and 2 in Block O, Glen Oak Heights, Fifth Election District of Anne Arundel County, as shown on a plat recorded in Cabinet 1, Rod I, Plat 9 of the Plat Records of said County.

The bill states, among other things, that the amounts necessary for redemption have not been paid, although more than a year and a day from the date of sale has expired.

It is thereupon, this 3 day of August, 1951, by the Circuit Court for Anne Arundel County, in Equity, Ordered that notice be given by the insertion of a copy of this Order in some newspaper having a general circulation in Anne Arundel County once a week for four (4) successive weeks, warning all persons interested in the said properties to be and appear in this Court by the 10 day of ~~November,~~ October, 1951, and redeem the property and answer the bill, or thereafter a final decree will be rendered foreclosing all rights of redemption in the properties and vesting in the Plaintiff a title free and clear of all encumbrances.

John H. Hopkins, 3rd, Clerk

12

JOHN H. HOPKINS, IV	:	NO. 10,289 EQUITY
		IN THE CIRCUIT COURT
VS.	:	
		FOR
LAWRENCE E. REED, etc., et al.	:	ANNE ARUNDEL COUNTY

:::::::

STIPULATION

It is agreed between the parties hereto that the following amounts must be paid in order that the respondent, Lawrence E. Reed, may redeem the property described in Tax Sale Certificate No. 1335, filed in these proceedings:

To be paid to the County Treasurer of Anne Arundel County for 1948 taxes	6.59	
1949 taxes	13.51	
1950 taxes	8.37	
1951 taxes	7.61	36.08
Clerk of Court, costs		9.75
Proportionate share of advertising		8.57
Notary fee		.25
Title examination		15.00
Registered letter		.33
		69.98

John H. Hopkins, IV, Plaintiff
15 School Street
Annapolis, Maryland

Albert J. Goodman
12 Church Circle
Annapolis, Maryland
Attorney for Defendant, Lawrence Reed

ORDER OF COURT

Upon the aforegoing stipulation, it is this 13th day of ~~September~~ October 1951, by the Circuit Court for Anne Arundel County in Equity, ordered that the amounts necessary to redeem the property described in Tax Sale Certificate No. 1335 are:

Filed 13 Oct., 1951

Filed 13 Oct., 1951

13

To be paid to the County Treasurer of Anne Arundel County for 1948 taxes	6.59	
1949 taxes	13.51	
1950 taxes	8.37	
1951 taxes	7.61	36.08
Clerk of Court, costs		9.75
Proportionate share of advertising		8.57
Notary fee		.25
Title examination		15.00
Registered letter		.33
		69.98

Benjamin Mackubin
Judge

14

JOHN H. HOPKINS, IV	:	NO. 10,289 EQUITY
		IN THE CIRCUIT COURT
VS.	:	
		FOR
LAWRENCE E. REED, etc., et al.	:	ANNE ARUNDEL COUNTY

:::::::

ORDER OF SATISFACTION

Mr. Clerk:

Please enter the above case settled and the property redeemed as to the defendant, Lawrence E. Reed, and all persons having or claiming to have any interest in the property described in Tax Sale Certificate No. 1335 filed in these proceedings.

John H. Hopkins, IV, Plaintiff
15 School Street
Annapolis, Maryland

Filed 25 Oct. 1951

15

JOHN H. HOPKINS, IV		IN
		THE CIRCUIT COURT
VS.		FOR
		ANNE ARUNDEL COUNTY
WILLIAM R. CARR, ET AL.		NO. 10,289 EQUITY

: : : : : :

A PETITION TO GRANT DEFENDANTS EXTENDED TIME

TO ANSWER

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The petition of John H. Hopkins, IV, the complainant in the above-titled cause, respectfully represents:

1. That heretofore he has filed a bill of complaint in the above-titled cause, and that an Order has been passed by this Honorable Court directing the defendants to answer the bill of complaint and to redeem the property by the 10th day of October, 1951.

2. That although most of the defendants have been served with process, the following defendants have been returned non est:

William R. Carr
Glenn R. Shaffer and Gloria M. Shaffer, his wife
Ella M. Vermillion
Harry George Mantakos and Aglaea Stella Mantakos, his wife.

3. That your petitioner has learned that William R. Carr is a resident of New York city, New York, and not subject to process in this state.

4. That your petitioner desires to reissue process against the defendants Shaffer, Vermillion and Mantakos in accordance with the requirements of the statute, but that the time allowed for their answer is past.

To the end, therefore, that this Honorable Court may pass an Order granting reasonable additional time unto the above-named defendants to appear in this Court to redeem their said property and to answer the bill of complaint.

And as in duty bound, etc.,

J. Hunt Hopkins

Plaintiff

Filed 6 Nov., 1951

16

Filed 7 Nov., 1951.

ORDER

Upon the foregoing petition it is ordered by the Circuit Court for Anne Arundel County in Equity this 7th day of November, 1951, that the defendants named in said petition be notified to appear in this Court by the 17th day of December, 1951 and redeem the property and answer the Bill of Complaint or thereafter a final decree will be rendered foreclosing all rights of redemption in the property and vesting in complainant a title free and clear of all encumbrances.

[signature]
Judge

17

JOHN H. HOPKINS, IV	:	NO. 10,289 EQUITY
VS.	:	IN THE CIRCUIT COURT FOR
GLENN R. SHAFFER, et al., etc.	:	ANNE ARUNDEL COUNTY

:::::::

STIPULATION

It is agreed between the parties hereto that the following amounts must be paid in order that the respondents, Glenn R. Shaffer and Gloria M. Shaffer, his wife, may redeem the property described in Tax Sale Certificate No. 1342, filed in these proceedings:

To be paid to the County Treasurer of Anne Arundel County for 1948 taxes	.20	
1949 taxes	8.15	
1950 taxes	1.55	
1951 taxes	1.45	
1952 taxes	1.39	12.74
Clerk of Court, costs		9.75
Proportionate share of advertising		8.57
Notary fee		.25
Title examination		15.00
Registered letter		.33
		46.64

Filed 18 Jan., 1952

John H. Hopkins, IV, Complainant
15 School Street
Annapolis, Maryland

Albert J. Goodman
12 Church Circle
Annapolis, Maryland
Solicitor for Respondents,
Glenn R. Shaffer and Gloria M. Shaffer

ORDER OF COURT

Upon the aforegoing stipulation, it is this 19th day of January, 1952, by the Circuit Court for Anne Arundel County in Equity, ordered that the amounts necessary to redeem the property described in Tax Sale Certificate No. 1342, are:

Filed 19 Jan., 1952.

18

To be paid to the County Treasurer of Anne Arundel County for 1948 taxes	.20	
1949 taxes	8.15	
1950 taxes	1.55	
1951 taxes	1.45	
1952 taxes	1.39	12.74
Clerk of Court, costs		9.75
Proportionate share of advertising		8.57
Notary fee		.25
Title examination		15.00
Registered letter		.33
		46.64

Benjamin Wilkinson
Judge

19

JOHN H. HOPKINS, IV	:	NO. 10,289 EQUITY
		IN THE CIRCUIT COURT
VS.	:	
		FOR
GLENN R. SHAFFER, et al., etc.	:	ANNE ARUNDEL COUNTY

:::::::

ORDER OF SATISFACTION

Mr. Clerk:

Please enter the above case settled and the property redeemed as to the defendants, Glenn R. Shaffer and Gloria M. Shaffer, his wife, and all persons having or claiming to have any interest in the property described in Tax Sale Certificate No. 1342 filed in these proceedings.

John H. Hopkins IV

John H. Hopkins, IV, Complainant
15 School Street
Annapolis, Maryland

Filed 21 Jan., 1952

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IN THE CIRCUIT COURT.
FOR ANNE ARUNDEL COUNTY
No. 10,289 EQUITY

JOHN H. HOPKINS, IV, School Street, Annapolis, Maryl

Vs.

WILLIAM R. CARR and SAMUEL E. CARR, his son, R.F.D. 2, Annapolis, Md., WALTER S. McDOWELL and LOUISE M. McDOWELL, his wife, 3344 Denver Stret, S. E., Washington, D. C., ELLA M. VERMILLION, 4810 Western Avenue, Baltimore, Maryland, JOHN MASON COOK, 1305 North Adams Street, Arlington, Virginia, LAWRENCE E. REED, 4304 North 16th Street, Arlington, Virginia, HARRY GEORGE MANTAKOS and AGLEA STELLA MANTAKOS, his wife, Odenton, Maryland, GLENN R. SHAFFER and GLORIA M. SHAFFER, his wife, C/o Callanhan and Company, 19 E. Lexington Street. Baltimore, Maryland, AND THEIR heirs at law, both known and unknown, and all other persons having or claiming to have any interest in the properties hereinafter described.

ORDER OF PUBLICATION

The object of this proceeding is to secure the foreclosure of all rights of redemption in the following properties situate in Anne Arundel County, sold by the Collector of Taxes for the County of Anne Arundel and the State of Maryland to the Plaintiff in this proceeding:

1. That lot of ground and improvements situate near St. Margaret's, Third Election District of Anne Arundel County, as described in deed from Joseph H. Pepper, et al., to William R. and Samuel E. Carr, his son, dated March 7, 1944, and recorded among the Cand Records of said County in Liber J. H. H. 428, folio 346.

2. Those lots Nos. 11 and 12 in Block 56 of Avalon Shores, Seventh Election District of Anne Arundel County, as shown on plat recorded in Cabinet 1, Rod A-6, Plat 16 of the Plat Records of said County.

3. That lot No. 108, Selby Heights, First Election District of Anne Arundel County, as shown on a plat recorded in Cabinet 1, Rod Z, Plat 11 of the Plat Records of said County.

4. Those lots Nos. 16 and 18 in Block 45 of Section B, Avalon Shores, Seventh Election District of Anne Arundel County, as shown on a plat recorded in Cabinet 1, Rod A-5, Plat 11 of the Plat Records of said County.

5. That lot No. 1 in Block H, Section 1, of Loch Haven Beach, First Election District of Anne Arundel County, as shown on a plat recorded in Cabinet 3, Rod E-7, Plat 11 of the Plat Records of said County.

6. That lot No. 3, containing 1.58 acres, near Odenton, Fourth Election District of Anne Arundel County, as shown on a plat recorded in Cabinet 3, Rod E-5, Plat 7 of the Plat Rocerds of said County.

7. Those lots Nos. 1 and 2 in Block O, Glen Oak Heights, Fifth Election District of Anne Arundel County, as shown on a plat recorded in Cabinet 1, Rod I, Plat 9 of the Plat Records of said County.

The bill states, among other things, that the amounts necessary for redemption have not been paid, although more than a year and a day from the date of sale has expired.

It is thereupon, this 3rd day of August, 1951, by the Circuit Court for Anne Arundel County, in Equity, Ordered that notice be given by the insertion of a copy of this Order in some newspaper having a general circulation in Anne Arundel County once a week for four (4) successive weeks, warning all persons interested in the said properties to be and appear in this Court by the 10th day of October, 1951, and redeem the property and answer the bill, or thereafter a final decree will be rendered foreclosing all rights of redemption in the properties and vesting in the Plaintiff a title free and clear of all encumbrances.

JOHN H. HOPKINS, 3rd., Clerk.

True Copy, TEST:

JOHN H. HOPKINS, 3rd., Clerk.

Filed 30 Jan., 1952.

J.I

LIBER 78 PAGE 457

OFFICE OF

Maryland Gazette & Evening Capital

Published by

THE CAPITAL-GAZETTE PRESS, INC.

CERTIFICATE OF PUBLICATION

Annapolis, Md., September 20, 1951

We hereby certify, that the annexed Order of Publication Equity No. 10,289 William R. Carr

was published in

Maryland Gazette & Evening Capital

a newspaper published in the City of Annapolis, Anne Arundel County, Maryland, once a week for 4 successive weeks before the 10th day of October, 1951. The first insertion being made the 4th day of August, 1951.

THE CAPITAL-GAZETTE PRESS, INC.

By Bettie L. Dees

JOHN H. HOPKINS, IV	(	IN
	(	THE CIRCUIT COURT
VS.	(	FOR
	(	ANNE ARUNDEL COUNTY
WILLIAM R. CARR, ET AL.	(	
	(	No. 10,289 EQUITY

: : : : : : :

AFFIDAVIT

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, TO WIT:

John H. Hopkins, IV, the Plaintiff herein, does hereby certify that on the 4th day of August, 1951, he caused a copy of the Bill of Complaint in the above-titled cause to be mailed by Registered Mail, Return Receipt Requested, to each of the Defendants in this cause at their last known Post Office addresses, according to the records of the Bureau of Assessments of Anne Arundel County.

He further certifies that the returns from the aforementioned Registered Letters were as follows:

(1) The return receipt for the registered letter addressed to William R. Carr and Samuel E. Carr, R.F.D. 2, Annapolis, Md., was returned signed W.R. Carr and Samuel E. Carr by W.R. Carr, on August 6, 1951.

(2) The return receipt for the letter addressed to Walter S. McDowell and Louise M. McDowell, his wife, 3344 Denver Street S.E., Washington, D.C., was returned signed Louise W. McDowell by Walter S. McDowell, on August 7, 1951.

(3) The letter addressed to Ella M. Vermillion, 4819 Western Avenue, Baltimore, Md., was returned marked "Unknown" and "Unclaimed." This letter was resent to Selby-on-the-Bay, Mayo, Md., and also to Edgewater, Maryland, and was returned marked "Unknown."

(4) The letter addressed to John Mason Cook, 1305 North Adams Street, Arlington, Virginia, was returned marked "Unknown."

The Defendants Lawrence E. Reed, Harry George Mantakos, and Aglaea Stella Mantakos his wife, Glenn R. Shaffer, and Gloria M. Shaffer his wife, have answered said Bill of Complaint and redeemed their respective property.

Filed 30 Jan., 1952

22.

The said John H. Hopkins, IV, Plaintiff herein, further certifies that he has no other addresses for the said Defendants whose letters were not delivered, nor does he know the names or addresses of the heirs of the defendants who may be deceased, nor has he any way of ascertaining the same.

Attest:

Mary P. Smith

J. Hopkins IV
Plaintiff

Subscribed and sworn to before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, this 30th day of January, 1952.

Witness my hand and seal Notarial.

MARY P. SMITH NOTARY PUBLIC ANNE ARUNDEL COUNTY, MD.

Mary P. Smith
Mary P. Smith, Notary Public

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LIBER 78 PAGE 460

JOHN H. HOPKINS, IV		IN
		THE CIRCUIT COURT
VS.		FOR
		ANNE ARUNDEL COUNTY
WILLIAM R. CARR ET AL.		NO. 10,289 EQUITY

: : : : : : : :

DECREE PRO CONFESSO

It appearing from the proceedings in this cause that the ORDER OF PUBLICATION heretofore issued therein has been duly published in the Maryland Gazette, a newspaper printed and published in Annapolis, Anne Arundel County, Maryland, and the Defendants William R. Carr, Samuel E. Carr, Walter McDowell, Ella M. Vermillion and John Mason Cook having failed to appear, either in person or by solicitor, and answer the Bill of Complaint filed against them;

It is thereupon, this 31st day of January, 1952, by the Circuit Court for Anne Arundel County, in Equity, ADJUDGED, ORDERED AND DECREED that said Bill of Complaint be, and the same is hereby taken pro confesso against the said Defendants who failed to answer said Bill of Complaint.

Benjamin Michaelson
Judge

Filed 31 Jan., 1952.

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JOHN H. HOPKINS, IV, Plaintiff	:	IN
	:	THE CIRCUIT COURT
vs	:	FOR
	:	ANNE ARUNDEL COUNTY
WILLIAM R. CARR, et al. Defendants	:	No. 10,289 EQUITY

: : : : : : : : : : : : : : :

FINAL DECREE

This cause, standing ready for hearing and being submitted, the proceedings were read and considered, and it appearing that the same have been conducted in substantial compliance with the provisions of Sections 89-I to 90-P of Article 81 of the Annatotated Code of Maryland (1943 Supplement),

It is, thereupon, this 1st day of August, 1952, by the Circuit Court for Anne Arundel County, in Equity, ADJUDGED, ORDERED and DECREED:

1. That all rights of redemption of the Defendants, or of anyone claiming by, through or under them, in and to the property described in these proceedings as having been sold by the Treasurer of Anne Arundel County to the Plaintiff on the 10th day of October, 1949, for the non-payment of taxes, be and the same are hereby barred and foreclosed; saving and excepting the property of the Defendants, Lawrence E. Reed, Harry George Mantakos and Aglaea Stella Mantakos, his wife, Glenn R. Shaffer and Gloria M. Shaffer, his wife, which were redeemed by them as provided by law.

2. That an absolute and indefeasible title, in fee simple, to said property, free and clear of all alienations and descents occurring prior to this decree, as well as all encumbrances thereon (except taxes accruing subsequent to said date of sale and the public assessments to which the same are subject) are hereby vested in the Plaintiff.

3. That, upon the payment to him of the balances, if any, due on the purchase price of said property, together with all taxes, interest and penalties thereon accruing subsequent to the date of sale, the Treasurer of Anne Arundel County shall execute a deed conveying said property to the Plaintiff.

4. That the Plaintiff shall pay the costs of this proceeding.

Benjamin Michaelson
Judge

Filed 1 Aug. 1952.

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IN		NO. 10,445 EQUITY
THE MATTER OF		IN THE CIRCUIT COURT FOR
STANLEY L. WRIGHT		ANNE ARUNDEL COUNTY
INCOMPETENT		

: : : : : : : : :

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The petition of Margaret B. Wright, as wife and next friend of Stanley L. Wright, respectfully shows:

1. That your petitioner is the wife of the said Stanley L. Wright and is an adult and resident of the State of Maryland.

2. That the said Stanley L. Wright is incompetent to manage his property by reason of mental disability, and has been confined in the Crownsville State Hospital at Crownsville, Maryland, since July 24, 1951.

3. That the said Stanley L. Wright owns the following real property:

(a) Lot of ground situate in the City of Annapolis, Sixth Election District of Anne Arundel County, Maryland, known and designated as Nos. 24-26 Calvert Street, which was acquired by the said Stanley L. Wright from The Asbury Methodist Episcopal Church of Annapolis by deed dated September 5, 1933 and recorded among the Land Records of Anne Arundel County, Maryland, in Liber F.S.R. No. 118, folio 134.

(b) Lot of ground and improvements at Adams Park, Annapolis, Maryland, described as Lots Nos. 16, 17, and a part of No. 15 on the plat of College Heights, in a deed from Annie Colbert, widow, to Stanley L. Wright, dated March 23, 1931 and recorded among the aforesaid Land Records in Liber F.S.R. No. 83, folio 338.

4. That your petitioner, as the wife of the said Stanley L. Wright, has an inchoate right of dower in the aforesaid property.

5. That your petitioner, as wife and next friend of the said Stanley L. Wright, has signed an option for the sale of Nos. 24-26 Calvert Street, Annapolis, Maryland, to the Mayor and Aldermen of the City of Annapolis, for the current market appraised value of Five Thousand Dollars ($5,000.00), a copy of said appraisal being filed herewith, marked "Petitioner's Exhibit No. 1."

Filed 27 May, 1953.

6. That the said property is unimproved and is producing no income.

7. That it is to the interest and advantage of the said Stanley L. Wright to sell the aforesaid property.

8. That your petitioner files herewith the certificate of two (2) attending neuropsychiatrists who have attended the incompetent within ten days before the filing of this petition. The said certificates are filed herewith marked Exhibits 2 and 3, and are prayed to be taken as a part hereof.

TO THE END THEREFORE:

1. That a Trustee be appointed to take charge of and manage said property.

2. That said Trustee be authorized to sell said property at and for the appraised value.

3. That the proceeds therefrom be administered under the jurisdiction of this Court.

May it please Your Honors to pass an Order directing the said Stanley L. Wright, the alleged incompetent, to be summoned within ten days hereof, requiring that within the same time a copy of the summons, petition, and Order of Court shall be left with whom the alleged incompetent resides, setting down the petition for hearing on or after fifteen days from the date of the Order, and allowing an appearance and answer at any time before or after the decree.

And as in duty bound, etc.

Margaret B. Wright
Petitioner and Next Friend

John Hopkins IV
Solicitor for Petitioner

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, TO WIT:

I HEREBY CERTIFY that on this 24th day of March, 1952, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Margaret B. Wright, Petitioner and Next Friend of Stanley L. Wright, and she made oath in due form of law that the matters and facts set forth in the foregoing petition are true to the best of his knowledge, information and belief.

WITNESS my hand and seal Notarial.

John H. Hopkins, IV, Notary Public

Filed 27 Mar., 1952.

ORDER OF COURT

ORDERED, this 27th day of March, 1952, by the Circuit Court for Anne Arundel County, sitting in Equity, that the petition of Margaret B. Wright, as next friend of Stanley L. Wright, be and the same is hereby set for hearing on the 23d day of April, 1952, at 10 a. M., provided the said Stanley L. Wright, alleged incompetent, shall be summoned before the 9th day of April, 1952, and that a copy of the summons, petition, and this Order, be left with the Superintendent of Crownsville State Hospital; and it is further Ordered that an appearance and answer will be allowed by the said Stanley L. Wright, at any time before or after decree.

Benjamin Michaelson
Judge

PETITIONER'S EXHIBIT NO. 1

February 28, 1952

WE, the undersigned licensed real estate brokers, do hereby certify that we are actively engaged in the real estate business in Anne Arundel County, and are familiar with the value of real estate in and around Annapolis, Anne Arundel County, Maryland, and further that we are familiar with the property under option by Margaret B. Wright, wife and next friend of Stanley L. Wright, and described in the case entitled: "In the Matter of Stanley L. Wright, Incompetent"; and in our opinion the fair market value of said property does not exceed Five Thousand Dollars.

Witness:

Virginia Bennett

Carroll H. Hynson
121 Clay Street, Annapolis, Maryland

Virginia E. Morland

Fred Voges
221 Main Street, Annapolis, Maryland

Filed 27 Mar., 1952.

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Petitioner's "Exhibit 2"

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, TO WIT:

I HEREBY CERTIFY that on this **24th** day of **March**, 1952, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Dr. Jacob Morgenstern, who made oath in due form of law that he is and has been for the past **11** years a licensed and practising neuropsychiatrist in the State of Maryland, and that he is satisfied, from the opportunity of observation afforded him and judging from his conduct, that Stanley L. Wright is of unsound mind, incapable of governing himself or of managing his estate; that his examination of Stanley L. Wright was conducted during the past ten (10) days. Moreover he believes his ailment to be induced by **Cerebral Arteriosclerosis (With Psychosis)**.

He is further of the opinion that it would be seriously detrimental to the said Stanley L. Wright, both physically and mentally, to be required to appear before a Court as a witness or to be present at a hearing before a Court concerning his mental condition and capacity to manage his estate.

Jacob Morgenstern M.D.
Dr. Jacob Morgenstern, Affiant

Sworn to before me this **24th** day of **March**

Annie L. Goans
Annie L. Goans Notary Public

Filed 27 Mar., 1952

Petitioner's "Exhibit 3"

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, TO WIT:

I HEREBY CERTIFY that on this 24th day of March, 1952, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Dr. Stephen Klinger, who made oath in due form of law that he is and has been for the past 7 years a licensed and practising neuropsychiatrist in the State of Maryland, and that he is satisfied, from the opportunity of observation afforded him and judging from his conduct, that Stanley L. Wright is of unsound mind, incapable of governing himself or of managing his estate; that his examination of Stanley L. Wright was conducted during the past ten (10) days. Moreover he believes his ailment to be induced by Cerebral Arteriosclerosis (With Psychosis)

He is further of the opinion that it would be seriously detrimental to the said Stanley L. Wright, both physically and mentally, to be required to appear before a Court as a witness or to be present at a hearing before a Court concerning his mental condition and capacity to manage his estate.

Stephen Klinger M.D.
Dr. Stephen Klinger, Affiant

Sworn to before me this 24th day of March 1952.

Annie L. Goans
Annie L. Goans, Notary Public

Filed 27 Mar., 1952.

ROWNSVILLE STATE HOSPITAL
CROWNSVILLE, MARYLAND

TELEPHONE: SOUTH SHORE 2751

JACOB MORGENSTERN, M.D.
SUPERINTENDENT
ELIZABETH MOSS
ADMINISTRATIVE ASS'T

March 31, 1952

LIBER 78 PAGE 468

Filed 2 Apr., 1952.

Mr. John H. Hopkins, Clerk
Fifth Judicial Circuit Court
Annapolis, Maryland

Dear Mr. Hopkins: RE: Stanley Wright

We feel it would not benefit the conditionof this patient to make an appearance in court at this time.

Very truly yours,

Jacob Morgenstern, M.D.
Superintendent

JM/s

Please give full name of patient in each letter. Visiting days: Thursday, Saturday, and Sunday - 1 P. M. to 3 P. M.

IN THE MATTER OF	:	IN
STANLEY L. WRIGHT,	:	THE CIRCUIT COURT
INCOMPETENT	:	FOR
	:	ANNE ARUNDEL COUNTY
	:	No. 10,455 Equity

::::::::::::::::::::::::::::::::

TESTIMONY IN OPEN COURT

JURY

April 23, 1952

Filed 23 April 1952

Before Hon. Benjamin Michaelson, Associate Judge

John H. Hopkins, 3rd., Clerk.

Katherine H. McCutchan, Court Stenographer.

Witnesses:

Dr. Stephen Klinger, page 2, 3.

Margaret B. Wright, pages 3, 4.

Carroll H. Henson, pages 4, 5.

Dr. Stephen Klinger, a witness of lawful age, being first duly sworn, deposes and says:

(Mr. Hopkins)

1. State your name and address.

A. Dr. Stephen Klinger, Crownsville State Hospital.

2. You are a physician duly licensed under the laws of Maryland?

A. Yes.

3. What specialty are you engaged in?

A. Psychiatry.

4. How long have you engaged in this practice?

A. I have been affiliated with the Crownsville State Hospital for the last eight years.

5. What is your capacity there?

A. I am a member of the Crownsville State Hospital Staff.

6. Have you had an occasion to examine a patient named Stanley L. Wright?

A. Yes I have on several occasions.

7. Will you tell the jury your methods of examination over how long a period?

A. Mr. Wright was admitted to Crownsville State Hospital on July 24, 1951, when he was transferred to us from Fort Howard Government Hospital, where he had been for about three months prior to his admission to our place. From the statement of the Fort Howard and from our own findings, Mr. Wright has been suffering from an organic mental disorder, arterioschlerotic kind, diagnosed as psychosis. This is due to a change in brain cells which is caused by less supply with blood to the brain and with damage to the brain cells as a consequence. Mr. Wright, who was seen for several interviews, is unable to give any information, but his own name. He is unable to grasp the sense of any questions propounded to him; his condition has become worse since his admission to the Crownsville State Hospital and when I saw him on my last interview yesterday, his condition has become worse than ever before.

8. Would you say, doctor, in your opinion, would he be capable of managing his property?

A. He certainly would not.

9. He would not be capable of taking care of himself?

A. No.

COURT:

C. That condition will continue to increase so that there isn't any real hope for his being able to take care of his affairs?

A. Yes, Your Honor, it is a progressive disease.

****

Margaret B. Wright, a witness of lawful age, being first duly sworn, deposes and says:

(Mr. Hopkins)

1. State your full name and address.

A. Margaret B. Wright, Adams Park, Annapolis, Md.

2. Do you know Stanley L. Wright?

A. Yes.

3. What is your relationship to him?

A. His wife.

4. Where is your husband now?

A. In the Crownsville State Hospital.

5. State briefly under what conditions he became a patient there?

A. He became a patient there because he suffered from a loss of memory and he couldn't be trusted alone.

6. Does your husband own any property?

A. Yes he does.

7. What does he own?

A. He owns property on Calvert Street and he owns property at Adams Park.

8. Is the property on Calvert Street improved?

A. No it isn't.

9. Do you know the approximate size of the lot?

A. I think approximately about 40 by 100 feet.

10. Is that property bringing in any income?

A. No it isn't.

11. Is the Adams Park property improved?

A. I have a dwelling on it.

12. Do you occupy that house?

A. Yes I do.

13. Do you know of any mortgages or liens on any of his property?

A. No I do not.

14. You visit your husband?

A. Yes I do.

15. Do you feel that in his condition he is qualified to manage his affairs?

A. No I don't; I feel sure that he isn't.

COURT:

Q. The unimproved lot is a piece of property which the City of Annapolis is acquiring for parking purposes, is it not?

A. Yes it is.

Q. You have arranged with the City to sell the property to the City?

A. Yes, Your Honor.

Q. It is necessary to have someone legally constituted to execute a deed to the City for the purchase of this property, is that correct?

A. Yes it is.

Q. The home property, the Adams Park property, you do not contemplate selling; you are living there as a resident?

A. Yes I am.

Q. Are you a school teacher?

A. Yes I am.

Q. In active practice?

A. Yes I am.

****

Carroll H. Henson, a witness of lawful age, being first duly sworn, deposes and says:

(Mr. Hopkins)

1. State your name and address.

A. Carroll H. Henson, 62 Calvert Street, Annapolis, Md.

2. What is your occupation?

A. Real estate business.

3. How long have you been engaged in the real estate business?

A. Since 1937.

4. Will you state briefly what your experience has been along the lines of real estate?

A. Well I have sold a number of business locations in Annapolis and I am now agent for Arundel-on-the-Bay which is being sold; I have several other agents; I have appraised property in the City of Annapolis and in the County.

5. Are you familiar with the property on Calvert Street belonging to Stanley L. Wright?

A. Yes sir.

6. Will you describe that property to the Jury?

A. This particular location is one number from the West Street side; in other words, it is within 40 or 50 feet of West Street; it is a lot approximately 42 feet point 10 by a 102 feet; it is considered a business location.

7. That property is unimproved at present?

A. Yes sir.

8. What in your opinion is the fair market value of this property?

A. Considering it being next door to the American Store, I think the value wouldn't exceed $5000.00.

****

K.H.McC. $5.00

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LIBER 78 PAGE 474

IN	|	NO. 10445 EQUITY
THE MATTER OF	|	IN THE CIRCUIT COURT FOR
STANLEY L. WRIGHT	|	ANNE ARUNDEL COUNTY
INCOMPETENT	|	

: : : : : : : :

Filed 23 Apr., 1952.

INQUISITION

THIS INQUISITION, taken this 23d day of April, 1952, in the Circuit Court for Anne Arundel County, in Annapolis, Maryland, in virtue of the writ de lunatico inquirendo, executed out of the Circuit Court for Anne Arundel County upon the oaths of:

1. Elizabeth Fogle Lee
2. Milton Deale
3. Edmund Hartge
4. Chester E. Hires
5. Fletcher Lane
6. Thomas Kent, Jr.
7. Shirley W. Watts
8. Elmer F. Davis
9. Frederick L. Kess
10. Wilbur Stevenson
11. C. Gilbert Hoffman
12. Roy P. Morgan

good and lawful men of the County aforesaid, who, being sworn and charged upon their oaths to inquire into the question of the lunacy vel non of Stanley L. Wright, WITNESSETH:

That the said Jurors aforesaid do find that the said Stanley L. Wright in the writ named is of unsound mind and a lunatic without lucid intervals, so that he is not capable of governing himself or managing his estate, and that he has been is such state for some time past; but how he became so the Jurors aforesaid cannot say, unless by the visitation of God.

And the Jurors aforesaid do also find that the said Stanley L. Wright is seized and possessed of certain real property, namely: Two (2) unimproved lots

in the City of Annapolis which are known and designated as Nos. 24-26 Calvert Street; and a parcel of ground described as Lots Nos. 16, 17 and a part of No. 15 on the plat of College Heights, Annapolis, the same being improved by a dwelling; nor do the aforesaid Jurors find that the said Stanley L. Wright hath, when in such unsound state of mind, alienated any part thereof.

And the Jurors aforesaid do also find that the nearest of kin to the said Stanley L. Wright is Margaret B. Wright, his wife.

IN WITNESS WHEREOF the Jurors aforesaid have hereunto subscribed their names and affixed their seals, the day and year first herein mentioned.

1. Elizabeth Fogle Lee (SEAL)
2. Milton Heale (SEAL)
3. Edmond W. Hartge (SEAL)
4. Chester E. Hires (SEAL)
5. Fletcher Lane (SEAL)
6. Thomas Kent Jr. (SEAL)
7. Shirley W. Watts (SEAL)
8. Elmer F. Davis (SEAL)
9. Frederick L. Kerr (SEAL)
10. Wilbur D. Stenenka (SEAL)
11. C. Gilbert Hoffman Sr. (SEAL)
12. Ray P. Morgan (SEAL)

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LIBER 78 PAGE 476

IN		No. 10,445 EQUITY
THE MATTER OF		IN THE CIRCUIT COURT
STANLEY L. WRIGHT		FOR
INCOMPETENT		ANNE ARUNDEL COUNTY

: : : : : : : :

ORDER CONFIRMING RETURN OF INQUISITION AND APPOINTING TRUSTEE(S)

The return of the inquisition taken by the Jury in the above case having been submitted for confirmation, and said return and the other proceedings having been read and considered,

It is thereupon, this 23d day of April, 1952, by the Circuit Court for Anne Arundel County, in Equity, adjudged and ordered that the said inquisition be, and it is hereby, confirmed.

And it is further ordered that Margaret B. Wright and John H. Hopkins, IV, be, and they hereby appointed trustees of the person and estate of the said Stanley L. Wright, with full power and authority to take charge of and manage his property and to assume the control of the person of the said Stanley L. Wright, under direction of this Court; but before the said Margaret B. Wright and John H. Hopkins, IV, shall proceed to act as such trustees, they shall give bond to the State of Maryland in the penalty of Five Thousand dollars, with sureties to be approved by this Court or the Clerk thereof, for the faithful discharge of their duties as trustees.

Benjamin Michaelson
Judge

Filed 23 Apr., 1952.

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LIBER 78 PAGE 417

No. 10,445 Equity

GLOBE INDEMNITY COMPANY

HEAD OFFICE: NEW YORK — A NEW YORK CORPORATION

A STOCK COMPANY

BOND

KNOW ALL MEN BY THESE PRESENTS: That we, Margaret B. Wright and John H. Hopkins, IV, of Anne Arundel County in the State of Maryland, as Principals, and the Globe Indemnity Company, a body corporate of the State of New York, duly authorized to do business in the State of Maryland, as Surety, are held and firmly bound unto the State of Maryland or its certain attorneys in the full and just sum of Five Thousand Dollars ($5,000.00), to the payment whereof well and truly to be made and done we and each of us bind ourselves, jointly and severally, and our respective heirs, executors, administrators and assigns, firmly by these presents.

Filed 5 May, 1952.

SIGNED, SEALED and Dated this 5th day of May, 1952.

WHEREAS, by an Order of the Circuit Court for Anne Arundel County sitting as a Court of Equity, passed on the 23rd day of April, 1952, in a cause therein pending entitled "In the Matter of Stanley L. Wright, Incompetent," No. 10,445 Equity, it was among other things ordered that the above bounden Margaret B. Wright and John H. Hopkins, IV, be appointed Trustees of the person and estate of Stanley L. Wright, Incompetent, with full power and authority to take charge of and manage his property and to assume control of his person under the direction of said Court, upon their filing a bond in the penal sum of $5,000.00, for the faithful performance of their duties, and the approval of said bond,

NOW THEREFORE THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the said Margaret B. Wright and John H. Hopkins, IV shall duly account for whatever shall come into their hands as such Trustees, and shall pay and apply the same from time to time as they may be directed by said Court, and shall obey such orders as said Court may make in relation to said trust, and shall in all respects faithfully discharge the duties of said trust, then the above obligation shall be void; otherwise to remain in full force and virtue in law.

Witness:

Virginia Merritt
Virginia Merritt
as to all.

Margaret B. Wright (SEAL)
Margaret B. Wright, Principal

John H. Hopkins IV (SEAL)
John H. Hopkins, IV, Principal

GLOBE INDEMNITY COMPANY, a body corporate,

By John H. Hopkins IV
John H. Hopkins, IV, Attorney-in-fact,
Surety.

Approved this 5 day of May, 1952.
John H. Hopkins, 3rd Clerk

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LIBER 78 PAGE 478

IN		
THE MATTER OF		NO. 10,445 EQUITY
STANLEY L. WRIGHT		IN THE CIRCUIT COURT FOR
INCOMPETENT		ANNE ARUNDEL COUNTY

: : : : : : : :

PETITION FOR SALE OF REAL ESTATE

Filed 5th May, 1952.

TO THE HONORABLE, THE JUDGES OF SAID COURT:

Your petitioners, as Trustees of Stanley L. Wright, an Incompetent, complaining, say:

1. That they were appointed Trustees of said Incompetent by an Order of this honorable Court passed on the 23rd day of April, 1952, and have duly qualified as such Trustees.

2. That the said Incompetent is seized in fee simple of two lots of ground in the City of Annapolis, Anne Arundel County, Maryland, said lots of ground being known and designated as Numbers 24-26 Calvert Street, and being more particularly described in a deed from the Asbury Methodist Episcopal Church of Annapolis to Stanley L. Wright, dated September 5, 1933, and recorded among the Land Records of Anne Arundel County in Liber F.S.R. No. 118, folio 134.

3. That said lots are unimproved, and are producing no income.

4. That your petitioner Margaret B. Wright, acting as next friend for the said Stanley L. Wright, has heretofore signed an option for the purchase of said property to the Mayor and Aldermen of the City of Annapolis, at the current market appraisal value of Five Thousand Dollars ($5000.00), and said option has been exercised by the said Mayor and Aldermen of the City of Annapolis.

5. That the sale of the said real estate and the investment of the proceeds of such sale in some productive fund would be to the benefit and advantage of the said Incompetent.

Wherefore your petitioners pray this honorable Court to pass a decree

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approving and confirming the aforesaid contract and authorizing your petitioners to convey the aforesaid property to the Mayor and Aldermen of the City of Annapolis, by good and sufficient deed executed and acknowledged according to law, upon receipt of the purchase price of Five Thousand Dollars ($5000.00); and to allow your petitioners such other and further relief as their case may require.

And as in duty bound, etc.

Margaret B. Wright

John H. Hopkins III

Petitioners

LIBER 78 PAGE 480

IN		
THE MATTER OF		NO. 10,445 EQUITY
STANLEY L. WRIGHT,		IN THE CIRCUIT COURT FOR
INCOMPETENT		ANNE ARUNDEL COUNTY

: : : : : : :

DECREE AUTHORIZING THE SALE OF REAL ESTATE

This cause standing ready for hearing, and the said Stanley L. Wright, heretofore summoned and failing to appear, having been found to be of unsound mind and a lunatic, by a jury for inquisition, on April 23, 1952, and said return of Inquisition having been confirmed, and Margaret B. Wright and John H. Hopkins,IV having been appointed Trustees by this Court and having qualified therefor; and,

It appearing from the testimony in open Court and from the certificates of two competent real estate brokers that the price offered for the hereinafter described real estate of the said Stanley L. Wright, Incompetent, is fair and reasonable; therefore,

It is adjudged, ordered and decreed this 5th day of May, 1952, by the Circuit Court for Anne Arundel County, in Equity, that the said Margaret B. Wright and John H. Hopkins, IV, Trustees of Stanley L. Wright, Incompetent, be, and they are hereby, authorized to sell those two lots of ground in the City of Annapolis, Anne Arundel County, Maryland, belonging to the said Stanley L. Wright, Incompetent, designated as Nos. 24-26 Calvert Street and more particularly described in a deed from The Asbury Methodist Episcopal Church of Annapolis to Stanley L. Wright, dated September 5, 1933, and recorded among the Land Records of Anne Arundel County in Liber F.S.R. No. 118, folio 134, to the Mayor and Aldermen of the City of Annapolis, for the sum of Five Thousand Dollars ($5000.00); and, as soon as may be convenient after such sale, the said Trustees shall return to this Court a full and particular report of such sale; and upon their obtaining the Court's ratification of the sale, and upon the payment of the whole purchase money, the said Trustees shall, by a good and sufficient deed to be executed, acknowledged and recorded according to law, convey to the said purchaser all the right, title, interest and estate of the said Stanley L. Wright, Incompetent,

Filed 5 May, 1952.

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and of those claiming by, from or under him, in and to the aforesaid property; and the said Trustees shall bring into this Court the money arising from said sale, to be distributed under the direction of this Court.

Benjamin Madison
Judge

IN
THE MATTER OF
STANLEY L. WRIGHT
INCOMPETENT

NO. 10,445 EQUITY
IN THE CIRCUIT COURT FOR
ANNE ARUNDEL COUNTY

: : : : : : : :

TRUSTEES' REPORT OF SALE OF REAL ESTATE

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The Report of Margaret B. Wright and John H. Hopkins, IV, Trustees, authorized, by a decree of this Court passed in the above-entitled cause, dated May 5, 1952, to make sale of certain real estate therein mentioned, respectfully shows:

That after giving bond with security for the faithful performance of their trust, your Trustees have sold said property at private sale to the Mayor and Aldermen of the City of Annapolis for the sum of Five Thousand Dollars ($5,000.00), the terms of said sale being as follows: a deposit of Five Dollars ($5.00) at the time of sale and the balance to be paid in cash upon ratification of the sale by this Court and in accordance with the terms of the Option to Buy Land, dated January 8, 1952, a copy of which is herewith filed as "Petitioner's Exhibit No. 4" in this cause, and with those of notice of acceptance of said option filed herewith, marked "Petitioners' Exhibit No. 5."

Respectfully submitted,

Margaret B. Wright
Margaret B. Wright,

John H. Hopkins
John H. Hopkins, IV,
Trustees

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, TO WIT:

I HEREBY CERTIFY that on this 10th day of May, 1952, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Margaret B. Wright and John H. Hopkins, IV, Trustees, and they made oath in due form of law that the matters and things stated in the foregoing report are true to the best of their knowledge and belief, and that the sale therein reported was fairly made.

WITNESS my hand and seal Notarial.

Mary P. Smith
Notary Public

Filed 12 May, 1952

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(C O P Y)

LIBER 78 PAGE 483

OPTION TO BUY LAND

IN CONSIDERATION of the sum of Five Dollars ($5.00) to us in hand paid we do hereby give to the Mayor and Aldermen of the City of Annapolis, a Municipal Corporation, or their assigns, the exclusive right to purchase on or before January 15, 1952, certain land lying and being in the City of Annapolis, within the outlines of a preliminary survey of the "Proposed Parking Lot, Gott's Court" as made by Edward Hall III, Registered Surveyor, in July 1951, which said land is known and designated as Nos. 24- 26 Calvert Street, Annapolis, Maryland; SUBJECT to the following terms and conditions:

1. That the purchase price thereof shall be $5,000.00, which shall be paid in cash sixty (60) days from the date of acceptance of the foregoing Option of Purchase by said Mayor and Aldermen of the City of Annapolis.

2. That upon the exercise of the foregoing Option of Purchase as before provided, we, for ourselves, our heirs, executors and assigns, agree to convey or cause to be conveyed by Warranty Deed to the said Mayor and Aldermen of the City of Annapolis said land, free and clear of all liens or encumbrances.

In witness whereof we have hereunto set our hands and seals this 8th day of January, 1952.

Witness:

(s) John H. Hopkins, IV (s) Margaret B. Wright (SEAL)

Petitioners Exhibit No 4
Filed 12 May, 1952.

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In consideration of the premises and benefits to Annapolis City and the Public the attached Option and its contents is hereby re-entered into and adopted and the time for exercising said Option shall be Thirty (30) days from the date of this re-adoption and granting to The Mayor and Aldermen, of the City of Annapolis, a Municipal Corporation.

Witness the hands and seals of the Owners, this 22nd day of January, 1952.

Witness:

/s/ John H. Hopkins, IV
John H. Hopkins, IV.

/s/ Margaret B. Wright (SEAL)
Margaret B. Wright

/s/ Stanley L. Wright by Margaret B. Wright, his wife (SEAL)
Stanley L. Wright by
Margaret B. Wright, his wife

(SEAL)

(SEAL)

(SEAL)

23

February 6, 1952

To:

Margaret B Wright, Individually and as agent for Stanley Wright

Take notice that the Mayor and Aldermen of the City of Annapolis did, by Resolution on January 22, 1952, exercisedthe Option to buy land embodied for use in developing Gott Court Parking Lot as embodied in an existing Option exercised by you.

Louis M Strauss
City Attorney

cc: Mrs. Margaret B. Wright, Agent
Messrs. Maurice Snyder, Samuel K. Snyder & William Snyder
Mrs. Hilaria G. Beck
Mrs. Tillie Ivrey

2-6-52

Petitions Docket No. 25
Filed 12 May, 1952

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LIBER 78 PAGE 486

ORDER NISI

IN THE MATTER OF STANLEY L. WRIGHT,
INCOMPETENT

versus

IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

No. 10,445 Equity

Filed 12 May, 1952.

Ordered, this 12 day of May, 1952, That the sale of the Real Estate in these Proceedings mentioned, made and reported by Margaret B. Wright and John H. Hopkins, IV, Trustees,

BE RATIFIED AND CONFIRMED, unless cause to the contrary thereof be shown on or before the 14 day of June next; Provided, a copy of this Order be inserted in some newspaper published in Anne Arundel County, once in each of three successive weeks before the 14 day of June next.

The report states that the amount of sales to be $ 5,000.00.

John H. Hopkins, 3rd Clerk.

True Copy,

TEST: Clerk.

(Final Order)

IN THE MATTER OF STANLEY L. WRIGHT,
INCOMPETENT

versus

IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

Term, 19

Filed 17 June, 1952.

ORDERED BY THE COURT, This 17th day of June, 1952, that the sale made and reported by the Trustee aforesaid, be and the same is finally hereby Ratified and Confirmed, no cause to the contrary having been shown, although due notice appears to have been given as required by the Order Nisi, passed in said cause; and the Trustee allowed the usual commissions and such proper expenses as he shall produce vouchers for the Auditor.

Benjamin Michaelson, Judge

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LIBER 78 PAGE 487 OFFICE OF

Evening Capital

Published by

THE CAPITAL-GAZETTE PRESS, INC.

(HOLDER OF CONTRACT FOR ANNE ARUNDEL COUNTY ADVERTISING)

CERTIFICATE OF PUBLICATION

Annapolis, Md., June 10, 1952

We hereby certify, that the annexed Order Nisi

Sale - Equity 10,445

Stanley L. Wright

was published in

Evening Capital

a newspaper published in the City of Annapolis, Anne Arundel County, Maryland, once a week for 4 successive weeks before the 14th day of June, 1952. The first insertion being made the 14th day of May, 1952.

THE CAPITAL-GAZETTE PRESS, INC.

By Bettie L. Carlson

No. E. C. 26

ORDER NISI

IN THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
No. 10,445 Equity

IN THE MATTER OF STANLEY L. WRIGHT, INCOMPETENT.

Ordered, this 12th day of May, 1952, That the sale of the Real Estate in these Proceedings mentioned, made and reported by Margaret B. Wright and John H. Hopkins, IV, Trustees, BE RATIFIED AND CONFIRMED, unless cause to the contrary thereof be shown on or before the 14th day of June next; Provided, a copy of this Order be inserted in some newspaper published in Anne Arundel County, once in each of three successive weeks before the 14th day of June next.

The report states that the amount of sales to be $5,000.00.

JOHN H. HOPKINS, 3rd., Clerk.

True Copy. TEST:
JOHN H. HOPKINS, 3rd., Clerk.

Ju-4

Filed 17 June, 1952

In the Case of

In the Matter of
Stanley L. Wright,
Vs
Incompetent

In the

Circuit Court

For

Anne Arundel County

No. 10,445 Equity

To the Honorable, the Judges of said Court:

The Auditor reports to the Court that she has examined the proceedings in the above entitled cause, and from them she has stated the within account.

August 6, 1952.

All of which is respectfully submitted.

Laura K. Ficklin
Auditor.

Aug. 1952.

Filed 6

Dr. In the Matter of Stanley L. Wright, incompetent in ac.

To Trustees for Commissions, viz:	180 00	180 00
To Trustees for Court costs, viz:		
Plaintiff's Solicitor's appearance fee	10 00	
Jos. W. Alton - Sheriff's costs	2 90	
Clerk of Court - Court costs	35 00	
Katharine H. McCutchan - stenographer's fee	5 00	
Auditor - stating this account	13 50	66 40
To Trustees for Expenses, viz:		
Capital-Gazette Press - order nisi (sale)	8 00	
Capital-Gazette Press - order nisi (acct)	6 00	
Globe Indemnity Co. - bond premium	35 00	
Dr. Jacob Morgenstern - professional services	5 00	
Dr. Stephen Klinger - Professional services and testimony	20 00	
Fred E. Voges - appraisal	25 00	
Carroll H. Hynson - appraisal and testimony	50 00	
John H. Hopkins, IV - fee for legal services (Order 8/1/52)	600 00	
Recording release of mortgage	2 00	
One-half Federal revenue stamps	2 75	
One-half State revenue stamps	2 75	
Mary P. Smith - notary fee	75	757 25
To Trustees for Taxes, viz:		
1951 State and County taxes	42 50	
1952 State and County taxes ($40.30 - adjusted to 6/17/52)	18 67	61 17
To Trustees for Benefit Charges, viz:		
Annapolis Water Co. - water rent from 12/31/49 to 1/31/50	25 80	25 80
Balance in hands of Trustees, subject to further order of Court	3,909 38	3,909 38
		5,000 00

with Margaret B. Wright and John H. Hopkins, IV, Trustees Cr.

1952				
July	3	Proceeds of Sale (Option dated 1/8/52)	5,000 00	5,000 00
				5,000 00

ORDER NISI LIBER 78 PAGE 491

In the Matter of

Stanley L. Wright,

~~XXXXXX~~

Incompetent

In the

CIRCUIT COURT

For

ANNE ARUNDEL COUNTY

No. 10,445 Equity.

ORDERED, This 6 day of August, 1952, That the Report and Account of the Auditor, filed this day in the above entitled cause,

BE RATIFIED AND CONFIRMED, unless cause to the contrary be shown on or before the 8 day of September next; Provided a copy of this Order be inserted in some newspaper published in Anne Arundel County, once in each of three successive weeks before the 8 day of September next.

John H. Hopkins, 3rd, Clerk.

Filed 9 Aug., 1952. Filed 6 Aug., 1952.

In the Circuit Court for Anne Arundel County

ORDERED BY THE COURT, this 9th day of September, 1952, that the aforegoing Report and Account of the Auditor be and the same is hereby finally ratified and confirmed, no cause to the contrary having been shown, and that the Trustee apply the proceeds accordingly with a due proportion of interest as the same has been or may be received.

[illegible]

OFFICE OF

Evening Capital

Published by

THE CAPITAL-GAZETTE PRESS, INC.

(HOLDER OF CONTRACT FOR ANNE ARUNDEL COUNTY ADVERTISING)

ORDER NISI
IN THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
No. 10,445 Equity
IN THE MATTER OF
STANLEY L. WRIGHT,
INCOMPETENT

Ordered, this 6 day of August, 1952, That the Report and Account of the Auditor, filed this day in the above entitled cause BE RATIFIED AND CONFIRMED, unless cause to the contrary be shown on or before the 8 DAY OF SEPTEMBER NEXT; Provided, a copy of this Order be inserted in some newspaper published in Anne Arundel County, once in each of three successive weeks before the 8 day of September next.

JOHN H. HOPKINS, 3rd, Clerk

True Copy:

TEST: JOHN H. HOPKINS, 3rd, Clerk.

A-21

Filed 8 Sept., 1952.

CERTIFICATE OF PUBLICATION

Annapolis, Md., Aug. 29th, 1952

We hereby certify, that the annexed

Order Nisi - Aud. Acct.

Equity No. 10,445

Stanley L. Wright

was published in

Evening Capital

a newspaper published in the City of Annapolis, Anne Arundel County, Maryland, once a week for 3 successive weeks before the 8th day of Sept., 1952. The first insertion being made the 7th day of Aug., 1952.

THE CAPITAL-GAZETTE PRESS, INC.

No. E. C. 329

By K. Green

LIBER 78 PAGE 492

NORMAN P. WILLIAMS, Colonel, QMC, and NELL S. WILLIAMS, his wife, The Quartermaster Board Fort Lee, Virginia	*	IN THE CIRCUIT COURT FOR
VS.	*	ANNE ARUNDEL COUNTY
OLIVER R. FRETWELL and EILEEN N. FRETWELL, his wife, Sylvan Shores, Riva, Maryland	*	EQUITY NO. 10,402

* * * * * * * * *

BILL TO DECLARE CONTRACT OF SALE NULL, UNENFORCIBLE, AND TO EXPUNGE THE SAME FROM THE LAND RECORDS OF ANNE ARUNDEL COUNTY

To the Honorable, Judges of said Court:

Your Complainants, Norman P. Williams and Nell S. Williams, his wife, respectfully represent:

1. That they are the record title owners of two lots of ground lying and being in the Second Election District of Anne Arundel County, Maryland, on Hillcrest Road, Sylvan Shores, Lots number 112 and 113 on Plat of Sylvan Shores, a certified copy of the deed is filed herewith as Complainant's "Exhibit No. 1".

2. That the Defendants, Oliver R. Fretwell and Eileen N. Fretwell, his wife, agreed to purchase the aforesaid lots of ground at and for the sum of Seven Thousand Dollars ($7,000.00), on November 14th, 1950, as evidenced by Contract of Sale, filed herewith as Complainant's "Exhibit No. 2", wherein it is shown the Defendants agreed to pay Five Hundred Dollars ($500.00) down on aforesaid purchase price, and agreed to make monthly payments of Fifty Dollars ($50.00) per month on the first day of each and every succeeding month beginning January 1, 1951, with interest at the rate of five per centum (5%) per annum on the whole sum remaining from time to time unpaid.

3. And that the Defendant further agreed that in the event two or more consecutive payments and interest are unpaid the entire contract shall be void and payments made shall be considered as liquidated damages for use and occupancy.

Filed 21 Jan., 1952

4. That the said Contract of Sale was recorded among the Land Records of Anne Arundel County in Liber J.H.H. 612, Folio 187.

5. That the Defendants made irregular payments through September, 1951, on the aforesaid Contract.

6. Although personal demands, written demands by your Complainants and William W. Townshend, Jr., a local Attorney of the Anne Arundel County Bar, have been made upon the Respondent, notifying them of the non-payment in breach of the aforesaid Contract, and by registered letter notifying the said Oliver R. Fretwell and Eileen N. Fretwell of their breach and forfeiture of their rights under said Contract, the Respondents have ignored by their actions in abandoning their interest in said Contract and their rights thereunder.

7. That although the aforesaid Contract has been fully breached and abandoned, your Plaintiffs by paying the assessment dues, have maintained and paid taxes on the aforesaid lots, that the recording of the aforesaid breached Contract, your Complainants are advised is a cloud on their record title and unless this Court declares such Contract breached and of no force and effect, and orders the recording thereof expunged from the Land Records of Anne Arundel County, the marketability of said lots are affected and your Complainants will suffer irreparable loss for which they have no recourse or remedy at law.

TO THE END, THEREFORE:

Your Complainants pray this Honorable Court grant:

(a) To declare the Contract mentioned in these proceedings between the Complainants and Respondents breached and of no force and effect, and to declare the Respondent's rights thereby forfeited.

(b) That the Clerk of this Court be Ordered, and directed by Decree to expunge said Contract of Sale as recorded in Liber J.H.H. 612, Folio 187, from the Land Records of Anne Arundel County.

(c) That your Complainants have such other and further relief as their case may require.

AND, AS IN DUTY BOUND, ETC.

Norman P. Williams

Nell S. Williams

William W. Townshend, Jr.,
Solicitor for Complainants

STATE OF VIRGINIA, COUNTY OF Prince George, TO WIT:

I hereby certify that on this 14th day of January, 1952, before the subscriber, a Notary Public of the State of Virginia, in and for the County aforesaid, personally appeared Norman P. Williams and Nell S. Williams, his wife, and they acknowledged the aforegoing facts to true to the best of their knowledge and belief.

WITNESS my hand and Notarial Seal.

My commission expires Aug. 22, 1953

Naomi B. Berry
Notary Public

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Filed 24 Jan., 1952.

O R D E R O F C O U R T

ORDERED this 24th day of January, 1952, by the Circuit Court for Anne Arundel County sitting in Equity that the relief prayed for in these proceedings be granted unless cause to the contrary be shown on or before the 20th day of ~~January~~ February, 1952, providing a copy of this ORDER be served on Oliver R. Fretwell and Eileen N. Fretwell, his wife, on or before the 4th day of ~~January~~ February, next.

Benjamin Michaelson
Judge

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No Consideration

THIS DEED made this 28th day of May, 1949, by and between William W. Townshend, Jr., Trustee, of the first part, hereinafter referred to as Grantor; and Nell S. Williams and Norman P. Williams, her husband, of the Second part, hereinafter referred to as Grantees.

WHEREAS Nell S. Williams and Norman P. Williams, her husband, by deed of even date herewith, conveyed the hereinafter described property to the said William W. Townshend, Jr., Trustee, in special trust and confidence that he will immediately reconvey the same to the said Nell S. Williams and Norman P. Williams, her husband, as tenants by the entireties, unto the survivor of them, his or her heirs and assigns, and in execution of the trust reposed in him by said deed, and in order to effectuate the intention of all parties hereto, the said William W. Townshend, Jr., Trustee, executed this deed.

Filed 23 Jan., 1952.
Re-filed 31 May, 1952.

NOW, THEREFORE, THIS DEED WITNESSETH: That for and in consideration of the premises and of the sum of One Dollar, and other good and valuable considerations, the receipt whereof in full is hereby acknowledged, the said William W. Townshend, Jr., Trustee, does hereby grant and convey unto the said Nell S. Williams and Norman P. Williams, her husband as tenants by the entireties, unto the survivor of them, his or her heirs and assigns, in fee simple,

ALL those lots situate, lying and being in the Second Election District of Anne Arundel County, State of Maryland, known and designated as Lots Nos. 112, 113 and 143, as shown on Plat of Sylvan Shores, Section A, which Plat is filed among the Plat records of Anne Arundel County in Plat Cabinet #1, Rod #, Folio 3, formerly recorded in Plat Book F.S.R. #2, Folio 55.

BEING the same property that was conveyed to William W. Townshend, Jr., Trustee, by Nell S. Williams, and Norman P. Williams, her husband, by deed of even date herewith and intended to be recorded among the Land Records of Anne Arundel County immediately prior hereto.

TOGETHER with the buildings and improvements thereon, and the rights, roads, ways, waters, privileges and appurtenances thereto belonging, or in anywise appertaining.

TO HAVE AND TO HOLD the above described lots of ground unto and to the proper use and benefit of the said Grantees, as tenants by the

Complainants' Exhibit No. 1.
Examiner's Exh. A. E. McLaren, Examiner

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entireties, unto the survivor of them, his or her heirs and assigns, in fee simple.

WITNESS the hand and seal of the said Grantor,

TEST: William W. Townshend, Jr., (SEAL)

Gloria N. Bates Trustee

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, TO WIT:

I HEREBY CERTIFY that on this 28th day of May, 1949, before the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared William W. Townshend, Jr., Trustee, and acknowledged the aforegoing deed to be his act.

WITNESS my hand and Notarial Seal,

(NOTARIAL SEAL) Gloria N. Bates, Notary Public

Recorded June 29th. 1949 at 11:50A.M.

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, SCT:

I HEREBY CERTIFY, That the aforegoing Deed is truly taken and copied from Liber J.H.H. No. 527, folio 490, one of the Land Record Books for Anne Arundel County.

IN TESTIMONY WHEREOF, I HERETO SET my hand and affix the Seal of the Circuit Court for Anne Arundel County this 8th day of January A.D., 1952.

John N. Hopkins, 3d Clerk

LIBER 78 PAGE 498

BOOK 612 PAGE 187

This Agreement of Sale, made this 14th day of November

nineteen hundred and Fifty, between Norman P. Williams and Nellie Williams of Fort Lee Virginia. Seller, and Oliver R. Fretwell and Eileen M. Fretwell, Buyer

Witness that the said Seller does hereby bargain and sell unto the said Buyer, and the latter does hereby purchase from the former the following described property, situate and lying in Hillcrest Rd. Sylvan Shores Anne Arundel County Maryland. Lots number 112 & 113 as shown by the plat books in the office of the county clerk and Recorder of aforesaid county and building thereon and furnishings therein.

Filed 24 Jan., 1952. Re-filed 31 May, 1952.

at and for the price of

Seven-thousand---------- Dollars ($7000.00)

of which Five-hundred---------- Dollars ($500.00)

have been paid prior to the signing hereof, and the balance to be paid as follows: $50.00 payable on the first day of each month thereafter until the whole purchase price is paid-beginning January 1st 1951-with interest at the rate of five per centum per annum on the whole sum remaining from time to time unpaid- Taxes and Insurance to be paid by the Seller. Privilege granted to pay any amount on principle at any time. **And in the event two or more consecutive payments and interest are unpaid the entire contract shall be void and payments made shall be considered as liquidated, damages for use and occupancy-and the sellers or their assigns or agents may take possession of the premises without legal process or notice.**

And it is further agreed that this contract will not and can not be assigned

AND upon payment as above provided of the unpaid purchase money, a deed for the property shall be executed at the Buyer's expense by the Seller, which shall convey the property by a good and merchantable title to the Buyer, free of liens and encumbrances except as specified herein; but subject, however, to all applicable restrictions, easements, laws, ordinances, regulations, charges, taxes and assessments, if any.

Ground rent, rent, water rent, taxes and other public charges against the premises shall be apportioned as of date of settlement, at which time possession shall be given; and the said parties hereto hereby bind themselves, their heirs, executors and administrators, for the faithful performance of this agreement.

It is also understood and agreed that the Seller shall immediately have all of the insurance policies on the property so endorsed as to protect all parties hereto, as their interests may appear, and continue said insurance in force during the life of this Contract.

This Contract contains the final and entire Agreement between the parties hereto, and neither they nor their Agents shall be bound by any terms, conditions or representations not herein written; time being of the essence of this Agreement. Cost of all documentary stamps required by law shall be divided equally between the parties hereto.

Seller hereby agrees to pay commission on this sale, in accordance with the Standard Schedule of Commissions of the Real Estate Board of Baltimore, to Mildred Bell Wilson -broker.

Witness in duplicate the hands and seals of the parties hereto the day and year first above written.

Frances E. White (SEAL)	Nell S. Williams (SEAL)
WITNESS—AS TO SELLER'S SIGNATURE	SELLER'S SIGNATURE
Frances E. White	Norman P. Williams (SEAL)
WITNESS—AS TO SELLER'S SIGNATURE	SELLER'S SIGNATURE
Mildred Bell Wilson	Eileen M. Fretwell (SEAL)
WITNESS—AS TO BUYER'S SIGNATURE	BUYER'S SIGNATURE
Mildred Bell Wilson	Oliver R. Fretwell (SEAL)
WITNESS—AS TO BUYER'S SIGNATURE	BUYER'S SIGNATURE

MILDRED BELL WILSON

Complainants Exhibit No. 2.

Examined & Filed Feb. 13

Recorded 26 Feb. 1951, at 1:10 P.M.

NORMAN P. WILLIAMS and NELL S. WILLIAMS, his wife	*	IN THE CIRCUIT COURT
vs	*	FOR
OLIVER R. FRETWELL and EILEEN N. FRETWELL, his wife	*	ANNE ARUNDEL COUNTY
	*	NO. 10,402 EQUITY
	*	

* * * * * * * * *

PETITION FOR COURT ORDER

To the Honorable, the Judges of said Court:

The Petition of Norman P. Williams and Nell S. Williams, his wife, by William W. Townshend, Jr., their Attorney, respectfully states:

1. That your Petitioners filed a Bill of Complaint in this Court January 21, 1952, as will more fully appear by reference thereto.

2. That the Sheriff's return for the Defendants is marked "NON EST".

3. That the show cause Order signed by this honorable Court has expired, and the Plaintiffs cannot "reissue" for the Defendants until a new show cause Order is signed.

WHEREFORE, your Petitioners pray that this honorable Court sign a show cause Order extending the time of service.

And your Petitioners pray for such other and further relief as their case may require.

AND as in duty bound, etc.

William W. Townshend, Jr.

William W. Townshend, Jr.,
Attorney for Petitioners

Filed 3 Mar., 1952

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LIBER 78 PAGE 500

Filed 4 Mar., 1952.

O R D E R O F C O U R T

ORDERED this 4th day of March, 1952, by the Circuit Court for Anne Arundel County sitting in Equity that the relief prayed for in these proceedings be granted unless cause to the contrary be shown on or before the 31st day of March, 1952, providing a copy of this ORDER be served on Oliver R. Fretwell and Eileen N. Fretwell, his wife, on or before the 17th day of March next.

Benjamin Michaelson
Judge

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NORMAN P. WILLIAMS and
NELL S. WILLIAMS, his wife,

vs.

OLIVER R. FRETWELL AND
EILEEN N. FRETWELL, his wife,

No. 10,402 DIVORCES -- EQUITY

IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

Filed 20 May, 1952.

The Defendants, ~~Oliver R. Fretwell and Eileen N. Fretwell, his wife,~~ after ~~Order of Publication duly published (or served)~~ having been duly summoned, having failed to appear to the Bill of Complaint and answer same, according to the command of the said ~~Order of Publication~~ Writ of Summons,

It is thereupon this 20th day of May, 1952, by the Circuit Court for Anne Arundel County in Equity, adjudged, ordered and decreed that said Bill of Complaint be, and the same is hereby, taken Pro Confesso against said defendant .

And it is further ordered that leave is hereby granted to the Plaintiff , to take testimony before any one of the standing Examiners of this Court in support of the allegations of the said Bill.

Benjamin Michaelson
Judge

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NORMAN P. WILLIAMS, Col. 2MC, and Nell S. Williams, his wife,	:	IN
	:	THE CIRCUIT COURT
VS.	:	FOR
OLIVER R. FRETWELL and EILEEN N. FRETWELL, his wife	:	ANNE ARUNDEL COUNTY
	:	No. 10,402 Equity

::::::::::::::::::::::::::::

Filed 31 May, 1952

TESTIMONY ON BEHALF OF THE COMPLAINANTS

May 26, 1952

Present:

Mr. William W. Townshend, Jr., Solicitor for Complainants.

Mr. Emanuel Klawans, Examiner.

Mrs. Katharine H. McCutchan, Court Stenographer.

Witnesses:

Nell S. Williams, pages 2 to 4 inc.

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Nell S. Williams, a witness of lawful age, being first duly sworn, deposes and says:

(Mr. Townshend)

1. State your name and address.

A. Nell S. Williams, 333 Ewell Street, Fort Lee, Virginia.

2. I believe you and your husband own some real estate in the Second Election District of Anne Arundel County, Maryland?

A. That's right.

3. Will you identify this deed filed as Complainants' Exhibit No. 1?

A. That is our deed for Lots Nos. 112, 113, and 143, as shown on a Plat of Sylvan Shores, Section A.

(CERTIFIED COPY OF DEED FILED AS COMPLAINANTS' EX. 1 MARKED EXAMINER'S EX. A)

4. Do you and your husband own Lots 112 and 113 on the Plat of Sylvan Shores today?

A. Yes.

5. Did you enter into a contract of sale to sell these lots?

A. Yes.

6. With whom did you enter into a contract?

A. Oliver R. Fretwell and Eileen N. Fretwell.

7. I show you an Agreement of Sale filed as Complainants' Ex. 2 and ask you to identify it?

A. It is the agreement we signed.

8. What is the date of that Agreement of Sale?

A. November 14, 1950.

Mr. Townshend: I offer in evidence Complainants' Ex. 2, being the Agreement of Sale, dated November 14, 1950, between Norman P. Williams and Nellie Williams and Oliver R. Fretwell and Eileen N. Fretwell, for the sale of Lots Nos. 112 and 113, Sylvan Shores, Second Election District, sale price $7000.00, deposit for which $500 was made at the time of the signing of the contract, balance to be paid in monthly installments. (MARKED EXAMINER'S EX. B)

9. Do you have a schedule of payments Mr. Fretwell made to you on account of this contract?

A. Yes.

10. Will you identify this paper?

A. This is a schedule of payments made by Mr. Fretwell.

(SCHEDULE OF PAYMENTS MARKED EXAMINER'S EX. C AND FILED HEREWITH)

11. When did Mr. Fretwell make his last payment?

A. August 1951.

12. How much was that check for?

A. $50.00.

13. Was that check returned for non payment?

A. Yes.

14. Did he make subsequent payments?

A. With another check which was also returned.

15. The last check you have on account was August 1951?

A. Yes.

16. The contract has been in default since August 1951?

A. That's right.

17. Did you talk with Mr. Fretwell about the fact that his contract of sale was in default?

A. Yes I did.

18. Did you make any demands on him to bring it up to date?

A. I asked him to come in and see you and he said he would.

19. Will you identify this copy of a letter?

A. This is the copy of the letter you wrote to Mr. Fretwell.

20. In that letter it shows it was sent registered and there is a registered receipt attached?

A. Yes.

21. Was that sent on November 29, 1951?

A. Yes.

(COPY OF LETTER DATED NOV. 29, 1951 WITH RETURN RECEIPT ATTACHED MARKED EXAMINERS EX. D AND FILED HEREWITH)

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22. Have you received any payments since November 29, 1951?

A. No.

23. Is he occupying the home at this time?

A. No.

24. Do you know when he vacated the premises?

A. February 1952.

25. Since then, I believe you have sold the property under a new contract of sale?

A. That's right.

26. You are asking the Court to declare the contract null and void so that title to the property can be cleared?

A. That's right.

(Mr. Klawans)

To the General Question under the rule, the witness answers "No".

Nell S. Williams

Nell S. Williams

There being no further witnesses to be examined on behalf of the Plaintiffs at this time, and no further testimony desired in their behalf, this testimony is now closed, and at the request of Plaintiff's Solicitor is returned to the Court.

Witness my hand and seal this 31st day of May 1952.

Emanuel R. Lawrence (SEAL)
Examiner

E.K. $10.00
K.H.McC. $5.00

Account with Oliver R. Fretwell for the purchase of Lots 112 & 113 with house and furnishings in Riva, Maryland from Col. N. P. Williams

Date: 29 January 1951 To: Oliver R. Fretwell

For:	Payment of Lots 112 & 113, Riva, Md.	$6564.97
	Interest for December 1950	27.35
	Total	$6592.32
	Payment of $50.00	50.00
		$6542.32

Date: 6 February 1951 To: Oliver R. Fretwell

For:	Payment on Lots	$6542.32
	Interest for January 1951	27.28
	Total	$6569.60
	Payment of $50.00	50.00
		$6519.60

Date: 7 March 1951 To: Oliver R. Fretwell

For:	Payment on Lots	$6519.60
	Interest for February	26.95
	Total	$6546.55
	Payment of $50.00	50.00
		$6496.55

Date: 9 April 1951 To: Oliver R. Fretwell

For:	Payment on Lots	$6496.55
	Interest for March 1951	27.07
	Total	$6523.62
	Taxes for 1950	36.89
		$6560.51
	Payment of $50.00	50.00
		$6510.51

Date: 9 July 1951 To: Oliver R. Fretwell

For:	Payment on Lots	$6510.51
	Interest for April 1951	27.10
	Total	$6537.61
	Interest for May 1951	27,10
	Interest for June 1951	27.10
	Total	$6591.81
	Payment of $50.00	50.00
		$6541.81

Date: 9 July 1951 To: Oliver R. Fretwell

For:	Payment on Lots	$6541.81
	Payment of $50.00	50.00
		$6491.00

Filed 31 May, 1952

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Examiner's exh. C page 1 E. Clemens Examiner

Account between Oliver R. Fretwell and Col. N. P. Williams(Con'td)

Date: 6 August 1951 To: Oliver R. Fretwell

For:	Payment on Lots	$6491.81
	Interest for July 1951	27.04
	Total.....	$6518.85
	Payment of $50.00	50.00
		$6468.85

Date: 11 September 1951 To: Oliver R. Fretwell

For:	Payment on Lots	$6468.85
	Interest for August 1951	26.95
	Interest for September 1951	26.95
	Interest for October 1951	26.95
	Total	$6548.85

Received check for $50.00
which was returned for
insufficient funds on 30 October 1951

Received second check for $50.00 which
was returned 2 November 1951 for the
same reason.

This second check has been returned
twice for insufficient funds

Norman P. Williams
NORMAN P. WILLIAMS
Colonel, QMC

Examiner's Exh. C P. 2
E. Williams
Examiner

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November 29, 1951

REGISTERED

Mr. Cliver R. Fretwell
Riva, Maryland

Re: Colonel N. P. Williams

Dear Mr. Fretwell:

Under the terms and conditions of your Contract of Sale dated November 14, 1950, you are hereby notified that the Contract of Sale will be declared null and void as of December 10, 1951, unless all payments are brought to date by that day.

Very truly yours,

William W. Townshend, Jr.

mbh

Filed 31 May, 1952.

Examiner's Exh. D
E. Williams
Examiner.

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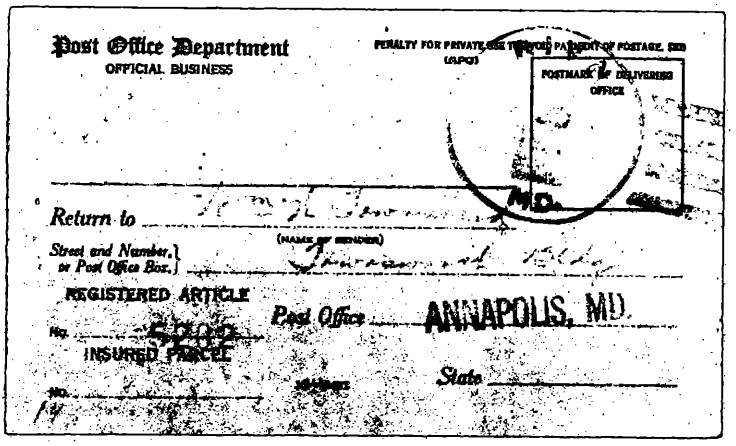

Form 3811
Rev. 1-4-45

LIBER 78 PAGE 509

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1 Oliver R. Fretwell
(Signature or name of addressee)

2 _____
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery 11-30, 1957

U. S. GOVERNMENT PRINTING OFFICE 16—12421

Examiner's Ech. D. E. Mawers, Examiner

LIBER 78 PAGE 510

NORMAN P. WILLIAMS AND NELL S. WILLIAMS, HIS WIFE	*	NO. 10.402	EQUITY
	*	IN THE CIRCUIT COURT	
VS.	*	FOR	
OLIVER R. FRETWELL AND EILEEN N. FRETWELL, HIS WIFE	*	ANNE ARUNDEL COUNTY	

* * * * * * *

DECREE

This cause standing for hearing and the proceedings read and considered, and no sufficient cause having been shown, although the Defendants have been duly served as to why the contract of sale mentioned in these proceedings should not be declared of no force and effect and expunged from the Land Records of Anne Arundel County.

Whereupon, it is ORDERED this 18th day of August, 1952, by the Circuit Court for Anne Arundel County, sitting in Equity, that the contract mentioned in these proceedings be, and it is hereby declared breached and of no force and effect and because the recording of said contract is a cloud of title against the property of the Complainants, it is FURTHER ORDERED AND DECREED that the Clerk of the Circuit Court for Anne Arundel County be, and he is hereby directed to expunge same from the Land Records of Anne Arundel County.

It is FURTHER ORDERED that the said Norman P. Williams and Nell S. Williams, his wife, the Complainants, pay the costs of these proceedings.

Benjamin Michaelson
Judge

Filed 18 Aug., 1952

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LIBER 78 PAGE 511

CHARLES L. BALL and
LOIS LONG BALL, his wife,

vs.

RUSSELL THOMAS POTEE
501 Old Annapolis Rd.
Glen Burnie, Maryland;
CHARLES MICHAEL POTEE, STAFF SERG.
AF 13173857
605
Tactical Control Squadron
APO 970
c/o Postmaster San Francisco,
California;
JOHN RALPH POTEE, Infant,
1 Washington Court
Annapolis, Maryland and
LIBERA MARIA BONSANTO POTEE
c/o Michele Dell Aquila
44 Church Street
Ambler, Pennsylvania

IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

No. 10,375 Equity.

Filed 3 Dec. 1951

PETITION FOR DECLARATORY DECREE

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The Petition of Charles L. Ball and Lois Long Ball, his wife, respectfully shows unto your Honors:

FIRST. That by Order of this Honorable Court dated the 12th. day of January 1951, in a cause entitled James W. Blackhurst, Assignee, vs. Michael Potee, et al, Equity No. 10086, it was ordered:

"1. That the land mentioned in the mortgage in these proceedings is not susceptible of division so as to enable any dower rights which Libera Maria Bonsanto Potee may have in said land to be assigned and laid off to her, and that it is necessary to sell the said land.

"2. That James W. Blackhurst, the Petitioner herein, be and he is hereby authorized and directed to sell, at foreclosure sale, all of the land mentioned in the mortgage of Michael Potee and Cornelia Potee, his wife, to the County Trust Company of Maryland, dated March 24, 1948, and recorded among the Land Records of Anne Arundel County in Liber J.H.H. No. 462, Folio No. 440, etc. (except Lot No. 59).

"3. That the said James W. Blackhurst shall bring the proceeds of said foreclosure sale into Court and after setting aside, in accordance with Equity Rule No. 17 of this Court, a sum as an allowance in lieu of dower to be held by James W. Blackhurst as Trustee, to take care of any possible dower claim of Libera Maria Bonsanto Potee in

the event that she proves that she is the lawful widow of the late Michael Potee, he shall then, after the payment of the costs of this suit, the expenses of said sale and such commissions and fees to the said James W. Blackhurst as this court shall think proper to allow, in consideration of the skill, attention and fidelity wherewith he shall have appeared to have discharged his trust, dispose of the balance of the proceeds of said sale as follows:

"a. Pay a sum sufficient to satisfy the agreements, covenants and conditions of the mortgage in these proceedings immediately upon the ratification of the sale and the ratification of the auditor's account.

"b. Hold the balance as Trustee, to be distributed under the orders of this Court to the persons entitled thereto in accordance with their rights and priorities under the law." That a certified copy of said Order is filed herewith marked "Petitioners' Exhibit No. 1".

SECOND: That in pursuance of the Order of this Court of January 12, 1951, James W. Blackhurst sold all the land mentioned in said order to your Petitioners for the sum of $92,000.00, they being the highest bidders. That said sale was duly reported to this Honorable Court and was ratified on the 21 day of July, 1951. That thereafter an auditor's report and account was filed and duly ratified by this Honorable Court on the 21 day of July, 1951.

THIRD: That the Land Records of Anne Arundel County indicate that the property bought at mortgage foreclosure sale by your Petitioners was acquired by Michael Potee, the Mortgagor in the following manner:

"a. By Deed dated February 10, 1948 and recorded among the Land Records of Anne Arundel County in Liber J.H.H. No. 456, Folio 544, in lots 11 thru 19, 5 thru 10 and 24 thru 28 on Plat of Academy filed among the Plat Records of Anne Arundel County in Cabinet 2 Rod B-3, Plat 29, were conveyed by the First Evangelical Lutheran Church to Michael Potee, (then a widower).

b. By Deed dated February 16, 1946 and recorded in the J.H.H. No. 349 Folio 381 Land Records of Anne Arundel County/Lot No. 60, as shown on Baldwin's Plat of Odenton filed among the Land Records of Anne Arundel County, was

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conveyed by Joseph Taylor et al to Michael Potee and wife.

Certified true copies of the two aforementioned deeds are attached hereto and marked "Petitioners' Exhibit No. 1A and 2 " respectively.

FOURTH: That as indicated by a photostatic copy of a marriage certificate, part of the documentary evidence filed in Law No. 2713 in this Court and entitled Libera Maria Bonsanto Potee and Salvatore Potee by Michael Dell 'Aquila, their next friend and attorney in fact vs. Marvin I. Anderson and Louis Straus, Administrators of Michael Potee, Michael Potee was married to Agnes M. Turner by Rev. Victor S. Ross on October 14, 1942.

FIFTH: That as indicated by a photostatic copy of a marriage certificate, part of the documentary evidence filed in Law No. 2713 in this Court and entitled Libera Maria Bonsanto Potee and Salvatore Potee by Michael Dell 'Aquila, their next friend and attorney in fact vs. Marvin I. Anderson and Louis Straus, Administrators of Michael Potee, Michael Potee was married to Cornelia E. Seward by Rev. Victor S. Ross on January 31, 1948.

SIXTH: That an "Agreement and Assignment" filed in Equity Case No. 9977 in this Court entitled Andrew E. Sears vs. Cornelia Potee, et al, in which said case Louis M. Strauss and Marvin I. Anderson were appointed receivers for the estate of Michael Potee states the following:

a. That Libera Maria Bonsanto Potee was married to the late Michael Potee on January 4, 1914, in the town of Vico del Gargano, Province of Foggia, Italy, and a son, Salvatore Potee was born of said marriage on February 25, 1915 in said City, Province and Country. That Michael Potee emigrated to the United States of America on December 12, 1914.

b. That on October 14, 1922, Michael Potee married Agnes M. Turner by whom he had three children, namely Russell Potee, Charles M. Potee and John R. Potee; that said Agnes M. Turner died in the year 1947.

c. That the said Michael Potee again entered into an alleged marriage ceremony with Cornelia E. Seward (herein called Cornelia

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E. Potee) at Odenton, Anne Arundel County, Maryland.

d. That on December 6, 1950, the said Libera Maria Bonsanto Potee and Salvatore Potee filed their Bill of Complaint in the Circuit Court for Anne Arundel County, in Equity, to enjoin the sale of the property of the said Michael Potee, deceased, and for other relief and at the same time said Libera Maria Bonsanto Potee and Salvatore Potee filed their claims as widow and sole lawful surviving child of Michael Potee in the Orphans' Court for Anne Arundel County. That subsequently the said Cornelia E. Potee filed her answer to said claims and issues were framed and transmitted to the Circuit Court for Anne Arundel County for trial by a jury, which issues were to determine whether Libera Maria Bonsanto Potee was the legal surviving widow of the late Michael Potee and whether Salvatore Potee was the lawful child of the said Michael Potee.

e. That counsel for the respective parties after extensive negotiations agreed to resolve the dispute between them and entered into a stipulation, a copy of which is attached hereto as part hereof representing the disposition of the aforementioned issues for and in consideration of the following agreement which is set forth more fully in paragraph Eighth of the Petition.

f. That under the laws of Maryland the parties to this agreement are advised that the presumption of law respecting the marriage of the said Michael Potee and the said Agnes M. Turner and the subsequent marriage after the death of Agnes M. Turner of the said Michael Potee and the said Cornelia E. Seward is that both said marriages were and are lawful marriages.

SEVENTH: That said Agreement and Assignment was executed by Michael Dell 'Aquila, next friend and attorney in fact of Libera Maria Bonsanto Potee and Salvatore Potee, Cornelia E. Potee and Marvin I. Anderson and Louis M. Straus, Receivers and Administrators of Michael Potee, deceased and a certified true copy of the entire agreement and assignment is attached hereto and marked "Petitioners' Exhibit No. 3."

EIGHTH: That the Agreement and Assignment hereinbefore referred to and marked "Petitioners' Exhibit No. 3" specifically provides for the following and to which the persons executing same mutually covenanted and agreed:

1. That the said parties hereto do hereby assent to, conform and adopt the terms and provisions of the Stipulation hereto annexed and agree to the findings upon the issues now pending in the Circuit Court for Anne Arundel County, pursuant to said Stipulation.

2. That the said parties hereto do hereby expressly assent to and direct the administration and distribution of the Estate of the late Michael Potee, who died intestate, pursuant to the laws of descent and distribution of the State of Maryland, and in that connection do hereby expressly agree that one-third of the Estate of the late Michael Potee shall be distributed to Cornelia E. Potee as his surviving widow and the remaining two-thirds of said Estate of the late Michael Potee shall be divided equally between Salvatore Potee, Russell Potee, Charles F. Potee, John M. Potee and Filihi Potee, being all the children of the said late Michael Potee; and the said parties hereto hereby agree that they will contend for, maintain and support such distribution of said Estate.

3. That the said parties hereto will take such actions as will effectually accomplish the aforesaid distribution; it being understood and agreed that the distributive share payable to Salvatore Potee will be paid to Michele Dell 'Aquila as his next friend and attorney in fact.

4. That the said Cornelia E. Potee hereby agrees to pay unto Libera Maria Bonsanto Potee ten per-cent of any and all monies to which the said Cornelia E. Potee was, is and shall be entitled to receive and to be received as the lawful widow of the said Michael Potee, deceased, and the parties hereto agree that this provision of this instrument shall operate as and be an assignment by the said Cornelia E. Potee to the said Libera Maria Bonsanto Potee of said ten per cent of the share received and to be received by the said Cornelia E. Potee out of and from the Estate of the said Michael Potee and that said Receivers and Administrators shall give full force and effect to this provision accordingly; it being understood and agreed by and between the parties hereto that said share or sums so payable as aforesaid to Libera Maria Bonsanto Potee shall be paid to Michele Dell 'Aquila as her next friend and attorney in fact.

5. That the said parties hereto do hereby covenant and agree

to execute any other and further instruments as shall be necessary to effectuate the terms of this agreement and assignment and they and each of them will execute such releases for or on account of the Estate of Michael Potee so distributed whether the same shallbe distributed by the Receivers or the Administrators; it being understood that any releases or instruments required to be executed by Libera Maria Bonsanto Potee and Salvatore Potee shall be executed by Michele Dell'Aquila as their next friend and attorney in fact.

6. It is the intention of the parties hereto with full knowledge of all the facts and circumstances to hereby make the choice, acquiescence in and to the acts as herein expressed.

NINTH: That by Petition filed in No. 9997 Equity, in the Circuit Court for Anne Arundel County in a case entitled Anderson E. Sears vs. Cornelia E. Potee, et al, Virginia Hall, guardian ad litem of John R. Potee and Filini Potee, infants, petitioned this Court for authorization to consent to the Agreement and Assignment between Libera Maria Bonsanto Potee and Salvatore Potee by Michele Dell'Aquila, their next friend and attorney in fact and Cornelia E. Potee and Marvin I. Anderson and Louis M. Strauss, Receivers and Administrators of Michael Potee. That a certified copy of said Petition and the Order thereon of July 6, 1951 is filed herewith marked "Petitioners' Exhibit No. 4."

TENTH: That in accordance with the first paragraph of the aforementioned "Agreement and Assignment" there are "Stipulations" attached to Law Case No. 2713 entitled Libera Maria Bonsanto Potee and Salvatore Potee, by Michele Dell'Aquila, their next friend and attorney in fact vs. Marvin I. Anderson and Louis Strauss, Administrators and Cornelia E. Potee. A certified true copy of these "Stipulations" are attached hereto and marked "Petitioners' Exhibit No. 5."

ELEVENTH: That Law Case No. 2713 in this Court entitled Libera Maria Bonsanto Potee and Salvatore Potee, by Michele Dell'Aquilla, their next friend and attorney in fact vs. Marvin I. Anderson and Louis Strauss, Administrators and Cornelia E. Potee, concerned "Issues" submitted by the

Orphan's Court to be determined by this Honorable Court. That said issues were submitted for trial without a jury, testimony was taken, supporting documents were filed, counsel for the parties were heard and after fully considering the evidence and proceedings the following answers of the Court were recorded on July 19, 1951:

"Issue 1 - Is the petitioner represented in these proceedings as Libera Maria Bonsanto Potee the legal surviving widow of Michael Potee, deceased, who died in Anne Arundel County at Odenton, Maryland, on the 18th. day of May, 1950?

"A. - The verdict of the Court is for the defendants, and the answer is NO.

"Issue 2 - Was the said Libera Maria Bonsanto Potee Lawfully married to the late Michael Potee on the 4th. day of January, 1914, at Vico Del Cargano, Province of Foggia, Italy?

"A. - The verdict of the Court is for the Plaintiff, Libera Maria Bonsanto Potee, and the answer is YES.

"Issue 3 - Is the said Salvatore Potee the surviving son of the late Michael Potee and the issue of the said marriage between the said Libera Maria Bonsanto Potee and Michael Potee?

"A. - The verdict of the Court is for the Plaintiff, Salvatore Potee, and the answer is YES.

That a certified copy of the findings on said issues is filed herewith marked "Petitioners' Exhibit No. 6.

TWELVE: That thereafter in conformity with the certified findings on the issues of facts raised by the pleadings and submitted by the Orphans' Court of Anne Arundel County to the Circuit Court for Anne Arundel County for trial, it was on the 31 day of July, 1951, Ordered, adjudged and Decreed by the Orphans' Court of Anne Arundel County that Cornelia E. Potee was the law ful widow of Michael Potee at the time of his death May 19, 1950, and it was further Ordered that Salvatore Potee is a lawful child of Michael Potee and a former wife, Libera Maria Bonsanto Potee. That said Order is filed herewith and marked "Petitioners' Exhibit No. 7.

THIRTEEN: That in Equity case No. 9997 in this Court entitled Andrew Sears vs. Cornelia Potee, et al there is filed an "Agreement" dated June 1, 1951 and executed by Russell Potee, Charles Potee, by Russell Potee, his attorney in fact, Virginia Hall, guardian of John R. Potee and Filini Potee, infants, Libera Maria Bonsanto Potee and Salvatore Potee, by Michael Dell'Aquilla, their next friend and attorney in fact, and Cornelia E. Potee, wherein Russell Potee's distributive share as an heir of the estate of the late Michael Potee is limited to $1500.00 and the other parties to this agreement release Russell Potee from any liability in or to the estate of Michael Potee by virtue of a joint judgment obtained against Michael Potee and Russell Potee by one Andrew Sears and in the amount of $25,000.00. A certified copy of this agreement is attached hereto and marked "Petitioners' Exhibit No. 8."

FOURTEEN: That the Petition filed in No. 9997 Equity, in the Circuit Court for Anne Arundel County in a case entitled Anderson E. Sears vs. Cornelia E. Potee, et al, Virginia Hall, guardian ad litem of John R. Potee and Filini Potee, infants, to execute Agreement between Russell Potee and others pertaining to any rights of subrogation by reason of judgment of Andrew E. Sears and order thereon of July 6, 1951 is filed herewith marked "Petitioners' Exhibit No. 9."

FIFTEEN: That your Petitioners' undertook to sell a portion of the property purchased by them known as Lot No. 60 on Baldwin's Plat of Odenton, saving and excepting so much thereof as was conveyed by Michael Potee to Russell T. Potee and wife by deed dated August 18, 1947. That title was turned over by said purchaser or prospective purchaser to The Maryland Title Guarantee Company for examination, and marked Application No. 108, 787 by said Title Company. That the Maryland Title Guarantee Company has stated that it has examined the various legal proceedings in the Orphans' Court and in the Circuit Court of Anne Arundel County relating to the claim of Libera Maria Bonsanto Potee and Salvatore Potee and that, in its opinion, in order to pass a marketable title a deed should be obtained from Libera Maria Bonsanto Potee of all of her right,

title and interest in and to said property, as well as a deed from Russell Potee, Charles Potee and John Potee (the children of Agnes Potee, who died October 26, 1946) of all of their right, title and interest therein.

SIXTEEN: That on the 11th day of September, 1951 a Petition for a declaratory decree was filed in this Court by your Petitioners in the case of James W. Blackhurst vs. Michael Potee, et al, Equity No. 10086. That on September 21, 1951 testimony was taken in open Court on said Petition for Declaratory Decree, a copy of which testimony is filed herewith marked "Petitioners' Exhibit No. 10", and was prayed to be taken as part thereof. That on September 24, 1951, this Honorable Court signed a decree on the Petition for declaratory relief. A true test copy of said Decree is filed herewith marked "Petitioners' Exhibit No. 11" and is prayed to be taken as part thereof.

Seventeen: That in view of the proceedings which have been taken in case No. 10086 and in No. 9997, in equity, and in the Orphans' Court for Anne Arundel County and in Law No. 2713 and all of the documents and agreements which have been filed therein, the title of your Petitioners has been fixed and determined so that no further claims can be made by any of the parties from whom the Title Company has requested a deed. That Charles L. Ball and Charles L. Ball, Jr. are one and the same person.

Wherefore, this Petition is filed pursuant to the provisions of Article 31A of the Annotated Code of Maryland, 1947 Supplement and your Petitioners respectfully pray that this Honorable Court, by its proper order or orders may declare, adjudge and decree:

a. That title to all the land sold by James W. Blackhurst, Assignee, in accordance with the order of this Court of January 12, 1951, is in the Petitioners' free, clear and discharged of the rights of the said Libera Maria Bonsanto Potee, Russell Potee, Charles Potee and John Potee.

b. That the Petitioners may have such other and further relief as this case may require.

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title and interest in and to said property, as well as a deed from Russell Potee, Charles Potee and John Potee (the children of Agnes Potee, who died October 26, 1946) of all of their right, title and interest therein.

SIXTEEN: That on the 11th day of September, 1951 a Petition for a declaratory decree was filed in this Court by your Petitioners in the case of James W. Blackhurst vs. Michael Potee, et al, Equity No. 10086. That on September 21, 1951 testimony was taken in open Court on said Petition for Declaratory Decree, a copy of which testimony is filed herewith marked "Petitioners' Exhibit No. 10", and was prayed to be taken as part thereof. That on September 24, 1951, this Honorable Court signed a decree on the Petition for declaratory relief. A true test copy of said Decree is filed herewith marked "Petitioners' Exhibit No. 11" and is prayed to be taken as part thereof.

Seventeen: That in view of the proceedings which have been taken in case No. 10086 and in No. 9997, in equity, and in the Orphans' Court for Anne Arundel County and in Law No. 2713 and all of the documents and agreements which have been filed therein, the title of your Petitioners has been fixed and determined so that no further claims can be made by any of the parties from whom the Title Company has requested a deed. That Charles L. Ball and Charles L. Ball, Jr. are one and the same person.

Wherefore, this Petition is filed pursuant to the provisions of Article 31A of the Annotated Code of Maryland, 1947 Supplement and your Petitioners respectfully pray that this Honorable Court, by its proper order or orders may declare, adjudge and decree:

a. That title to all the land sold by James W. Blackhurst, Assignee, in accordance with the order of this Court of January 12, 1951, is in the Petitioners' free, clear and discharged of the rights of the said Libera Maria Bonsanto Potee, Russell Potee, Charles Potee and John Potee.

b. That the Petitioners may have such other and further relief as this case may require.

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ORDER OF COURT

Upon the aforegoing Petition, it is this 12th day of January, 1951, by the Circuit Court for Anne Arundel County, Sitting in Equity, ORDERED:

1. That the land mentioned in the mortgage in these proceedings is not susceptible of division so as to enable any dower rights which Libera Maria Bonsanto Potee may have in said land to be assigned and laid off to her, and that it is necessary to sell the said land.

2. That James W. Blackhurst, the Petitioner herein, be and he is hereby authorized and directed to sell, at foreclosure sale, all of the land mentioned in the mortgage of Michael Potee and Cornelia Potee, his wife, to the County Trust Company of Maryland, dated March 24, 1948, and recorded among the Land Records of Anne Arundel County in Liber J.H.H. No. 462, Folio No. 440, etc. (except Lot No. 59).

3. That the said James W. Blackhurst shall bring the proceeds of said foreclosure sale into Court and after setting aside, in accordance with Equity Rule No. 17 of this Court, a sum as an allowance in lieu of dower to be held by James W. Blackhurst as Trustee, to take care of any possible dower claim of Libera Maria Bonsanto Potee in the event that she proves that she is the lawful widow of the late Michael Potee, he shall then after the payment of the costs of this suit, the expenses of said sale and such commissions and fees to the said James W. Blackhurst as this court shall think proper to allow, in consideration of the skill, attention and fidelity wherewith he shall have appeared to have discharged his trust, he shall dispose of the balance of the proceeds of said sale as follows:

a. Pay a sum sufficient to satisfy the agreements, covenants and conditions of the mortgage in these proceedings immediately upon the ratification of the sale and the ratification of the auditor's account.

b. Hold the balance as Trustee, to be distributed under the orders of this Court to the Persons entitled thereto in accordance with their rights and priorities under the law.

Filed 3 Dec., 1951
Re-filed 30 July, 1952

2/26/52

Examiners' Ex. 1

Ex 1

Benjamin Michaelson
Judge

Filed 12 Jan., 1951

11

Petitioners' Exhibit No. 1

State of Maryland, Anne Arundel, Sct:

I HEREBY CERTIFY, That the aforegoing Order of Court was truly taken and copied from No. 10,086 Equity in the Circuit Court for Anne Arundel County.

IN TESTIMONY WHEREOF, I hereto set my hand and affix the Seal of the Circuit Court for Anne Arundel County this 14th day of November A.D., 1951.

John H. Hopkins, 3d.

John H. Hopkins, 3rd., Clerk

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(INT. REV. STAMP $4.95)(MD. STATE STAMP $4.95)

THIS DEED, Made this 10th day of February in the year Nineteen hundred and forty eight, by and among The First Evangelical Lutheran Church of Odenton, Anne Arundel County, Maryland, a body corporate, party of the first part, Reverend Emanuel T. Finck, President and Pastor of the Board of Trustees of the said Congregation, Carl Niedergesahs, William R. Beckman, W.F. Burgess, Jr., Robert H. Emerson, Louis F. Scriba, Alonzo E.Tull, Chas. W. Mullard, Otto Deichyrieber, Paul J. Georg, Trustees of the Congregation, parties of the second part, and Michael Potee of Anne Arundel County aforesaid, party of the third part.

WHERAS, at a special meeting of the Congregation and Trustees of the First Evangelical Lutheran Church held on July 25, 1947, after due notice had been fully given, were by a unanimous resolution authorized to make and execute on behalf of said congregation, a deed to Michael Potee for the property hereinafter described at and for the sum of Forty one hundred dollars.

Filed 3 Dec, 1951
Re-filed 30 July, 1952

NOW THEREFORE, this Deed Witnesseth, That for and in consideration of the sum of Ten dollars and other good and valuable considerations, paid by the said party of the third part to the said parties of the first and second parts, at or before the execution and delivery of these presents, the receipt whereof is hereby acknowledged, the said parties of the first and second parts have bargained and sold and by these presents do grant and convey unto the said Michael Poteen his heirs and assigns, in fee simple, All those lots, pieces or parcels of land situate, lying and being in the Fourth Election District of Anne Arundel County aforesaid and described as follows:

2/26/52

1. Beginning for the same at an iron set at the intersection of the southeast edge of Washington Avenue, with the lot line between lots ten and eleven Section seven of the Plat of Academy, which plat is filed among the Plat Records of Anne Arundel County in Cabinet 2 Rod B-3 plat 29; thence leaving Washington Avenue and with said lot line south 58 degrees 40 mintues east 120 feet to a pipe; thence with the southeast side of lots 11, 12 and 13 and part of 14, north 31 degrees 20 minutes east 90.2 feet to the lot line of lot 15, section

Examiner's Ex. 2

13 Ex 2

Petitioners' Exhibit No. 1a.

7; thence leaving lot 14 and with the southwest side of lot 15, south 58 degrees 40 minutes east 59.3 feet to an iron set on the northwest bank of the State Road from Odenton to Severn; thence binding on said bank and the Easement area of said road, north 31 degrees 20 mintues east 134.8 feet to a stake 3.5 feet southwest of a culvert outlet; thence leaving said road, and with the lot line north 58 degrees 40 minutes west 179.3 feet between lots 19 and 20 to a stake on the southeast side of Washington Avenue; thence leaving lot 20, south 31 degrees 20 minutes west 225 feet to the beginning. Same being all of lots 11 to 19, inclusive, as shown on Plat of Academy heretofore referred to, except that portion included in the easement area of the State Road heretofore referred to.

2. Beginning for the same at an iron set at the intersection of the southeast side of Washington Avenue with the lot line between lots 10 and 11 of Section 7, as laid down on the aforesaid plat of Academy, and running thence south 31 degrees 20 minutes west 150 feet, more or less, to the division line between lots 4 and 5 of Section 7, thence with said divisional line south 58 degrees 40 mintues east 120 feet, thence at right angles north 31 degrees 20 minutes east 150 feet, more or less, to the end of <u>of</u> the first line of the conveyance from Atkinson to the party of the first part, recorded in Liber J.H.H. No. 258 folio 359, thence with said line, reversed, north 58 degrees 40 minutes west 120 feet to the place of beginning. Being lots 5 to 10, inclusive in Section 7 on the aforesaid plat of Academy.

BEING the same property which was conveyed to the First Evangelical Lutheran Church of Odenton, by Mary C. Atkinson, widow, by the following deeds:

One dated February 25, 1942, recorded among the Land Records of Anne Arundel County in Liber J.H.H. No. 258, folio 359; and the other dated February 27, 1945, recorded among the aforesaid Land Records in Liber J.H.H. No. 324, folio 424.

3. All those five lots designated as lots Number 24, 25, 26, 27, and 28 of Section 7 on the aforesaid plat of "Academy", said lots having an aggregate frontage of 125 feet on the southeast side of Washington Avenue, as shown on the aforesaid plat.

BEING the same property which was conveyed to the said The First Evangelical Lutheran Church of Odenton, by Mary C. Atkinson, widow, by deed dated on the 22nd day of March in the year 1945, and recorded among the Land Records aforesaid in Liber J.H.H. No. 383 folio 145.

TOGETHER with the buildings and improvements thereupon erected made or being and all and every the rights, roads, ways, waters, privileges, appurtenances and advantages to the same belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above described property with its appurtenances unto and to the proper use and benefit of the said Michael Potee, his heirs and assigns, in fee simple.

And the said parties of the first and second parts hereby covenant that it and they will warrant specially the property hereby conveyed and that they will execute such other and further assurances thereof as may be requisite.

WITNESS the corporate name of the The First Evangelical Lutheran Church of Odenton, Anne Arundel County, Maryland, by Emanuel T. Finck, President and the corporate seal thereof attested by Carl Niedergesahs, Secretary, and the hands and seals of the Reveerend Emanuel T. Finck Pastor of the Board of Trustees, and the Trustees of the Congregation.

(CORPORATE SEAL)
Attest:
Carl Niedergesahs,Secretary
Test: Louis F. Scriba
Mary A. Pinkine
4004 Pennington Ave.
Balto.,26, Md.
Test: Mary A. Pinkine
4004 Pennington Ave.
Baltimore 26, Md.
Louis F. Scriba

The First Evangelical Lutheran Church of Odenton,Anne Arundel County, Md.
by:
Emanuel T. Fink,President (SEAL)
Alonzo E. Tull, (SEAL)
Emanuel T. Finck,Pastor (SEAL)
Carl Niedergesahs, Trustee (SEAL)
William R. Beckman (SEAL)
Robert H. Emerson (SEAL)
Alonzo E. Tull, Trustee (SEAL)
Charles W. Millard, Trustee (SEAL)
Otto Deichyrieber,Trustee (SEAL)
W.F. Burgess, Jr., (SEAL)
Paul J. Georg ,Trustee (SEAL)

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LIBER 73 PAGE 526

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, TO WIT:

I HEREBY CERTIFY that on this tenth day of February in the year Nineteen hundred and forty eight; before me the subscriber, a Notary Publif of the State of Maryland, in and for Anne Arundel County aforesaid, personally appeared Emanuel T. Finck, President of The First Evangelical Lutheran Church of Odenton, Anne Arundel County, Maryland and he acknowledged the aforegoing deed to be the act and deed of said corporation, and at the same time also personally appeared Emanuel T. Finck, Pastor of saidCongregation and Carl Niedergesahs, William R. Beckman, Alonzo E. Tull, Charles W. Millard and Otto Deichyrieber, Trustees of the Congregation, and they each acknowledged the aforegoing deed to be their act and deed.

WITNESS my hand and seal Notarial,

(NOTARIAL SEAL)

Mary A. Pinkine, Notary Public
4004 Pennington Ave.
Balto. 26, Md.

My Commission Expires May 2, 1949.

STATE OF MARYLAND, ANNE ARUNDEL COUNTY TO WIT:

I HEREBY CERTIFY that on this 10 day of February in the year Nineteen hundred and forty eight, before me, the subscriber, a Notary Public of the State of Maryland in and for Anne Arundel County aforesaid, personally appeared Robert H. Emerson W.F. Burgess, Jr., and Paul J. Georg, Trustees of the Congregation of the First Evangelical Lutheran Church and they each acknowledged the aforegoing deed to be their act and deed.

WITNESS my hand and seal Notarial,

(NOTARIAL SEAL)

Mary A. Pinkine, Notary Public
4004 Pennington Ave.
Baltimore 26, Md.

Recorded- February 21st, 1948 at 10-20 A.M.

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, SCT:

I HEREBY CERTIFY, That the aforegoing Deed is truly taken and copied from Liber J.H.H. No. 456, folio 544, one of the Land Record Books for Anne Arundel County.

IN TESTIMONY WHEREOF, I hereto set my hand and affix the Seal of the Circuit Court for Anne Arundel County this 14th day of November A.D., 1951.

John H. Hopkins, 3d Clerk

INT. REV. STAMP $2.20- MD. STATE STAMP $1.60

THIS DEED, Made this 16" day of February, in the year Nineteen hundred and forty-six, by and between JOSEPH TAYLOR, single, JACOB LEVINE AND RAE L. LEVINE, his wife, of Baltimore City, Maryland, of the first part, and MICHAEL POTEE and AGNES POTEE, his wife, of Anne Arundel County, Maryland, of the second part,

WITNESSETH, That for and in consideration of the sum of ten ($10.00) dollars and other good and valuable considerations, paid by the parties of the second part to the parties of the first part, receipt whereof is hereby acknowledged, the said parties of the first part have bargained and sold and by these presents do grant and convey unto the parties of the second part, as tenants by entireties thereof, their heirs and assigns, in fee simple, the following described property, to wit:

All that lot or parcel of land situate, lying and being in the Fourth Election District of Anne Arundel County, Maryland, and being known and designed as lot No. 60 on "Baldwins Plat of Odenton" recorded among the Land Records of Anne Arundel County in Liber S.H. No. 34, folio 604, and described as follows:

BEGINNING for the same at the intersection of a line drawn through the center of Third Avenue and a line drawn through the center of Baldwin Street, as same are laid off on said plat, and running thence through the center of Third Avenue North 73 3/4 degrees West 208.71 feet, thence South 15¼ degrees West 208.71 feet, thence South 73 3/4 degrees East 208.71 feet to the center of Baldwin Street and thence along the center of Baldwin Street North 16¼ degrees East to the place of beginning; containing one acre of land, more or less, subject, however, to use in common with others of the street and avenue binding thereon.

Filed 3 Dec., 1951
Re-filed 30 July, 1952

2/26/52

Examined 6-4-3

18 Ex 3

Petitioners' Exhibit No. 2.

BEING the same property conveyed to the parties of the first part by Lillian E. Waters and husband, by deed dated May 2, 1941, recorded among the Land Records of Anne Arundel County in Liber J.H.H. No. 234, folio 359.

TOGETHER with the buildings and improvements thereon, and all and every the rights, roads, ways, waters, privileges, appurtenances and advantages thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD said land and premises hereby intended to be conveyed, unto and to the proper use and benefit of the parties of the second part, as tenants by entireties thereof, their heirs and assigns, in fee simple.

AND the parties of the first part hereby covenant that they will warrant specially the property hereby conveyed, and that they will execute such other and further assurances of the same as may be requisite.

WITNESS the hands and seals of the parties of the first part.

Test: JOSEPH TAYLOR (SEAL)

JACOB LEVINE (SEAL)

MYRTLE STURM RAE L. LEVINE (SEAL)

STATE OF MARYLAND, ANNE ARUNDEL COUNTY To Wit:

I hereby certify that on this 16 day of February, in the year Nineteen hundred forty-six before me, the subscriber, a Notary Public of the State of Maryland, in and for said County, personally appeared JOSEPH TAYLOR, single, JACOB LEVINE and RAE L. LEVINE, his wife, and they acknowledged the aforegoing deed to be their act.

As witness my hand and seal Notarial.

MYRTLE STURM
Notary Public

(Notarial Seal)

Recorded - 16th February 1946, at 11:45 A.M.

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, SCT:

I HEREBY CERTIFY, That the aforegoing Deed is truly taken and copied from Liber J.H.H. No. 349, Folio 381 one of the Land Record Books for Anne Arundel County.

IN TESTIMONY WHEREOF, I hereto set my hand and affix the Seal of the Circuit Court for Anne Arundel County this 8th day of November A.D., 1951.

John H. Hopkins, 3d Clerk

THIS AGREEMENT AND ASSIGNMENT, made this 1st day of June, 1951, between LIBERA MARIA BONSANTO POTEE and SALVATORE POTEE, by MICHELE DELL'AQUILA, their next friend and attorney in fact, parties of the First Part and CORNELLA E. POTEE, party of the Second Part and MARVIN I. ANDERSON and LOUIS M. STRAUSS, Receivers and Administrators of Michael Potee, late of Anne Arundel County, Maryland, deceased:

WHEREAS Libera Maria Bonsanto Potee was married to the late Michael Potee on January 4, 1914, in the town of Vico del Gargano, Province of Foggia, Italy, and a son, Salvatore Potee was born of said marriage on February 25, 1915 in said City, Province and Country. That shortly prior to the birth of Salvatore Potee his father, the late Michael Potee, emigrated to the United States of America on December 12, 1914 and came to live in the State of Maryland and particularly Odenton, Anne Arundel County, where he resided until his death on May 18, 1950; and

Filed 3 Dec., 1951. Re-filed 30 July, 1952.

WHEREAS the said Michael Potee took up his residence at Odenton, Anne Arundel County, Maryland, and on or about October 14, 1922, entered into an alleged marriage ceremony with Agnes M.Turner by whom he had three (3) children namely Russell Potee, Charles M. Potee and John R. Potee; that said Agnes M. Turner died in the year 1947; and

WHEREAS the said Michael Potee again entered into an alleged marriage ceremony with Cornelia E. Stewart (herein called Cornelia E. Potee)at Odenton, Anne Arundel County, Maryland, on January 31, 1948, and one (1) child namely Filini Potee was born of said marriage; and

WHEREAS the said Michael Potee died intestate on May 18, 1950, at Odenton, Anne Arundel County, Maryland; and

WHEREAS Marvin I. Anderson, Esq., and Louis M. Strauss, Esq., were on July 7, 1950, appointed Receivers of the property of the late Michael Potee by the Circuit Court for Anne Arundel County,and on October 10, 1950, said Marvin I.Anderson, Esq., and Louis M.Strauss,

E 4 4

Petitioners' Exhibit No. 3.

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Esq. were granted Letters of Administration upon the Estate of the late Michael Potee by the Orphans' Court for Anne Arundel County; and

WHEREAS on December 6, 1950, the said Libera Maria Bonsanto Potee and Salvatore Potee filed their Bill of Complaint in the Circuit Court for Anne Arundel County, in Equity, to enjoin the sale of the property of the said Michael Potee, deceased, and for other relief and at the same time said Libera Maria Bonsanto Potee and Salvatore Potee filed their claims as widow and sole lawful surviving child of Michael Potee in the Orphans' Court for Anne Arundel County. That subsequently the said Cornelia E. Potee filed her Answer to said claims and issues were framed and transmitted by the Orphans' Court for Anne Arundel County to the Circuit Court for Anne Arundel County for trial by a jury, which issues were to determine whether Libera Maria Bonsanto Potee was the legal surviving widow of the late Michael Potee and whether Salvatore Potee was the lawful child of the said Michael Potee; and

WHEREAS counsel for the respective parties after extensive negotiations agreed to resolve the dispute between them and entered into a Stipulation; a copy of which is attached hereto as part hereof respecting the disposition of the aforesaid issues for and in consideration of the following agreement between them; and

WHEREAS under the laws of Maryland the parties to this Agreement are advised that the presumption of law respecting the marriage of the said Michael Potee and the said Agnes M. Turner, and the subsequent marriage after the death of Agnes M. Turner of the said Michael Potee and the said Cornelia E. Steward were and are lawful marriages.

NOW THEREFORE in consideration of the sum of Five Dollars ($5.00) in hand paid by each of the parties hereto to the others and for other good and valuable considerations they and each of them hereby mutually covenant and agree as follows:

1. That the said parties hereto do hereby assent to, conform

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and adopt the terms and provisions of the Stipulation hereto annexed and agree to the findings upon the issues now pending in the Circuit Court for Anne Arundel County, pursuant to said Stipulation.

2. That the said parties hereto do hereby expressly assent to and direct the administration and distribution of the Estate of the late Michael Potee, who died intestate, pursuant to the laws of descent and distribution of the State of Maryland, and in that connection do hereby expressly agree that one-third of the Estate of the late Michael Potee shall be distributed to Cornelia E. Potee as his surviving widow and the remaining two-thirds of said Estate of the late Michael Potee shall be divided equally between Salvatore Potee, Russell Potee, Charles M. Potee, John R. Potee and Filini Potee, being all the children of the said late Michael Potee; and the said parties hereto hereby agree that they will contend for, maintain and support such distribution of said Estate.

3. That the said parties hereto will take such actions as will effectively accomplish the aforesaid distribution; it being understood and agreed that the distributive shall payable to Salvatore will be paid to Michele Dell'Aquila as his next friend and attorney in fact.

4. That the said Cornelia E. Potee hereby agreed to pay unto Libera Maria Bonsanto Potee ten per-cent of any and all monies to which the said Cornelia E. Potee was, is and shall be entitled to receive and receive or received as the lawful widow of the said Michael Potee, deceased, and the parties hereto agree that this provision of this instrument shall operate as and be an assignment by the said Cornelia E.Potee to the said Libera Maria Bonsanto Potee as said ten per-cent of the share received out of and from the Estate of the said Michael Potee and that said Receivers and Administrators shall give full force and effect to this provision accordingly; it being understood and agreed by and between the parties hereto that said share or sum so payable as aforesaid to Libera Maria

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Bonsanto Potee shall be paid to Michele Dell'Aquila as her next friend and attorney in fact.

5. That the said parties hereto do hereby covenant and agree to execute any other and further instruments as shall be necessary to effectuate the terms of this agreement and assignment and they and each of them will execute such releases for or on account of the Estate of Michael Potee so distributed whether the same shall be distributed by the Receivers or the Administrators; it being understood that any releases or instruments required to be executed by Lbera Maria Bonsanto Potee and Salvatore Potee shall be executed by Michele Dell'Aquila as their next friend and attorney in fact.

6. It is the intention of the parties hereto with full knowledge of all the facts and circumstances to hereby make choice, acquiescence and do the acts as herein expressed.

IN WITNESS WHEREOF the First Parties by Michele Dell'Aquila, their next friend and attorney in fact, and the other parties hereto by their signatures, have hereunto subscribed their names and affixed their seals the day and year first above written.

WITNESS

Libera Maria Bansanto Roti,
by Michele Dell'Aquila. her
next friend and attorney in fact
(SEAL)

Isidor Roman

Libera Maira Bonsanto Potee, by Michele Dell'Aquila, her next friend and attorney in fact

Cornelia E. Potee (SEAL)
Salvatore Poti, by Michele Dell'Aquila, his next friend and Attorney in fact. (SEAL)

Salvatore Potee, by Michele Dell' Aquila, his next friend and attorney in fact.

FIRST PARTIES

Linwood L. Clark

Cornelia E. Potee (SEAL)
Cornelia E. Potee,

SECOND PARTY

Marvin I. Anderson, (SEAL)
Marvin I. Anderson

Louis M. Strauss (SEAL)
Louis M. Strauss

Receivers and Administrators
of Michael Potee, deceased.

THIRD PARTIES.

Filed 6th July, 1951

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, SCT:

I HEREBY CERTIFY, that the foregoing is a true copy of the Agreement and Assignment taken from Equity No. 9997.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the Seal of the Circuit Court for Anne Arundel County, this 13th day of November, A. D., 1951.

John N. Hopkins, 3d
Clerk.

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ANDREW E. SEARS	°	NO. 9997 EQUITY
	°	IN THE
VS	°	CIRCUIT COURT FOR
CORNELIA E. POTEE, et al.	°	ANNE ARUNDEL COUNTY.

° ° ° °

PETITION OF GUARDIAN AD LITEM FOR AUTHORIZATION TO CONSENT TO AGREEMENT AND ASSIGNMENT BETWEEN LIBERA MARIA BONSANTO POTEE and SALVATORE POTEE, BY MICHELE DELL'AQUILA, their next friend and attorney in fact and CORNELIA E. POTEE and MARVIN I. ANDERSON and LOUIS M. STRAUSS, RECEIVERS and administrators of MICHAEL POTEE.

Filed 3 Dec., 1951. Re-filed 30 July, 1952.

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The Petition of Virginia Hall, Guardian Ad Litem of John R. Potee and Filini Potee, infants, respectfully represent.

1. That it has been proposed that the attached Agreement and Assignment be entered into in settlement of the claims of the alleged widow and son of the late Michael Potee.

2. That your Petitioner believes that said Agreement and Assignment is to the best interest and advantage of the infants but that she is unable to consent thereto without the direction of this Honorable Court.

Wherefore your Petitioner prays the Court to pass an order authorizing and directing the Guardian Ad Litem to enter into said Agreement.

Virginia Hall

Guardian Ad Litem

Filed 1 June, 1951

ORDER OF COURT.

Ordered this 6th day of July, 1951, by the Circuit Court for Anne Arundel County that Virginia Hall, the Guardian Ad Litem heretofore appointed in this case, be and she is hereby authorized to consent to the said Agreement and Assignment it being to the best interest and advantage of said infants.

Benjamin Michaelson,

Judge.

Filed 6 July, 1951

Examiner's Ex. 5 2/26/52

Ex 5

Petitioners' Exhibit No. 4

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STATE OF MARYLAND, ANNE ARUNDEL COUNTY, SCT:

I HEREBY CERTIFY, That the aforegoing is a true copy of the PETITION OF GUARDIAN AD LITEM FOR AUTHORIZATION TO CONSENT TO AGREEMENT And ASSIGNMENT taken from No. 9997 Equity.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the Seal of the Circuit Court for Anne Arundel County, this 13th day of November, A. D., 1951/

John H. Hopkins, 3d Clerk.

LIBERA MARIA BONSANTO POTEE AND SALVATORE POTEE, by MICHELE DELL'AQUILA, their next friend and attorney in fact Plaintiffs	:	IN THE CIRCUIT COURT FOR
Vs	:	ANNE ARUNDEL COUNTY
MARVIN I. ANDERSON AND LOUIS STRAUSS, Admrs. and CORNELIA E. POTEE Defendants	:	LAW NO. 2713

Filed 3 Dec., 1951
Re-filed 30 July, 1952

STIPULATIONS

Counsel in this case, with the approval of their respective clients, the parties hereto, after reviewing the facts and applicable law, stipulate as follows:

1. That the affidavits of removal in this case shall be denied by the Court.

2. That when this case is called for trial, testimony shall first be offered by Cornelia E. Potee to prove a prima facie case that she and Michael Potee were lawfully married at Odenton, Maryland, January 31, 1948. The Plaintiffs in this case. Libera Maria Bonsanto Potee and Salvatore Potee, her son, will offer no rebuttal testimony.

3. That the adverse party plaintiff, Libera Maria Bonsanto Potee, for the above reasons, will not attempt to rebut the presumption that said Michael Potee was lawfully married to the said Cornelia E. Potee at the time of his death, and that said plaintiff will consent to a verdict for the defendants on Issue No. 1, and the answer to Issue No. 1 shall be NO.

4. That the word "the" in the first line of Issue No. 2 shall be stricken out and the letter "A" be substituted, making same read "a surviving child instead of the surviving child."

5. That the adverse party plaintiff, Salvatore Potee, will not attempt to rebut the presumption that Michael Potee was lawfully married to the said Cornelia E. Potee, but that he was a lawful child of said Michael Potee and entitled to share in his

Examined & c. 6 2/26/52

E 46
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Petitioners' Exhibit No. 5

estate with four other children of Michael Potee who survived him, and that the defendants will consent to a verdict for the plaintiff Salvatore Potee, on Issue No. 2, and the answer to Issue No. 2 shall be YES.

Isador Roman
Isador Roman
Attorney for Plaintiffs

Approved:

Michele Dell'Aquila
Michele Dell'Aquila

Linwood L. Clark.
Linwood L. Clark,
Attorney for Defendants.

Def. Ex. B.

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, SCT.:

I HEREBY CERTIFY, that the aforegoing STIPULATIONS is truly taken and copied from No. 2713 Law, in the Circuit Court for Anne Arundel County.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the Seal of the Circuit Court for Anne Arundel County, this 15th day of November, A. D.1951.

John H. Hopkins, 3d (SEAL)

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LIBERA MARIA BONSANTO POTEE AND SALVATORE POTEE By Michele Dell'Aquila, their next friend and attorney in fact VS MARVIN I. ANDERSON AND LOUIS STRAUSS, Administrators AND CORNELIA E. POTEE.	:	IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY LAW # 2713

. . . . . .

FINDINGS ON ISSUES.

The issues transmitted by the Orphans Court to the Circuit Court for trial by a jury coming on for hearing, and by agreemment of parties filed in the case, said issues were submitted to the Court for trial without a jury, testimony was taken, supporting documents were filed, Counsel for the parties were heard, and the proceedings and evidence having been fully considered by the Court, the following answers to the issues are recorded, this 19th day of July, 1951:

Issue 1 - Is the petitioner represented in these proceedings as Libera Maria Bonsanto Potee the legal surviving widow of Michael Potee, deceased, who died in Anne Arundel County at Odenton, Maryland, on the 18th day of May, 1950?

A. - The verdict of the Court is for the defendants, - and the answer is NO.

Issue 2 - Was the said Libera Maria Bonsanto Potee lawfully married to the late Michael Potee on the 4th day of January, 1914, at Vico Del Gargano, Province of Foggia, Italy?

A. - The verdict of the Court is for the Plaintiff, Libera Maria Bonsanto Potee, and the answer is YES.

Issue 3 - Is the said Salvatore Potee the surviving son of the late Michael Potee and the issue of the said marriage between the said Libera Maria Bonsanto Potee and Michael Potee?

A. - The verdict of the Court is for the plaintiff, Salvatore Potee, and the answer is YES.

Benjamin Michaelson,

Judge,

Petitioners' Exhibit No. 6.

Filed 3 Dec., 1951
Re-filed 30 July, 1952.

Examined 6-4-7 2/26/52

Eq 7

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To the Clerk:

You will in conformity with the law and practice certify to the Orphans Court of Anne Arundel County, as above recorded, the answers to the Issues transmitted to this Court for trial.

Benjamin Michaelson,

Judge.

Certified copy of above"findings of issue" given to Linwood L. Clark, Atty, to be delivered to Orphans Court this 25th day of July, 1951.

John H. Hopkins, 3rd, Clerk.

Filed July 24", 1951

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, SCT:

I HEREBY CERTIFY, that the aforegoing FINDINGS ON ISSUE is truly taken and copied from No. 2713 Equity.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the Seal of the Circuit Court for Anne Arundel County, this 15th day of November, A. D., 1951.

John H. Hopkins 3d CLERK.

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IN THE MATTER OF THE ESTATE OF MICHAEL POTEE, late of Anne Arundel County, deceased. : IN THE ORPHANS COURT FOR ANNE ARUNDEL COUNTY

ORDER OF COURT

In conformity with the certified findings on the issues of facts raised by the pleadings and submitted by this Court to the Circuit Court for Anne Arundel County, for trial, it is, this 31st day of July, 1951, hereby ORDERED, ADJUDGED and DECREED by the Orphans Court of Anne Arundel County, Maryland, that Cornelia E. Potee was the lawful widow of Michael Potee at the time of his death May 18, 1950; and it is further ORDERED and DECREED, this 31st day of July, 1951, that Salvatore Potee is a lawful child of Michael Potee and a former wife, Libera Maria Bonsanto Potee.

Owain E. Owens, C.J.
Charles G. Hill, A.J.
Weems R. Duvall, A.J.

True Copy, Test:
R Glenn Proud
Register of Wills for Anne Arundel County

Filed 3 Dec., 1951
Re-filed 30 July, 1952.

2/26/52

Examiner's Exhibit 8

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Petitioners' Exhibit No. 7

THIS AGREEMENT, made this 1st day of June, 1951, between Russell Potee, party of the first part; and Charles Potee, now in the military service, by Russell Potee, his attorney in fact, and Virginia Hall, guardian ad litem of John R. Potee and Felina Potee, infants, and Libera Maria Bonsanto Potee and Salvator Potee, by Michele Dell'Aquila, their next friend and attorney in fact, and Cornelia E. Potee, parties of the second part, WITNESSETH THAT:

WHEREAS, Andrew E. Sears obtained a judgment in the Circuit Court for Baltimore County against Michael Potee and Russell Potee on the 19th day of April, 1950, for $25,000.00 and on the 20th day of April, 1950, caused to be issued thereon a writ of fi fa directed to the Sheriff of Anne Arundel County, and the Sheriff of Anne Arundel County made a levy on the property of Michael Potee; and

WHEREAS, said Michael Potee died intestate subsequent to said judgment and levy on the property of said Michael Potee; and

WHEREAS, on the petition of Andrew E. Sears, Marvin I. Anderson, Esq., and Louis M. Strauss, Esq., were appointed receivers of the property of Michael Potee; and

WHEREAS, a dispute has arisen between said Russell Potee and said receivers, as to whether his distributive share as heir of Michael Potee should be credited to the estate of Michael Potee for distribution among the other heirs, or on the other hand distributed to him, the said Russell Potee, notwithstanding said judgment; and

WHEREAS, in settlement of said dispute the said Russell POTEE proposes to release or waive all his right, title and interest in said estate of Michael Potee over and above $1,500.00 on condition that all parties in interest do release, exonerate and forever discharge him from further contributions to or liability under said Sears judgment; and

WHEREAS, said proposal is agreed to by all parties of the second part as a just and fitting solution of said dispute;

NOW, THEREFORE, in consideration of the premises and $1.00 in hand paid by each of the parties hereto to the other parties,

Petitioners' Exhibit No. 8.

Filed 3 Dec., 1951.
Re-filed 30 July, 1952.

Examined by 9 2/26/52

E&G
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they and each of them do hereby mutually covenant and agree as follows:

1. That the said receivers and/or Administrators of the estate of Michael Potee, in their report to Court of the receipts and disbursements of the said estate of Michael Potee shall credit said estate with all right, title and interest, or distributive share, of said Russell Potee, as a child and heir of said Michael Potee, over and above $1,500.00, in full settlement of his, Russell Potee's, liability under the aforesaid Sears judgment.

2. That the parties of the second part, being all those persons interested in the collection of said Sears judgment, do hereby release, exonerate and forever discharge said Russell Potee from further contributions to, or liability under, said Sears judgment.

3. That the said parties hereto will take and perform such actions as will effectively accomplish the settlement of the dispute as hereinbefore recited.

IN WITNESS WHEREOF, the parties hereto, Russell Potee, party of the first part, and Charles Potee by Russell Potee, his attorney in fact, and Virginia Hall, guardian ad litem of John R. Potee and Felina Potee, infants, and Libera Maria Bonsanto Potee and Salvatore Potee, by Michele Dell'aquila, their next friend and attorney in fact, and Cornelia E. Potee, parties of the second part, have subscribed their names and affixed their seals the day and year above written.

Russell Potee (SEAL)
Russell Potee

WITNESS:

Charles Potee (SEAL)
By
Russell Potee, (SEAL)

Russell Potee, attorney in fact

Virginia Hall, (SEAL)
Virginia Hall, guardian ad litem
for John R. Potee and Felina Potee,
infants

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Libera Maria Bonsanto Potee
and
Salvatore Potee

BY Michele Dell'Aquila (SEAL)
Michele Dell'aquila, next friend
and attorney in fact for
Libera Maria Bonsanto Potee and
Salvatore Potee

Cornelia E. Potee (SEAL)
Cornelia E. Potee.

Filed 6 July, 1951

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, SCT.

I HEREBY CERTIFY, That the aforegoing AGREEMENT is truly taken and copied from No. 9997 Equity.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the Seal of the Circuit Court for Anne Arundel County, this 13th day of November, A. D., 1951.

John H. Hopkins, 3d.
CLERK.

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ANDREW E. SEARS	:	No. 9997 EQUITY
	:	IN THE
vs	:	CIRCUIT COURT
CORNELIA E. POTEE, et al	:	FOR
	:	ANNE ARUNDEL COUNTY.

:::::::

PETITION OF GUARDIAN AD LITEM FOR AUTHORIZATION TO EXECUTE AGREEMENT BETWEEN RUSSELL POTEE AND OTHERS PERTAINING TO ANY RIGHTS OF SUBROGATION BY REASON OF THE JUDGMENT OF ANDREW E. SEARS

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The Petition of Virginia Hall, Guardian Ad Litem of John R. Potee and Filini Potee, infants, respectfully represent.

1. That it has been proposed that the attached agreement between Russell Potee and the other heirs and beneficiaries of the Estate of Michael Potee be entered into in settlement of the claims and contentions of the parties by reason of possible rights of subrogation arising out of the judgment obtained by Andrew E. Sears against Michael Potee and Russell Potee.

2. That your petitioner believes that said agreement is to the best interest and advantage of the infants to enable a more prompt settlement of the estate and thereby eliminate further costs and expenses, but that she is unable to consent thereto without the direction of this Honorable Court.

Wherefore your Petitioner prays the Court to pass an order authorizing and directing the Guardian Ad Litem to enter into said agreement.

Virginia Hall,
Guardian Ad Litem

Filed 6 July, 1951

ORDER OF COURT

ORDERED this 6th day of July 1951, by the Circuit Court for Anne Arundel County that Virginia Hall, the Guardian Ad Lite, heretofore appointed in this case, be and she is hereby authorized to consent to the said Agreement it being to the best interest and

Petitioners' Exhibit No. 9

Filed 3 Dec., 1951.
Re-filed 30 July, 1952.

2/26/52

Examined & Exhibit 10

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advantage of said infants.

Benjamin Michaelson,

Judge.

Filed 6 July, 1951

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, SCT:

IHEREBY CERTIFY, that the aforegoing PETITION OF GUARDIAN AD LITEM for Authorization to Execute Agreement, taken from No. 9997 Equity.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the Seal of the Circuit Court, this 13th day of November, A. D., 1951.

John H. Hopkins, 3d CLERK.

JAMES W. BLACKHURST,	:	IN
ASSIGNEE,	:	THE CIRCUIT COURT
VS.	:	FOR
MICHAEL POTEE, ET AL.	:	ANNE ARUNDEL COUNTY
	:	No. 10,086 Equity

::::::::::::::::::::::::::::

TESTIMONY IN OPEN COURT

September 21, 1951

Before Hon. Benjamin Michaelson, Associate Judge.

Mr. Ginsberg, Solicitor for Plaintiff.

Mrs. Katharine H. McCutchan, Court Stenographer.

Witnesses:

James W. Blackhurst, pages 2, 3, 5, 6.

R. Glenn Prout, pages 3, 4.

John H. Hopkins, 3rd. pages 5, 6.

Filed 3 Dec., 1951.
Re-filed 30 July, 1952.

Examiner's Exhibit 11 7/26/52

Ex 11

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1. Petitioners' Exhibit No. 10.

James W. Blackhurst, a witness of lawful age, being first duly sworn, deposes and says:

(Mr. Ginsberg)

1. Will you give your name?

A. James W. Blackhurst.

2. You are a member of the Bar?

A. Yes.

3. Practicing in Anne Arundel County?

A. That's correct.

4. How long have you been a member of the Bar?

A. Since 1945.

5. Did you have occasion in the course of your practice to institute a proceedings for foreclosure in a case known as James W. Blackhurst, Assignee, vs. Michael Potee, et al., No. 10,086 Equity?

A. I did.

6. In that proceeding there was an order passed on the 12th day of January, 1951 whereby you were ordered to sell certain property. Will you tell his Honor just what was done at that time, whether deeds were made as a result of that proceeding?

A. The sale was made in accordance with the Court order and I believe that sale, if my memory is correct, was on February 17th.

7. Did you report the sale to the Court?

A. The sale was reported and ratified. I received the funds; the deed was made by the assignee to the purchasers at the foreclosure sale.

8. You made a deed on the 10th day of April 1951 to Charles L. Ball, Jr. and Lois Long Ball, his wife; they were the purchasers?

A. That's correct.

9. The deed was recorded in J.H.H. 618, page 4 and the pages that follow, is that correct?

A. That's correct.

10. Since that deed was made Mr. and Mrs. Charles L. Ball have made arrangements to sell Lot No. 60, which is a part of the land in which you sold to them, is that correct?

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A. That's correct.

11. You have had certain discussions with Mr. George B. Woelfel who is the attorney for the purchasers, is that correct?

A. That is correct.

12. Will you tell his Honor just what has arisen as a result of the attempt to sell Lot No. 60?

A. Mr. Woelfel requested the Maryland Title Company to make a title examination of the property that the Balls purchased at the mortgage foreclosure sale; the preliminary report of the title company stated in effect that they believed that a quit claim deed should be obtained from Libera Maria Bonsanto Potee.

13. Who is she?

A. She is a woman who at one time claimed to be the surviving widow of Michael Potee. They also thought that quit claim deeds should be obtained from Russell Potee, Charles Potee and John Arthur Potee. They were the children of Michael Potee and Agnes Turner, Agnes having died October 26, 1946.

14. I show you this letter from the Maryland Title Company to George B. Woelfel, Esquire, dated August 24, 1951, is that the letter you are referring to?

A. This is the letter I am referring to and Mr. Woelfel has given me a copy of it.

(COPY OF LETTER MARKED PLAINTIFF'S EXHIBIT 1 AND FILED HEREWITH)

****

Richard Glenn Prout, a witness of lawful age, being first duly sworn, deposes and says:

(Mr. Ginsberg)

1. State your full name?

A. Richard Glenn Prout.

2. You are the Register of Will for Anne Arundel County?

A. Yes sir.

3. It is your duty to have custody of all the papers pertaining to the administration of estates of people who have died in this County?

A. Yes.

4. Do you have with you the papers pertaining to the estate of Michael Potee?

A. I have.

5. Are these the papers?

A. They are.

6. The estate is No. 7894 in the Orphans Court of Anne Arundel County?

A. That's right.

7. I show you a folder here containing all the papers in that estate-are these each and every one of the proceedings that have been taken in the estate of Michael Potee?

A. These are all of the papers that we have in the estate of Michael Potee.

8. Down to the present time?

A. Yes sir.

(No. 7894 ORPHANS COURT OF ANNE ARUNDEL COUNTY MARKED PLAINTIFF'S EX.2 AND FILED HEREWITH)

****

John H. Hopkins,3rd, a witness of lawful age being first duly sworn, deposes and says:

(Mr. Ginsberg)

1. State your full name.

A. John H. Hopkins, 3rd.

2. You are the Clerk of the Circuit Court for Anne Arundel County?

A. Yes.

3. As Clerk of the Court it is your duty to receive in your custody all papers filed in all law and equity cases in this County?

A. That's correct.

4. I show you a folder No. 9997 Equity, entitled Andrew E. Sears vs. Cornelia Potee, et al. Are these all the papers and proceedings in that case.

A. They are.

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(NO. 9997 EQUITY, PIERCE VE. POTEE, MARKED PLAINTIFF'S EX. 3 AND FILED HEREWITH)

5. I show you a folder No. 2713 Law, in a case entitled Libera Maria Bonsanto Potee vs Cornelia Potee, et al. Are these all the papers in that case?

A. They are.

(NO. 2713 LAW, POTEE VS. POTEE, MARKED PLAINTIFF'S EX. 4 AND FILED HEREWITH)

6. I show you a folder No. 10,086 Equity, entitled James W. Blackhurst, Assignee, vs. Michael Potee, et al. Are these all the papers and proceedings in that case?

A. They are.

(NO. 10,086 EQUITY, BLACKHURST VS. POTEE, MARKED PLAINTIFF'S EX. 5 AND FILED HEREWITH)

7. I show you a Land Record, which is known as J.H.H. No. 618, and especially at page 4, which is a deed dated 10th day of April 1951 from James W. Blackhurst, Assignee, to Charles L. Ball, Jr. and Lois L. Ball, his wife. Is that one of the Land Records which is in your custody?

A. It is.

8. And an official Land Record in this County?

A. It is.

PLAINTIFF'S
(DEED OFFERED IN EVIDENCE AS/EXHIBIT 6 AND FILED HEREWITH)

9. This deed was recorded 11th day of April 1951 at 2 o'clock?

A. That's correct.

****

James W. Blackhurst, a witness of lawful age, after being first duly sworn, deposes and says:

(Mr. Ginsberg)

1. From the examination of the Land Records where you find a deed dated 10th day of April, 1951 from James W. Blackhurst, Assignee, to Charles L. Ball, Jr. and Lois Long Ball, his wife, is Charles L. Ball, Jr. and Charles L. Ball one and the same person?

A. Yes.

COURT: THAT IS THE SAME CHARLES L. BALL THAT HAS BEEN NAMED ALL THROUGH THESE PROCEEDINGS?

WITNESS: YES SIR AND IT IS THE SAME CHARLES L. BALL WHO IS ONE OF THE PETITIONERS IN THIS PROCEEDING BEFORE THE COURT.

COURT: HOW DID IT HAPPEN THAT HE WAS DESIGNATED "JR." WHEN IT CAME TO THE DEED?

WITNESS: POSSIBLE IT SHOULD HAVE BEEN "JR." IN THE PETITION. THE MISTAKE WAS MADE WHEN THE PETITION WAS DRAWN AND "JR." WAS LEFT OUT.

****

LIBER 18 PAGE 553

JAMES W. BLACKHURST,	:	IN
ASSIGNEE,	:	THE CIRCUIT COURT
VS.	:	FOR
MICHAEL POTEE, ET AL.	:	ANNE ARUNDEL COUNTY
	:::	No. 10,086 Equity

::

DECREE ON PETITION FOR DECLARATORY RELIEF

Filed 3 Dec., 1951.
Re-filed 30 July, 1952.

The above entitled cause coming on to be heard on the Petition of Charles L. Ball, Jr. and Lois Long Ball, his wife, for a Declaratory Decree, the papers were read and considered and testimony was taken in open Court.

It is thereupon this 24th day of September, 1951, by the Circuit Court for Anne Arundel County, sitting in Equity, ADJUDGED, ORDERED and DECREED:

1. That as a result of the proceedings which have been taken in this cause, Equity No. 10,086; in the case of Andrew E. Sears vs. Cornelia Potee, et al., Equity No. 9997; in the case of Libera Maria Bonsanto Potee, et al. vs. Marvin I. Anderson, et al. Law No. 2713; in the Estate of Michael Potee, late of Anne Arundel County, deceased, in the Orphans' Court for Anne Arundel County, the papers in all of which cases and proceedings have been offered in evidence in this Petition for a Declaratory Decree, title to all the land sold by James W. Blackhurst, Assignee, in accordance with the order of this Court of January 12, 1951, passed in this cause, and in accordance with the Deed dated the 10th day of April, 1951, from James W. Blackhurst, Assignee, as grantor, to Charles L. Ball, Jr. and Lois Long Ball, his wife, as grantees, (said Deed being recorded among the Land Records of Anne Arundel County in Liber J.H.H. No. 618, folio 4, etc.) a good and merchantable title is now in Charles L. Ball, Jr. and Lois Long Ball, his wife.

7/26/52 Examined & Exhibit 1, 2

2. That title to all the land sold by James W. Blackhurst, Assignee, in accordance with the Order of this Court of January 12, 1951, passed in this cause, is in the said Charles L. Ball, Jr. and Lois Long Ball, his wife, free, clear and discharged of the rights of Libera Maria Bonsanto Potee, Russell Potee, Charles M. Potee and John R. Potee.

Petitioners' Exhibit No. 11.

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3. That the said Charles L. Ball, Jr. and Lois Long Ball, his wife, as a result of the proceedings which have been taken in this cause, Equity No. 10,086; in the case of Andrew E. Sears vs. Cornelia Potee, et al., Equity No. 9997; in the case of Libera Maria Bonsanto Potee, et al. vs. Marvin I. Anderson, et al. Law No. 2713; in the Estate of Michael Potee, late of Anne Arundel County, deceased, in the Orphans' Court for Anne Arundel County, can pass a good and merchantable title to all the land or any portion of the land sold to them by James W. Blackhurst, Assignee, in accordance with the Order of this Court of January 12, 1951, passed in this cause, and the Deed aforesaid.

Benjamin Michaelson
Judge

TRUE COPY,
TEST: John N. Hopkins 3rd
Clerk

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CHARLES L. BALL and
LOIS LONG BALL, his wife,

vs.

RUSSELL THOMAS POTEE
501 Old Annapolis Rd.
Glen Burnie, Maryland;
CHARLES MICHAEL POTEE, STAFF SERG.
AF 13173857
605
Tactical Control Squadron
APO 970
c/o Postmaster San Francisco,
California;
JOHN RALPH POTEE, Infant,
1 Washington Court
Annapolis, Maryland and
LIBERA MARIA BONSANTO POTEE
c/o Michele Dell Aquila
44 Church Street
Ambler, Pennsylvania

IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

No. 10,375 Equity

Filed 3 Dec., 1951.

ORDER OF PUBLICATION

The object of this suit is to procure a Declaratory Decree declaring and adjudging that title to all the land sold by James W. Blackhurst, in accordance with the Order of the Circuit Court for Anne Arundel County of January 12, 1951, is in Charles L. Ball and Lois Long Ball, his wife, free, clear and discharged of the rights of Libera Maria Bonsanto Potee, Russell Potee, Charles Potee and John Potee, and for such other and further relief as the case may require.

The Petition for said Declaratory Decree states that by an order of the Circuit Court for Anne Arundel County of January 12, 1951, in a cause entitled James W. Blackhurst, Assignee, vs. Michael Potee, et al, Equity No. 10086, it was ordered that the land mentioned in a mortgage filed in said proceedings was not susceptible of division so as to enable dower rights which Libera Maria Bonsanto Potee may have in said land to be assigned to her and that it was necessary to sell said land; that James W. Blackhurst was authorized to sell at foreclosure sale all of the land mentioned in a mortgage of Michael Potee and Cornelia Potee, his wife, to the County Trust Company of Maryland, dated March 24, 1948 and recorded among the Land Records of Anne Arundel County in Liber J.H.H. No. 462, Folio No. 440, etc. except Lot No. 59; that said James W. Blackhurst

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was ordered to bring the proceeds of said foreclosure sale into Court and after setting aside, in accordance with Equity Rule 17 in the Circuit Court for Anne Arundel County, a sum as an allowance in lieu of dower to be held by him as trustee to take care of any possible dower claim of Libera Maria Bonsanto Potee in the event that she proves that she is the lawful widow of the late Michael Potee, he shall then after the payment of the costs of this suit, the expenses of said sale and such commissions and fees to the said James W. Blackhurst as this Court shall think proper to allow, in consideration of the skill, attention and fidelity wherewith he shall have appeared to have discharged his trust, dispose of the balance of the proceeds of said sale as follows: "a. Pay a sum sufficient to satisfy the agreements, covenants and conditions of the mortgage involved in that case, Equity No. 10086, upon the ratification of the sale and the ratification of the auditor's account. b. Hold the balance as trustee to be distributed under orders of the Circuit Court for Anne Arundel County to the persons entitled thereto in accordance with their rights and priorities under the law. That a certified copy of said Order is attached to the Petition marked, "Petitioners' Exhibit No. 1".

That in pursuance of said Order of the Circuit Court for Anne Arundel County, dated the 12th. day of January, 1951, as aforesaid, James W. Blackhurst sold all theland mentioned in the Order to Charles L. Ball and Lois Long Ball for the sum of $92,000.00, they being the highest bidders. That this sale was reported to the Circuit Court for Anne Arundel County and ratified on the 21st. day of July 1951. That thereafter an auditor's report and account was filed and duly ratified by said Court on the 21st. day of July 1951.

The Petition further alleges that the Land Records of Anne Arundel County indicate that the said property brought at foreclosure sale by Charles L. Ball and Lois Long Ball as aforesaid was acquired by Michael Potee, the Mortgagor, in the following manner: "a. By Deed dated February 10, 1948 and recorded among the Land Records of Anne Arundel County in Liber J.H.H. No. 456, Folio 544, lots 11 thru 19, 5 thru 10 and 24 thru 28 on Plat of Academy filed among the Plat Records of Anne

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Arundel County in Cabinet 2 Rod B-3, Plat 29, were conveyed by the First Evangelical Lutheran Church to Michael Potee, (then a widower). b. By Deed dated February 16, 1946 and recorded in the Land Records of Anne Arundel County in J.H.H. 349 Folio 381 Lot No. 60, as shown on Baldwin's Plat of Odenton filed among the Land Records of Anne Arundel County, was conveyed by Joseph Taylor et al to Michael Potee and wife." The Petition further alleges that certified true copies of these two aforementioned deeds are attached to the Petition and marked, "Petitioners' Exhibit Nos. 1A and 2".

The Petition further alleges that as indicated by a photostatic copy of a marriage certificate, part of the documentary evidence filed in the Circuit Court of Anne Arundel County, in a case entitled Libera Maria Bonsanto Potee and Salvatore Potee by Michael Dell 'Aquila, their next friend and attorney in fact vs. Marvin I. Anderson and Louis Straus, Administrators of Michael Potee, which case was Law No. 2713 in said Court, Michael Potee was married to Agnes P. Turner by Rev. Victor S. Ross on October 14, 1942.

The Petition further alleges that, as indicated by a photostatic copy of a marriage certificate, part of the documentary evidence filed in the Circuit Court of Anne Arundel County, in a case entitled Libera Maria Bonsanto Potee and Salvatore Potee by Michael Dell 'Aquila, their next friend and attorney in fact vs. Marvin I. Anderson and Louis Straus, Administrators of Michael Potee, which case was Law No. 2713 in said Court, Michael Potee was married to Cornelia E. Seward by Rev. Victor S. Ross on January 31, 1948.

The Petition further alleges that an "Agreement and Assignment" filed in the Circuit Court of Anne Arundel County in a case entitled Andrew E. Sears vs. Cornelia Potee, et al, which case was No. 9977, in which case Louis L. Strauss and Marvin I. Anderson were appointed receivers for the estate of Michael Potee, the aforementioned Agreement and Assignment stated the following: a. That Libera Maria Bonsanto Potee was married to the late Michael Potee on January 4, 1914, in the town of Vico del Gargano, Province of Foggia, Italy, and a son, Salvatore Potee was born of said

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marriage on February 25, 1915 in said City, Province and Country. That Michael Potee emigrated to the United States of America on December 12, 1914. b. That on October 14, 1922, Michael Potee married Agnes M. Turnerby whom he had three children, namely Russell Potee, Charles M. Potee and John R. Potee; that said Agnes M. Turner died in the year 1947. c. That the said Michael Potee again entered into an alleged marriage ceremony with Cornelia E. Seward (herein called Cornelia E. Potee) at Odenton, Anne Arundel County. d. That on December 6, 1950, the said Libera Maria Bonsanto Potee and Salvatore Potee filed their Bill of Complaint in the Circuit Court for Anne Arundel County, in Equity, to enjoin the sale of the property of the said Michael Potee, deceased, and for other relief and at the same time said Libera Maria Bonsanto Potee and Salvatore Potee filed their claims as widow and sole lawful surviving child of Michael Potee in the Orphans' Court for Anne Arundel County. That subsequently the said Cornelia E. Potee filed her answer to said claims and issues were framed and transmitted to the Circuit Court for Anne Arundel County for trial by a jury, which issues were to determine whether Libera Maria Bonsanto Potee was the legal surviving widow of the late Michael Potee and whether Salvatore Potee was the lawful child of the said Michael Potee. e. That counsel for the respective parties after extensive negotiations agreed to resolve the dispute between them and entered into a stipulation, a copy of which is attachedthereto as part thereof representing the disposition of the aforementioned issues for and in consideration of the agreement between them which is more fully set forth thereafter in the Petition and in this Order of Publication. f. That under the laws of Maryland the parties to this agreement are advised that the presumption of law respecting the marriage of the said Michael Potee and the said Agnes M. Turner, and the subsequent marriage after the death of Agnes M. Turner of the said Michael Potee and the said Cornelia E. Seward is that both of said marriages were and are lawful marriages. That the said Agreement and Assignment was executed by Michael Dell 'Aquila, next friend and attorney in fact of Libera Maria Bonsanto Potee and Salvatore Potee, Cornelia E. Potee and Marvin I.

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Anderson and Louis L. Straus, Receivers and Administrators of Michael Potee, deceased, a certified copy of the entire Agreement and Assignment being attached to the Petition and marked "Petitioners' Exhibit No. 3."

That the Petition further stated that the Agreement and Assignment referred to above and marked "Petitioners' Exhibit No. 3 specifically provides for the following and to which the persons executing same mutually covenanted and agreed: "(1.) That the said parties hereto do hereby assent to, conform and adopt the terms and provisions of the Stipulation hereto annexed and agree to the findings upon the issues now pending in the Circuit Court for Anne Arundel County, pursuant to said Stipulation. (2.) That the said parties hereto do hereby expressly assent to and direct the administration and distribution of the Estate of the late Michael Potee, who died intestate, pursuant to the laws of descent and distribution of the State of Maryland, and in that connection do hereby expressly agree that one-third of the Estate of the late Michael Potee shall be distributed to Cornelia E. Potee as his surviving widow and the remaining two-thirds of said Estate of the late Michael Potee shall be divided equally between Salvatore Potee, Russell Potee, Charles M. Potee, Jonn R. Potee and Filini Potee, being all the children of the said late Michael Potee; and the said parties hereto hereby agree that they will contend for, maintain and support such distribution of said Estate. 3. That the said parties hereto will take such actions as will effectually accomplish the aforesaid distribution; it being understood and agreed that the distributive share payable to Salvatore Potee will be paid to Michele Dell 'Aquila as his next friend and attorney in fact. 4. That the said Cornelia E. Potee hereby agrees to pay unto Libera Maria Bonsanto Potee ten per-cent of any and all monies to which the said Cornelia E. Potee was, is and shall be entitled to receive and to be received as the lawful widow of the said Michael Potee, deceased, and the parties hereto agree that this provision of this instrument shall operate as and be an assignment by the said Cornelia E. Potee to the said

Libera Maria Bonsanto Potee of said ten per cent of the share received and to be received by the said Cornelia E. Potee out of and from the Estate of the said Michael Potee and that said Receivers and Administrators shall give full force and effect to this provision accordingly; it being understood and agreed by and between the parties hereto that said share or sums so payable as aforesaid to Libera Maria Bonsanto Potee shall be paid to Michele Dell 'Aquila as her next friend and attorney in fact. 5. That the said parties hereto do hereby covenant and agree to execute any other and further instruments as shall be necessary to effectuate the terms of this agreement and assignment and they and each of them will execute such releases for or on account of the Estate of Michael Potee so distributed whether the same shall be distributed by the Receivers or the Administrators; it being understood that any releases or instruments required to be executed by Libera Maria Bonsanto Potee and Salvatore Potee shall be executed by Michele Dell 'Aquila as their next friend and attorney in fact. 6. It is the intention of the parties hereto with full knowledge of all the facts and circumstances to hereby make the choice, acquiescence in and to the acts as herein expressed.

The Petition further states that by Petition filed in No. 9997 Equity, in the Circuit Court for Anne Arundel County in a case entitled Anderson E. Sears vs. Cornelia E. Potee, et al, Virginia Hall, guardian ad litem of John R. Potee and Filini Potee, infants, petitioned this Court for authorization to consent to the Agreement and Assignment between Libera Maria Bonsanto Potee and Salvatore Potee by Michele Dell 'Aquila, their next friend and attorney in fact and Cornelia E. Potee and Marvin I. Anderson and Louis M. Straus, Receivers and Administrators of Michael Potee, and that a certified copy of the said Petition and the Order thereon of July 6, 1951 was being filed with the Petition marked "Petitioners' Exhibit No. 4".

The Petition further states that in accordance with the first paragraph of the aforementioned "Agreement and Assignment" there are "Stipulations" attached to Law Case No. 2713 in the Circuit Court for Anne Arundel County entitled Libera Maria Bonsanto Potee and Salvatore

Potee, by Michele Dell 'Aquila, their next friend and attorney in fact vs. Marvin I. Anderson and Louis Strauss, Administrators and Cornelia E. Potee, and that a certified true copy of these "Stipulations" are attached to the said Petition and marked "Petitioners ' Exhibit No. 5."

The Petition further states that Law Case No. 2713 in the Circuit Court for Anne Arundel County entitled Libera Maria Bonsanto Potee and Salvatore Potee, by Michele Dell'Aquilla, their next friend and attorney in fact vs. Marvin I. Anderson and Louis Strauss, Administrators and Cornelia E. Potee, concerned "Issues" submitted by the Orphans' Court to be determined by the Circuit Court for Anne Arundel County, and that said issues were submitted for trial without a jury, testimony was taken, supporting documents were filed, counsel for the parties were heard and after fully considering the evidence and proceedings the following answers of the Court were recorded on July 19, 1951: "Issue 1 - Is the petitioner represented in these proceedings as Libera Maria Bonsanto Potee the legal surviving widow of Michael Potee, deceased, who died in Anne Arundel County at Odenton, Maryland, on the 18th. day of May, 1950? A. - The verdict of the Court is for the defendants, and the answer is No. Issue 2 - Was the said Libera Maria Bonsanto Potee Lawfully married to the late Michael Potee on the 4th. day of January, 1914, at Vico Del Gargano, Province of Foggia, Italy? A. - The verdict of the Court is for the Plaintiff, Libera Maria Bonsanto Potee, and the answer is Yes. Issue 3 - Is the said Salvatore Potee the surviving son of the late Michael Potee and the issue of the said marriage between the said Libera Maria Bonsanto Potee and Michael Potee? A. - The verdict of the Court is for the Plaintiff, Salvatore Potee, and the answer is Yes." And the Petition states that a certified copy of the findings on said issues are filed therewith marked "Petitioners' Exhibit No. 6".

The Petition further states that thereafter in conformity with the certified findings on the issues of facts raised by the pleadings and submitted by the Orphans' Court of Anne Arundel County to the Circuit Court for Anne Arundel County for trial, it was on the 31 day of July,

1951, Ordered, adjudged and Decreed by the Orphans' Court of Anne Arundel County that Cornelia E. Potee was the lawful widow of Michael Potee at the time of his death May 19, 1950, and it was further Ordered that Salvatore Potee is a lawful child of Michael Potee and a former wife, Libera Maria Bonsanto Potee, and that Order was being filed with the Petition and marked "Petitioners' Exhibit No. 7".

The Petition further states that in Equity case No. 9997 in the Circuit Court for Anne Arundel County entitled Andrew Sears vs. Cornelia Potee, et al there is filed an "Agreement" dated June 1, 1951 and executed by Russell Potee, Charles Potee, by Russell Potee, his attorney in fact, Virginia Hall, guardian of John R. Potee and Filini Potee, infants, Libera Maria Bonsanto Potee and Salvatore Potee, by Michael Dell'Aquilla, their next friend and attorney in fact, and Cornelia E. Potee, wherein Russell Potee's distributive share as an heir of the estate of the late Michael Potee is limited to $1500.00 and the other parties to this agreement release Russell Potee from any liability or to the estate of Michael Potee by virtue of a joint judgment obtained against Michael Potee and Russell Potee by one Andrew Sears and in the amount of $25,000.00 and that a certified copy of this agreement is attached to the Petition and marked "Petitioners' Exhibit No. 8."

The Petition further states that the Petition filed in No. 9997 Equity, in the Circuit Court for Anne Arundel County in a case entitled Anderson E. Sears vs. Cornelia E. Potee, et al, Virginia Hall, guardian ad litem of John R. Potee and Filini Potee, infants, to execute Agreement between Russell Potee and others pertaining to any rights of subrogation by reason of judgment of Andrew E. Sears and order thereon of July 6, 1951 was being filed with the Petition in the present case and marked "Petitioners' Exhibit No. 9".

The Petition further states that your Petitioners undertook to sell a portion of the property purchased by them known as Lot No. 60 on Baldwin's Plat of Odenton, saving and excepting so much thereof as as was conveyed by Michael Potee to Russell T. Potee and wife by deed dated August 18, 1947. That title was turned over by said purchaser or

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prospective purchaser to the Maryland Title Guarantee Company for examination, and marked Application No. 108, 787 by said Title Company. That the Maryland Title Guarantee Company has stated that it has examined the various legal proceedings in the Orphans' Court and in the Circuit Court of Anne Arundel County relating to the claim of Libera Maria Bonsanto Potee and Salvatore Potee and that, in its opinion, in order to pass a marketable title; a deed should be obtained from Libera Maria Bonsanto Potee of all of her right, title and interest in and to said property, as well as a deed from Russell Potee, Charles Potee and John Potee (the children of Agnes Potee, who died October 26, 1946) of all of their right, title and interest therein.

The Petition further states that on the 11th. day of September 1951 a Petition for a declaratory decree was filed in this Court by your Petitioners in the case of James W. Blackhurst vs. Michael Potee, et al, Equity No. 10086. That on September 21, 1951 testimony was taken in open Court on said Petition for Declaratory Decree, a copy of which testimony was filed with the Petition marked "Petitioners' Exhibit No. 10", and was prayed to be taken as part thereof. That on September 24, 1951, this Honorable Court signed a decree on the Petition for declaratory relief and a true copy of said Decree was filed with the Petition marked "Petitioners' Exhibit No. 11" and was prayed to be taken as part thereof.

The Petition further states that in view of the proceedings which have been taken in case No. 10086 and in No. 9997, in equity, and Orphans' Court for Anne Arundel County and in Law No. 2713 and all of the documents and agreements which have been filed therein, the title of your Petitioners has been fixed and determined so that no further claims can be made by any of the parties from whom the Title Company has requested a deed. That Charles L. Ball and Charles L. Ball, Jr. are one and the same person.

It is thereupon by the Circuit Court for Anne Arundel County Ordered this 3 day of ~~November~~ December, 1951, that the Petitioners, Charles L. Ball and Lois Long Ball, his wife, by causing a copy of this Order

to be inserted in some daily or weekly newspaper published in Anne Arundel County, Maryland, once in each of four successive weeks before the 7 day of ~~December~~ January, 1952, give notice to the said absent Libera Maria Bonsanto Potee and Charles Michael Potee of the object and substance of this Petition, warning them to be and appear in this Court, in person or by solicitor, on or before the 23 day of January, 1952, to show cause, if any they may have, why a Decree should not be passed as prayed.

John F. Hopkins, 3rd, Clerk.

CHARLES L. BALL and
LOIS LONG BALL, his wife,

vs.

RUSSELL THOMAS POTEE,
501 Old Annapolis Rd.
Glen Burnie, Maryland;
CHARLES MICHAEL POTEE, STAFF SERG.
AF 13173857
605
Tactical Control Squadron
APO 970
c/o Postmaster San Francisco,
California;
JOHN RALPH POTEE, infant,
1 Washington Court
Annapolis, Maryland and
LIBERA MARIA BONSANTO POTEE
c/o Michele Dell Aquila
44 Church Street
Ambler, Pennsylvania

IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

No. 10,375 Equity

Filed 24 Jan., 1952.
Re-filed 30 July, 1952

PETITION

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The Petition of Charles L. Ball and Lois Long Ball, his wife, (the said Charles L. Ball also being known as Charles L. Ball, Jr.) respectfully shows unto your Honors:

1. That on the 1st day of December, 1951, your Petitioners filed their Petition praying for declaratory relief pursuant to the provisions of Article 31A of the Annotated Code of Maryland, 1947 Supplement and for other relief.

2. That Russell Thomas Potee, one of the Defendants named in the Petition was served in person in Anne Arundel County, but said Defendant has failed to file his answer to said Bill of Complaint.

3. That Charles Michael Potee and Libera Maria Bonsanto Potee, the non-resident Defendants, were notified of the object and substance of the Petition by an Order of Publication duly inserted in a newspaper published in Anne Arundel County, as will appear from the Certificate of Publication filed in these proceedings, but said Defendants have failed to file an answer to the Petition.

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Examiner's Ex. 13.

LIBER 78 PAGE 566

WHEREFORE, your Petitioners respectfully pray that the Petition may be taken pro confesso against the Defendants, Russell Thomas Potee, Charles Michael Potee and Libera Maria Bonsanto Potee.

AND AS IN DUTY BOUND, ETC.

GINSBERG & GINSBERG
914-916 Garrett Building
Baltimore 2, Maryland

Solicitors for Petitioners

CHARLES L. BALL and
LOIS LONG BALL, his wife,

vs.

RUSSELL THOMAS POTEE,
501 Old Annapolis Rd.
Glen Burnie, Maryland;
CHARLES MICHAEL POTEE, STAFF SERG.
AF 13173857
605
Tactical Control Squadron
APO 970
c/o Postmaster San Francisco,
California;
JOHN RALPH POTEE, infant,
1 Washington Court
Annapolis, Maryland and
LIBERA MARIA BONSANTO POTEE
c/o Michele Dell Aquila
44 Church Street
Ambler, Pennsylvania

: IN THE
:
: CIRCUIT COURT
:
: FOR
:
: ANNE ARUNDEL COUNTY
:
:

Filed 24 Jan., 1952

: : :

ORDER OF COURT

The Defendant, Russell Thomas Potee, having been duly summoned to appear to the Petition and having failed to appear thereto according to the exigency of the writ, and the Defendants, Charles Michael Potee and Libera Maria Bonsanto Potee, having been duly notified by Order of Publication to appear to the Bill of Complaint, and having failed to appear thereto according to the exigency of the Order,

It is thereupon this 24th day of January, 1952, by the Circuit Court for Anne Arundel County, Sitting in Equity, ADJUDGED, ORDERED and DECREED, that the Petitioners are entitled to relief in the premises, and the Petition be and it is hereby taken pro confesso against the said Defendants, Russell Thomas Potee, Charles Michael Potee and Libera Maria Bonsanto Potee.

But because it doth not certainly appear to what relief the Petitioners are entitled, it is further ADJUDGED and ORDERED that testimony be taken in open Court to support the allegations of the Petition.

Benjamin Michaelson

CHARLES L. BALL and
LOIS LONG BALL, his wife,

vs.

RUSSELL THOMAS POTEE,
501 Old Annapolis Rd.
Glen Burnie, Maryland;
CHARLES MICHAEL POTEE, STAFF SERG.
AF 13173857
605
Tactical Control Squadron
APO 970
c/o Postmaster San Francisco,
California;
JOHN RALPH POTEE, infant,
1 Washington Court
Annapolis, Maryland and
LIBERA MARIA BONSANTO POTEE
c/o Michele Dell Aquila
44 Church Street
Ambler, Pennsylvania

IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

No. 10,375 Equity

Filed 13 Feb, 1952.
Re-filed 30 July, 1952.

PETITION AND ORDER APPOINTING GUARDIAN AD LITEM

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The Petition of Charles L. Ball and Lois Long Ball, his wife, respectfully represents unto your Honors:

1. That John Ralph Potee, Infant Defendant in this cause has been duly summoned.

2. That said Infant Defendant has no legal guardian.

Wherefore, your Petitioners pray this Honorable Court to appoint a Guardian ad Litem to appear and answer for said Infant Defendant, and suggest that ----Eleanor Owings---------- who has no interest whatever in this suit, be appointed Guardian ad Litem.

AND AS IN DUTY BOUND, ETC.

GINSBERG & GINSBERG
914-916 Garrett Building
Baltimore, Maryland

Solicitors for Petitioners

Examined Ed. 14

CHARLES L. BALL and
LOIS LONG BALL, his wife,

vs.

RUSSELL THOMAS POTEE,
501 Old Annapolis Rd.
Glen Burnie, Maryland;
CHARLES MICHAEL POTEE, STAFF SERG.
AF 13173857
605
Tactical Control Squadron
APO 970
c/o Postmaster San Francisco,
California;
JOHN RALPH POTEE, infant,
1 Washington Court
Annapolis, Maryland and
LIBERA MARIA BONSANTO POTEE
c/o Michele Dell Aquila
44 Church Street
Ambler, Pennsylvania

IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

ORDER

ORDERED, by the Circuit Court for Anne Arundel County on this 14th day of February, 1952, upon the foregoing Petition that ----------Eleanor Owings---------- be and she is hereby appointed Guardian ad Litem for the Infant Defendant named in the aforegoing Petition andshe is hereby directed to appear and file her answer in his behalf.

Benjamin Michaelson

14 Feb. 1952

Filed

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Filed 1st Feb., 1952.
Re-filed 30 July, 1952.

CHARLES L. BALL and
LOIS LONG BALL, his wife,

vs.

RUSSELL THOMAS POTEE,
501 Old Annapolis Rd.
Glen Burnie, Maryland;
CHARLES MICHAEL POTEE, STAFF SERG.
AF 13173857
605
Tactical Control Squadron
APO 970
c/o Postmaster San Francisco,
California;
JOHN RALPH POTEE, infant,
1 Washington Court
Annapolis, Maryland and
LIBERA MARIA BONSANTO POTEE
c/o Michele Dell Aquila
44 Church Street
Ambler, Pennsylvania

: IN THE

: CIRCUIT COURT

: FOR

: ANNE ARUNDEL COUNTY

No. 10,375 Equity.

ANSWER OF GUARDIAN AD LITEM

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Answer of John Ralph Potee, the Infant Defendant named in the Bill of Complaint in this Court, against him exhibited, by Eleanor Owings----------, duly appointed Guardian ad Litem, respectfully represents unto your Honor:

That the Defendant being an Infant under age of twenty-one years cannot admit nor deny, the allegations set up in said Bill of Complaint and therefore submits his rights to the protection of this Honorable Court.

AND AS IN DUTY BOUND, ETC.

Eleanor Owings
Guardian ad Litem

Elleanor L. Owings.

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Examined Ex. 5

CHARLES L. BALL and LOIS LONG BALL, his wife,	:	IN THE
vs.		
RUSSELL THOMAS POTEE, 501 Old Annapolis Rd. Glen Burnie, Maryland; CHARLES MICHAEL POTEE, STAFF SERG. AF 13173857 605 Tactical Control Squadron APO 970 c/o Postmaster San Francisco, California; JOHN RALPH POTEE, infant, 1 Washington Court Annapolis, Maryland and LIBERA MARIA BONSANTO POTEE c/o Michele Dell Aquila 44 Church Street Ambler, Pennsylvania	:	CIRCUIT COURT FOR ANNE ARUNDEL COUNTY NO. 10375 EQUITY

Filed 2 July, 1952
Re-filed 30 July, 1952

ANSWER OF CHARLES MICHAEL POTEE

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The Answer of Charles Michael Potee, one of the Defendants, respectfully represents unto your Honors:

That the said Defendant submits to the jurisdiction of this Court and to such Decree as the Court may pass in the premises.

AND AS IN DUTY BOUND, ETC.

Charles M. Potee
Charles Michael Potee

One of the Defendants

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Examined & c. 16

CHARLES L. BALL AND	:	IN
LOIS LONG BALL, HIS WIFE,	:	THE CIRCUIT COURT
PLAINTIFFS,	:	FOR
VS.	:	ANNE ARUNDEL COUNTY
RUSSELL THOMAS POTTS, ET AL.,	:	No. 10,375 Equity
DEFENDANTS.	:	

::::::::::::::::::::::::::::::::::

TESTIMONY ON BEHALF OF PLAINTIFFS

February 26, 1952

Filed 30 July, 1952

Present:

Mr. Ginsberg, Solicitor for Plaintiffs.

Mr. John S. Strahorn, Examiner.

Mrs. Katharine H. McCutchan, Court Stenographer.

Witnesses:

R. Glenn Prout, page 2.

Lois Long Ball, pages 3 to 8.

R. Glenn Prout, a witness of lawful age, being first duly sworn, deposes and says:

(Mr. Ginsberg)

1. What is your name?

A. R. Glenn Prout.

2. You are the Register of Wills for Anne Arundel County?

A. I am.

3. You have control of all the records pertaining to the estates of deceased persons in this County?

A. I do.

4. Do you have the records pertaining to the estate of the late Michael Potee?

A. I do.

5. In the records of your office these papers are known as what?

A. No. 7894.

6. Are these all of the papers relating to the estate of the late Michael Potee?

A. I am satisfied they are all of the papers.

(I offer each and every one of the papers filed to the present time in the Orphans Court for Anne Arundel County as part of the evidence in this case as Exhibit 1)

(Mr. Strahorn)

To the General Question under the Rule, the witness answers "No".

R Glenn Prout
R. Glenn Prout

Lois Long Ball, a witness of lawful age, being first duly sworn, deposes and says:

(Mr. Ginsberg)

1. What is your full name?

A. Lois Long Ball.

2. Where do you live?

A. 203 West Maple Road, Linthicum Heights, Anne Arundel County, Maryland,

3. You are the wife of Dr. Charles L. Ball?

A. That's right.

4. Dr. Charles L. Ball and Dr. Charles L. Ball, Jr., are one and the same person?

A. That's right.

5. You and Dr. Ball purchased the property mentioned in this case, is that correct?

A. That is correct.

6. You obtained a deed dated April 10, 1951 from James W. Blackhurst, Assignee, and that deed is made out to Charles L. Ball, Jr. and Lois Long Ball, his wife, as grantees?

A. That is right.

7. That deed is recorded among the Land Records of Anne Arundel County in Liber J.H.H. No. 618, folio 4, etc., is that correct?

A. That is correct.

(The original record will be produced by bringing in Liber J.H.H. 618)

8. You allege in your bill of complaint that by order of the Circuit Court for Anne Arundel County, dated 12 January 1951, in a cause entitled "James W. Blackhurst, Assignee, vs. Michael Potee, et al., Equity 10,086, the Court passed a certain order and this order was filed as Petitioners' Ex. 1, with your bill of complaint, is that correct?

A. Yes.

(Order of Court marked Petitioners' Exhibit 1 Marked Examiner's Ex. 1)

9. You state that in pursuance of the order of Court of January 12, 1951,

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James W. Blackhurst sold all of the land mentioned in that order to you and your husband for $92,000.00 and that you were the highest bidders, is that correct?

A. That is correct.

10. You further state that the Land Records of Anne Arundel County indicate that the property which you bought was acquired by Michael Potee in the following manner: By a deed dated February 10, 1948 and recorded among the Land Records of Anne Arundel County in Liber J.H.H. No. 456, folio 544 in lots 11 through 19, 5 through 10, and 24 through 28, on Plat of Academy, filed among the Plat Records of Anne Arundel County in Cabinet 2, Rod B-3, Plat 29, that was conveyed by the First Evangelical Lutheran Church to Michael Potee, then a widower. You also allege that by deed dated February 16, 1946and recorded among the Land Records of Anne Arundel County in Liber J.H.H. No. 349, folio 381, Lot No. 60, as shown on Baldwin's Plat of Odenton filed among the Land Records of Anne Arundel County was conveyed by Joseph Taylor, et al. to Michael Potee and wife, is that correct?

A. Yes.

(CERTIFIED COPIES OF ABOVE DEEDS FILED WITH BILL OF COMPLAINT AS PETITIONERS' EXHIBITS 1A AND 2 MARKED EXAMINER'S EXHIBITS 2 and 3)

11. You further allege in your bill of complaint that as indicated by a photostatic copy of a marriage certificate, part of the documentary evidence filed in a case entitled Libera Maria Bonsanto Potee and Salvatore Potee by Michael Dell 'Aquila, their next friend and attorney in fact vs. Marvin I. Anderson and Louis Strauss, Administrators of Michael Potee, Law 2713, Michael Potee was married to Agnes M. Turner by Rev. Victor S. Ross on October 14, 1942, is that correct?

A. That is correct.

12. You further state in your bill of complaint that as indicated by a photostatis copy of a marriage certificate, part of the documentary evidence filed in the case of Libera Maria Bonsanto Potee and Salvatore Potee by Michael Dell 'Aquila, their next friend and attorney in fact vs. Marvin I. Anderson and Louis Strauss, Administrators of Michael Potee, Michael Potee was married to Cornelia E. Seward by Rev. Victor S. Ross on January 31,1948, is that correct?

A. Yes.

13. You further state that by an "Agreement and Assignment" filed in Equity Case No. 9977 in the Circuit Court for Anne Arundel County entitled "Andrew E. Sears vs. Cornelia Potee, et al."in which case Marvin I. Anderson and Louis M. Strauss were appointed trustees that certain facts are set forth, is that correct?

A. That is correct.

(COPY OF AGREEMENT AND ASSIGNMENT FILED AS PETITIONERS' EXHIBIT 3 MARKED EXAMINER'S EXHIBIT 4)

14. You further state that by Petition filed in No. 9997 Equity in the Circuit Court for Anne Arundel County in a case entitled "Anderson E. Sears vs. Cornelia E. Potee, et al., Virginia Hall, guardian ad litem of John R. Potee and Filini Potee, infants, petitioned this Court for authorization to consent to the Agreement and Assignment between Libera Maria Bonsanto Potee and Salvatore Potee by Michele Dell 'Aquila, their next friend and attorney in fact, and Cornelia E. Potee and Marvin I. Anderson and Louis M. Strauss, Receivers and Administrators of Michael Potee, is that correct?

A. That is correct.

(COPY OF PETITION AND ORDER FILED WITH BILL OF COMPLAINT AS PETITIONERS' EXHIBIT 4 MARKED EXAMINER'S EXHIBIT 5)

15. You further state that in accordance with the first paragraph of the Agreement and Assignment, there are stipulations attached to case No. 2713 Law entitled "Libera Maria Bonsanto Potee and Salvatore Potee, by Michele Dell 'Aquila, their next friend and attorney in fact vs. Marvin I. Anderson and Louis Strauss, Administrators and Cornelia E. Potee", is that correct?

A. That is correct.

(STIPULATIONS FILED WITH BILL OF COMPLAINT AS PETITIONERS' EXHIBIT 5 MARKED EXAMINER'S EXHIBIT 6)

16. You further state that Law Case No. 2713 entitled "Libera Maria Bonsanto Potee and Salvatore Potee, by Michele Dell 'Aquila, their next friend and attorney in fact vs. Marvin I. Anderson and Louis Strauss, Administrators and Cornelia E. Potee," concerned "Issues" submitted by the Orphans Court

to be determined by the Circuit Court for Anne Arundel County and you also state the issues were submitted for trial without a jury, testimony was taken, supporting documents were filed, counsel for the parties were heard and after considering the evidence and proceedings, certain answers of the Court were recorded on July 19, 1951, is that correct?

A. That is correct.

(FINDINGS ON ISSUES FILED WITH BILL OF COMPLAINT AS PETITIONERS' EXHIBIT NO. 6 MARKED EXAMINER'S EXHIBIT 7)

17. You further state that in conformity with the certified findings on the issues of facts raised by the pleadings and submitted by the Orphans Court of Anne Arundel County to the Circuit Court for Anne Arundel County for trial, it was on the 31st day of July, 1951, ordered, adjudged and decreed by the Orphans Court of Anne Arundel County that Cornelia E. Potee was the lawful widow of Michael Potee at the time of his death May 19, 1950, and it was further ordered that Salvatore Potee is a lawful child of Michael Potee and a former wife, Libera Maria Bonsanto Potee, is that correct?

A. That is correct.

(ORDER OF COURT FILED AS PETITIONERS' EXHIBIT No. 7 WITH THE BILL OF COMPLAINT MARKED EXAMINER'S EXHIBIT 8)

18. You also state in your bill of complaint that in Equity Case No. 9997, entitled, "Andrew Sears vs. Cornelia Potee, et al., there is filed an agreement, dated June 1, 1951 and executed by Russell Potee, Charles Potee, by Russell Potee, his attorney in fact, Virginia Hall, guardian of John R. Potee and Filini Potee, infants, Libera Maria Bonsanto Potee and Salvatore Potee, by Michael Dell 'Aquila, their next friend and attorney in fact, and Cornelia E. Potee", wherein Russell Potee's distributive share as an heir of the estate of the late Michael Potee is limited to $1500.00 and the other parties to this agreement release Russell Potee from any liability in or to the estate of Michael Potee by virtue of a joint judgment obtained against Michael Potee and Russell Potee by one Andrew Sears and in the amount of $25,000.00, is that correct?

A. That is correct.

(COPY OF AGREEMENT FILED AS PETITIONERS' EX. 8 WITH THE BILL OF COMPLAINT MARKED EXAMINER'S EXHIBIT 9)

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19. You further state that the Petition filed in No. 9997 Equity in the Circuit Court for Anne Arundel County in a case entitled, "Anderson E. Sears vs. Cornelia E. Potee, et al., Virginia Hall, guardian ad litem of John R. Potee and Filini Potee, infants, to execute the Agreement between Russell Potee and others pertaining to any rights of subrogation by reason of judgment of Andrew E. Sears and the order thereon is filed as Exhibit 9 with the bill of complaint for declaratory judgment in this case, is that correct?

A. That is correct.

(ORDER FILED AS PETITIONERS' EXHIBIT No. 9 WITH BILL OF COMPLAINT MARKED EXAMINER'S EXHIBIT 10)

20. You further state in your bill of complaint that you and your husband undertook to sell a portion of the property purchased by you and your husband known as Lot No. 60 on Baldwin's Plat of Odenton, saving and excepting so much thereof as was conveyed by Michael Potee to Russell T. Potee and wife, by deed dated August 18, 1947; you also state that title was turned over by the prospective purchaser to The Maryland Title Guarantee Company for examination, and marked Application No. 108.787 by the Title Company. You further state in your bill of complaint that the Maryland Title Guarantee Company has stated that it has examined the various legal proceedings in the Orphans Court and in the Circuit Court of Anne Arundel County relating to the claim of Libera Maria Bonsanto Potee and Salvatore Potee, and that, in its opinion, in order to pass a marketable title a deed should be obtained from Libera Maria Bonsanto Potee of all of her right, title and interest in and to said property, as well as a deed from Russell Potee, Charles Potee and John Potee, the children of Agnes Potee, who died October 26, 1946, of all of their right, title and interest therein, is that correct?

A. Yes.

21. You further state in your bill of complaint that on the 11th day of September, 1951, a petition for a declaratory decree was filed in the Circuit Court for Anne Arundel County by you and your husband, Charles L.

Ball, also known as Charles L. Ball, Jr., in the case of James W. Blackhurst vs. Michael Potee, et al., Equity No. 10,086, and that on September 21, 1951, testimony was taken in open Court on the petition for declaratory decree, and on September 23, 1951, a decree on this petition for declaratory relief was signed by the Court, is that correct?

A. That is correct.

(COPY OF TESTIMONY FILED AS PETITIONERS' EX. No. 10 WITH THE BILL OF COMPLAINT MARKED EXAMINER'S EXHIBIT 11)

(COPY OF DECREE ON PETITION FOR DECLARATORY RELIEF FILED AS PETITIONERS' EX. No. 11 MARKED EXAMINER'S EXHIBIT NO. 12)

To the General Question under the rule, the witness answers "No".

Lois Long Ball
Lois Long Ball

There being no further witnesses to be examined on behalf of the Plaintiffs at this time, and no further testimony desired in their behalf, this testimony is now closed, and at the request of Plaintiffs' Solicitor is returned to the Court.

Witness my hand and seal this 29 day of July 1952.

Jno S. Strauss (SEAL)
Examiner

J.S.S. $10.00 /
K.H.McC. $ 8.00 Pd. 7/16/52 K.H.McC.

CHARLES L. BALL AND	:	IN
LOIS LONG BALL, HIS WIFE,	:	THE CIRCUIT COURT
PLAINTIFFS,	:	FOR
VS.	:	ANNE ARUNDEL COUNTY
RUSSELL THOMAS POTEE, ET AL.,	:	No. 10,375 Equity
DEFENDANTS.	:	

::::::::::::::::::

TESTIMONY ON BEHALF OF PLAINTIFFS,

July 10, 1952

Filed 30 July, 1952.

Present:

Mr. Ginsberg, Solicitor for Plaintiffs.

Mr. Emanuel Klawans, Examiner.

Mrs. Katharine H. McCutchan, Court Stenographer.

Witness:

Charles L. Ball, Jr. pages 9, 10.

Charles L. Ball, Jr., a witness of lawful age, being first duly sworn, deposes and says:

(Mr. Ginsberg)

1. What is your name?

A. Charles L. Ball, Jr.

2. You are one of the plaintiffs in this case?

A. Yes.

3. The other plaintiff is your wife?

A. Yes.

4. Where do you live?

A. 203 West Maple Road, Linthicum Heights, Md.

5. I show you a petition filed by yourself and Mrs. Ball asking for a decree pro confesso against the defendants, Russell Thomas Potee, Charles Michael Potee and Libera Maria Bonsanto Potee, that was filed January 24, 1952, is that your petition?

A. Yes.

6. An order was passed by the Circuit Court for Anne Arundel County on the same day, 24 January, 1952 whereby a decree pro confesso was granted against these three people, Russel Thomas Potee, Charles Michael Potee and Libera Maria Bonsanto Potee, is that correct?

A. Yes. (PETITION AND ORDER MARKED EXAMINER'S EXHIBIT 13)

7. I show you a petition of yourself and your wife, Mrs. Lois Long Ball, requesting the Court to appoint a guardian ad litem for John Ralph Potee, the infant defendant, that petition was filed February 13, 1952, and there is an order of Court dated 14 February 1952 appointing Eleanor Owings to be guardian ad litem for the infant John Ralph Potee? Is that your petition?

A. Yes. (PETITION MARKED EXAMINER'S EXHIBIT 14)

8. I show you a paper called answer of guardian ad litem filed February 14, 1952 by Eleanor Owings, is that her answer?

A. Yes. (ANSWER MARKED EXAMINER'S EX. 15)

9. I show you a paper called answer of Charles Michael Potee, filed by Charles Michael Potee on July 2, 1952, is that a paper filed by Charles Michael

Potee?

A. Yes. (ANSWER OF CHARLES MICHAEL POTEE MARKED EXAMINER'S EXHIBIT 16)

(Mr. Klawans)

To the General question underthe rule, the witness answers "No".

Charles L. Ball, Jr.
Charles L. Ball, Jr.

There being no further witnesses to be examined on behalf of the Plaintiff at this time, and no further testimony desired in their behalf, this testimony is now closed, and at the request of Plaintiff's Solicitor is returned to the Court.

Witness my hand and seal this 30th day of July, 1952.

Emanuel Klawans (SEAL)
Examiner

E.K. $10.00 Pd E. Klawans
K.H.McC. $2.00 Pd 7/1/52
KHMcE

CHARLES L. BALL and
LOIS LONG BALL, his wife,

vs.

RUSSELL THOMAS POTEE,
501 Old Annapolis Rd.
Glen Burnie, Maryland;
CHARLES MICHAEL POTEE, STAFF SERG.
AF 13173857
605
Tactical Control Squadron
APO 970
c/o Postmaster San Francisco,
California;
JOHN RALPH POTEE, infant,
1 Washington Court
Annapolis, Maryland and
LIBERA MARIA BONSANTO POTEE
c/o Michele Dell Aquila
44 Church Street
Ambler, Penhsylvania

IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

Equity No. 10375

: : : :

Filed 11 Aug., 1952.

DECREE ON PETITION FOR DECLARATORY RELIEF

The above entitled cause coming on to be heard on the Petition of Charles L. Ball (also known as Charles L. Ball, Jr.) and Lois Long Ball, his wife, for Declaratory Decree, testimony was taken, the papers were read and all the proceedings were considered by the Court.

It is thereupon this 11th day of August, 1952, by the Circuit Court for Anne Arundel County, Sitting in Equity, ADJUDGED, ORDERED and DECREED:

1. That a good and marketable title to all the land sold by James W. Blackhurst, Assignee, in accordance with the Order of this Court of January 12, 1951, passed in a cause entitled James W. Blackhurst, Assignee vs. Michael Potee, et al, Equity No. 10086, and in accordance with the Deed dated the 10th. day of April, 1951, from James W. Blackhurst, Assignee, as Grantor, to Charles L. Ball, Jr. and Lois Long Ball, his wife, as Grantees, (said Deed being recorded among the Land Records of Anne Arundel County in Liber JHH No. 618, Folio 4, etc.)passed to Charles L. Ball, Jr. and Lois Long Ball, his wife.

2. That the title to all the land sold by James W. Blackhurst, Assignee, in accordance with the Order of this Court of January 12, 1951, passed in a cause entitled James W. Blackhurst, Assignee vs. Michael

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Potee, et al, Equity No. 10066 is in the said Charles L. Ball, Jr. and Lois Long Ball, his wife, free, clear and discharged of any rights or claims of Libera Maria Bonsanto Potee, Russell Thomas Potee, Charles Michael Potee and John Ralph Potee.

3. That the said Charles L. Ball, Jr. and Lois Long Ball, his wife, can convey a good and marketable title to all the land or any portion of the land sold to them by James W. Blackhurst, Assignee, in accordance with the Order of this Court of January 12, 1951, passed in a cause entitled James W. Blackhurst, Assignee, vs. Michael Potee, et al, Equity No. 10066 and conveyed to them by the Deed dated the 10th. day of April, 1951, by James W. Blackhurst, Assignee, which deed is recorded among the Land Records of Anne Arundel County in Liber JHH No. 616, Folio 4, etc.

Benjamin Michaelson
Judge.

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LIBER 78 PAGE 584

IN THE MATTER OF THE	*	IN THE CIRCUIT COURT FOR
MORTGAGED REAL ESTATE OF	*	ANNE ARUNDEL COUNTY
JOHN B. MUNSON, Single	* NO. 10,459	EQUITY

****

ORDER TO DOCKET SUIT

****

Mr. Clerk:

Please file the original mortgage in this foreclosure suit.

John Demyan, Jr.
Attorney named in the Mortgage

Filed 17 Apr., 1952

LIBER 78 PAGE 585
BOOK 633 PAGE 402

No. 10,459 Equity

This Mortgage, Made this 19th day of July , 19 51

by and between John B. Munson, Single -

hereinafter referred to as MORTGAGORS, and THE GLEN BURNIE SAVINGS AND LOAN ASSOCIATION OF ANNE ARUNDEL COUTY, a body corporate, of the State of Maryland, hereinafter referred ro as MORTGAGEE.

WHEREAS, the said MORTGAGORS as a condition precedent ro said loan have agreed to SHARES-PLAN ☐ A ☒ B ☐ C ☐ GI as herein indicated, and being the holder of -65- shares of unredeemed stock of said body corporate and a member thereof, have received from said body corporate an advance of $ 6,500.00 which is the par value of said shares of stock when fully paid up and completed, in the contemplation of the object and purpose of said Association, and in order to secure the full payment and completion of said shares of stock, said body corporate in accordance with its present constitution and by-laws, said MORTGAGORS have agreed to execute this Mortgage, the execurion hereof being a condirion precedent to said advance being made by said Association.

Filed 17 Apr., 1951

WITNESSETH, That for and io consideration of the premises and the sum of One Dollar, rhe receipt of which is hereby acknowledged, the said MORTGAGORS do hereby grant and convey unto the said MORTGAGEE, its successors and assigns, all th ose lots of ground, situate, lying and being in Green Haven, Third Election District of Anne Arundel County, State of Maryland; and described as follows:

BEING known and designated as Lots Numbered 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and the Westernmost 20 feet of Lot Numbered 44, adjoining the Easterly side of Lot #43, extending to the West side of Marydell Avenue, as shown on Map C Green Haven recorded among the Land Records of Anne Arundel County in J.H.H. 199, folio 51; all in Section 22, as shown on Plat of Green Haven, recorded among the Land Records of Anne Arundel County in Plat Book W.N.W. 1, folio 346; now Plat Cabinet 2, Rod D-9, Plat 346.

BEING ALSO the same property which the said Mortgagor acquired from The Maryland Title Guarantee Company, by deed dated August 25, 1944 and recorded among the Land Records of Anne Arundel County in Liber J.H.H. 316, folio 137.

AND WHEREAS this Mortgage shall also secure future advances as provided by Chapter 923 of the Laws of Maryland of 1945 or any amendments thereto; subject, however, to the discretion of the Board of Directors.

TOGETHER with the buildings and improvements thereupon erected, made or being; and all and every the rights, roads, alleys, ways, easements, privileges, appurtenances and advantages to the same belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above desctibed parcel of ground and premises unto and to the use and benefit of the said MORTGAGEE, its successors and assigns, in fee simple.

PROVIDED that the said MORTGAGORS shall make the payments and perform each and every the covenants herein on their respective part to be made and performed, then this Mortgage shall be void.

AND the said MORTGAGORS, for themselves, their heirs, executors, administrators and assigns, covenant with the said MORTGAGEE, its successors and assigns, to pay and perform as follows, viz: to pay to the said MORTGAGEE, its successors and assigns, the monthly sum of $ 32.50 as dues at every regular monthly meeting of said MORTGAGEE until the full sum of the loan shall be repaid; and also pay at the time aforesaid, as interest, the monthly sum of $ 32.50 until the sum of one hundred dollars shall be repaid in monthly dues, then said monthly payments of interest shall be reduced fifty cents, and so on as often as one hundred dollars shall be so repaid in dues, the monthly payments of interest shall be reduced fifty cents; and to pay all public dues, monthly expenses and assessments for which the property hereby mortgaged may become liable when payable; and to pay all fines that may be imposed on him, them or it by said MORTGAGEE, in accordance with the by-laws, and to keep the improvements on said ground fully insured from loss by fire for the use of the MORTGAGEE.

ALL of which payments and covenants shall continue in force until the full sum of money shall be repaid in monthly dues as aforesaid.

AND IT IS AGREED, That until default be made in the premises, the said MORTGAGORS may use and occupy the hereby mortgaged property. But if default be made in the payment of any of the said monthly sums of money, and continue for a period of two months, or in the performance of the covenants or conditions herein mentioned on the part of the said MORTGAGORS; or either of them, then this whole mortgage debt hereby intended to be secured shall be deemed due and demandable, and the said MORTGAGEE, its successors or assigns, or John Demyan, Jr. its authorized Attorney or Solicitor, is hereby empowered to sell the hereby mortgaged property at public auction, and convey the same to the purchaser or purchasers thereof; which sale shall be made upon giving at least twenty days previous notice of the time, place, manner and terms of sale, by advertisement in some newspaper published in Anne Arundel County, and which terms shall be such as the party making the sale shall elect; and the proceeds of such sale, shall be applied first, to the payment of all expenses of the sale, including a fee of fifty dollars and a commission to the party making sale of said property equal to the commission allowed trustees for making sale of property by virtue of a decree of a Court having equity jurisdiction in the State of Maryland; secondly, to the payment of all taxes, insurance, and other public dues charged against said property or debt to the day of sale, then to the payment of all claims and demands of said MORTGAGEE hereunder, whether then matured or not, and the balance to be paid to the said MORTGAGORS or whosoever may be entitled to the same; all in accordance with Article 66 of the Code of the Public General Laws of the State of Maryland.

AND the said MORTGAGORS for themselves, their heirs, personal representatives and assigns, do hereby covenant and agree that immediately upon the first insertion of the advertisement or notice of sale as aforesaid, under the powers hereby granted, there shall be and become due by them to the party inserting said advertisement or notice, all expenses incident to said advertisement or notice, all Court costs and all expenses incident to the foreclosure proceedings under this mortgage, including a fee of twenty-five dollars and a commission on the total amount of mortgage indebtedness, principal, interest and fines equal to one-half the percentage allowed as commissions to Trustees making sale under orders or decrees of the Circuit Court for Anne Arundel County in Equity, which said expenses, costs, fees and commission the said MORTGAGORS for themselves, their heirs, personal representatives or assigns do hereby covenant to pay; and the said MORTGAGEE, its successors or assigns, or its Attorney shall not be required to receive the principal and interest only, of said mortgage debt in satisfaction thereof, unless the same be accompanied by a tender of the said expenses, costs, fees and commissions, but said sale may be proceeded with unless prior to the day appointed therefor legal tender be made of said principal, interest, costs, expenses, fees and commissions.

AND the said MORTGAGORS for themselves, their personal representatives and assigns do further covenant to insure and pending the existence of this mortgage, to keep insured in some good company selected by the said MORTGAGEE, its successors or assigns, the improvements on the hereby mortgaged land to the amount of at least $ 6,500.00 and to cause the policy to be effected thereon, to be so framed or indorsed, as in case of fire, to inure to the benefit of said MORTGAGEE, to the extent of its lien or claim hereunder, and to deliver said policies to said MORTGAGEE, its successors and assigns.

WITNESS the hands and seals of the MORTGAGORS.

TEST:

Fred. W. Kuethe

Fred. W. Kuethe

John B. Munson

John B. Munson, Single (SEAL)

(SEAL)

(SEAL)

(SEAL)

LIBER 78 PAGE 588

BOOK 633 PAGE 405

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, TO WIT:

I HEREBY CERTIFY, That on this 14th day of July , 19 51, before me, the subscriber, a Notary Public of the State of Maryland, in and for Anne Arundel County, personally appeared John B. Munson, Single and acknowledged the foregoing mortgage to be their act. And at the same time also personally appeared Joseph D. Groh the President of THE GLEN BURNIE SAVINGS AND LOAN ASSOCIATION of Anne Arundel County, Maryland, Mortgagee, and made oath in due form of law, that the consideration named in the aforegoing mortgage. is true and bona fide as therein set forth.

AS WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

Fred. W. Kuethe Notary Public.

Recorded- 21st July, 1951, at 11:15 A.M.

IN THE MATTER OF THE * IN THE CIRCUIT COURT FOR
MORTGAGEDREAL ESTATE OF * ANNE ARUNDEL COUNTY
JOHN B. MUNSON, Single * NO. 10,459 EQUITY

****

STATEMENT OF CLAIM

****

Advanced to Mortgage Loan			$ 6,500.00
Interest from November 30th, 1951			
to April 30th, 1952	@ $32.00	$160.00	
Late Fines from December, 1951 to			
April, 1952	@ $12.80	51.20	211.20
			$ 6,711.20
Dues Paid to Date			133.50
Total amount due under Mortgage			$ 6,577.70

GLEN BURNIE SAVINGS & LOAN ASSOCIATION OF
ANNE ARUNDEL COUNTY, a body corporate

BY Fred W. Kuethe
Fred. W. Kuethe-Secretary

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, to wit:

I HEREBY CERTIFY, that on this 5th day of April, 1952; before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Fred W. Kuethe, Secretary of the Glen Burnie Savings and Loan Association of Anne Arundel County, a body corporate, and he made oath in due form of law that the aforegoing Statement of Claim or Account is true and correct as shown on the books of the Association.

WITNESS my hand and Notarial Seal.

Amelia H. Tubman
Amelia H. Tubman
Notary Public

NOTARY PUBLIC ANNE ARUNDEL COUNTY, MARYLAND

Filed 17 Apr., 1952

G 22056

LIBER 78 PAGE 590

GLOBE INDEMNITY COMPANY

HEAD OFFICE: NEW YORK , A NEW YORK CORPORATION

A STOCK COMPANY

No. 10,459 Equity.

B O N D

KNOW ALL MEN BY THESE PRESENTS: That we, JOHN DEMYAN, JR. , as Principal, and GLOBE INDEMNITY COMPANY, a body corporate of the State of New York, authorized to do business in the State of Maryland, as Surety, are held and firmly bound unto the State of Maryland in the full and just sum of EIGHT THOUSAND DOLLARS ($8000.00) current money, to be paid to the said State or its certain Attorney, to which payment well and truly to be made and done we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severelly, firmly by these presents, sealed with our seals and dated this 20th day of May, 1952.

Filed 20 May, 1952.

WHEREAS by virtue of a power of sale contained in a mortgage from JOHN MUNSON to Glen Burnie Savings & Loan Association of Anne Arundel County, bearing date on or about the 19th day of July, 1951, , the said JOHN DEMYAN, JR. is authorized and empowered to make sale of the property described in said mortgage, in case default should be made in the payment of the principal debt secured by said mortgage or of the interest thereon in whole or in part; and WHEREAS default has been made in the Payment of the interest and principal aforesaid, and the said JOHN DEMYAN, JR. is about to execute said power and make sale of the property described in said mortgage as aforesaid;

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that if the above bounden JOHN DEMYAN, JR. does and shall well and faithfully abide by and fulfill any order or decree which shall be made by any Court of Equity in relation to the sale of such mortgaged property or the proceeds thereof, then the above obligation shall be void and of no effect, otherwise to be and remain in full force and virtue in law.

Signed, sealed, and delivered May 20, 1952.

in the presence of

Virginia Merritt
Virginia Merritt

Virginia Merritt
Virginia Merritt

John Demyan, Jr. (SEAL)
Principal

GLOBE INDEMNITY COMPANY, a body corporate
By John H. Hopkins, IV
John H. Hopkins, IV, Attorney-in-fact.
Surety

approved this 20 May, 1952.
John H. Hopkins, 3rd, Clerk

GEORGE SCIBLE - - LIBER 78 PAGE 591 - - - - - - Auctioneer

Equity 10,459

JOHN DEMYAN, JR.
Attorney At Law
9 Crain Highway, Glen Burnie, Md.

MORTGAGE SALE

OF VALUABLE

Fee Simple Property

Lots Nos. 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and Westernmost 20 feet of Lot No. 44, adjoining the Easterly side of Lot No. 43, as shown on the Plat of Green Haven, recorded among the Plat Records of Anne Arundel County in Plat Cabinet 2, Rod D-9, Plat 346.

Property located at Green Haven, Third Election District of Anne Arundel County, State of Maryland.

Under and by virtue of the power of sale and authority contained in a Mortgage from John B. Munson, single, dated July 19, 1951, and recorded among the Land Records of Anne Arundel County in Liber J. H. H. 633, Folio 402 (default having occurred thereunder), the undersigned, the Attorney named in the Mortgage, will sell at public auction, at the Court House Door, Annapolis, Maryland, on

Tuesday, May 20, 1952

AT 11 O'CLOCK, A.M.

All those lots of ground situate, lying and being at Green Haven, Third Election District of Anne Arundel County, State of Maryland; and described as follows:

BEING known and designated as Lots Numbered 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and the Westernmost 20 feet of Lot Numbered 44, adjoining the Easterly side of Lot No. 43, extending to the West side of Marydell Avenue, as shown on Map C, Green Haven, recorded among the Land Records of Anne Arundel County in J. H. H. 199, Folio 51; all in Section 22, as shown on the Plat of Green Haven, recorded among the Land Records of Anne Arundel County in Plat Book W. N. W. 1, Folio 346; now Plat Cabinet 2, Rod D-9, Plat 346.

BEING ALSO the same property which said John B. Munson, single, acquired from the Maryland Title Guarantee Company by deed dated August 25, 1944, and recorded among the Land Records of Anne Arundel County in Liber J. H. H. 316, Folio 137.

IMPROVEMENTS: This property has three (3) houses on it; the first being a frame bungalow, white asbestos shingles with composition roof on the East end of the property; the second being a small masonry bungalow in the center of the property; both of these houses are occupied by Tenants; the third being on the West end of the property, is a masonry bungalow which needs some work done to complete the same.

TERMS OF SALE: A cash deposit of $1,000.00 will be required of the purchaser at the time and place of sale, balance of purchase money upon final ratification of sale by the Circuit Court for Anne Arundel County, and to bear interest at 6% from date of sale to date of settlement. Taxes and all other expenses, including sanitary district charges, if any, and all other assessments to be adjusted to date of sale.

JOHN DEMYAN, JR.,
Attorney named in the Mortgage.

LIBER 78 PAGE 592 CTIONEER'S CERTIFICATE

May 20th,1952

I HEREBY CERTIFY, that I have sold the property advertised in this handbill unto Meyer Mindel of 111 North Charles St Baltimore, Md for the sum of Seventy Five Hundred and Twenty Five ($7525.00) Dollars, he being at that figure the highest bidder; and I do further certify that said sale was fairly made.

George Scible, Auctioneer

Subscribed and sworn to before me this 20 day of May, 1952; by George Scible, Auctioneer.

Clemence C. Burwell
Notary Public

PURCHASER'S CERTIFICATE

May 20th,1952

I HEREBY CERTIFY, that I have purchased the property advertised on this handbill for the sum of $7525.00; having paid the sum of $1,000 as required; and agree to comply with the terms of sale within the time set forth in this handbill.

WITNESS:
Lucy Jacobs

Meyer Mindel (SEAL)

(SEAL)

Filed 20 May 1952

IN THE MATTER OF THE * IN THE CIRCUIT COURT FOR
MORTGAGED REAL ESTATE OF * ANNE ARUNDEL COUNTY
JOHN B. MUNSON, Single. * NO. 10,459 EQUITY

****

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The report of Sale of John Demyan, Jr., Attorney named in the Mortgage filed in these proceedings, respectfully shows:

That under and by virtue of a power of sale contained in a Mortgage from John B. Munson, Single, to The Glen Burnie Savings and Loan Association of Anne Arundel County, a body corporate, dated July 19, 1951, and recorded among the Land Records of Anne Arundel County in Liber J.H.H. 633, folio 402; the said John Demyan, Jr., Attorney named in the aforesaid Mortgage to make sale of the property therein described in case of default, and default having occurred thereunder, after having given due notice of the time, place, manner and terms of sale by advertisement in the Maryland Gazette, a newspaper published in Anne Arundel County, Maryl and, and after having complied with all other requisites of the Mortgage and of the law for such cases made and provided, offered the property in said Mortgage described, at public auction, at the Court House door City of Annapolis, State of Maryland; May 20th, 1952 at 11 o'clock, A.M. and then and there sold the said property to Meyer Mindel, of 111 North Charles Street, Baltimore, Maryland at and for the sum of Seventy Five Hundred and Twenty Five ($7,525.00) Dollars, being at that figure the highest bidder therefore, said property being the following:

Filed 20 May 1952

All that lot of ground situate, lying and being in Green Haven, Third Election District of Anne Arundel County, State of Maryland; and described as follows:

BEING Known and designated as Lots Numbered 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and the Westernmost 20 feet of Lot Numbered 44, adjoining the Easterly side of Lot No. 43, extending to the West side of Marydell Avenue, as shown on Map C, Green Haven recorded among the Land Records of Anne Arundel County in J.H.H. 199, folio 51; all in Section 22, as shown on Plat of Green Haven, recorded among the Land Records of Anne Arundel County in Plat Book W.N.W. 1,

folio 346; now Plat Cabinet 2, Rod D-9, Plat 346.

AND the said Attorney further reports that he has received from the purchaser a deposit as required by the terms of said sale, and has also required the Purchaser's Agreement to comply with the terms of sale which are as follows: TERMS OF SALE: a Cash Deposit of $ 1,000.00 will be required of the purchaser at the time and place of sale, balance of purchase money upon final ratification of the saie by The Circuit Court for Anne Arundel County, and to bear interest at 6% from date of sale to date of settlement. Taxes and all other expenses, including sanitary district charges, if any, and all other assessments to be adjusted to date of sale.

AND the said Attorney further states that the said sale was fairly made to the highest bidder aforesaid.

Respectfully submitted

John Demyan, Jr.
Attorney named in the Mortgage

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, to wit:

I HEREBY CERTIFY, that on this 20 day of ~~April,~~ May 1952; before me, the subscriber, a Notary Public of the State of Maryland in and for the County aforesaid, personally appeared John Demyan, Jr., Attorney named in the Mortgage, and made oath in due form of law that the matters and things stated in the aforegoing Report of Sale are true to the best of his knowledge and belief.

WITNESS my hand and Notarial Seal.

Clemelles C. Brassell

Notary Public

A F F I D A V I T

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, to wit:

I HEREBY CERTIFY, that on this 20th day of ~~April,~~ May 1952; before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared John Demyan, Jr., Attorney named in the Mortgage for the purpose of foreclosure; and at the same time also appeared George W. Scible, Auctioneer, and they made oath in due form of law that they read the following terms of sale prior to the sale of the property of these proceedings, at the Court House door, Annapolis Maryland on MAY 20 1952, at 11 o'clock, namely:

TERMS OF SALE: A cash deposit of $1,000.00 will be required of the purchaser at the time and place of sale, balance of purchase money upon final ratification of sale by The Circuit Court for Anne Arundel County, and to bear interest at 6% from date of sale to date of settlement. Taxes and all other expenses, including sanitary district charges, if any, and all other assessments to be adjusted to date of sale.

WITNESS my hand and Notarial Seal.

Filed 20 May, 1952.

Clarence C. Burnett

Notary Public

John Demyan, Jr.
Attorney named in the Mortgage

George W. Scible
Auctioneer

AFFIANTS

LIBER 78 PAGE 596

ORDER NISI

In The Matter Of The
Mortgaged Real Estate Of

~~XXXXXXXX~~

John B. Munson,
Single.

IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

No. 10,459 Equity

Filed 20 May, 1952.

Ordered, this 20 day of May, 19 52, That the sale of the Property in these Proceedings mentioned, made and reported by John Demyan, Jr., Attorney named in the Mortgage, ~~Trustees~~,

BE RATIFIED AND CONFIRMED, unless cause to the contrary thereof be shown on or before the 23 day of June next; Provided, a copy of this Order be inserted in some newspaper published in Anne Arundel County, once in each of three successive weeks before the 23 day of June next.

The report states that the amount of sales to be $ 7,525.00.

John H. Hopkins, 3rd, Clerk.

True Copy,

TEST: ..... Clerk.

(Final Order)

In The Matter Of The
Mortgaged Real Estate Of

~~XXXXXX~~

John B. Munson,
Single.

IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

..... Term, 19

Filed 26 June, 1952.

ORDERED BY THE COURT, This 26th day of June, 1952, that the sale made and reported by the ~~Trustee~~ Attorney aforesaid, be and the same is hereby finally Ratified and Confirmed no cause to the contrary having been shown, although due notice appears to have been given as required by the Order Nisi, passed in said cause; and the ~~Trustee~~ Attorney allowed the usual commissions and such proper expenses as he shall produce vouchers for the Auditor.

Benjamin Michaelson
A. J.

Legal Notices

JOHN DEM , JR.,
ATTORNEY ... LAW
0 CRAIN HIGHWAY,
GLEN BURNIE, MD.

MORTGAGE SALE
— OF —
VALUABLE FEE SIMPLE PROPERTY

Lots Nos. 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and Westernmost 20 feet of Lot No. 44, adjoining the Easterly side of Lot No. 43, as shown on the Plat of Green Haven, recorded among the Plat Records of Anne Arundel County in Plat Cabinet 2, Rod D-9, Plat 340.

Property located at Green Haven, Third Election District fo Anne Arundel County, State of Maryland.

Under and by virtue of the power of sale and authority contained in a Mortgage from John B. Munson, Single, dated July 19, 1951, and recorded among the Land Records of Anne Arundel County in Liber J. H. H. 633, folio 402 (default having occurred thereunder), the undersigned, the Attorney named in the Mortgage, will sell at public auction, at the Court House door, Annapolis, Maryland on

MAY 20TH, 1952

AT 11 O'CLOCK, A. M.

All those lots of ground situate, lying and being at Green Haven, Third Election District of Anne Arundel County, State of Maryland; and described as follows:

BEING known and designated as Lots Numbered 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and the Westernmost 20 feet of Lot Numbered 44, adjoining the Easterly side of Lot No. 43, extending to the West side of Marydell Avenue, as shown on Map C, Green Haven, recorded among the Land Records of Anne Arundel County in J. H. H. 109, folio 51; all in Section 22, as shown on the Plat of Green Haven, recorded among the Land Records of Anne Arundel County in Plat Book W. N. W. 1, folio 346; now Plat Cabinet 2, Rod D-9, Plat 340.

BEING ALSO the same property which said John B. Munson, Single, acquired from the Maryland Title Guarantee Company by deed dated August 25, 1944, and recorded among the Land Records of Anne Arundel County in Liber J. H. H. 316, folio 137.

IMPROVEMENTS: This property has three (3) houses on it; the first being a frame bungalow, white asbestos shingles with composition roof on the East end of the property; the second being a small masonry bungalow in the center of the property; both of these houses are occupied by Tenants; the third being on the West end of the property, is a masonry bungalow which needs some work done to complete the same.

TERMS OF SALE: A Cash deposit of $1,000.00 will be required of the purchaser at the time and place of sale, balance of purchase money upon final ratification of sale by the Circuit Court for Anne Arundel County, and to bear interest at 6% from date of sale to date of settlement. Taxes and all other expenses, including sanitary district charges, if any, and all other assessments to be adjusted to date of sale.

JOHN DEMYAN, JR.,
Attorney named in the Mortgage.
(GEORGE SCIBLE)
Auctioneer. m-15

Filed 23 May 1952

LIBER 78 PAGE 597

OFFICE OF

Maryland Gazette

Published by

THE CAPITAL-GAZETTE PRESS, INC.

(HOLDER OF CONTRACT FOR ANNE ARUNDEL COUNTY ADVERTISING)

CERTIFICATE OF PUBLICATION

Annapolis, Md., May 23, 1952

We hereby certify, that the annexed Mortgage Sale

John B. Munson

was published in

Maryland Gazette

a newspaper published in the City of Annapolis, Anne Arundel County, Maryland, once a week for 4 successive weeks before the 20th day of May, 1952. The first insertion being made the 24 day of April, 1952.

THE CAPITAL-GAZETTE PRESS, INC.

By Nellie L. Larkin

LIBER 78 PAGE 598 OFFICE OF

Evening Capital

Published by

THE CAPITAL-GAZETTE PRESS, INC.

(HOLDER OF CONTRACT FOR ANNE ARUNDEL COUNTY ADVERTISING)

Filed 26 June, 1952.

ORDER NISI

IN THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
No. 10,459 Equity

In The Matter Of The Mortgaged Real Estate Of JOHN B. MUNSON, Single.

Ordered, this 20th day of May, 1952, That the sale of the Property in these Proceedings mentioned, made and reported by John Demyan, Jr., Attorney named in the Mortgage, BE RATIFIED AND CONFIRMED, unless cause to the contrary thereof be shown on or before the 23rd day of June next; Provided, a copy of this Order be inserted in some newspaper published in Anne Arundel County, once in each of three successive weeks before the 23rd day of June next.

The report states that the amount of sales to be $7,525.00.

JOHN H. HOPKINS, 3rd., Clerk.

True Copy. TEST:
JOHN H. HOPKINS, 3rd., Clerk.

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CERTIFICATE OF PUBLICATION

Annapolis, Md., June 17, 1952

We hereby certify, that the annexed Order Nisi
Sale - Equity 10,459
John B. Munson

was published in

Evening Capital

a newspaper published in the City of Annapolis, Anne Arundel County, Maryland, once a week for 4 successive weeks before the 23rd day of June, 1952. The first insertion being made the 21st day of May, 1952.

THE CAPITAL-GAZETTE PRESS, INC.

No. E. C. 4369 By Bettie L. Carlson

In the Case of

In the Matter of the
Mortgaged Real Estate
of
~~Vs~~
John B. Munson, Single

In the

Circuit Court

For

Anne Arundel County

No. 10,459 Equity

To the Honorable, the Judges of said Court:

The Auditor reports to the Court that she has examined the proceedings in the above entitled cause, and from them she has stated the within account.

Filed 18 July, 1952

July 18, 1952

All of which is respectfully submitted.

Laura K. Fickling
Auditor.

Dr. In the Matter of the Mortgaged Real Estate of John B. Munson, Single in ac.

To Attorney for Fee, viz:	50 00		
To Attorney for Commissions, viz:	257 05	307	05
To Attorney for Court costs, viz:			
Plaintiff's Solicitor's appearance fee	10 00		
Clerk of Court - Court costs	19 75		
Auditor - stating this account	18 00	47	75
To Attorney for Expenses, viz:			
Capital-Gazette Press - advertising sale	50 00		
Capital-Gazette Press - handbills	9 69		
Capital-Gazette Press - order nisi (sale)	8 00		
Capital-Gazette Press - order nisi (acct)	6 00		
Globe Indemnity Co. - bond premium	32 00		
George W. Scible - auctioneer's fee	30 00		
One-half Federal revenue stamps	4 40		
One-half State revenue stamps	4 40		
Amelia H. Tubman - notary fee	50		
Clemence C. Burwell - notary fee	1 00	145	99
To Attorney for taxes, viz:			
1952 State and County taxes ($69.11 - adjusted)	27 82	27	82
To Glen Burnie Savings & Loan Ass'n of Anne Arundel County, mortgagee - in full for mortgage claim	6,577 70	6,577	70
To Grace Christian, - in full for claim filed (Order of 7/2/52), viz:			
Debt $90.00			
Magistrate's costs 3.75	93 75	93	75
To Lincoln Loan, Inc. - this balance on account claim filed (Order 6/13/52), viz:	368 44	368	44
Debt $300.00			
Interest 72.00			
Court costs in #3360 Law 9.65			
Court costs in #3361 Law 19.85			
Total $401.50			
		7,568	50

with John Demyan, Jr., Attorney named in Mortgage Cr.

1952				
May	20	Proceeds of Sale	7,525 00	
		Interest on deferred payment	43 50	7,568 50
				7,568 50

Filed 23 Aug, 1952. Filed 18 July, 1952.

ORDER NISI

LIBER 78 PAGE 602

In the Matter of the Mortgaged Real Estate of ~~VERSUS~~

John B. Munson, Single

In the
CIRCUIT COURT
For
ANNE ARUNDEL COUNTY

No. 10,459 Equity.

ORDERED, This 18 day of July, 19 52, That the Report and Account of the Auditor, filed this day in the above entitled cause,

BE RATIFIED AND CONFIRMED, unless cause to the contrary be shown on or before the 22 day of August next; Provided a copy of this Order be inserted in some newspaper published in Anne Arundel County, once in each of three successive weeks before the 22 day of August next.

John H. Hopkins, 3rd, Clerk

In the Circuit Court for Anne Arundel County

ORDERED BY THE COURT, this 23rd day of August, 19 52, that the aforegoing Report and Account of the Auditor be and the same is hereby finally ratified and confirmed, no cause to the contrary having been shown, and that the ~~Trustee~~ apply the proceeds accordingly with a due proportion of interest as the same has been or may be received.

Benjamin Michaelson
Judge

OFFICE OF

Maryland Gazette & Evening Capital

Published by

THE CAPITAL-GAZETTE PRESS, INC.

Filed 20 Aug, 1952.

ORDER NISI

IN THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
No. 10,459 Equity

In The Matter Of The Mortgaged Real Estate Of JOHN B. MUNSON, Single

Ordered, this 18th day of July, 1952, That the Report and Account of the Auditor, filed this day in the above entitled cause BE RATIFIED AND CONFIRMED, unless cause to the contrary be shown on or before the 22nd day of August next; Provided, a copy of this Order be inserted in some newspaper published in Anne Arundel County, once in each of three successive weeks before the 22nd day of August next.

JOHN H. HOPKINS, 3rd., Clerk.

True Copy, TEST:
JOHN H. HOPKINS, 3rd., Clerk.

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CERTIFICATE OF PUBLICATION

Annapolis, Md., August 19, 1952

We hereby certify, that the annexed

Order Nisi - Sale
Equity 10459
John B. Munson
Foreclosure

was published in

Maryland Gazette & Evening Capital

a newspaper published in the City of Annapolis, Anne Arundel County, Maryland, once a week for Three successive weeks before the 22 nd - day of August, 19 52 The first insertion being made the July 22 day of _____, 1952

THE CAPITAL-GAZETTE PRESS, INC.

By E. S. Lugar