IN THE

St. Louis Court of Appeals.

MARCH TERM, 1944.

RAY R. DOLAN and JOHN H. WEHMEYER,
Appellants,

vs.

SCOVEL RICHARDSON and INEZ W. RICHARDSON, His Wife, and VICTOR J. ZUBIENA and ESTHER ZUBIENA, His Wife, and LAFAYETTE FEDERAL SAVINGS & LOAN ASSOCIATION, a Corporation, HARRY J. GANNON and H. J. GANNON REALTY COMPANY, INC., a Corporation,
Respondents.

No. 26,502.

Appeal from the St. Louis Circuit Court,
Division No. 2,
Hon. Robert L. Aronson, Judge.

APPELLANTS' ABSTRACT OF THE RECORD.

Plaintiffs (above-named appellants) commenced this proceeding by filing their petition on October 21, 1941, in the Circuit Court of the City of St. Louis, Missouri.

1.

On said October 21, 1941, said cause was assigned to Division No. 2, an equity division of the Circuit Court of the City of St. Louis, Missouri.

Further on said 21st day of October, 1941, the defendants, Scovel Richardson and Inez W. Richardson, were ordered to show cause in said Division No. 2 on October 30, 1941, why a temporary injunction should not be granted, which said order was issued as to other individuals but was later withdrawn, as will appear later herein.

Pursuant to separate demurrers of then named defendants, Jewell Bryant and Jeffie L. Bryant, his wife, and of Benjamin N. Henderson and Obelia Henderson, filed on November 5, 1941, and alleging in general that there was a misjoinder of parties defendant, plaintiffs did, on November 6, 1941, dismiss as to said individuals and did amend their petition.

By the filing of various motions and by consent, defendants Victor J. Zubiena and Esther Zubiena, his wife, Lafayette Federal Savings & Loan Association, a corporation, Harry H. Gannon and H. J. Gannon Realty Company, Inc., a corporation, were joined as parties defendant and were served with process returnable to the December Term, 1941.

On January 7, 1942, plaintiff's amended petition was filed by leave of Court, which amended petition (omitting signatures) is in words and figures as follows, to wit:

AMENDED PETITION IN EQUITY FOR INJUNCTION.

Plaintiffs state that their authority to prosecute this action is based on a certain instrument duly executed, and recorded in book 3841, at page 386, in the office of the Recorder of Deeds for the City of St. Louis, Missouri, which said instrument purports to be in effect until December 18, 1942, and is in effect a restriction agreement, under the terms of which the subscribing property owners

of block 4472, block 4473, block 4474, block 4475, block 4476 and block 5638, of the City of St. Louis, Missouri, agreed, among other things, that none of the properties by them owned should be sold, conveyed, leased or rented to a negro or negroes, no matter how the right to title should be attempted to be acquired, and also that none of said properties should be occupied by a negro or negroes; that for the purpose of carrying out the terms of said agreement, there were named as trustees therein, the president, treasurer and secretary of the St. Louis Real Estate Exchange, and as successor trustees, the duly elected and qualified successors of such officers; that any two of said trustees or their successors would be sufficient to prosecute any such action as might be necessary under the terms of said agreement; that the plaintiffs herein are respectively the duly elected and qualified president and treasurer of the said St. Louis Real Estate Exchange, and that they have been requested to prosecute this action for the benefit of the subscribing owners (and their successors in title) described in said agreement.

Plaintiffs further state that the defendants, Scovel Richardson and Inez W. Richardson, his wife, are the owners and occupants of the following described property lying and being situate in the City of St. Louis, to wit:

> The east part of Lot 15 and the west part of 16, in City Block 4472, fronting 33′ 4″ on the north line of North Market Street, together with improvements thereon known as and numbered 4635 North Market Street.

That at the time of the execution of the restriction agreement hereinbefore mentioned, each of said properties last above described was owned by persons who joined in and became parties to the terms of said agreement, which agreement also provided that the terms thereof should be binding upon the heirs, successors or assigns

of the persons executing said agreement, and that the covenants therein should attach to and run with each of the parcels of land therein described, and that defendants Richardson purchased said property from defendants Zubiena on or about the 17th day of October, 1941. That defendants Zubiena are ultimate assigns of Johanna M. M. Schroeck, who executed said restriction agreement.

Plaintiffs further state that the defendants hereinabove mentioned are negroes and that the ownership and occupancy by them is in violation of the terms of said restriction agreement, and will destroy the desirability of the homes of the other lot owners in said area, and will destroy the value thereof, and will cause those on whose behalf this action is instituted by plaintiffs to suffer irreparable injury and irremediable damages; that unless defendants be restrained from owning and occupying said properties, and from disposing of or permitting said property to be occupied by other members of the negro race, the property owners on whose behalf this action is instituted will be deprived of their property rights; that plaintiffs have no adequate remedy at law. Plaintiffs further state that defendant Lafayette Federal Savings & Loan Association, a corporation, is the holder of a deed of trust on said property, by virtue whereof it is made a defendant herein.

Wherefore, plaintiffs pray title to said properties be divested out of said defendants and vested in their grantors or in such person or persons, not negroes, as the Court may determine; that defendants be compelled to remove their persons and belongings from said property, and every part thereof, so long as said restriction agreement shall remain in force and effect; that said restriction agreement be declared by the Court to be valid and in full force and effect, and that defendants and each of them be ordered to show cause why they should not be

enjoined from transferring to, leasing to or permitting said properties or any of them to be occupied by persons of the negro race.

.....

Attorney for Plaintiffs.

State of Missouri, }
City of St. Louis. } ss.

D. Calhoun Jones, being first duly sworn upon his oath states that he is the agent and attorney for the plaintiffs named in the foregoing petition; that he has read the same and that the matters stated therein are true to the best of his knowledge, information and belief.

.....

Subscribed and sworn to before me this ... day of February, 1942.

My commission expires: September 24, 1942.

.....

Notary Public.

Thereafter, and on January 29, 1942, the answer of defendants Scovel Richardson and Inez W. Richardson was filed, which separate answer (omitting caption, names of parties and signatures) is in words and figures as follows, to wit:

ANSWER.

1. Defendants Scovel Richardson and Inez W. Richardson, his wife, for their separate answer to plaintiff's petition filed herein, deny that there ever was in existence at any time or is now in existence any duly executed or valid instrument lawfully recorded in book 3841, at page 386, in

the office of the Recorder of Deeds for the City of St. Louis, Missouri, which purports to be in effect until December 18, 1942, and is in effect a restriction agreement, which gives plaintiffs authority to prosecute this action and demands strict proof thereof.

2. Deny that the property owners of block 4472, block 4473, block 4474, block 4475, block 4476 and block 5638 of the City of St. Louis, Missouri, or any of their predecessors in title have agreed that none of the properties by them owned should be sold, conveyed, leased or rented to, or occupied by a negro or negroes, and ask for strict proof thereof.

3. Deny that any of the trustees named or any of their predecessors in office have, or ever have had, any authority, under the laws of this state or of the United States or by virtue of their power derived from the charter, constitution, by-laws or rules and regulations of the St. Louis Real Estate Exchange, to accept a trust to prosecute this action under said alleged restrictive agreement, and ask for strict proof thereof.

4. Plaintiffs state that they have been requested to prosecute this action, but do not state by whom said request has been made. Defendants deny that any such request has been made and call for strict proof thereof.

5. Defendants admit that they are the owners and occupants of the property described in paragraph 2 of plaintiffs' petition.

6. Defendants state that the first eight lines of paragraph 3 of plaintiffs' petition are incoherent, do not make sense, and should be stricken.

7. Defendants Richardson state that title passed through defendants Zubiena, straw parties, to defendants Richardson, on or about October 17, 1941.

8. Defendants state they have not sufficient information concerning the allegation that Johanna M. M. Schroeck executed said alleged restrictive agreement, and therefore neither admit nor deny said allegation, but demand strict proof thereof.

9. Defendants deny that they are in privity with any of the purported signers of the alleged restrictive agreement. An agreement forbidding ownership and occupancy of land by colored persons is not a covenant running with the land, because it does not touch or affect the land as such, but is a restriction merely against persons.

10. Defendants deny that their ownership and occupancy is in violation of the terms of any valid restriction agreement.

11. Deny that their ownership and occupancy will destroy the desirability of the homes of other lot owners in said area, or destroy the value thereof, but, on the contrary, state that the value of said homes of other lot owners in said area will increase in value tremendously by virtue of their ownership and occupancy. These defendants, further answering, deny that their ownership and occupancy will cause those on whose behalf this action is alleged to be instituted to suffer irreparable injury and irremediable damages, and state that plaintiffs in their petition do not attempt to show wherein they or those on whose behalf they purport to prosecute this action will suffer irreparable injury and irremediable damages; deny that unless defendants be enjoined from owning and occupying said property, or from disposing of or permitting said property to be occupied by other members of the negro race, the property owners on whose behalf this action is alleged to be instituted will be deprived of their property rights; deny that plaintiffs have no adequate remedy at law, but, on the contrary, state that the plaintiffs' remedy, if any they have, is at law.

12. Defendants state that the neighborhood of said alleged restrictive area has changed since the date when the alleged restrictive agreement is supposed to have become effective, and the area has changed in respect to its occupancy by colored persons, and at the time of the defendants' answer, January, 1942, other colored persons live in and own property therein, so that the purpose for which said alleged restrictive agreement was entered into can no longer be accomplished, and any attempt to enforce said alleged agreement would be useless. Defendants' property could not be sold to white persons, so it would be unprofitable to enforce said alleged agreement.

Defendants state that the neighborhood immediately adjacent, next to, abutting and adjoining the said alleged restrictive area has changed in the last twenty years so that the area is surrounded on the south and east by over 70,000 colored persons.

Defendants state that a large number of property owners in the alleged restrictive area did not sign said alleged restrictive agreement; that plaintiffs have acquiesced in numerous breaches and violations of the alleged restrictive agreement, and in the ownership by colored persons within the alleged restrictive area. Because of noncompliance with conditions precedent, change in the abutting, adjacent and surrounding said alleged restrictive area and in the area itself, it would be harsh, unfair, unjust, burdensome and inequitable to enforce this alleged agreement.

Defendants state that the owners of said alleged restrictive area are not desirous that the alleged agreement remain in full force and effect, and state that on the contrary a large number of white owners in said area desire to sell their property to prevent its loss through mortgage and tax foreclosure because of low rentals obtained by them from white tenants; that the plaintiffs who presented this action do not, have not brought, and cannot bring a

representative suit and action because their interests are diverse, different and conflicting with those white property owners who desire to avoid certain loss of their property; that if paintiffs are allowed to bring a representative suit they will thus be enabled to destroy the property rights of other persons of the alleged restrictive area.

13. The alleged restrictive agreement, according to plaintiffs' petition, will expire by its own terms December 18, 1942, which is only a few months hence. The shortness of the period remaining for the alleged agreement to run should be considered by the Court along with other circumstances set out in paragraph 12 above.

14. Assuming that the alleged restrictive agreement were valid, and that, according to the courts of Missouri, it did not contravene the public policy of Missouri, it is the duty of this Court to exercise its discretion and refuse to aid in the enforcement of this alleged agreement, because it would be unconscionable, oppressive and iniquitous. Such enforcement on the border of a district wholly or predominantly colored would strike a severe blow to the public health, morals, safety and general welfare of St. Louis. It would accentuate the already acute housing problem of the colored people within the ring of steel thrown around them by so-called restrictive agreements; it would compel their increasing population, due both to the increase in birth rate and migration from the South, to live in an overcrowded and slum-ridden section of the city. This situation would breed disease and develop criminals. Disease and crime know no racial boundaries, and make no distinctions based on color. The alleged restrictive agreement is socially undesirable and against the public policy of the State of Missouri, because it destroys the marketability of land, interferes with the free sale and use thereof, prevents improvement to land and property, encourages waste and

disuse of property, discourages the payment of taxes to the state and its various instrumentalities, unsettles the land titles of community and state and impedes the development of communities, and is void and against sound real estate policy.

The alleged restrictive agreement contravenes the public policy of the United States of America as set out in Sections 1977 and 1978 of the Revised Statutes of the United States.

15. Defendants state that the alleged restrictive agreement is unconstitutional and void, because it abridges the privileges and immunities of defendants in violation of the Fourteenth Amendment to the Constitution of the United States of America; it unreasonably interferes with the freedom of contract of white persons, as well as colored persons, who did not sign or attempt to execute the alleged restrictive agreement in respect to the sale and use of their property and property rights without due process of law in violation of the Fifth and Fourteenth Amendment to the Constitution of the United States of America; it destroys defendants' liberty in violation of the Fourteenth Amendment of the Constitution of the United States of America; it expressly contemplates and provides for state action and the use of the state's agencies, its courts and public officers in the enforcement of said alleged restrictive agreement in violation of the Fourteenth Amendment of the Constitution of the United States of America, and it is wholly void as being an invalid restraint on the alienation of real property.

16. Defendants state that in determining whether to grant relief by way of a mandatory injunction courts of equity take into consideration the relative convenience and inconvenience which would result to the parties from granting or withholding the relief, and will be governed accordingly. To compel defendants to move would be of

no benefit to the plaintiffs or those on whose behalf they purport to bring this action, but would result in a great hardship to the defendants.

17. Defendants deny that plaintiffs or those on whose behalf they purport to prosecute this action are entitled to any of the relief prayed for or any part thereof or any relief whatsoever in the said petition therein demanded, and pray that title to said property be quieted, and that said alleged restrictive agreement be canceled as a cloud on defendants' title; pray the same advantage of this answer as if they had moved to dismiss the said petition; pray that said petition of plaintiffs be dismissed and that plaintiffs and each of them be assessed a reasonable costs for and charges of the defendants in this behalf most wrongfully sustained, and for all other and proper relief.

Thereafter, and on February 27, 1942, plaintiffs filed their reply to said separate answer, which reply (omitting caption, names of parties and signatures) is in words and figures as follows, to wit:

REPLY.

Come now the plaintiffs, and for their reply to the answer of defendants filed herein deny each and every allegation of new and affirmative matter therein contained.

Wherefore, having replied, plaintiffs pray judgment in accordance with prayer in the petition contained.

Thereafter and on March 9, 1942, the answer of defendant Lafayette Federal Savings & Loan Association was filed by leave, which said answer (omitting caption, names of parties and signatures) is in words and figures as follows, to wit:

ANSWER OF DEFENDANT LAFAYETTE FEDERAL SAVINGS & LOAN ASSOCIATION.

Comes now Lafayette Federal Savings & Loan Association, one of the defendants in the above-entitled cause, and for its answer to plaintiffs' petition herein denies each and every allegation therein contained.

Defendant Lafayette Federal Savings & Loan Association further states that if there is a restriction on the property described in the petition, that said restriction limits itself to December, 1942, and further that negroes own and have been living in certain of the properties supposedly subject to this restriction for many years, and that therefore no purpose would be served by enforcing said restriction.

Wherefore, defendant Lafayette Federal Savings & Loan Association prays that this cause be dismissed and that plaintiffs pay the costs herein.

And on said 9th day of March, 1942, the answer of defendants Victor J. Zubiena and Esther Zubiena, his wife, Harry J. Gannon and H. J. Gannon Realty Company, Inc., a corporation, was filed by leave of Court, which said answer (omitting caption, names of parties and signatures) is in words and figures as follows, to wit:

ANSWER OF DEFENDANTS VICTOR J. ZUBIENA, ESTHER ZUBIENA, HIS WIFE, HARRY J. GANNON AND H. J. GANNON REALTY COMPANY.

Come now defendants Victor J. Zubiena and Esther Zubiena, his wife, Harry J. Gannon and H. J. Gannon Realty Company, and for their answer to plaintiffs' amended petition herein filed, deny each and every allegation in said petition contained and set forth.

Wherefore, having fully answered, said defendants pray to be hence dismissed with their costs.

And further on the said 9th day of March, 1942, the trial of said cause was duly commenced before the Honorable Robert L. Aronson, Judge of Division No. 2 of the Circuit Court of the City of Louis, progressed and laid over until March 10th, 1942.

And on said 10th day of March, 1942, further trial of said cause was resumed, progressed and laid over until March 12, 1942.

And on said 12th day of March, 1942, further trial of said cause was resumed, progressed and laid over until March 19, 1942.

And on said 19th day of March, 1942, further trial of said cause was had, concluded, submitted and taken under advisement by the Court.

And on the 2nd day of April, 1942, on oral application of defendants, the submission of said cause was set aside and reopened for further trial, which was concluded on said 2nd day of April, 1942, and resubmitted.

On the 1st day of December, 1942, the Court entered its finding and judgment in favor of the defendants as is set out in plaintiffs' bill of exceptions hereinafter.

Plaintiffs thereafter and on December 3, 1942, filed their motion for new trial as is set out in their bill of exceptions.

Thereafter and on December 11, 1942, plaintiffs' motion for new trial was argued and submitted.

And on December 15, 1942, plaintiffs' motion for new trial was overruled, at which time a memorandum of the Court was filed, all of which is set out in said bill of exceptions.

Thereafter and on the 19th day of January, 1943, and at the same term of said court, the plaintiffs' affidavit for appeal was filed and appeal was allowed to the St. Louis Court of Appeals.

Thereafter and, to wit, on the 29th day of February, 1944, plaintiffs' bill of exceptions was duly allowed, signed, sealed, ordered filed and made a part of the record herein by the Honorable Robert L. Aronson, Judge of Division No. 2 at the time of the trial of said cause, and the Honorable William L. Mason, Judge of Division No. 2 on said 29th day of February, 1944. Said bill of exceptions herein is as follows, to wit (omitting caption):

PLAINTIFFS' BILL OF EXCEPTIONS.

Be It Remembered, That the above-entitled cause coming on for hearing on the 9th day of March, A. D. 1942, and at the February Term, 1942, of the Circuit Court of the City of St. Louis, State of Missouri, before the Honorable Robert L. Aronson, Judge, in Division No. 2 of said court, the following proceedings were had:

Appearances:

D. Calhoun Jones, Esq., for the plaintiffs.

S. E. Garner, Esq., for defendants Richardson.

Scovel Richardson, Pro se.

Thomas B. Curtis, Esq., for defendant Lafayette Federal Savings & Loan Association.

The Court: Before we start on the trial of this case, I want to again ask counsel whether they thought about and talked about the possibility of abbreviating trial in any respect by considering as in evidence here anything that was offered and received in evidence in the case tried last week, entitled Dolan v. Bryant. After all, there is much

similarity in the cases, possibly very little dissimilarity; in any event, I would like to inquire whether counsel can in any way shorten the trial by stipulation that any evidence, any part of the evidence that they might agree on that was introduced last week in Dolan v. Bryant might again be considered before the Court.

Mr. Garner: Mr. Jones and myself have talked about the matter. I think he honestly, and I think I honestly, try to do that. We ran upon this knot. We would not want to risk our case, for instance, on the cross-examination of any witness, and we would be afraid we could not properly conduct our cross-examination, and at times remember what the witness said at the other trial. It seems that is what is in the way, and we have also a little different theory in our defense than what was in the other case. We have honestly tried to do that, because we heard how the Court felt about it, and wanted to save time, but, after all, this is our day in court.

The Court: I have no disposition to restrict you or prevent you from trying it in full. It only occurred to me that the probabilities were, since the legal situation was much the same, the probabilities were that there would have to be a similar result in all the cases, and that it would be unlikely that the different facts were sufficiently important—rather, the differing facts were sufficiently important so that there might be a success for the plaintiff in one case and not in the other.

Mr. Garner: It may be, if my client sees it as I do, that on the change of the neighborhood proposition, that might be one item of evidence that could come in this case. Right now I do not see why it could not.

The Court: Well, you gentlemen talk it over as we go along, and until counsel mention that they want to have something included in this record by agreement, which was in the other record, then I will not mention it again. I

do not want to appear to press it too much. After all, it is our function to try cases efficiently, and sometimes that means avoiding duplication. You may proceed. There is no more need to make an opening statement than there was last week.

Mr. Jones: We discussed the possibility of admitting certain transfers of record.

Mr. Garner: We will admit all of that.

Mr. Jones: In other words, the deed from Altenhauser—in brief, all deeds in the chain of titles by which the defendants Richardson acquired title to the property.

Mr. Garner: I think that will be all right.

PLAINTIFFS' EVIDENCE.

WILLIAM J. GAVIGAN,

a witness of lawful age, being first duly sworn, in behalf of the plaintiff testified as follows:

Direct Examination, by Mr. Jones.

Q. State your name to the Court. A. William J. Gavigan.

Q. Where do you live, Mr. Gavigan? A. 1200 Oakley place, St. Louis.

Q. I will ask you if you were a notary public in 1923? A. I was, sir.

Mr. Jones: Will you please mark this as "Plaintiffs' Exhibit A"?

Q. I will hand you what has been marked, for the purposes of identification, as "Plaintiffs' Exhibit A," and ask you if the signature appearing on the fifth page thereof is your signature? A. It was.

Q. It is your signature? A. Yes, sir.

Q. Now, I will again hand you this instrument and ask you whether you saw the signature of Johanna M. Schrake, which appears on the third page of this instrument, affixed

by Johanna M. Schrake? A. Yes, I did. I took the acknowledgment. Saw her write it, and took it.

Q. You say you took the acknowledgment? A. Yes, sir.

Mr. Jones: That is all.

Cross-Examination, by Mr. Richardson.

Mr. Richardson: Will you mark this as "Defendants' Exhibit 1"?

Q. Will you look at that, please, and examine it? Is it drawn according to the scale of the original covenant? A. Well, I can't answer that. It appears to be.

Q. It appears to be? A. It is part of the instrument.

The Court: I guess counsel, by comparison, can say for the record whether this is a reproduction of the plat. Suppose you compare it with what is in the original?

Mr. Jones: I think that may be admitted.

The Court: All right; proceed. This is the whole district, and not just the northern portion.

The Witness: It is apparently a facsimile.

The Court: Go ahead.

Mr. Garner: We reserve the right to call the witness after he has further testified.

The Court: You will not examine him further at this time?

Mr. Garner: Not if he does not testify to any more than he has.

Mr. Jones: I will recall him now.

Redirect Examination, by Mr. Jones.

Q. I will again hand you what has been marked, for purposes of identification, as "Plaintiffs' Exhibit A," and ask you if you obtained all of the signatures appearing on that instrument? A. Well, this is the instrument I examined a week ago today, and I will state positively that I have—I have gotten all of the signatures, and it repre-

sents each and every improved property owner in the district set forth, between the east side of Marcus, between Easton avenue on the—the north side of Easton avenue on the south and the north side of North Market street on the north, and I went as far as Cora to the—to the eastern line—to the western line of Cora avenue and——

Mr. Richardson: I would like for him to go over it again. Will you go down the street as outlined in the plat?

The Court: He does not have to follow any particular form in his answer. This is not cross-examination. He can repeat his answer, but he does not have to follow any form.

Mr. Richardson: I would like for him to repeat it.

The Witness: From the east line of Marcus avenue between the north side of Easton and the alley back of the north side of North Market, east to Cora avenue and back to the east side of Wagoner place. I set forth in this plat that I have drawn so as to specifically show the district I was attempting and did restrict.

Mr. Richardson: I think I have a right to make an objection to the witness varying from the terms of the plat.

The Court: You might have such a right, but he has not varied from it.

Mr. Richardson: You say he has not varied?

The Court: Not as I understood his evidence, but, in any event, the plat will control. You need not worry about my assuming that the district is other than what is in the plat.

Q. (By Mr. Jones) There appear on the instrument certain properties—certain parties appeared before you on various dates and acknowledged that they executed this instrument as their free act and deed. Did such people appear before you and make such acknowledgment? A. They did.

Q. I believe you testified on Monday, or, rather, you testified last week, that, included in this area which you

have described, there was one vacant lot the owner of which did not execute the agreement? A. That is true. I could not locate the owner of the piece of property at that time, and it was later apparently omitted. I seem—I am convinced in my own mind, however——

Mr. Garner: We object to that.

The Witness: I will state that I did not secure the signature for a piece of property on the north side of North Market, I think a vacant lot about seventy-five to a hundred feet, about one hundred feet east of the corner, the northwest corner—the northeast corner of Marcus and North Market.

Mr. Jones: That is all.

Recross-Examination, by Mr. Richardson.

Q. Mr. Gavigan, did you circulate this alleged instrument? A. I did.

Q. You had it drawn up? A. Personally.

Q. You had it drawn up? A. I did, yes.

Q. How did it happen that you were personally selected to have this instrument circulated? A. Well, I can answer that very clearly. I left the Treasury Department service in Washington and came to St. Louis and resigned, and the president of the Real Estate Exchange, at that time Mr. Joseph W. Hannauer, who happened to be a personal friend, asked me if I would not come to the Real Estate Exchange and form a tax unit, and I told him I was going to enter into business, but I saw after he had gone over the subject thoroughly with me, and concluded it would not take over a period of six months to accomplish what he had in mind or, at least, initiate a unit in the Real Estate Exchange as a basis for some success. I happened to be in the office about sixty days after I became associated, and two gentlemen, officers, as I understood it, of the Chouteau Rental Improvement Association, they had an instrument with them purporting to be a restric-

tion agreement, and it seems a piece of property had passed into the hands of some member of the negro race. The agreement was shown to me and contained the name of one of the owners of this particular piece of property. He asked me whether I thought it could be enforced, and I very frankly told him that I had never been admitted to the Bar, and could not answer that question authoritatively. They then told me they had just come from an office——

Mr. Garner: If the Court please, of course, I concede the witness is answering a question that came through cross-examination by counsel, and that is the reason I did not object, because he called for it, but I think he is going farther than an answer to the question.

The Court: In other words, because this is a history that precedes the particular transaction here, I think you are probably right. Mr. Gavigan, you might resume your answer and restrict it to the time of this particular restrictive covenant, when it came to your attention.

The Witness: I did not understand the question that was originally—he asked me how I came to do it.

The Court: Yes.

The Witness: Well, I thought that was the purpose—I understood he was asking how—he asked if I was responsible for the drawing of the instrument and I said yes. He followed that, as I understood, how I came to do it, and that is the reason I went into that lengthy explanation.

The Court: All right. Suppose you skip these other matters and confine the answer to this. Commence with the story of this particular covenant.

The Witness: Dr. Potter, who introduced himself as the president of the Wagoner Place Improvement Association, or some such name, I don't recall exactly, asked me whether I would circulate one of our restriction agreements in that particular Wagoner place, and I consented to do so. I think that answers you.

Q. (By Mr. Richardson) Was this property association a corporation? A. No, not to my knowledge.

Q. Had you had any experience, previous experience, with other instruments of this nature? A. That is what I was testifying to when I was stopped.

The Court: He means for you to answer "yes" or "no."

A. Yes, I did.

Q. (By Mr. Richardson) You did have? A. Yes, sir.

Q. What did you say the purpose of the agreement is?

The Court: This agreement.

Mr. Richardson (Q.): The one you had drawn up—what is the purpose of this particular agreement? A. The purpose of this particular agreement was this: It was a contract, an attempted contract, between the white citizens of this particular district to draw a contract between each and every one of themselves, to prohibit the sale to negroes, unless, as the instrument itself plainly states, the entire property was bought in its entirety by the negroes.

Q. You see, the plot, on page 1 of the alleged restrictive agreement, which is entitled "Real Estate Exchange Restriction Agreement," indicates the entire area intended to be included in this instrument? A. Yes, in this particular instrument.

Q. Did you succeed in obtaining the signatures and acknowledgment of all the owners in the restricted plot set out in the alleged agreement?

Mr. Jones: He has answered the question.

The Witness: I stated that I got the signatures of the owners of improved property in that particular district, as set forth in the records of the Special Tax Department of the City of St. Louis, and as sworn to by them, as the owners of these particular pieces of property.

Mr. Garner: I move to strike out the answer as not responsive to the question.

The Court: The question was did you get the signatures of all the owners of the property, not merely the improved property; go ahead and answer that particular question. A. I stated there was one piece of property——

The Court: You see, each counsel is entitled to ask the same question on direct examination and cross-examination.

The Witness: All right.

Mr. Richardson (Q.): This seventy-five feet that you referred to on the north side—— A. Seventy-five, more or less.

Q. Seventy-five feet, more or less, on the north side of North Market street, when did you cease to try to obtain the signature of the owner or owners of that particular piece of property? A. Well, now, I can't state that in answer to that positively, but I assume the day that I filed that instrument with the Recorder of Deeds, I was waiting, apparently trying to get that signature, which I think I got later.

Q. Between the time you obtained the respective signatures to this instrument, and the date of their filing, did you go back to the signers for any purpose whatsoever? A. Will you repeat that?

Q. Between the time you obtained the respective signatures to this instrument and the date of the filing did you go back to the signers as such for any purpose whatever? A. Well, I don't think so. I would not—I would not know any reason except I have called on some. I had friends in there, social and political friends.

Q. You live and owned property in the neighborhood set out in the plat. Did you live in or own any property in the neighborhood set out in the plat? A. I own 4517 Cote Brilliante avenue.

Q. That is not in this restrictive district? A. Oh, in this particular district, no.

Q. Do the frontage and lots set out with the names of the persons listed immediately following the plat on page 1 of the agreement represent the lots signed for? A. As only——

Q. Yes or no? A. It is supposed to.

Q. But do they? A. I cannot——

Q. You drew—— A. To my knowledge, yes, to the best of my knowledge.

Q. Was any authority with reference to this agreement conferred on you by the persons signing other than what is set forth in the restriction agreement?

Mr. Jones: I object to that as calling for a conclusion.

The Court: Objection sustained.

Mr. Richardson: Your Honor, it seems he knows what he was authorized to do.

The Court: The form of the question is such that it calls for a conclusion.

Q. (By Mr. Richardson) When Mr. Potter came to you what did he tell you the people in this property association wanted done or wanted you to do? A. You realize it would be impossible for me to answer that question verbatim. I naturally answered the question before, I think, by saying he came to the Real Estate Exchange and asked if I would circulate a petition for the purpose stated.

Q. And you agreed to do that? A. Yes, I certainly did.

Q. Did you agree to do anything else for them? A. I don't understand that question.

Q. You say you agreed to circulate a petition. Did you agree to do anything else? A. I didn't think I was required to do anything else.

Q. That's all I wanted to know. Did you personally take the acknowledgments of all the persons purported to be subscribing witnesses to the alleged agreement? A. Where my name is set forth or signed by one of my understudies, Mr. Brady, naturally he took his own acknowledgment, as stated in the affidavit filed.

Q. Were there any restriction agreements affecting or covering the neighborhood or neighborhoods adjoining the neighborhood affected by this agreement drawn up about this time?

Mr. Jones: I object to that as immaterial and not tending to prove any issue in this case. The examination of the witness has been limited to this one agreement right along, and if we want to go into that we will go far afield.

The Court: Why do you think it is proper?

Mr. Richardson: I think it will be shown later on that this agreement was connected up with some other agreements which the witness has knowledge of.

The Court: In what way connected up, and how do you contend that that fact would be material.

Mr. Richardson: As will be brought out in the defendants' defense.

The Court: But you don't say in what way.

Mr. Richardson: There will be statements from persons who signed the agreement of the representations that were made to them.

The Court: This question is a little bit off that subject. If it becomes proper you might recall the witness later, but the ruling will stand and I will sustain the objection.

Mr. Richardson (Q.): The instrument recites, Mr. Gavigan, that there was a consideration of one dollar paid. Do you know who paid this one dollar and to whom it was paid? A. Each and every one—it was paid to me as a representative of the Real Estate Exchange, proceeds of the Real Estate Exchange.

Q. It was paid to you as representative of the trustees of the Real Estate Exchange? A. Yes.

Q. That is not what the agreement calls for, is it?

Mr. Jones: I object to that.

Mr. Richardson: I want to refresh his recollection.

Q. Did anyone appear before you and sign the instrument on Sunday? A. No.

Q. Were all the persons whose acknowledgments you took personally known to you? A. They were in so far as any notary taking signatures of that kind; they were introduced as such.

Q. Will you answer, were they known to you? A. At the time they signed it, yes. I asked them about it, to that extent, personally.

Q. You knew them before you went to them to get the signatures? A. No, not in all cases, no. Naturally, when I went to a man's house, I asked for the owners. I knew their names in advance as of the record, introduced myself and asked them what their names were; to that extent, personally.

Q. Did anyone go with you to identify them? A. No, not in all cases. Dr. Powell and Miss Bircher, a registered nurse, there were certain neighbors that accompanied me on some of those trips or excursions.

Q. The instrument recites "power coupled with an interest" was given to the Trustee. What interest do they have reference to; interest in what, is what I want to know? A. I don't quite get you.

Q. I don't quite understand the instrument. It says "power coupled with an interest" was given to the trustees. I want to know what interest was meant; interest in what?

Mr. Jones: I object to that as calling for a conclusion on the part of the witness as to what "a power coupled with an interest" means.

Mr. Richardson: He drew the instrument.

The Witness: No, I did not draw it. I did not say I drew it.

The Court: Let me see the instrument.

Mr. Jones: On what line or page is that?

The Court: Mr. Gavigan, I read these words from this instrument near the top of what I suppose would be considered page 3. "This power-of-attorney being coupled

with an interest is hereby made irrevocable." Now, do you know what was meant by that expression?

The Witness: If the Court please, if I testified that I drew up that instrument I surely did not want the Court to understand——

The Court: I did not so understand you. That is not what I mean.

The Witness: I can't answer it.

The Court: You do not know what it means?

The Witness: Naturally, that was drawn by the attorneys who drew the instrument.

The Court: All right, let's get to the next question.

Q. (By Mr. Richardson) Why did not the trustees—why didn't you have the trustees sign a place on the instrument for them to accept the trust?

Mr. Jones: Wait a minute. I think it is only fair that he have the instrument in his hands.

The Court: Apparently counsel means to direct your attention to the fact there was a space provided for the trustees to sign to evidence acceptance of the trust, and he asks why they did not sign in that space.

The Witness: Well, if the Court please, I had—that was my printed form, or our printed form. The Court asked me a question the other day as to why apparently pasted on—for instance this—I think in this case I did the same with the trustees. I am not sure.

The Court: So far as you remember, was there any special reason why——

The Witness: None whatever, your Honor, except the addition of these things which was unusual, so many unusual affidavits from corporations, and from one or two out of town, that the stenographer, when she was attaching this may have gotten them in just a different spot. Just excuse me until I verify that. This is my certificate. I thought he was referring to that. I just pasted that on that way.

The Court: Let me see that whole thing for a minute. Apparently, what Mr. Richardson means is that the last printed language has these words: "The said Trustees hereby accept said trust" and it has three lines, and he wants to know why those three lines were not the one on which they signed instead of signing at the end as they appeared to have signed or near the end of the signatures. I do not mean at the back of the instrument where the last paper is, but I mean at the end of the signatures.

The Witness: The only answer I can make would be, when I took the instrument over there instead of having it open at the proper place, they signed it as the others did probably?

The Court: I see. All right.

Q. (By Mr. Richardson) Did you read the instrument to each one of the property signers and to the trustees before taking their acknowledgment? A. Verbatim, no. I explained what it was, what it contemplated, but there was none of them that did not know what I was talking about.

Q. When did you take the signatures or acknowledgments of the trustees with reference to the time that you had the instrument recorded? A. Why I never took—I can state this positively, that the trustees were the very last to sign, and I was then on my way to the Recorder of Deeds' office practically. In other words, I will say I attempted to file it the day the trustees signed it. They were the last to sign it.

Q. Mr. Gavigan, were you successful in filing it this time after taking the acknowledgment of the trustees? You say you attempted to file it. You say you attempted to file it after taking the acknowledgment of the trustees. Were you successful in filing it after taking their acknowledgement in this particular instrument? A. It speaks for itself. It is recorded. Is that the question?

Q. Calling your attention to the list of acknowledgments—I prefer that you keep the instrument in your hand—beginning with the second one, Frederick Rahmoeller and Maria, his wife, the acknowledgments were taken February 8, 1923? A. You are referring to the typewritten part?

Q. Yes. A. My certificate you are talking about?

Q. Yes. A. I may as well answer that right quick, so far as this certificate is concerned, that was done by the stenographer.

Q. You testified previously that—I asked you the question specifically whether the names as they appear in the acknowledgment were acknowledgments of persons that you personally took, and were they correct, and you said yes. A. Yes, sir.

Q. Now, I am calling your attention, farther down the instrument, Anna M. Wagoner, Augustus L. Abbott, Harry A. Woerman, and John B. Edwards, trustees under the will of Jewett Wagoner, for Anna M. Wagoner, will of Jewett, life estate remainder to Nellie W. Woerman and Mildred W. and G. W. Henderson, all on February 9, 1923.

The Court: What is your question about that?

Mr. Richardson: I want to point out that he has testified——

The Court: Don't tell me, but you have no question attached to the statement. I want you to put the statement to him.

Q. (By Mr. Richardson) I will ask him, first, when did he obtain the signatures of the trustees with reference to when he filed the instrument?

The Court: I know, but you are not asking anything about these others.

Mr. Richardson: I will phrase it differently, then.

Q. Did Johanna M. Schroeck, the one who is defendant Richardson's predecessor in title, appear before you February 1, 1923? A. Well, I cannot state that back twenty years, as to a fact of that kind. Could you?

Q. Well, you say that list of acknowledgments as they appear above your signature and the dates opposite them are correct? A. I say they should be correct.

Q. Will you answer yes or no? A. They are to the best of my knowledge.

Q. Now, Mr. Gavigan, holding the instrument in your hand, I would like to direct your attention to the first page and the list of property owners and their respective foot frontage, and the list as they appear immediately following the plat, with reference to the north side of Garfield avenue, in city block 4473. A. That is 4472.

Q. The name is Van Vleet. A. In this instrument it says city block 4472.

The Court: That is what appears in this, too, unless we do not understand what you are talking about. The north side of North Market——

Mr. Richardson: No, the north side of Garfield, block 4473.

The Court: He wants to go over towards Marcus and Garfield. That portion from Marcus to Garfield. All right. What lot?

Mr. Richardson (Q.): The instrument recites that N. Van Vleet and N. Van Vleet, his wife, own seventy-five feet, which is described as lot E, on the east part, or the east ten feet of lot F, in city block 4473. Is there any lot E and lot F on the north side of Garfield avenue in city block 4473? A. Well, not having the record as of that date——

Q. Well, you have the plat before you? A. That does not show that. The plat does not show all of the questions asked.

Q. The plat will show whether—— A. The plat shows the outline of the streets. That is the purpose of that

plat, of the boundaries east, west, north and south. That is the purpose of the plat.

The Court: Is there any meaning to that? Suppose there is an error, what is the meaning of it?

Mr. Richardson: There is a whole lot of meaning. I mean if it is signed for any lot——

The Court: They may have the wrong description. Maybe it says the north side of the street when it means the south side. Suppose it says 4473 when it should have block 4474, what is the meaning of it?

Mr. Richardson: He has testified the name and the frontage are correct.

The Court: He says to the best of his knowledge. I suppose there may be some trifling errors, but what is the meaning of a little error like that, if there is one? That is not the big issue. We cannot decide the case on some little phase of it.

Mr. Richardson: Did you rule the question out, your Honor?

The Court: I did not, but it seems to me we are just wasting time. What is your question? What is it?

Mr. Richardson: I said, according——

The Court: I think the form in which you had the question is argumentative. It was not really a question.

Mr. Richardson: This is but one step in a chain which we are going to attempt to show—the defects in the instrument.

The Court: Won't that appear even without asking the question? If you want to point it out to me that there is an inconsistency between the description down here and something in the plat, you can point that out without asking him a question.

Mr. Richardson: All right, then.

The Court: And if it has any meaning you will have it just as much in the record in that way.

Mr. Richardson: I will point it out.

The Court: You may do it by brief or otherwise. I do not mean that it has to be done now. The instrument will be in evidence, as it was in the other trial, and if there is anything inconsistent about it, you can point it out to me.

Mr. Richardson: I would like to point them out for the record, as well.

The Court: All right, go ahead.

Mr. Richardson: The owner or owners of the east part of lot F and the whole of lot E, fronting eighty feet on the south side of North Market street, beginning at the southwest corner of Wagoner place and running due west for eighty feet, did not sign the alleged restrictive agreement. The property is located in city block 4473.

The Court: Who was the owner of that?

Mr. Richardson: We are asking him. He has testified he obtained the signatures of everyone.

Mr. Jones: Let me see that. I think he is in error.

Mr. Garner: Our contention is, if he drew the instrument and went and got the signatures, we have gone over it carefully and find that people in these particular blocks never did sign it. We are asking him on cross-examination if he can account for that.

The Court: In other words, you say that owners of particular lots in that subdivision were not actually, in that one instance, Mr. and Mrs. Van Vleet, but were some other people.

Mr. Garner: No, that is not it.

The Court: Or, at least, they were not these people.

Mr. Garner: We call the attention of the witness by lots or numbers, that record owners of these properties never signed this instrument, and he asked him——

The Court: Do you know who the record owner was that did not sign it?

Mr. Garner: The lots are in the plat, and in the instrument the lots are supposed to be in the plat or over here,

and these lots do not appear with anyone signing for them.

Mr. Richardson: This is the same situation that was reported in the Paine lot. He said there was one seventy-five feet——

The Court: He said there is a lot that is located seventy-five feet more or less east of Marcus avenue. He didn't say that the lot was a seventy-five-foot lot. You misunderstood him. He said it was one lot and that it commenced at a point seventy-five or a hundred feet east of Marcus avenue, so he did not say it was a seventy-five-foot lot. Now, it occurred to me, Mr. Garner, maybe what Mr. Richardson and you were undertaking to prove amounted to no more than he had the wrong lot number next to the name of Mrs. Van Vleet, and had their lot number next to the name of Mr. and Mrs. Smith. That is why I asked the question which has not been answered. Do you know who did own the particular lot you claim was erroneously accredited to Mr. and Mrs. Van Vleet?

Mr. Garner: Personally, I don't know.

The Court: It may turn out that the name of the owner is signed, but merely happens to have alongside of it, through error or otherwise, a wrong description of the property.

Mr. Garner: If that was true, suppose that was true—I do not want to argue the matter with your Honor, but I want to get through with it. If that was true, if I signed for Robert L. Aronson, could Robert L. Aronson properly be bound?

The Court: That is not an answer. If you and I both own lots there and we both signed, our property would be bound even though someone had transposed or interchanged the description. We undertook to bind whatever property we had. Let me see it at the place where they actually signed. Did they have a description with their signatures? You see, that is what I anticipated. There is

no description right where they signed, and that is not a significant part of the affidavit.

Mr. Richardson: According to the instrument itself, in no less than seven places, it has that the people purport to sign for the property hereinabove described. The property hereinabove described is what I have reference to.

The Court: Mr. Garner denies that he knows who were the owners of this property that is described alongside of the name of Mr. and Mrs. Van Vleet. Do you know who the owner was?

Mr. Richardson: I did not look it up. I understood the burden was on the plaintiff to make out his own case.

The Court: Well, it happens when you are trying to make out a defect——

Mr. Richardson: I pointed it out.

The Court: Very incompletely, put it that way. Do I understand—you have not answered the question yet—do you know who were the owners at that time of lot E and the east ten feet of lot F?

Mr. Richardson: I stated that I did not, your Honor.

The Court: I did not so understand it. I thought that your only answer was that it was not your duty to mention it.

Mr. Jones: What is that, the south side of Garfield? Let me call your attention to the very last name. You will find that it is there.

Mr. Richardson: They signed for a part that does not include the part I have reference to.

The Court: Now, wait a minute before you resume. It would appear, trying to interpret this, until there is a showing that Mr. and Mrs. Van Vleet did not own any property there, it would appear that the only error is putting that below the line "City Block 4473." I am talking about the description below the plat. In other words, if the Van Vleet property were included in City Block 4474 and was understood to be the south side of Garfield ave-

nue, it would fit in perfectly with the description of property owned by the Wackmans and Concannons, also on the south side of Garfield, and also in city block 4474; so, the only error seems to be there should not have been in the typewriting of this—there should not have been a line that changed our attention from the south side of Garfield in city block 4474 and directed our attention to the north side of Garfield in city block 4473. If those two lines were reversed, there would be a perfect harmony about it. In city block 4474, the south side of Garfield, there is lot E and the eastern ten feet of lot F, and that works in perfectly with the land of the Wackmans, which is the middle part there, namely, the western part of lot F, all of lot G, and the eastern part of lot H, and would also work in perfectly with the land of the Concannons, the western part of lot H.

Mr. Curtis: It seems to me the plaintiff will have to put on proof some time or other that the people who signed were the owners of the property at that time, if that were in evidence, if that were already in, we could proceed. I assume he is intending to do that.

Mr. Richardson: I hate to differ with your Honor, but it would not coincide as you have attempted to account for it.

The Court: In what respect?

Mr. Richardson: The owner or owners of the east part of lot E, fronting on the east side of Garfield avenue, beginning at the southwest corner of Garfield and Wagoner place, and running west for thirty-two and a half feet, in city block 4472, did not sign the alleged agreement.

The Court: Well, who were they?

Mr. Richardson: Now, that is thirty-two and a half feet. I submit that I know that the Van Vleets do not own that.

The Court: Well, who did?

Mr. Curtis: Is not that proof that the plaintiff should have brought in, to start the case off, if these people do not own the land, the signatures make no difference.

The Court: There is a prima facie case made by the plaintiffs on that.

Mr. Curtis: On the instrument?

The Court: I mean on the testimony.

Mr. Curtis: No, I beg to disagree. That instrument is not worth a thing unless there is good proof that these people own the land for which they sign the instrument. They are seeking to bind the land. Anyone can sign that, and they could say they were the owners, but if they were not, then that is something that has to be affirmatively proven, or there is no case in court.

The Court: It may be, when we conclude the case, we will find there is not sufficient proof that these people owned it, but right now, getting back to the question that Mr. Richardson asks, he makes the positive statement that someone owns thirty-two and a half feet.

Mr. Richardson: The Van Vleets purport to sign for seventy-five feet and for lot E and the east part of lot F.

The Court: It could not be harmful to you, Mr. Richardson, to tell me who did own thirty-two and a half feet. If they did not sign, their signatures won't appear here merely because you give me the name. You make the statement that they are not signed. You know from the instrument all the people who did sign. If you can show me someone whose name is not signed here——

Mr. Richardson: It has been conceded that several lots on the north side of North Market were not signed or were not called——

The Court: One lot.

Mr. Richardson: To be specific, lots 5, 6 and 7 and the west part of lot 8, fronting on North Market, beginning 135 feet from the northeast corner of Marcus and North

Market and running due east for seventy-five feet, did not sign the alleged agreement.

The Witness: All that property is owned by one person, your Honor; vacant property.

The Court: In other words, you do not want to answer the question that I put to you?

Mr. Richardson: Will you state it again?

The Court: Who was the owner of the thirty-two and a half feet?

Mr. Richardson: Well, I state—I state that it is not—I state I do not know.

At this point a recess of ten minutes was declared, after which time, the same parties being present by their respective counsel, further proceedings were had as follows:

Mr. Richardson: Your Honor, I started out to ask the witness certain questions about defects in the instrument. You stated if they were there, I should point them out. Now, I do not wish to go any further, and I am through with the witness now.

The Court: All right.

Mr. Curtis: The witness will be subject to recall?

The Court: Yes, if you wish to ask any questions now, you may do so.

Mr. Curtis: No.

The Court: Any redirect examination?

Mr. Jones: No, I think it was brought out by the witness.

The Court: Let's not sum up.

Mr. Jones: All right, I better ask him about this.

Q. (By Mr. Jones) Mr. Gavigan, did you testify that the signatures of all owners of property in this district covered by the restriction agreement, with the exception of the lots on North Market street, were obtained——

Mr. Garner: Just a minute. We object for this reason: if he did so testify, it is a conclusion as to whether the owner signed and——

The Court: I sustain the objection, in part, because it is repetition, too. Let me ask you this, Mr. Gavigan: Where did you get that information as to who owns the parcels of property?

Mr. Garner: We realize we are trying the case before the Court, who is trying his best to try the case carefully, but we object for the record to the question by the Court on the ground that the record is the best evidence, and if the Court asks where he got his proof that the owner signed it, that is asking for a conclusion.

The Court: I want to find out what procedure he went through.

Mr. Garner: All right.

The Court: It may be that it will establish that he did not have good foundation. You can always feel free to make an objection to my question. I will overrule the objection.

Mr. Curtis: May I just say this one thing: The only thing I believe that counsel objects to here is that this witness is incompetent to testify as to who owns the land.

The Court: I didn't ask him that.

Mr. Curtis: That is the only point that counsel has.

The Court: The record will show the overruling of the objection. What did you do in advance of trying to get the signatures, in the way of getting the list?

The Witness: If the Court please, when I had agreed to go into the thing in one given neighborhood——

The Court: I mean this particular one.

The Witness: I proceeded at once to go to the only place that I could secure with reasonable accuracy the owners of the property in this particular given district. I had examined the books of the City Assessor and had questioned the then chief clerk of the department as to why there was apparently so many pieces of property indicated on their books as the owners of property as of the date I

appeared, and from my own personal inquiry I found were owned by other people. His reply was that for their purpose the books were kept up only to the extent, and they were frequently behind six months in making changes of record on their plat books for the reason——

The Court: You are not answering the question, Mr. Gavigan.

The Witness: I am trying to arrive——

The Court: Do I gather that you went to the Assessor's office?

The Witness: I did, and, finding that record incomplete, I proceeded then to the Assessor of Special Taxes under the Board of Public Improvement as—I am not sure whether it was under the Board of Public Improvement at that time or under the Public Service, but we took up within ten days——

The Court: I didn't ask you that. Just answer the question. You went to those two places; is that right?

The Witness: I did.

The Court: Did you do anything in addition to that in the way of looking up deeds?

The Witness: I made arrangements with the clerk employed in the department, who has been there over forty years, to make up the list.

The Court: We will strike out the answer about how long the clerk had been there and that you made arrangements. You can answer yes or no, if you did anything further than that.

The Witness: I got a list from them and then checked them back myself, and then went to the owners of the property of record and asked whether they were the owners.

The Court: Did you look at deeds, or take the people's word for it?

The Witness: I just took the people's word for it, your Honor, and assumed that the records showed they corresponded when they stated that it corresponded with the list that I had gotten from the Assessor's office, and the special tax bill.

The Court: Well, all right. I wanted to get some kind of rough idea as to what you did.

Mr. Garner: I move to strike out all of the testimony in response to the Court's question as to how he obtained his idea about the ownership. First, he said he talked to the chief clerk. That is not the best evidence; that is hearsay. He said he examined the book, and that is the best evidence. He said then that he assumed the book would be kept correctly; that is not competent. He said he made arrangements; that is not competent. He said he took someone's word for it; that is not competent. Then he said "reasonable accuracy," and that is a conclusion. And I move to strike out the entire testimony in answer to all of the Court's questions as incompetent, irrelevant and immaterial.

The Court: A good deal of his testimony was not proper. There is no doubt about that. His choice of words would indicate he was drawing conclusions, and a good deal of his answers were not in response, but since you have a general motion to strike it all out, I will overrule it, because the sole purpose the Court had in mind was to get an idea of the steps he went through, and the Court does not and will not attribute greater validity to the instrument by reason of his answers. The questions are asked merely to see what course of procedure he followed, as reflecting on the credibility of the witness and the sincerity of his efforts and so forth. It is just background matter, and I will let it stay in the record.

Mr. Garner: May I ask the Court, then, if the Court's questions are intended to shed any light on the question of ownership of the various properties?

The Court: No.

Mr. Garner: It was not intended for that?

The Court: No, because it did not apply to any one property or group of properties, but was merely with reference to his method of operation.

Mr. Garner: All right.

The Court: It is not to be taken as shedding any light on the ownership of any specific lot or parcels.

Mr. Garner: Understand, I am not waiving my objection, but I just wanted to find out the Court's purpose.

The Court: I understand. Are there any further questions?

Mr. Jones (Q.): Did the people to whom you went in their respective homes or houses, as you have testified, tell you that they were the owners of the property in which you interviewed them?

Mr. Garner: Your Honor, if he is seeking to prove ownership, we object, because it is hearsay and not the best evidence; that the record itself is the best evidence as to who owned the property.

The Court: I think that objection is well taken. It will be sustained.

Mr. Jones: The purpose of the question is to bind the parties who executed this agreement.

Mr. Curtis: The statements of the people themselves would not be the best evidence.

The Court: I will sustain the objection.

To which ruling of the Court plaintiffs, by counsel, then and there duly excepted.)

Mr. Jones: In other words, the best evidence would be a combination, under these theories, of all of the books in the office of the Recorder of Deeds, plus some identification —positive identification—by parties who knew or were acquainted with the purported record owner of the property?

The Court: I just know about identification being needed. I think, under the theory idem sonans, if someone named Van Vleet appears before the Notary and identifies himself, and if the record shows that someone with the same name and same initials, Van Vleet, owns the parcel, I think that would establish his ownership. I do not know that you would need to bring in proof that it was the same person. The identity of names would take care of that.

Mr. Jones: I just wanted to make sure how far I would have to go in establishing the question of ownership. I presume it will be necessary to at least subpoena in the records to show that the Schroecks were the record owners when they executed this agreement.

The Court: Yes, it might be a good bit of evidence to produce. Any parcels that are called in question, I think you might go into, also. That is what I had in mind before when I spoke about a prima facie case. I think defendants ought to point out what parcels are not covered. Here is an instrument on record for twenty years and not called in question. Now you are calling it in question by saying there are five, six, seven or eight parcels of property that were not committed to this agreement by the signatures of their actual owners, and rather than encumber the record by getting deeds to every one of a hundred owners, if there are that many, I think that would be the efficient way and one that we ought to follow. I think I shall follow the rules of prima facie evidence until the names are disclosed.

Mr. Garner: We are not responsible for this lawsuit. It is not incumbent on us to dig into that record and develop that instrument and show those defects until we were attacked, and we were not attacked until lately, and we are not guilty of any laches. They bring this instrument in and rely on it, and it is up to them to establish its validity from A to Z, and it is not up to us.

The Court: Now, I am sure you do not question that some of the people that sign the instrument were owners?

Mr. Garner: We do not admit it.

The Court: I think you ought to point out in what

respect the land is not bound. If there are enough parcels, it might destroy the general deeds.

Mr. Curtis: I am in here representing a corporation that has a deed of trust on this property, and we have been put to a lot of time and expense, and I might add we asked for a pleading some time ago in which we could make response to, which we did not get, and had to come up here quite a number of times. If the plaintiff had prepared this case properly they would have come to court ready and prepared to show the essential feature of the suit, which is ownership. Defendants are not required to know whether these signatures on here at the time were the owners. They should not be required to be put to the expense of going over and checking these things, but plaintiff should put it on as evidence, he should put on his witnesses, each one of them, because there may be some objection to each one—I don't know, but they have to prove it. I don't think they are proceeding in the right way, and because some people say they are the owners, and might think they are the owners, and might not be, if we brought the records into court that would show So-and-So was not an owner, and that piece of property was not bound by the land, I cannot understand this suit in the first place, because it runs out in December, and I think under the circumstances, the pleadings which have been amended by interlineation, but are in terrible shape, and the fact that we are not ready to proceed, and will take a long time, this whole matter should be dismissed.

The Court: We are in the middle of the trial and we cannot dismiss it. So far as when it will expire, that time has not yet come, and we cannot anticipate anything.

Mr. Curtis: We are now in a situation where the plaintiff has admitted he has not got this evidence, and plaintiff will have to ask for a continuance, and I don't think it should be granted. I think this case should be dismissed because we cannot proceed further, and plaintiff has not proved his case.

The Court: We are proceeding, maybe not as fast as would be desirable, but we are proceeding. I am not making a definite statement now that the plaintiff can get along without that evidence. It may be when you come to look into the law more fully we will find that plaintiff has failed because of that. I did not do any research in this case in advance. It is the Court's job to do research when the evidence is all in, and I will not prerule that, but it seems to me we might get right to the heart of it if we knew some parcels were not covered, and the more the defendant shows that, the more plaintiffs' side of it is weakened by failure of proof of every parcel. I do not know that we have anything before us right now for a ruling.

Mr. Richardson: That is what I set out to do at first. I started to state in the form of a question, and you suggested if there were any defects to point them out. I then started taking them up step by step, but I do not know who owns these parcels.

The Court: If you want to mention another parcel, why, you have the same right to mention it in the record.

Mr. Richardson: We will take our time and point them out one by one.

Mr. Garner: The record does not show that they are signed, I mean this instrument on its face.

The Court: When you point out those inconsistencies, that increases Mr. Jones' burden.

Mr. Curtis: I would like to interpose a special objection on the part of the Lafayette Federal Savings and Loan Company, of the proceedings going on in this manner, that the proper way would be for plaintiff to put on his evidence rather than for these defendants——

The Court: Plaintiff was putting on evidence.

Mr. Curtis: These are the defendants who are asking questions.

The Court: They have a right to cross-examine. You are not prejudiced. We will proceed.

Mr. Richardson: Shall I go ahead and point out the defects or ask him to account for the particular lot?

The Court: Well, I suppose that the best way, really, is to wait until you get to your part of the case and you can point them out. It is somewhat in evidence already that there is an inconsistency, but all you will be doing now is directing the Court's attention to it.

Mr. Richardson: Our theory is plaintiff is basing his suit on the written instrument, and if the written instrument is invalid on its face there is no occasion to proceed further, that no amount of evidence he might bring in would cure the defects.

The Court: You want to object to the consideration of the instrument? Then you will have to state the various defects in your objection. Suppose we wait until Mr. Jones formally offers it.

Mr. Jones (Q.): Mr. Gavigan, did you compare the list which contains the names of these alleged property owners with the names given to you by the people living in the houses when you obtained their signatures?

Mr. Garner: If the question is asked for the purpose of attempting to establish ownership, then I object to it on the ground that it is incompetent and it would be hearsay, and the record itself is the best evidence, and whether he compared the list would not tend to prove the ownership.

The Court: Objection sustained.

To which ruling of the Court plaintiffs, by their counsel, then and there duly excepted.

Mr. Jones: It might shorten the proceedings if the defendant did point out the inconsistencies.

The Court: They are going to object when you offer these instruments. They will point out their objections to it.

Witness excused.

RAY R. DOLAN,

of lawful age, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in behalf of the plaintiffs as follows:

Direct Examination, by Mr. Jones.

Q. State your name. A. Ray R. Dolan.

Q. Where do you live? A. 7400 Parkdale, Clayton.

Q. Mr. Dolan, I will ask you if you held any office in the Real Estate Exchange in October, 1941? A. President of the St. Louis Real Estate Exchange.

Q. I will ask you if on or about the middle of October, 1941, you were requested by anybody to institute a suit for injunction against Scovel Richardson and his wife, at 4635 North Market street?

Mr. Garner: If the Court please, we object to any answer to that question for the reason that it appears Mr. Dolan, the witness, is president of the St. Louis Real Estate Exchange, and that as such he is a trustee in this lawsuit. Now, we object on the ground that the St. Louis Real Estate Exchange is a corporation and has no right, power or authority to become a party to any such instrument as this particular instrument for the reason that the Real Estate Exchange gets its authority from the State of Missouri, and that the State of Missouri itself would not have any power or authority under our law to become party to such an instrument, and it could not delegate such power or create a creature with such power. The Court will take judicial notice of the fact that this is a restriction agreement limiting the sale and alienation of property, and if the State of Missouri could not do it, a corporation empowered by the State could not do it, and Mr. Dolan is not coming in person, but as the Real Estate Exchange.

The Court: Objection overruled.

A. Mr. Jones approached me about that some time last October.

Q. (By Mr. Jones) Was Mr. John Wehmeyer an officer of the Exchange? A. He was treasurer of our Exchange at that time.

Q. And did you consent——

Mr. Garner: I am sorry, but I object further to any answer to the question on the ground that the trustee, such as he is in this case, was not a trustee in 1922 when this instrument went into effect, and those, as trustees at that time, had no right, power or authority to bind subsequent trustees, and he is not a proper party to this suit, and it is not proper to ask this question.

The Court: Objection overruled.

The Witness: Will you give me the question again?

Q. (By Mr. Jones) Did you consent to such a suit being filed? A. Yes, sir.

Mr. Jones: That is all.

Cross-Examination, by Mr. Richardson.

Q. You were a member of the Exchange in 1922? A. Yes, sir.

Q. Did you know, or remember, whether the Exchange authorized the trustees set out in the alleged restrictive agreement to become parties to this restriction agreement? A. As a member, I don't remember that. If I had known it at that time, I have forgotten it.

Q. Is there any rule of the Exchange by which the officers, the president and secretary and treasurer, may act as trustees in these restrictive agreements? A. I would not know what the rules of law are, but I do know they have acted.

Q. You say it is the established practice? A. Yes, it is; that is right.

The Court: You mean various predecessors of yourself

in the office of president have acted as trustees and they have brought suit, and so forth? A. Yes, sir.

Q. (By Mr. Richardson) You are acquainted with this restriction agreement on which the suit is based? A. No, I am not familiar with it.

Q. You just lent your name? A. That is right, as the president of the Real Estate Exchange.

Q. Do you know in general about restriction agreements that trustees of the Exchange enter into?

Mr. Jones: It is not the trustees, it is the officers who act as trustees in these agreements.

The Witness: Oh, it would be so remote it probably would not be of any value.

Q. (By Mr. Richardson) Do you get a consideration for the trustees or officers acting? A. I don't know. I never got any consideration for acting.

Q. Did you ever pay any consideration? A. No.

Mr. Richardson: That is all.

Redirect Examination, by Mr. Jones.

Q. Mr. Richardson asked you about consideration of the trustees. Explain your answer when you say you never received any consideration.

The Court: Well, does that need explanation?

The Witness: I loaned my name to this thing as a successor to my predecessor in office, as the president of the Real Estate Exchange.

Q. (By Mr. Jones) As a successor? A. As a successor to my predecessor, president of the exchange.

Mr. Jones: Inasmuch as you did not execute the instrument, I withdraw any further questions. That is all.

Recross-Examination, by Mr. Richardson.

Q. Were there any conditions precedent to your election as president of the St. Louis Real Estate Exchange?

The Court: What do you mean?

Mr. Richardson (Q.): Were there any qualifications, were you elected absolutely without equivocation as president? A. I think it was unanimous. I do not think there was one vote cast against my election.

The Court: Did you have to bind yourself in any way that you would follow a given course or do any particular thing as a condition before they would elect you? A. No, unless, like any other member, we would have to prescribe to various rules, that any officer would have to prescribe to.

Mr. Jones: Now, I would like to offer this instrument now, so I can hear the specific objections and while the defense is being put on I will have to work up the rebuttal, to save time. I wish to offer in evidence an instrument previously marked as "Exhibit A," which shows on the outside of the instrument, or purports to show, that same was filed of record on July 18, 1923, in book 3841, at page 386, in the office of the Recorder of Deeds of the City of St. Louis, Missouri, which said agreement purports to have been executed and acknowledged by Johanna M. Schroeck and others.

Mr. Richardson: I wish to object to the introduction in evidence of Plaintiffs' Exhibit A, and wish to state that my objection will be largely in three parts: first, to the defects in the instrument itself; second, to the constitutional objection, and, third, as to the St. Louis Real Estate Exchange being a party. First, the property owners who plaintiffs claim signed the restrictive agreement have not been identified properly as the parties owning any property in the said restrictive area. Second, there was no consideration for this contract. The contract recites a consideration of one dollar moving from the parties of the first part, who are set out in the agreement as being the property owners of the plat set out on page 1, to—just a minute, I will withdraw that statement. It

recites that the consideration moved from the parties of the second part to the parties of the first part. The parties of the second part were the trustees and officers of the St. Louis Real Estate Exchange. The parties of the first part were the property owners. The witness who was responsible for obtaining the signatures stated that the one dollar was paid to him by the parties of the first part and turned over to the parties of the second part. Also, third, the witness testified that there was a power coupled with an interest given to the parties of the second part, but does not state or identify what that interest was. The witness stated that he did not know the persons who signed and took the acknowledgment in a number of instances prior to their signing, and his taking the acknowledgments. The statute requires a person making an acknowledgment of any instrument affecting real estate, must be personally known to the person taking the acknowledgment, or whose name is subscribed to the instrument as a party thereto, or is proved to be such by at least two witnesses whose names and places of residence shall be inserted in the certificate. There are no names of identifying persons offered in evidence as appearing in the certificate, in the instances wherein he did not know the persons. The owner or owners of lots 5, 6 and 7 and the west part of lot 8, fronting on North Market street, beginning 135 feet from the northeast corner of Marcus avenue and North Market street, and running due east for seventy-five feet more or less, did not sign the alleged restrictive agreement. Negroes, Dr. and Mrs. Payne, and their son, to my knowledge, occupied said property. The said property, like the property owned and occupied by the defendants Richardsons, is located in block 4472 and is 175 feet west of the property owned and occupied by the defendants Richardsons. The owner or owners of the east part of lot F and the whole of lot E,

fronting eighty feet on the south side of North Market street, beginning at the southwest corner of Wagoner place, and running due west for eighty feet, did not sign the alleged restrictive agreement.

The Court: That is block 4475?

Mr. Richardson: No, block 4473. The owner or owners of the lot fronting on the east side of Marcus avenue, between North Market and the alley, beginning ninety feet, six inches, from the northeast corner of North Market and Marcus, and running forty feet due north, in city block 4472, did not sign the alleged restrictive agreement. Mr. N. Van Vleet and Mrs. N. Van Vleet, according to page 1 of the alleged restrictive agreement, own lot E and the east ten feet of lot F on the north side of Garfield avenue in city block 4473. There is no lots E and F on the north side of Garfield avenue in city block 4473. The property purported to be owned by said Van Vleet is described as fronting 75 feet on the north side of Garfield avenue in city block 4473. This is impossible. The total frontage of the north side of Garfield in city block 4473 is 200 feet, according to page 1 of the agreement. Those 200 feet were purported to be owned by Q. W. Morrison and Florence E. Morrison, 75 feet; Nannie O'Malley, 45 feet; Thomas L. and Mae E. Spillane, 35 feet, and Theresa Vogt, 45 feet; making a total of 200 feet. The agreement recites in no less than seven places that the land covered by the signatures which follow is the land hereinbefore described. The persons listed as owning lots fronting on the north side of Easton avenue, in city block 4476, between Wagoner place and Marcus avenue, purport to sign for 220 feet, exactly, and there are only 200 feet fronting on said part of Easton avenue. Plaintiffs have not explained this discrepancy.

The Court: That is the south half of a block?

Mr. Richardson: From Wagoner to Marcus, on the north side of Easton.

The Court: From Easton to the alley and from Wagoner to Marcus.

Mr. Richardson: The owner or owners of the east part of lot E, on the south side of Garfield avenue, beginning at the southwest corner of Garfield and Wagoner place and running west for thirty-two and a half feet in city block 4474 did not sign the alleged agreement. The owner or owners of the lots located in city block 5638, bounded on the east by Cora avenue, on the south by Easton avenue, on the west by Wagoner place and on the north by the alley running from Cora to Wagoner place, did not sign the alleged agreement. These lots are situated in the district which was sought to be restricted according to the plat on page 1 of the alleged agreement.

The Court: Are they described in any way by language or only by the plat?

Mr. Richardson: Your Honor, where there is a plat set out in an agreement and it is described as covering the property with respect to which the contract is made, the plat has to be taken as evidence of what was intended to be covered.

The Court: I didn't ask that. I better look at the agreement so I can get the answer to the question I wanted. I wanted to know whether it is described in two ways or just one way.

Mr. Richardson: Just one way; just in the plat.

The Court: There is no description otherwise by blocks?

Mr. Richardson: No.

The Court: All right, you have answered it.

Mr. Richardson: It cannot be determined from the instrument on which this complaint is based just who owned the lots on the east side of Wagoner place, between Easton

avenue and North Market street, in city block 5638. Some persons are listed as owning a number of foot frontage, but no lots are described. In totaling the footage listed as owned by persons on the east side of Wagoner place and the plat contained in the agreement there is still a discrepancy of 75 feet 9 inches, more or less, that in no instance is accounted for.

The Court: That is not covered. If you add up all the footage mentioned in the instrument it falls short by 75 feet of being the whole thing.

Mr. Richardson: That is right. The list of acknowledgments does not show that all R. B. Pitts, who was acting or purported to act for the Methodist Church, took an acknowledgment. By reference to the alleged restrictive agreement——

The Court: You mean it does not show he gave an acknowledgment?

Mr. Richardson: Yes.

The Court: You said "took."

Mr. Richardson: I meant "gave." By reference to the agreement it will be seen that W. G. Isenberg and Mathilda, and so forth, are listed as trustees under the will of Jewett Wagoner for Anna M. Wagoner will, with the life estate remainder to Nellie W. Woerman and Mildred W. Henderson and G. W. Henderson. According to the instrument presented it does not appear that the said Isenbergs acknowledged their signatures before any notary public. Through a close examination of the instrument it appears that whoever signed the name of W. G. Isenberg also signed for Mathilda Isenberg. Nellie W. Woerman, Mildred Henderson and G. W. Henderson, who had a vested remainder in whatever property Jewett Wagoner left in trust for Anna M. Wagoner, did not appear before any notary public and make the necessary acknowledgment.

The Court: That is the remainderman on the same parcel.

Mr. Richardson: That is right. The names of the persons appear in the list of acknowledgments, but only as descriptive of the estate owned by them. Frank W. and Nellie Gerrish, who purport to own thirty-six feet fronting on the east side of Wagoner place, did not have their acknowledgments taken by any notary public. Margaret Patterson, who had a vested remainder in sixty feet, purported to be owned by Agnes McKee, fronting on the east side of Wagoner place, did not have her acknowledgment taken before any notary public. No acknowledgment purports to have been made by any person for the Gill Bros. Grocery Company, who purport to own fifty-five feet on the north side of Easton avenue, between Marcus avenue and Wagoner place.

The Court: There is a corporate resolution, but you say that was not followed up by actual acknowledgment?

Mr. Richardson: No. It has been stated by the witness, who attempted to verify the execution of the instrument, that it was a neighborhood scheme which was represented by the plat on page 1 of the restrictive agreement. That is one of the objections, that the instrument was not executed because—properly executed—because of lack of finality and completeness. Now, as to the constitutional question: Assuming that the alleged restrictive agreement were valid, and that according to the courts of Missouri it did not contravene the public policy of Missouri, it is the duty of this Court to exercise its discretion and refuse to aid in the enforcement of this alleged agreement, because it would be unconscionable, oppressive and inequitous. Such enforcement on the border of a district wholly or predominantly colored would strike a severe blow to the public health, morals, safety and general welfare of the City of St. Louis. It would accentuate the

already acute housing problem of the colored people within the range of steel thrown around them by so-called restrictive agreements. It would compel their increasing population, due both to the increase in birth rate and migration from the South, to live in an overcrowded and slum-ridden section of the city. This situation would breed disease and develop criminals; disease and crime know no racial boundaries, and make no distinction based on color. The alleged restrictive agreement is socially undesirable and against the public policy of the State of Missouri, because it destroys the marketability of land, interferes with the free sale and use thereof, prevents improvement to land and property, encourages waste and disuse of property, discourages the payment of taxes to the state and its various instrumentalities, unsettles the land titles of community and state and impedes the development of communities, and is void and against sound real estate policy. The alleged restrictive agreement contravenes the public policy of the United States of America, as set out in Sections 1977 and 1978 of the Revised Statutes of the United States. The alleged restrictive agreement is unconstitutional and void, because it abridges the privileges and immunities of defendants in violation of the Fourteenth Amendment to the Constitution of the United States of America. It unreasonably interferes with the freedom of contract of white persons, as well as colored persons, who did not sign or attempt to execute the alleged restrictive agreement in respect to the sale and use of their property, and property rights, without due process of law, in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States. It destroys defendants' liberties in violation of the Fourteenth Amendment of the Constitution of the United States. It expressly contemplates and provides for state action and the use of the state's agencies, its courts and

public officers, in the enforcement of said alleged restrictive agreement, in violation of the Fourteenth Amendment of the Constitution of the United States, and it is wholly void as being an invalid restraint on the alienation of real property. It is a covenant against race, and as such is a covenant against persons themselves personally, and not one running to the land. The covenant has but a short time to run. This fact should be taken into consideration by the Court along with the other circumstances and the defects in the instrument itself, and the change in the neighborhood.

Now, as to the St. Louis Real Estate Exchange——

The Court: You mean on the point of ultra vires?

Mr. Richardson: No, another point.

The Court: Is there a pleading of ultra vires in this case like the Bryant case?

Mr. Richardson: Not only that, but there is a pleading that, even assuming that authority given a corporation by the state, which permits them to enter into these agreements, it would still not be a good agreement. That point has not yet been presented. The judicial treatment of restriction agreement of the type here involved is repeatedly that such agreement contemplates the creation of a binding contract effective as of the time when all desired signatures had been obtained. The feature of this case now before the Court, and the question is the capacity of a corporation such as the St. Louis Real Estate Exchange to be a party to such an agreement.

The restriction agreement now in question cannot be read, nor its background considered without an immediate realization that the St. Louis Real Estate Exchange, referred to as the Exchange, is in form and substance a material party to the agreement. The instrument itself is headed with the title of the Exchange. The members of the Exchange were instrumental in giving or taking the

agreement perfected. The parties of the second part in their agreement are described as, and only as, officers of the Exchange. The consideration recited in the agreement is said to move from the Exchange. That the determination of who at any given time are trustees contemplated by the instrument can be had only by reference to the Exchange and finding as to what person holds the designated offices. The agreement recites the conveyance of an interest to the officers of the Exchange. The power of attorney is cited as being irrevocably granted by parties of the first part to the trustees and not individuals.

It has been revealed on testimony that the officers of the Exchange have an established practice in becoming parties to these agreements. Since the officers of the Exchange are elected at regular intervals and serve for a term less than the term for which the agreement purports to operate, it is clear the trustees may be, and no doubt will, be changed without the knowledge or consent of the subscribers to the instrument. In order that this may be effectively done it must be intended at the time of the execution of the agreement it was contemplated that some party representing the interest of the then officers of the Exchange and the interests of all parties thereafter to become such officers should become a party to this agreement. Inasmuch as the future officers could not be presently determined and the then officers of the Exchange were without power in their individual capacities to bind such future officers, the St. Louis Real Estate Exchange was a party to the agreement. In order to give effect to the apparent intention of the parties to create a binding agreement, it is necessary to hold that the St. Louis Real Estate Exchange, acting through its officers, was empowered to become a party to this agreement. Our contention is, first, it is not within the power of a state to confer on a corporation power to become party to this type of restriction

agreement; second, the statutes of Missouri has not attempted to confer on the St. Louis Real Estate Exchange power to become a party to this type of restriction agreement; it is, therefore, not such a party, and its attempt to become one is void as being ultra vires. On the first point, a corporation is a creature of the state and possesses such power only as the state has granted it. Neither broad or general language of corporate authority granted by the state, or the statutes, authorizing the incorporation, no state can grant to a corporation power to do that which the Constitution forbids it from doing itself. The state itself cannot enforce a plan to restrict, because of race, a neighborhood in which certain of its citizens may live, nor can an agency of the state do so. What the state is forbidden to do directly it may not do by indirection. Number two: That the State of Missouri has not authorized the St. Louis Real Estate Exchange to become a party to this type of agreement. The power and authority of a corporation are only those set forth in its charter, and those necessary for carrying out its expressed power and authority and object of its incorporation. The express authority and powers of the St. Louis Real Estate Exchange are set forth in its articles of incorporation and in its constitution and do not include authority to become a party to a restriction agreement.

Now, will it be permissible to omit the reading of the articles?

The Court: Just read the section heading and we can copy them in at any time.

Mr. Richardson: Article 2 of the articles of incorporation of the constitution of the Real Estate Exchange defines the purpose of the Exchange. Article 3 defines the powers of the Exchange. There is clearly in these provisions no expressed recital of the power or authority to become a party to a restriction agreement. So far as the expressed

powers go, it must be asserted that such power, if given expressly, is included in the general authority under the article "Purposes to devise, advocate and support all measures calculated to improve the City of St. Louis and the character of its streets and buildings." Now, article 5, section 13.

(At this point counsel reads various sections of the constitution and charter.)

Mr. Richardson: The contention is that the placing of such a restriction by no means is devising, advocating and supporting a measure calculated to improve the City of St. Louis and the character of its streets and buildings. In fact, it negatives such a view and shows a total ignoring of what may be an improvement to the City of St. Louis, and a concentration of what is to the advantage of certain residences of the City without regard to the best interests of the City itself.

The agreement states, "And whereas, it is to the mutual benefit and advantage of all the parties of the first part to preserve the character of said neighborhood as a desirable place of residence for persons of the Caucasian race and to maintain values of their respective properties, and to that end they desire to restrict the use and disposition of their several said parcels of land for the benefit of all parties of the first part, their heirs, successors and assigns, in the manner hereinafter set forth, and whereas, the St. Louis Real Estate Exchange is a corporation of which said Trustees are respectively, the president, treasurer and secretary, is organized to promote the interest of the property owners of the City of St. Louis, and is, therefore, in thorough sympathy with said purpose, and desires to cooperate in the establishment of said restriction." We contend that the expressions above indicated indicate that the Exchange has by that concerned itself not with the interest of the City of St. Louis, which is composed of people of all

races, but solely with the interest of only a small segment and of one of the races making up the great City of St. Louis. The implied powers of a corporation are limited to those reasonably necessary to accomplish the purposes for which it was formed. The authority to become party to a restriction agreement does not survive the test of it being reasonably necessary for the realization of the expressed powers of such an agreement, and is in direct contravention of the authority granted to benefit the City of St. Louis as a whole.

Finally, it appears that this is an engaging by the Exchange in an enterprise designed for its own or the benefit of its members, which is forbidden under the clause of the Constitution. This agreement recites the St. Louis Real Estate Exchange is organized to promote the interest of property owners of the City of St. Louis, and the constitution shows no such authority.

At this time, your Honor, I would like to renew the motion of the defendants to dismiss the action for all the objections stated, and for the further reason——

Mr. Garner: I think I understand the rule about not taking two bites at the apple, but I would like to make one objection to the introduction of this instrument. In addition to the objections already made to the introduction of this exhibit, we want to make this objection, that there is no competent evidence in the record that the various alleged property owners who signed this alleged agreement are the owners of the parcels of land charged to them in the instrument, and that the answer in this case denies any such instrument has ever been signed, and calls for strict proof.

The Court: All right. These objections, particularly those given at the outset as to the alleged defects in the execution of the instrument, presents a serious question. It may be that there are enough defects to invalidate it, but that

is really a question to be determined at the close of the case. I think I ought to properly reserve a ruling on the admission of this exhibit this time and see what further develops. Some of the points seem to have a serious value. We will be in recess now for lunch until 2 o'clock.

At this point the Court declared a recess until 2 o'clock p. m. of the same day, at which time, the same parties being present, by counsel, the further proceedings were had as follows:

The Court: Now, without committing myself to follow or make the same ruling at the conclusion of the case, but solely for the purpose of completing the record, I will overrule the objection to the instrument and receive it; but I propose to give most serious thought to the grounds of the objection along with the rest of the case.

Said Plaintiffs' Exhibit A is in words and figures as follows:

JOHN CONCANNON,

of lawful age, being first duly sworn in behalf of the plaintiffs, testified as follows:

Direct Examination, by Mr. Jones.

Q. State your name. A. John Concannon.

Q. Where do you reside? A. 4648 Leduc.

Q. How long have you been there? A. Twenty-eight years.

Q. What is your business or occupation? A. Real estate.

Q. How long have you been in that business or occupation? A. About forty years.

Q. Engaged in the buying and selling of real estate? A. Yes, sir.

Q. Now, will you tell us your opinion, based upon your experience—what, in your opinion, would be the effect on a neighborhood in confined areas, which is almost exclusively white, if colored families were to move into the neighborhood?

Mr. Garner: We object to that for the reason the witness has not been properly qualified to answer the question, and no proper foundation has been laid for the question or the answer.

The Court: It may be that another qualifying question ought to be asked, as to whether he has ever observed this particular situation. So far he has only testified he has been in the real estate business for forty years.

Mr. Jones: All right.

Q. (By Mr. Jones) During your experience in the real estate business, in the time you have been in it, have you ever had opportunity to observe a neighborhood predominantly white, into which colored families have moved?

Mr. Garner: Now——

The Court: The question just asked calls for a yes or no answer; whether you had an opportunity to observe it.

The Witness: Yes, I have.

Q. (By Mr. Jones) Now, have you had an opportunity to observe what happened or what became of property values of the neighborhood into which these colored people moved, if you know?

Mr. Garner: Just a minute.

The Court: Just answer yes or no, whether you had opportunity to observe the effect on property values.

A. Yes, I have.

Q. (By Mr. Jones) And what was that effect?

Mr. Garner: We object to that now for the reason that this witness, as I understand, is an expert witness, but the proper foundation has not been laid for an answer from an expert witness. The facts as developed in this case have not been brought up to this witness. He has assumed a case. He has not given him the facts in this case, but just assumed a case.

The Court: I do agree with the objection to the extent that you are asking what was the effect on some previous situation. I think you ought to hypothesize the facts here.

Mr. Jones: All right.

Q. (By Mr. Jones) Mr. Concannon, in your opinion, having observed the effects in other communities, and taking into consideration the similarity and character in these neighborhoods, if any, to the area bounded by Marcus avenue on the west, North Market on the north, Cora on the south——

The Court: Cora on the east.

Mr. Jones (Q.): Cora on the east, and running on North Market from Cora to Wagoner place, and from Wagoner place over to Easton avenue, and west on the north line of Easton avenue to Marcus avenue, what would be the effect on property—the value of property—in that area, assuming that it is now overwhelmingly white, if colored families were to move in?

Mr. Garner: He has made no proper foundation for an

expert opinion by this witness, based upon the case now before the Court. He has outlined the metes and bounds of the plat and then assumes to ask the question.

The Court: Overruled. It seems to be a proper question.

A. Well, the loss arises mainly from the fact that the property loses its commercial value, because it has no market value for white people after colored people move in.

Mr. Garner: We move to strike the answer, first, because it is not responsive to the question asked, and, second, because the witness is not qualified, and there is no proof as to what the value was before and what the value was afterwards, or anything like that, after this change was made.

The Court: The objection is overruled.

Q. (By Mr. Jones) Are you familiar with the vicinity of Easton avenue and Wagoner place? A. Yes, sir.

Q. Can you tell us, Mr. Concannon, whether the property located at the northeast corner of Wagoner place and Easton avenue faces on Easton avenue or Wagoner place? A. Well, I think——

Mr. Garner: We don't want to be what you might call technical, but the plat is in evidence and it is before the Court; it is the best evidence, and speaks for itself.

The Court: No, it does not. I take it, he is asking which way do the structures face, not the lot from the standpoint of unimproved ground, but which way does the structure face. That is a proper question. The plat would not show it.

A. There is a store on the corner with living rooms above, which extends back, I don't know how many feet, and then there is a single flat practically all in the same building that faces Wagoner place.

Q. (By Mr. Jones) There is one building behind the store that faces on Wagoner place? A. Yes, sir.

The Court (Q.): Do I understand the store faces on Easton avenue? A. Yes.

Q. (By Mr. Jones) Could you give us an estimate of how far back on Wagoner place that store extends, the one that fronts on Easton avenue? A. Well, I would say that the store building and the living quarters above would probably be fifty or more feet deep, probably maybe sixty feet or more.

Q. You don't know for sure? A. I can't tell exactly, but it has the appearance of about being two-thirds of a lot or something like that.

Q. About two-thirds of the entire lot? A. I would say that, from observation.

Mr. Jones: That is all.

Cross-Examination, by Mr. Richardson.

Q. You say you have been in the real estate business forty years? A. That is right.

Q. Have you ever sold any property to colored people? A. Well, I don't think—let me see. I don't know. I would be afraid to say that I did not or that I did. Not recently, I have not.

Q. You don't recall having ever sold any, do you? A. No.

Q. Where has the property been located in which you had done most of your dealings? A. Well, we have been operating wherever we could. We sell where we can, anywhere. Of course, now, most of my operations are in the county.

Q. For how long a period have they been in the county? A. There is no particular date I could state.

Q. You say you think there is a store on the northeast corner of Wagoner place and Easton avenue? A. The northeast, yes, a sewing machine store.

Q. Does the store face at an angle, that is, I mean, is it diagonally across the corner, or does it face squarely

on Easton avenue? A. The entrance to the store is at an angle.

Q. The entrance is at an angle? A. Yes.

Q. You stated that there was a house on the northeast corner of Wagoner place and Easton avenue going west—pardon me, going north at the corner of the alley? A. That is my recollection.

Q. Are there any more houses? A. That is my recollection, there is one building there.

Q. You don't recall there may be two houses? A. I think the buildings are all attached, really, I think they are.

Q. You stated the corner building ran back how many feet? A. Well, I would say approximately about two-thirds of the distance of the lot.

Q. That is your best estimate? A. That's right.

Q. You have stated that property in a neighborhood in which colored people had moved will depreciate, but you did not state what communities you had through observation as a basis for that statement? A. I remember a time, of course, when all that neighborhood was white down as far as—say, Easton and Taylor avenue, and I remember how rapidly it depreciated after the colored people commenced to move in there. All the white people moved out and the prices, as reported to me, were all shattered and practically all of no value.

Q. How long ago was that? A. Oh, they were coming in there, I guess, as far back as thirty years ago, eighteen or twenty years ago they had gotten as far as Taylor avenue.

Q. Since that time they have moved up? A. There has been quite a few families moved up since then, yes.

Q. Can you tell how much property in the neighborhood as described in this particular restricted district will depreciate as a result of negroes moving in? A. It is a kind of broad question. I don't think I can answer that

very intelligently without examining the respective properties.

Q. Have you made an examination of the respective properties? A. No, but it was the opinion when we got these covenants up that, that it was necessary to protect ourselves——

Q. You have answered the question. As an expert in the real estate business for forty years, what would you say would be the average life of a brick house? A. Well, the fair average life is about fifty years. After fifty years it loses a good deal of its usefulness and becomes more or less obsolete, even if the building is good.

Q. How long have you lived in that neighborhood? A. I have lived in the neighborhood for over forty years.

Q. How old are the houses in that neighborhood? A. Well, they are forty years old, most of them, I guess.

Q. Would you say some of them are fifty years old? A. Not quite all of them. Some of the streets are forty, and some of the houses have been built since my time there.

Q. Would you say that property would depreciate as a result of other nationalities, to be specific, say, Italians, moving in? A. I don't know. I don't think so.

Q. Would you say if the Germans moved in—— A. I wouldn't think so, no.

Q. You don't think so? A. No, I would not think so.

Q. Would you say if the Japanese moved in? A. Well, now, that is a hypothetical question. I don't know how to answer it. I haven't known of any Japanese colonization of any kind.

Q. Are you acquainted with the property on Enright avenue? A. Yes, generally.

Q. Say, from Sarah on the east to Taylor on the west, are you acquainted with it? A. Pretty well.

Q. Do you know anything about the occupancy of that property? A. I think it is entirely colored.

Q. Have you observed as to whether it has depreciated

considerably as a result of colored being there? A. Well, that property over there seems to be well kept and nicely conditioned.

Q. What would you say about the property on West Belle? A. I would say the condition there is similar to Enright.

Q. How about Cook? A. Well, I am not so sure about Cook.

Q. How about Page avenue? A. Well, colored people are only a very recent vintage over there, and there hasn't been enough time to prove whether it will depreciate rapidly or not.

Q. When was it turned over to them? A. I would say not over two years since they commenced to move in.

Q. How long a period does it take to determine when depreciation has set in? A. It depends on how the property is kept up.

Q. You have no yardstick to depend on? A. No; one man may keep his house in good condition.

Q. What would you say if a negro living on Enright avenue, who had lived there for a period of fifteen years and kept up his property, would move in a so-called restricted district, would you say the property would depreciate then? A. I can't say that.

Q. What's that? A. I can't answer that.

Q. I mean if he kept the property up in his district. A. That would depend on how colored the neighborhood was. If it was an entirely colored neighborhood I would say it would not depreciate further.

Q. And if it was—— A. The point I am making is it loses—you have no further sale to white people after colored people move in.

Q. Well, then, you say, if one negro from Enright, who has kept up his property for fifteen years on Enright, moves into a so-called restricted district and kept up his property there, even went so far as to improve his prop-

erty, that would cause other property to depreciate? A. Naturally, yes, I think so. It loses its commercial value.

Q. Well, then, would depreciation depend upon the way in which the property is kept or the presence of a person of a particular race? A. No, I don't think so. I think, no matter how well a colored man would keep up his property, you could not sell the neighboring house to white people after he moves in. That is where the loss comes in.

Q. Well, the depreciation is due to color rather than failure to keep it up? A. That is what I would say regardless of that.

Q. Are you a party to this alleged agreement, you signed it? A. Yes, I did.

Q. What property did you own in this district then? A. I am still living at 4648 Leduc.

Q. What was that formerly? A. Garfield.

Q. That is the south side of the street formerly called Garfield? A. Yes, sir.

Q. How many houses are there on that street, it is a rather short street? A. I think there are four properties—four separate ownerships in there. Next to me is 75, next 35 and the next one is 40 feet on the south side of the street.

Q. You are at the corner, at the Marcus corner or Wagoner place corner? A. Marcus corner.

Q. There are three others east of you? A. That's right.

Q. Would you have signed the agreement, Mr. Concannon, if it had been told you that the person next door to you was not going to sign the agreement and that he might sell his property to colored? A. Well, I can't answer that question. As a matter of fact, they all signed that agreement at the time and there was no argument about it.

Q. But would you sign if you knew the person next door would sell his to colored? A. Well, that's very doubtful.

Q. You don't think you would? A. I would not want to tie myself up.

Q. This property association, what was the name of it? A. In the beginning it was the Central Homes Protective Association.

Q. Wasn't it the Central Homes Improvement Association? A. Central Homes Protective Association.

Q. Was it a corporation? A. I don't think we were incorporated.

Q. Is it still in existence now? A. No, it merged with the Marcus Avenue Improvement Association.

Q. At what time did that merger take place? A. I guess about—it is more than a year. I would say probably two years ago, maybe not quite two years, but it is in that neighborhood.

Q. You, as a member, were notified of the merger? A. Yes, I was at a meeting when the merger occurred.

Q. How did it take place? Did the rules of the Association provide means of a merger or did the members get together and vote to merge, or did certain individuals go over and tell the Marcus Avenue Association to take it over? A. We decided there was a duplication of work of all three different organizations.

Q. Who is we? A. We called a meeting of the general organization.

Q. Every member was sent a notice? A. Yes, sir.

Mr. Richardson: That is all.

Redirect Examination, by Mr. Jones.

Q. Mr. Concannon, you as one of the signers of the instrument, you requested that this suit be filed? A. This present suit?

Q. Yes. A. Yes, I did.

Q. Of whom did you make the request? A. I talked to Mr. Koob.

Mr. Jones: That is all. Thank you.

Recross-Examination, by Mr. Richardson.

Q. You approached him and asked him to initiate proceedings? A. Well, we talked about it generally and agreed upon it.

Q. You and Mr. Koob? A. And others, several others were in it, too.

Mr. Richardson: That is all.

The Court: Counsel has handed me a subpoena. It seems to me this covers matters already agreed upon. At the outset counsel on both sides agreed about the chain of title from Schroeck to Richardson and so on. Now, does not this subpoena call for the books that will establish just exactly that?

Mr. Jones: The point was, in addition to that this establishes, so far as we are able to establish, the ownership by Schroeck at the time Schroeck executed the agreement.

The Court: I do not think that is in dispute. Wasn't that agreed at the beginning that this predecessor in title was the owner?

Mr. Garner: Just as to this particular part, originally, yes.

The Court: If that is all you are getting the books for, you do not need to get them. It is for other things you need to get the books.

Mr. Jones: It may be agreed at the time Johanna Schroeck executed this agreement that she was the owner of the property which is now occupied by the defendant Richardson.

Mr. Garner: We agreed to that this morning. That is all we did agree to.

The Court: You do not need a subpoena to prove that.

Mr. Jones: We also have included——

The Court: The things that are in dispute are such things as the southwest corner of North Market and Wagoner place and the southwest corner of Garfield and Wagoner place.

Mr. Jones: I should like to ask for a subpoena duces tecum to show that George Wackman and Clara, his wife, who executed this agreement, were the owners of the east fifty feet of lot E in city block 4474, which is the southwest corner of Garfield and Wagoner.

The Court: And not Van Vleets who are named there?

Mr. Jones: No, they are on the corner of North Market and Wagoner place.

The Court: I see.

Mr. Jones: And they have executed the agreement.

The Court: You had better write out your subpoena and hand it up, then. We will let you get a subpoena for the Recorder's books that will show ownership on anything involved, but there is no point in bringing one in that has been conceded. You can write up the subpoena and hand it up and I will look at it. The only one that is conceded is this one. What is the street number of the parcel that is in suit?

Mr. Richardson: 4635 North Market; it is the second house from the corner.

The Court: The second house from Cora?

Mr. Richardson: Yes.

The Court: About two houses east of the house that Mr. Bryant occupies, that was mentioned in the case last week?

Mr. Richardson: Yes. 175 feet east of the property occupied——

Mr. Jones: What others?

The Court: He is talking about the east side of Wagoner place. That is in the plat and it is included.

Mr. Jones: No, he is talking about property that faces on Easton and has, perhaps, part of its boundaries on Wagoner place.

The Court: I understand you have different views about that. You claim that is not in the district.

Mr. Jones: No, there is no attempt to describe it.

The Court: He says it is, because it is on the plat. Use your own judgment about how to present that. The last subpoena you requested, I will mark it denied, because it is conceded.

Mr. Garner: We are not admitting that proper proof has been made as to the ownership of the various parties who signed the instrument. We ask for strict proof as to the ownership of all the property in the district.

The Court: I understand. The only one you conceded is the property now occupied by Mr. Richardson.

Mr. Jones: This subpoena calls for an additional piece——

The Court: Scratch out what you do not see that is still left. It seems to me, while you are at it, since you are going to need some others, you may as well include them.

Mr. Jones: If we will be required to establish that all the people purporting to have signed the instrument were owners of record at the time that they did sign it, and prove that by the best evidence, which I presume would be the introduction of the books from the Recorder's office, it would naturally consume a tremendous length of time to bring all those books in and bring the whole office over here.

The Court: Of course, that will not affect the legal duty at all, the inconvenience is not to be considered if it is necessary.

Mr. Jones: I appreciate that.

The Court: You will have to determine for yourself how you are going to proceed, and ultimately it will be for the Court to determine whether you have brought in enough evidence.

Mr. Jones: I would like to ask Mr. Richardson and Mr. Garner and Mr. Curtis if it would be admitted that an

examiner from the Title Insurance Corporation examine all of the deeds and books and records pertaining to the ownership of these various pieces of property in 1923, and from that examination made up a report, whether it might be admitted that the books of 1923 reflected that such persons were the then owners of the properties?

Mr. Curtis: I can only answer for myself; I would be content with such proof.

The Court: You would?

Mr. Curtis: Yes; all I want to do—I feel certain the way this job has been done, it was done in a slip-shod fashion, and a lot of owners were not gotten at the time, nor was a careful attempt made to get all the parties who own that land. That has been my contention, that the burden is on you to show it. I would accept that proof, but I cannot answer for the main parties in interest.

Mr. Garner: Did I understand Mr. Jones to say that if someone from the Title Company would examine each parcel of this land as if he were asked for the title as of 1922, is that correct?

Mr. Jones: Yes.

The Court: That he would come to court and be a witness as to what the record shows?

Mr. Garner: And if his certificate as to the ownership showed at that time as to who owned this land at that time?

The Court: He would come to court and be prepared to tell what those records show.

Mr. Garner: Would he be bound by that just as he would if I ask him to make a title and I find some defects after he made it and turned it over?

The Court: What do you mean by bound?

Mr. Garner: If you go to a title company and they give you a title and it is not right, you have a chance at them for damages. Is he coming in here on that theory?

The Court: I do not think that is a reasonable sugges-

tion, Mr. Garner. Let us not worry about suing him for anything. You are not going to buy anything or sell anything on the strength of what they report to you.

Mr. Garner: Well, my client is an attorney himself, and unless he agrees to it——

The Court: If you do not want to answer——

Mr. Richardson: No, your Honor, I won't agree to that.

The Court: All right, Mr. Jones. It may be that you are entitled, anyway, to prove it that way. I would give careful consideration to testimony by someone that made that search. Very often witnesses come in, examiners of title, who report what the title shows, and think it unnecessary to bring moving vans full of books into the court room, so, if you want to prove it that way, I would be inclined to receive your evidence. I think an objection to that would be purely technical. I do not think there would be any substance to it. That may be the better way to proceed.

EMIL KOOB,

having been first duly sworn, on behalf of the plaintiff, testified as follows:

Direct Examination, by Mr. Jones.

Q. State your name. A. Emil Koob.

Mr. Jones: This witness is being put on at this time instead of on rebuttal in order to save time. I want to get the case out of the way as much as I can.

Q. Where do you live? A. 4935 Cote Brilliante.

Q. Where did you live before that? A. 1738 North Euclid.

Q. Where did you live before that? A. 2823 Marcus avenue.

Q. For how long a period have you lived—what is the total number of years you lived in those three houses? A. Approximately thirty-five years.

Q. And are all of those houses within the district which you have heard discussed here? A. They are, within two blocks removed in one instance and four in another or four and a half.

Q. Are you familiar with the area described in Plaintiff's Exhibit A? A. I am.

Q. And can you tell us the number of colored people who live in that area, approximately? A. In the area of this particular district in question?

Q. Yes. A. I can tell you definitely how many there are. There are four families living on North Market street, and beyond that there are none. Now, I am not discussing east, I am taking just what the restriction covers.

Q. Who are those four families? A. The four families as I—I think there is a certain Mr. Richardson and wife, Mr. Henderson and wife, a certain Mr. Bryant and wife, along with Mr. Vaughn C. Payne, or Dr. Payne and wife.

Q. Those are the only colored people living in the entire area described in Exhibit A? A. That is absolutely correct.

Q. Have you examined the agreement? A. Yes, sir.

Q. You know the houses? A. Yes, sir; I do know them.

Q. I will ask you whether you requested me, on behalf of the owners of the property in this neighborhood, to file this suit? A. I did. Do you want me to be specific as to the owners?

Q. Just name a few of them. A. Well, Mr. Concannon, Mr. Herman, Mr. Rosche and Mrs. Swanz.

Q. That's enough. A. There were quite a few more.

Q. That is enough. That is all.

Cross-Examination, by Mr. Richardson.

Q. Does Mr. Rosche own any property in that district? A. Yes, sir.

Q. What is the address of it? A. 4600—I just don't recall. It is in the 4640 block of North Market.

Q. Is he a signer of the restriction? A. His father is.

Q. Did your association at any time, the Marcus Avenue Improvement Association, at any time have a meeting with the members of the Central Homes Improvement Association? A. Did they have a meeting?

Q. Did they ever have a meeting with them? A. We had—not a meeting with the Central Homes, but a meeting with the immediate property owners who were a part of the Central Homes.

Q. You—— A. Those people were former members of the Central Homes.

Q. Former members of the Central Homes? A. Yes, former members of the Central Homes, and also——

The Court: You mean they were members of the Central Homes organization while it was in existence?

The Witness: Well, yes, and after that there were some—there were—that is, in effect what it is, yes. They were members while it was in existence, but it was defunct.

Q. (By Mr. Richardson) When did it cease? A. I don't know.

Q. How did the Marcus Avenue Improvement get to take over the Central Homes? A. At the request of the owners of the property.

Q. How many owners, just some individual people? A. I would say there were—the number is between three and four hundred; I can't remember. It is rather closer to four hundred.

Q. Came into the Marcus Avenue Improvement Association and asked you to take over? A. That is correct.

Q. You say you are acquainted with that district generally? A. I am.

Q. Do you know where 1927 Cora avenue is? A. I do.

Q. Where is that with respect to the property? A. That's between Garfield and North Market.

Q. As a matter of fact, it is on the corner, is it not? A. That I don't know. I only take it from the 1900 block. I wouldn't say whether it was the corner or where, but I know it is between North Market and Garfield.

Q. Do you know anything about the occupancy of the house at the southwest corner of Cora and North Market? A. The occupancy of the house?

Q. Yes, the house on the corner, do you know whether it is occupied? A. Whether it is occupied by colored or white?

Q. Yes. A. I would not be in a position to answer.

Q. You have been so definite about the rest of it, I thought you could answer that, too. A. Well, I have been definite about the rest of it, but I have not committed myself any further than what the question was.

Q. Are you familiar with the occupancy generally, between Garfield and North Market on the west side of Cora with respect to colored and white occupancy? A. I know there is colored in there, how many I wouldn't say.

Q. Do you know how many whites are there? A. I know they are there, but how many I wouldn't say.

Q. Would you say there has been a change in the complexion in that particular block in the last twenty years? A. There has been some, yes.

Q. There has been more colored came in? A. Certainly, more colored came in.

Q. Would you say the same thing with respect to the rest of the property on the west side of Cora between Garfield and Easton avenue? A. Between Garfield and Easton?

Q. Yes, going south. A. I know there is some colored in there. I wouldn't be in a position to answer it definitely, because I do not know. However, I do know there is colored in there.

Q. Would you say more colored have came in in the last twenty years? A. I think so. Now, there are—yes, that's right.

Q. You have been living out in that neighborhood or district for about thirty-five years? A. Yes, sir.

Q. Do you know or have you had any experience with restrictions, what has been the extent of your experience with these agreements? A. The experience I had with the agreements is I helped to circulate a restriction agreement for this contract on certain streets in 1925 and '26.

Q. What streets were those? A. One is Maffitt avenue and the other is a part of Greer avenue.

Q. Did you have anything to do with this particular one? A. This particular instrument I had none, no, I did not.

Q. Was a restriction taken on the Marcus avenue property at the same time? A. How is that?

Q. Was a restriction taken on the Marcus avenue Improvement Association property at about the same time? A. What do you mean by the Marcus avenue property?

Q. You have a Marcus Avenue Improvement Association that was in existence in 1922? A. That's right; they were in existence before that.

Q. Do you know what property that is with respect to this; is it immediately adjoining this? A. Well, in a measure it is; it is not immediately adjacent. You mean one block.

Q. Is St. Ferdinand included? A. St. Ferdinand; yes, now.

Q. Since when? A. Since—the property owners became part and parcel of the organization as a result of their

requesting to become members of this organization, but they only became members since the other organization was defunct.

Q. St. Ferdinand was not included in any restriction in 1922 or 1923? A. That that the Marcus Avenue Association had something to do with?

Q. Yes. A. St. Ferdinand is separate, as I recall it; I don't know. I do not have it in front of me. I do not want to be quoted. Generally speaking, I would say St. Ferdinand is a separate restriction.

Q. How long has it had one? A. Well, I would say I would be safe in saying anywhere between the years of 1923 and 1927.

Q. Do you know whether any other property, say, the 4500 block of North Market, is included in any restriction on property? A. I haven't that in front of me, Mr. Garner —the 4500 block, I am familiar with it, because I attended school at the end of the block, and I had occasion to walk to and fro, and had occasion to go to church to and fro there for many years, and I am pretty conversant with the situation.

Q. You are conversant with the situation on Garfield? A. I am.

Q. The 4500 block? A. Yes.

Q. On Cote Brilliante on the 4500 block? A. Yes.

Q. And Aldine? A. That's right.

Q. Do you know in 1922 whether they were covered by restrictions? A. That I don't know. I believe that Cote Brilliante was covered by restrictions that was rescinded as a result of the property owners lifting it themselves.

Q. When did that take place? A. Oh, in 1922. I do not know the various years—'23 or '24, when Cote Brilliante became essentially, for the most part, negro.

Q. The 4500 block? A. Yes.

Q. And they rescinded their restriction then? A. 1926 or '27.

Q. Calling your attention to one block south of this particular restricted area, will you state what the occupancy of that house, Evans, the 4600 block of Evans, between Cora and Marcus avenue on both sides of the street, one block south of this so-called restricted area? A. Evans is not a block south—you are talking about the whole area that is south of Easton?

Q. Yes. A. You mean what is the occupancy of that block?

Q. Yes, colored or white? A. Whether it is colored or white?

Q. Yes. A. I wouldn't say—I was—this would be hearsay with me, but I knew there was—it was told to me that colored moved in there. I would not verify it.

Q. You just have been interested in going around this little tract? A. That is all—I have confined my activities. I have business that I take care of, and I am not policing the particular area other than where I am interested.

Q. Do you know Marcus avenue very well? A. I do. I think I know it very well.

Q. Do you know where the northeast corner of Marcus and Evans is? A. Yes.

Q. Do you know what the occupancy of that house is? A. I don't know whether it is negroes or whites. I have been told it is negroes now. I have been also told——

Q. That is all right; you have answered the question.

The Court: Now, wait a minute. If you want to finish, go ahead. You cannot get part of an answer in and stop it where you want it stopped.

Mr. Garner: He just testified what he had been told.

The Court: He had not finished when you interrupted him.

A. I have been told it was negroes and on another occasion I was told it was whites. I have not been able to verify it.

Q. (By Mr. Richardson) Do you know where the alley

is on the west side of Cora between Easton and Aldine, the west side of Cora, do you know that little alley there? A. The alley between where?

Q. The alley—— A. Yes, I know where it is. The alley between——

Q. Easton and Aldine on the west side of Cora?

The Court: A half block west of Cora?

Mr. Garner: And a half block north of Easton.

The Court: It is the alley that runs from Cora to the west towards Wagoner place.

A. I know there is an alley going into Cora and there is an alley going into Wagoner. You mean going east, is that the idea?

Q. (By Mr. Richardson) Here it is (indicating). A. It seems to me that there is an alley here off of Easton on Cora, if my memory serves me right; I think there is one there; I am positive there is an alley going west off of the alley into Wagoner; there is an alley into Wagoner.

Q. There is an alley from Cora to Wagoner going west? A. From Cora to the alley off Wagoner, as well as off Cora. There is an alley going from Wagoner, or rather an alley from Wagoner into the Cora avenue alley. Wagoner is completely shut off from Easton to North Market.

Q. You are acquainted with that alley that runs into Cora? A. Very vaguely I am.

Q. Do you know anything about the occupancy of the property on the northwest corner of that alley? A. No, I don't know.

Q. You would not know whether it is occupied by colored or by white? A. No, I do not.

Q. What is the situation with respect to the north side of—with respect to the north side of Cora avenue, is it colored or white, between North Market and Easton? A. With respect to the east side?

Q. Yes. A. I would say it was 35 or 40 per cent colored.

Q. And the rest white? A. That's right.

Q. What was it twenty years ago? A. Twenty years ago I would say, for the most part, white. There may be a smattering of a colored family here and there.

Q. There has been a change? A. There has been a rise. If there were five or six living there twenty years ago, I would say there were twelve living there today.

Q. Do you know about the forty-five hundred block of St. Ferdinand? A. Yes.

Q. And Taylor and St. Ferdinand? A. Yes.

Q. Do you know whether there is a church located on the northwest corner? A. There is a church located there, yes. I think it is a sort of foundation affair; they never got any farther than the foundation.

Q. Do they have church meetings there? A. Occasionally.

Q. Is that colored or white? A. I think it is colored.

Q. What is the situation in the 4500 block of Cottage avenue? A. Cottage avenue, the 4500 block, has not changed, I don't think, one iota in twenty years, since it was essentially colored twenty years ago.

Q. You do not think there has been a single colored family moved in? A. Possibly two or three, but you could not possibly get much more in there unless they built an apartment building since that time.

Q. But it is colored? A. There is an apartment building east of there somewhere that was built, but it was essentially colored twenty years ago.

Q. And it is essentially colored now? A. Well, I say it has not changed.

Mr. Richardson: That is all.

Mr. Jones: Now, with the exception of bringing in that man from the title company, and it may take him a day to prepare that information—now, I believe there is certain admissions which it has been intimated will be made. I

believe we agreed that you would dismiss the instruments of record insofar as it affects your chain of title and your deed of trust.

Mr. Richardson: Yes.

Mr. Jones: Let the record show that the defendants Richardsons are the record owners of the property through a series of conveyances, all of which are admitted, beginning with Johanna M. M. Schroeck, and that about the time of the purchase from defendant Dubienas, who were the record owners, defendants Richardsons executed a deed of trust to the Lafayette Federal Savings Loan Company, and that at the time of all of the transfers the instrument marked "Exhibit A" was on record; that the particular property described in the petition and owned by the defendants Richardsons is located within the area outlined by the restriction agreement. That the defendants Richardsons are negroes and are occupying the premises.

The Court: Are those statements agreed to?

Mr. Garner: I suppose we can agree to everything except whether Richardson is a negro or not.

The Court: Mr. McLemore made that agreement last week.

Mr. Garner: Yes, but that is not Richardson. I really don't know.

The Court: Is there anything else?

Mr. Garner: We would like to conserve time and go ahead and we reasonably expected that plaintiff would go ahead and put on his case, and we start out dependent on it. We may not be able to pick up and go ahead now.

The Court: I suppose you have some witnesses who will take up half of the afternoon. Let me get this straight: do you have to litigate this mentioned issue that you said you were not going to agree to? Do you need evidence pro and con on that subject?

Mr. Garner: I am serious about it. I do not know what he is. They have alleged he is a negro. I don't know.

The Court: I said that was needless.

Mr. Garner: No, we deny everything in their petition.

The Court: All right, Mr. Jones, you are called upon for proof, I guess.

Mr. Jones: Mr. Herman testified Monday that he was one of the property owners in the area included in this agreement and was one who authorized the bringing of the suit. Now, will you admit it, or would you rather have him go on?

Mr. Garner: I am willing to forget all about that and consider that as proof and go ahead. We do not admit it in the answer. We expect to make an issue out of it.

Mr. Jones: Now, I want to call the attention of your Honor to the answer, on page 3.

The Court: Paragraph 12?

Mr. Jones: Paragraph 12. Defendant states that the neighborhood of said alleged restrictive area has changed since the date when the alleged restrictive agreement is supposed to have become effective, and the area has changed in respect to its occupancy by colored persons, and at the time of the defendants' answer, January, 1942, other colored persons live in and own property therein.

Now, will you admit it?

Mr. Garner: No.

Mr. Richardson: Japanese are colored; Chinese are colored.

The Court: We will have a temporary recess.

At this point the Court declared a temporary recess, after which time, the same parties being present by their respective counsel, further proceedings were had as follows:

Mr. Jones: Apparently we are unable to agree upon the last suggestion made by the Court. As I understand it, the defendant is willing to stipulate that he is a member

of the colored race, and a colored American, but not as to the term "negro." Have you any suggestions to ease the situation?

The Court: If you have to offer proof you will have to do it at such time as you can.

Mr. Garner: If, in offering a stipulation to us, he cuts out the word "negro" and puts in the word "colored" we will go ahead.

The Court: What is the language of the restriction?

Mr. Jones: "Negro or negroes."

The Court: You would probably do better to get a witness or some other kind of evidence to breach the gap, so to speak.

Mr. Garner: We would like to know—this is not something we just jumped up here with—this man has never in any document signed his name as a negro; he has never said he is a negro.

Mr. Jones: However, there is no——

The Court: It just occurred to me, because it was not an issue in the other case, I figured it was not in any of them from a controversial standpoint.

Mr. Richardson: As a defendant I cannot help but have personal feelings about it, and the word "negro" to my mind denotes something black and despicable, and if I am to be classified as a negro, according to this agreement, along in the same category with slaughter houses, junk shops, rag-picking establishments, it is impertinent and scandalous to me. I have never admitted I am a negro. I have always stated I am a colored person and an American citizen.

The Court: I do not think the word as used denotes something black and despicable.

Mr. Richardson: We were classed that way.

The Court: Of course, I do not know every word that is in that agreement. I know the word is used in daily use without any such implication, and I do not draw that kind

of connotation from the word. I think you possibly stretched it a little bit, but I have no disposition to force you to stipulate on any matter. I merely said if he has not the evidence on that subject now, that is something that he can cover at such time as he has the evidence available. I do not think the word is intended as an unpleasant connotation at all. Let us proceed, if not on that, then on something alse. Do you have any other evidence now?

Mr. Jones: I would like to avoid the necessity of bringing Mr. Gavigan back here when the man from the Title Insurance Corporation produces the result of his findings, and will put him on the stand again just for a minute.

The Court: All right.

Mr. Curtis: Don't you think he would have to come back anyway?

Mr. Jones: It is all right with me.

Mr. Curtis: It seems to me that he would be necessary.

The Court: I should think there is a good probability that you will need him again. I think you put him on the stand in rebuttal at the last trial, and you are likely to have to do so again.

Mr. Jones: I wanted to put him on for the purpose of showing that the southwest corner of Garfield and Wagoner place, while it does not appear in here, was purchased by George Wackman and Clara Wackman, who executed the agreement, but that the deed had not passed at the time that he first interviewed him with respect to other property that he owned in the area. I understand Mr. Wackman is not available for any purpose whatever.

The Court: When the man examines the record and testifies we will see how many more complications there are on that.

Mr. Jones: At this time the plaintiff has no further evidence.

Mr. Garner: Are you closing your case?

Mr. Jones: Subject to those two things, that the Court said I might have time to produce a witness who would establish the allegation that the defendant comes within the classification of negro, as a general classification, and also the establishment of the owners insofar as the title examiner ascertains same from his inspection of the records.

Mr. Garner: We do not want to put on our case in piecemeal.

The Court: I do not see in what way you can be prejudiced, Mr. Garner. Of course, that is a matter for you to explain. What I am interested in, of course, is getting light on the subject and reaching the right results, and that is more important than such technicalities as to whether this evidence should go in before that evidence. Now, you had something before about the change of conditions and you can, without prejudice, put on evidence on that subject of the changed conditions. However, I will leave that up to you. Do you think we can proceed now?

Mr. Garner: Here is the only thing: We want the record straight on our motion to dismiss this petition at the close of plaintiffs' case.

The Court: The record will be straight on it. As I indicated before, with respect to that motion or with respect to the exhibit, there are some very serious questions presented in the objections to the exhibit and I am by no means ruling them adversely to you now, but in order to get it all in and rule those issues after deliberation on both the facts and the law, I think it would be well to overrule the objection for the record, and I would do the same thing with reference to the demurrer to the evidence, without prejudice as to how I would rule at the conclusion of the case.

Mr. Garner: We will try to comply with the Court's order.

DEFENDANTS' EVIDENCE.

Defendants, to sustain the issues in their behalf, offered and introduced the following evidence, to wit:

DORA PRICHARD,

of lawful age, being first duly sworn, in behalf of the defendants testified as follows:

Direct Examination, by Mr. Richardson.

Q. State your name. A. Dora Prichard.

Q. Where do you live? A. 1420 Academy.

Q. Did you at any time live in the restricted area? A. Yes, sir.

Q. About what time was that that you lived there; there was a period of time you lived there? A. About thirty years.

Q. Beginning at what time? A. Oh——

Q. Was it prior to 1922? A. Yes, we rented there about nine years, I think, before I bought it.

Q. May I show you this and ask you if that is your signature? A. Yes, it is.

Mr. Jones: Just for the record, what is that?

The Court: You may for the record state that you indicated such and such a line on such and such a page. What line was it?

Mr. Richardson: Line 9 on page 2 of the signatures.

The Court: There are two columns.

Mr. Richardson: Yes.

The Court: That is in the left-hand column?

Mr. Richardson: Yes.

Q. (By Mr. Richardson) I hold in my hand this restriction agreement. Was this agreement ever read to you? A. No, I don't remember that it was. It has been twenty years ago, so I don't recall that it was ever read to me. It was just explained what it was.

Q. Who explained it to you? A. I don't remember. I think there were three men at my home that night.

Q. Did you know the persons? A. No, I did not.

Q. What did they state was the purport of the agreement? A. As near as I can recall, they were getting an agreement up among the property owners to restrict that particular territory there, selling property to colored.

Q. Did they make any representations to you as to whether just you and three or four others would sign or whether all of them would sign? A. Well, all the people. I was approached on that subject of signing because everyone was supposed to sign to make it ironclad.

Q. That was the explanation to you? A. Yes, sir.

Q. When you signed it, had you known at the time you affixed your signature hereto that property which plaintiffs now occupy on the north side of North Market—do you know where that is? A. That is west of me.

Q. Would you have signed had you known that property was not signed up; would you have signed this agreement had you known that a piece of property in the same block in which you lived was not signed up for and was not going to be signed up for? A. Oh, no, no, of course not. I would not have done that had I known, but I didn't know who was signing or who was not signing. I signed with the explanation that everyone else was to sign and make it 100 per cent.

Q. Was your acknowledgment taken or notarized? A. I guess it was. I don't remember. I don't recall that now, it has been so long ago. I presume it was.

Q. What was the name of the property association that covered that district? A. Central Homes Protective Association.

Q. Were you an active member in that association? A. Yes, sir.

Q. How long did you remain active? A. As long—I attended all the meetings I ever knew anything about,

and being a property owner and a signer of the covenant, I presume I was an active member.

Q. Were you ever notified that the property owners in that district were—wanted to be affiliated with the Marcus Avenue Improvement Association? A. Never.

Q. Did you ever attend any of the meetings of the Marcus Avenue Improvement Association? A. Yes, I attended one; I happened to pick up a notice in one of the grocery stores and I saw there was an association meeting to be held and I went out to see what was going on and I went up and sat there.

Q. Were you at any time ever notified to attend the meeting? A. No, never.

Q. You did attend the meeting? A. That particular meeting of the Marcus Avenue, because I picked up a circular and saw it and I thought I would go and listen.

Q. Can you tell me what transpired at that meeting? A. Well, there was——

Mr. Jones: Wait a minute; your Honor, I object to that —to what happened at this meeting of the Marcus Avenue Improvement Association.

The Court: Well, we ought to know a little bit more about the meeting.

Q. (By Mr. Richardson) When was the meeting held, do you have that in mind? A. I don't know. It seems to me it is about a year ago; just about a year ago now.

Q. Where was it held? A. In the Presbyterian Church on Marcus and Labadie.

Q. You think it was about a year ago? A. Yes, it was about a year ago, I guess about that time, it seems to me.

Q. Now—with the date and place that has been more definitely fixed, do you still object?

Mr. Jones: Not if it is a year ago, no. If it was some time after this defendant sold the property I would object.

The Court: You mean after the defendant bought the property?

Mr. Jones: After this defendant sold the property.

The Court: She is not a defendant.

Mr. Richardson: She is in a different case, in the Henderson case.

The Court: You can repeat your question.

Q. (By Mr. Richardson) State what transpired at that meeting that you attended of the Marcus Avenue Improvement Association. A. Well, there was a general discussion among their members—I presume it was their members—there was a pretty nice crowd there. Mr. Seigel explained the reason for that meeting, which was to take up—the fact that their covenant was probably up, it would be up in 1943, and it was necessary to look after their interests there. That was the gist of the conversation, and then there was something said about the Cote Brilliante School and the principal up there, and he got up and made some statement about the condition of the Cote Brilliante School, and they had the Fire Department there and gave a display of their work, and that is all there was to the meeting. I believe they drew up a petition or a letter to be sent to the School Board regarding the Cote Brilliante School, authorize their secretary to write a letter, and that is about as far as I remember now.

Q. What did the principal of the Cote Brilliante School do? A. Well, I think Mr. Seigel made a statement that the school would have to be taken into consideration because of the colored coming in there. It was very important about the school request the School Board about keeping that school white.

Q. Was anything said about the number of white people that was in attendance and had children in the Cote Brilliante School? A. No, they didn't state how many were in attendance there, but the principal——

Mr. Jones: This is quadruple hearsay.

The Court: I will sustain it. We are only interested in knowing what happened that may have related to the Wagoner place district.

Mr. Richardson: What I want to get at is the matter that was testified to as to how the merger took place.

The Court: Not a word has been said about the Wagoner place district, so the objection is sustained.

Q. (By Mr. Richardson) Was anything said at the meeting about the merger between the Central Homes Protective Association and the Marcus Avenue Improvement Association? A. Not a word.

Q. No action was taken? A. No. I may state this——

The Court: You had better wait for a question.

Q. (By Mr. Richardson) You have lived up there for thirty years? A. Yes.

Q. Do you know what the situation has been with respect to colored and white occupancy of the neighborhood immediately east of your neighborhood, that is, on North Market, on Garfield, on Cote Brilliante, on Aldine, and the east and west side of Cora avenue? Would you say—would you make a statement as to whether there has been any change in the complexion of the neighborhood? A. In the last twenty years that has been gradually filling in there with colored people right along.

Q. There has been an infiltration of colored people? A. Right along.

Q. Do you know the house on the southwest corner of Cora and North Market about 1927? A. The southwest corner of North Market and Cora? That's a flat that is there, is it not?

Q. Yes. Can you tell me about the occupancy of it—white or colored? A. That is white. You mean the place——

Q. The one on the corner. A. The southwest corner?

Q. Yes. Not the one in the restricted tract across the street. A. That is occupied by colored; a big four-family flat; it is occupied by colored.

Q. Do you know how far that runs back on the south side of North Market street? A. It runs to the alley there.

Q. What would you say? A. About a hundred feet from my home.

Q. What would you say would be the location of this property with respect to the property owned by the defendant Richardson, at 4635 North Market street? A. Almost across the street from it. It is across the street from it.

Q. What would you say would be the percentage of white persons and colored persons occupying the west side of Cora avenue between North Market street and Easton avenue? A. The percentage? Just about every house. I do not think there is more than three or four white families, or one or two more, and that is about all.

Q. What would you say would be the percentage on the east side of Cora? A. I think about 100 per cent.

Q. Are you acquainted with the persons who live on—acquainted with the nature of the occupancy of persons on Evans avenue in the 4600 block which runs from Cora to Marcus, one block south of Easton? A. On both sides of the street practically all colored all the way up to Marcus avenue.

The Court (Q.): What would be the number of the house you used to own? A. 4649 North Market.

Q. (By Mr. Richardson) Where is that located with respect to the property occupied by Mr. Payne? A. You mean 4649?

Q. Yes. A. You mean Mr. Richardson?

Q. Payne. A. Just three houses east of me, east. My house was east just one house. There was one house between that house and mine.

The Court (Q.): How far are you from the house of Mr. Richardson—how far was your house from the house of Mr. Richardson? A. Three.

The Court (Q.): In other words, there are three in between? A. Dr. Payne is in a bungalow; I am next; and then Mr. Bryant, and then another white family, and then Mr. Richardson.

Q. (By Mr. Richardson) Now, this is a hypothetical case. If you were given the property back under the present circumstances, would you sign a restriction agreement again?

Mr. Jones: I object to that.

The Witness: No, I would not.

Mr. Jones: I ask that the answer——

The Witness: Indeed not.

Mr. Jones: ——be stricken out.

The Court: It is speculative, but I will allow it to remain in the record. Objection overruled.

To which ruling of the Court plaintiffs, by counsel, then and there duly excepted and still except.

Mr. Richardson: That is all.

Cross-Examination, by Mr. Jones.

Q. What is your business or occupation? A. Not doing much of anything right now. I have been in the cemetery business a good many years.

Q. In 1923, when you signed this agreement, what business were you in? A. The shoe employment for years, with Hamilton-Brown Shoe Company. 1923, you say?

Q. Yes. A. Was that signed in 1923?

The Court: Yes.

A. No, I was sick at that time. I was in the hospital.

Q. (By Mr. Jones) You were in the hospital in 1923? A. I was sick, but had been in the hospital. I may have been home at that time. I don't remember, but I know at that time—let me see—I was handling a hospital campaign, I think.

Q. Did you have a daughter at that time? A. Sir?

Q. Or a sister, in 1923? A. Did I what?

Q. Have a daughter or a sister? A. I am a single woman; I had sisters.

Q. Did you know Dr. Potter? A. Yes, sir.

Q. Did your sister know Dr. Potter, if you know? A. Well, the whole family knew him. He was the family physician for a while.

Q. Well, now, wasn't Dr. Potter head of the Central Homes, or whatever the name of this was? A. Was Dr. Potter head of the Central Homes?

Q. Yes. A. I believe he headed it or was at the head of it for a time. I don't know how long.

Q. About that time? A. Possibly so; I think so.

Q. And didn't your sister go around with Dr. Potter and attempt to interest people in signing this petition? A. She certainly did not.

Mr. Garner: Wait a minute. We are not bound by what the sister did.

The Court: She has answered in the negative, so there is no harm done.

Q. (By Mr. Jones) Well, did you? A. No, I did not even know Dr. Potter was connected with it at that time. I heard of that afterwards, but not then I did not. All I know was three men came in my home, saying something, but I didn't even know who they were.

The Court (Q.): Do you recognize Mr. Gavigan; was he one of them? A. I didn't know that man until I saw him in court. I didn't know who he was until I got on the stand.

Q. Didn't you meet him at Dr. Potter's office? A. No, I should say not. The only one I ever saw was in my home, came to my home for me to sign that. What transaction was made was in my own home at 4649 North Market.

Q. And that was some time in 1923? A. Evidently. If it was 1923, that's when it was, yes.

Q. Now, you testified that these men told you that this restriction would not be binding unless everyone signed, is that what you said? A. I didn't testify to that, in those words. I testified that everyone—that it was explained to me that everyone was to sign it to make it one hundred

per cent, and I understood it was one hundred per cent signed up.

Q. For how long a period did you understand that? A. That it was to be twenty years.

Q. When did you first find out, if ever, that it was not one hundred per cent? A. Well, I found that out; I heard when Dr. Payne bought his that that property never signed. That is before I sold mine.

Q. Did you then check up and investigate and find out whether the predecessors to Dr. Payne had ever signed this agreement?

Mr. Garner: We object to that; it is immaterial whether she did or did not.

Mr. Jones: This is groundwork. The witness answered before I could make an objection, and if she did not check up on it, I want to move that her answer about hearing this thing be stricken out.

The Court: All right, I will overrule the objection.

Q. (By Mr. Jones) Did you make an investigation, Miss Pritchard, to find out whether the predecessors in title to Dr. Payne had signed this agreement? A. You mean according to the records?

Q. Yes. A. No, I did not go down to the records.

Q. You did not.

Mr. Jones: Then I move that the answer of the witness that she heard that Dr. Payne did not sign the agreement be stricken out.

The Witness: I didn't say Dr. Payne signed the agreement.

Mr. Jones: I mean the predecessors had signed it. I move that be stricken as hearsay.

The Court: Objection overruled. It is conceded that he is now.

To which ruling of the Court plaintiffs, by counsel, then and there duly excepted and still continue to except.

Mr. Jones: In so far as this case is concerned, yes, but this witness has violated, as we will show, has violated the restriction herself, and if the basis of her violation was something she had heard, I want to show that she has a very decided interest and is not an impartial witness.

The Court: You may proceed with the examination, but the ruling will stand.

Q. (By Mr. Jones) Can you remember the words which these men used to you when they came to see you about this agreement and explain what it was? A. I can't remember the words; I just remember them telling me what it was all about, and I signed it because they told me what it was all about.

Q. Tell us as nearly as you can what they did tell you, what it was all about. A. I don't recall; they had talks with my father and mother before. I came home that evening. They had been in the house before I ever got in the house, and I didn't know what was said to them, only it was explained to me after I came in, this was an agreement for the property owners to sign up these parties with a restriction to keep colored people out for twenty years, and that's all I know about it, and that everyone was to sign and make it one hundred per cent, to make the restriction binding, is the way it was explained to me, but I would not know the men that came in. I know there was at least three of them there. I didn't know any of them.

Q. You know the words they used left no doubt in your mind that one hundred per cent of the people would sign? A. Yes.

Q. But you don't know who it was that told you that? A. No; there were just three men there, and they had been talking to my mother and father before I came home.

Mr. Jones: That is all.

Redirect Examination, by Mr. Garner.

Q. Did you receive a subpoena to come in this case? A. Yes, I did.

Recross-Examination, by Mr. Jones.

Q. I believe you are a defendant in a suit involving property at 4649 North Market street, are you not? A. Yes, sir.

Q. In that case you sold the property to people by the name of Henderson? A. Yes, sir.

Q. Did you ever discuss this instrument or its contents with Dr. Potter before the time you signed it? A. No.

Q. You never did? A. No.

Mr. Jones: That is all.

(Witness excused.)

EDITH PAYNE,

of lawful age, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in behalf of the defendants as follows:

Direct Examination, by Mr. Richardson.

Q. State your name. A. Edith Payne.

Q. Where do you live? A. 4645 North Market.

Q. What do you do? A. Housewife.

Q. What does your husband do? A. He is a physician and X-ray specialist.

Q. Is your property covered by any restriction agreement?

Mr. Jones: Well, I object to that, of course, your Honor. I will admit this witness and her husband occupies the premises known as 4655 North Market, if that will be of any help, and that the restriction agreement does not include that particular piece of property.

The Court: That is better proof than a witness' testimony.

Q. (By Mr. Richardson) When did you move into this property? A. September 6, 1941.

Q. Do you plan on moving soon? A. No.

Q. Have you made any expenditures on the property?

Mr. Jones: I object to that, it does not tend to prove or disprove any issues, whether the Paynes, who are not subjected to this agreement, should spend any money on the property.

The Court: I think I know the purpose. Objection overruled.

To which action and ruling of the Court plaintiff, by their counsel, then and there duly excepted and still except.

The Witness: Yes, I think I have spent just in round figures, I have spent around six hundred and seventy dollars improving externally and internally; more has been spent externally. I have made my yard, which is seventy-five feet in on the front and a hundred and fifty feet and six-tenths inches deep, I have had it relandscaped by the Westover Nursery, and I have had other work done. In fact, I have done quite a bit of improvement externally and redecorated it completely internally.

Q. (By Mr. Richardson) Have you had anything done to your floors? A. I have had them all resanded and repolished.

Q. Have you kept up your payments on your property? A. Yes, very far ahead.

The Court: When I overruled the other objection I thought you just wanted to give, or to show enough proof to show permanency.

Mr. Richardson: Well, this would apply to that.

Mr. Garner: It is, your Honor.

The Court: Well, I will let the answer in.

Q. (By Mr. Richardson) Do you know the defendants Richardsons? A. Yes, I do.

Q. How long have you known them? A. I have known Mr. Richardson before 1934, and I have known Mrs. Richardson since she has come to St. Louis.

Q. Have you had occasion to visit them at their home? A. Yes, I have.

Q. Did you notice whether there were any broken out windows or anything that contained rubbish or any business carried on there that had offensive odors? A. No. I think the property has been improved since the Richardsons have been there.

Q. Do you know how long—how long have you lived in St. Louis? A. All of my life, twenty-eight years.

Q. Do you know what the situation was about ten years ago with respect to the occupancy of the property in the 4500 block on North Market and the 4500 block on Garfield, Cote Brilliante, Aldine and the east and west side of Cora between North Market and Easton avenue? A. It so happens that I have been, previous to March, my parents have owned the home in the 4500 block on Garfield, which is just a little distance from where I live at the present, for twenty-three years, and I know the neighborhood quite well, and I can see no deterioration. If anything has been—the properties that has been bought in that time up until now, there has been improvement.

Q. Will you tell me what has happened, if anything, in the last twenty years, with respect to its occupancy, by colored or white persons? A. It has increased with colored.

Q. What would you say is the percentage of colored persons living on the west side of Cora avenue, between North Market and Easton avenue? A. I would say, except for three families it would be one hundred per cent. There are about three white families there now.

Q. What is the situation on the east side of the street? A. I think it is just about one hundred per cent. If it is not one hundred per cent, it is just one or two, but I sincerely doubt it.

Q. Did you receive a subpoena to come into court in this case? A. Yes, I did.

Mr. Richardson: That is all.

Cross-Examination, by Mr. Jones.

Q. When did the Richardsons move into their property? A. The exact date I cannot say, but I do know it was about six weeks after I moved in, and I moved in on the 6th of September.

Q. Were you pretty busy fixing up your own place when you moved in? A. No, I did not start decorating until six weeks ago internally. However, I had contracted with Westover to relandscape my yard as soon as I moved in, but they had to wait until frost set in.

Q. Did you look at any other house in that block before you moved into this one? A. No; I wouldn't say that I was interested. I was interested. I looked at them externally, but I had been interested in 4655 for a number of years.

Q. After you got into your house for about, say, six weeks, did you go around looking at other houses? A. You mean internally?

Q. Yes. A. No.

Q. Then you really don't know whether Mr. Richardson has improved the house that he got? A. I said that he improved it from what I could see externally, the yard and things like that. The residence is much cleaner externally than it was when I moved in.

Mr. Jones: I think that is all.

(Witness excused.)

HELEN DAVIS,

of lawful age, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in behalf of the defendants as follows:

Direct Examination, by Mr. Richardson.

Q. State your name. A. Mrs. Helen Davis.

Q. Where do you live? A. 4647 Evans avenue.

Q. Where is this place in which you live with respect to Easton avenue between Marcus and Cora? A. One block south.

Q. How long have you lived there? A. Eleven months.

Q. What would you say would be the character of the neighborhood with respect to white and colored occupancy on Evans avenue? A. You mean the block in which I live?

Q. On both sides of the street? A. I would say it was one hundred per cent.

The Court: What?

The Witness: Colored.

Q. (By Mr. Richardson) Do you know the house at the northeast corner of Evans avenue and Marcus avenue; do you know where that house is? A. There at the alley?

Q. Yes. What would you say the occupancy of that house is with respect to white or colored? A. It is colored.

Q. Have you ever had occasion to go down Cora avenue between Easton and North Market street? A. Yes, sir.

Q. What would you say was the occupancy of that section of Cora avenue with respect to whether it is colored or white on both sides? A. I would say there were more colored than white.

Q. Do you know anything about the occupancy of the 4500 block on North Market and the corner of Cote Brilliante and Aldine with respect to occupancy by colored or white? A. Well, I can more for Garfield than the others,

because I have friends that own property in the 4500 block on Garfield, and it is mostly colored.

Q. How long have you been acquainted with the neighborhood on Garfield? A. Well, for the past fifteen years, I would say.

Q. Could you state whether it is changed from more white to colored or more colored to white in fifteen years? A. From more colored—I mean from more white.

Q. White to colored? A. I don't know. Wait a minute, now. I mean there are more colored in the last fifteen years than there were before.

Mr. Richardson: That is all.

Cross-Examination, by Mr. Jones.

Q. Do you go to church? A. Yes, I do.

Q. What is the name of the church? A. St. Luke's Baptist Church.

Q. Does Mr. Richardson go to that church? A. No.

Q. Do you know the church he attends? A. No.

Q. You are at St. Luke's Baptist Church? A. Yes.

Q. Where is that located? A. 3619 Finney.

Redirect Examination, by Mr. Richardson.

Q. You are a member of the St. Luke's Baptist Church; is that a member of the Church Federation? A. No, it is not.

Mr. Richardson: That is all.

Mr. Garner: That is all we have here.

Mr. Jones: It is stated by the defendants in their objection to the introduction of Exhibit A that the instrument was not acknowledged by Phillipe E. and Lulu Pitts, I wish to call the attention of the Court——

The Court: I think there was an objection that there was no acknowledgment for Pitts, trustee for the church. I think that was the objection.

Mr. Richardson: The name Pitts appears more than once. It is a different Pitts.

Mr. Jones: Which one do you object to?

Mr. Richardson: R. B., or R. P. Pitts.

The Court: As trustees of the church.

Mr. Richardson: R. P. Pitts.

Mr. Jones: Well, I wish to call the Court's attention to the eighth page of the instrument, purporting to be the affidavit and acknowledgment of R. P. Pitts, in words and figures as follows:

"State of Missouri, } ss.
City of St. Louis. }

On this 19th day of February, 1923, before me appeared R. P. Pitts, to me personally known, who, being by me duly sworn, did say that he is the secretary of the Wagoner Place M. E. Church South, a corporation, organized under the laws of the State of Missouri, and that the seal affixed to the foregoing instrument is a corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation, by authority of its board of directors, and said R. P. Pitts acknowledged said instrument to be the free act and deed of said corporation.

"In testimony whereof I have hereunto set my hand and affixed my notarial seal at the City of St. Louis the day of the year last above written.

"My term expires August 16, 1926.

William J. Gavigan,
Notary Public."

Mr. Richardson: Where is the instrument that contains what this statement may have reference to, the corporate seal and so forth?

Mr. Jones: Just above the affidavit.

The Court: On the next page, you mean. It appears to be on the very next page over the church seal of the Wagoner Place M. E. Church.

Mr. Richardson: Should it not appear on the list of acknowledgments as recorded? The fact that he is given authority to do so——

The Court: Is not that on the same page?

Mr. Richardson: The list of acknowledgments is contained on separate pages.

Mr. Jones: Your objection is it does not appear on this big, long list?

The Court: It is different in form and that is the reason they put it on separate paper, because it is the act of a corporation or of a church and they use slightly different language, but it is in the instrument, so there is nothing to that point.

Mr. Richardson: Should it not have been made apart above the signatures?

The Court: Mr. Gavigan signed again below that. In other words, it runs together, all of those.

Mr. Jones: There is also an acknowledgment that the Gill Brothers Grocery Company did not acknowledge the instrument, and I call the Court's attention to the ninth page contained in the instrument.

The Court: Let me see it. That appears to be an acknowledgment by Henry Gill, as president of the Gill Brothers Grocery Company, before James F. Brady, Notary Public. That seems to take care of that end of the objection.

Mr. Richardson: That shows he was given power of attorney to sign, but it does not show where he took the acknowledgment.

The Court: Well, that is an acknowledgment there.

Mr. Richardson: That he had the power or authority.

The Court: Also that it is a free act and deed. That is above the signature of the Notary Brady.

Mr. Richardson: He states he did, but if you look at the acknowledgment, Mr. Gavigan says appeared before him Gill Brothers Grocery Company, but he doesn't say by whom.

The Court: The chief point in there is the acknowledgment by the Notary Brady of Henry Gill, president of Gill Brothers. Suppose we regard what Mr. Gavigan said about it as surplusage, then it is in there as fully as the law could possibly want.

Mr. Jones: Now, seventy-five feet of the property purporting to be on Wagoner place is not represented by any signatures. I wish to point out to the Court that one hundred and twenty feet of that footage includes the property running from the northeast corner of Easton and Wagoner place, along the east line of Wagoner place, and that according to the testimony of the witness Concannon that lot of 128 feet, or at least approximately two-thirds thereof, was the western boundary of property facing on Easton avenue.

The Court: I do not know that that is the answer to what Mr. Richardson said. What he said was he added up all the front footage of all the parcels for which there were signatures, all the front footage on Wagoner place for which there were signatures, and when it was added up it was seventy-five feet short of the total footage on Wagoner place.

So while he said he was not able to point out which was omitted, that someone, according to his computation, was omitted.

Mr. Jones: And he included this 120 feet in his computation.

The Court: Well, I don't know that.

Mr. Richardson: Even so, that would still leave 120 feet on the east side of Wagoner place uncovered, whether

it fronts on Easton avenue or Wagoner, that part of the east side of Wagoner is not covered by any restriction.

The Court: You mean because of the omission?

Mr. Richardson: Yes.

The Court: I do not think you have yet fully answered that, Mr. Jones.

Mr. Jones: He is taking the total of all of this front footage in here and including this 120 feet here.

The Court: Is that signed for?

Mr. Jones: No.

The Court: Why should it not be?

Mr. Jones: Because the property faces on Easton and not—seventy-five feet of the hundred and twenty faces on Easton and not Wagoner place.

The Court: All right, that is a matter for consideration.

Mr. Jones: It is also complained that the properties on —beginning at the east line of Marcus avenue and continuing eastwardly along the north line of North Market street, being lots 1, 2, 3 and 4 and part of lot 5, bear no signatures as being represented by any specific owners.

Mr. Richardson: That was not the objection. It was stated that the property covered is not on North Market. Parts of lots 1, 2, 3 and 4 and fronting fifty feet six inches on the east side of Marcus was not objected to. That is, it runs down North Market. That part was not objected to.

Mr. Jones: It is the part facing on the alley.

The Court: How wide is that strip?

Mr. Jones: Forty feet.

The Court: It fronts on Marcus and it is on the south side of that alley?

Mr. Jones: Yes.

The Court: Runs back for four lots, and a little bit of the fifth lot?

Mr. Jones: Yes, about a hundred and thirty-five feet.

We maintain it was not intended to be covered. There is no description of it or an attempt to set it out.

The Court: On the other hand, there is no break in the line of continuity of the plat that would indicate that it was intended to be omitted.

Mr. Jones: It might be. That is a matter of construction.

The Court: All right. We understand what you mean about it, anyway.

Mr. Jones: We contend that the plat was prepared to show all of the properties so you would not have a jagged looking affair——

Mr. Richardson: We object to all of this testimony on the part of counsel.

The Court: It will be considered along with the whole matter.

Mr. Jones: Well, now, the same comment is made with respect to the east end of that block of North Market, being city block 4472—no, that is not in there. It is also stated that the east part of lot F and all of lot E in city block 4473 has not been included, and we submit that even if the names of Van Vleet and wife, who the records will show are the owners of that property, appears in some way in the north side of Garfield avenue, yet in truth and in fact those parties own the property known as lot E and the east part of lot F in city block 4473, and that if the instrument seeks to give the impression that that particular tract is owned by the Van Vleets is located on the north side of Garfield avenue, it is to that extent in error.

Mr. Garner: What Mr. Jones is saying now, is that to be taken as evidence that this ownership is where he says it is?

The Court: No, I understand he is going to take to undertake to prove it.

Mr. Garner: All right.

The Court: He is just outlining what his answer is.

Mr. Jones: With respect to the tract on Easton from Wagoner to Marcus, I did not get what the objection was to that.

The Court: There were no signatures for that. I thought your complaint was from Cora to Wagoner?

Mr. Richardson: I do complain of that, too, and that complaint was, that the people purported to sign for two hundred and twenty feet, and actually there were only two hundred feet there.

Mr. Jones: That is merely surplusage.

The Court: I suppose that is the reason I did not note that one down. In other words, you have too much signatures and not too little?

Mr. Richardson: I don't know who owns which.

Mr. Jones: With respect to the southwest corner of Garfield and Wagoner place, we will have to show by the introduction of the records of ownership as to the time this instrument was fully completed and recorded that the property was owned by the ones whose signatures appear on the instrument, and I think that will take care of all of the objections except the admitted objection that that one lot on North Market street was not included.

The Court: I do not know that it takes care of all of them. We will see what proof you have on that, and there is some complaint about the failure to have the acknowledgments from some individuals.

At this point the Court adjourned further in said cause until March 10, 1942, at which time the same parties being present, by their respective counsel, further proceedings were had as follows:

Mr. Garner: Since the Court adjourned we have been having some conference, and out of many considerations and trouble we will waive our objection to the word "negro," and for the purpose of the record we will admit that. That is just for the purpose of this record.

VIRGIL H. LUCAS,

being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in behalf of the defendants as follows:

Direct Examination, by Mr. Richardson.

Q. Will you state your name? A. Virgil H. Lucas.

Q. Where do you live? A. 1901 Cora avenue.

Q. What is your occupation? A. (No response.)

Q. With respect to North Market street and Cora avenue and Garfield avenue, where is your house? A. My house is immediately west of Garfield avenue, at the end of Garfield avenue on Cora avenue. It is on the west side of Cora avenue. It is in the block south of North Market street.

The Court: The reason you put it that way is because Garfield avenue does not run through?

The Witness: No, it stops.

The Court: Your house is about opposite the extended lines of Garfield?

The Witness: Yes.

The Court: You live on the west side of Cora?

The Witness: Yes.

Q. (By Mr. Richardson) Between North Market and Garfield, on the west side of Cora avenue, do you know what the occupancy is of those houses with respect to their being white or colored? A. There are approximately thirteen or fourteen colored families, and there are only two families in that block on the west side.

Q. Do you know where the house is on the southwest corner of North Market and Cora avenue? A. I do.

Q. That flat? A. Yes, sir.

Q. Where is that house with respect to the house in which the defendant Richardson lives? A. That house is just across the street from the defendant Richardson's house. That property is opposite Richardson's property.

Q. Is its occupancy white or colored? A. Solely colored. Four colored families live in that flat.

Q. What would you say would be the proposition of white occupancy with colored occupancy on Cora avenue, taking in both sides between Easton avenue on the south and North Market on the north? A. It is about ninety per cent colored.

Q. Did you ever have occasion to go to Gill Bros. Grocery Company? A. I have had occasion.

Q. Did you notice whether there were any colored people in the store? A. It is predominantly colored customers now.

Q. Do you trade there regularly? A. Yes.

Q. Do you receive the ordinary courtesies that should be extended to customers? A. I have seen that the clerks are very, very courteous towards colored customers. In no instance have I seen any indication that they were hostile to them.

Q. With respect to the 4500 block on Aldine, Cote Brilliante, Garfield and North Market, would you say they were predominantly colored or white? A. They were predominantly colored and on some of the streets they are entirely colored. I think you have white only on North Market in the 4500 block, and even that block is now predominantly colored.

Q. Do you know where the 4600 block of Evans avenue is? A. Yes, I do.

Q. Can you tell me with respect to its occupancy whether it is white or colored? A. It is predominantly colored now on Evans avenue.

Q. That is between Cora and Marcus avenue? A. Yes; that's right.

Witness excused.

ARNOLD B. WALKER,

being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the defendants as follows:

Direct Examination, by Mr. Richardson.

Q. What is your name? A. Arnold B. Walker.

Q. Where do you live? A. 4216 East Evans.

Q. What is your occupation? A. I am industrial secretary of the Urban League.

Q. How long have you been such? A. I have been industrial secretary better than a year. I was field secretary from 1937 up until I became industrial secretary.

Q. Your field work, that was outside? A. Outside of the League. I was contacting industrial plants and making surveys and so on.

Q. Have you had any experience studying the different aspects of the economic and social life of the so-called colored community in St. Louis? A. That covers virtually my activities.

Q. Have you observed or studied the trend of the population of the colored people towards West St. Louis? A. Yes. As a matter of fact, as you probably know, we have an organization known as block units, and we do have the negro community fairly well organized. We have tried to build up some of the communities that the white families have permitted to run down; that is part of our work, so we are in a fair position to observe certain trends.

Q. You say the trend has steadily moved west? A. Definitely, and definitely in the direction you are having this discussion about now.

Q. What would you say would be the extent of the colored populations of St. Louis as compared to the white population? A. If you take St. Louis proper, you have 816,048 people within the corporate area, of which 108,765

are negroes. That would show we have between eleven and thirteen per cent of the city population, which is an increase over the previous enumeration.

Q. Have any of the housing units been demolished in the so-called colored districts in the last twenty years? A. As a matter of fact, a survey was recently made by the Chamber of Commerce showing that most of your houses that have been demolished have been in the negro district, and the study that was made in an effort to bring some of the Government agencies here indicated we had a number of dwelling units, but they were farther west in the better district. There is definitely a shortage in the tenement section. Most of the houses have been torn down because of the age of the city and the houses in which we have been relegated have been torn down in the negro districts——

Mr. Jones: I ask that the statement "the houses to which we have been relegated" be stricken out.

The Court: Sustained.

Q. (By Mr. Richardson) Have those housing units been replaced? A. Not as yet. There are some units being built now, but there is a question of whether we shall get those or not—I mean, the negro community shall receive them or not. There is Carr Square Village——

Q. What is the result of this demolition of housing units in the colored communities? A. We have found that there is a tendency to double up, triple, and in a number of instances, we find four or five families in extreme cases living in one room. When houses were torn down, particularly in this area where it was colored, a number of people moved west, where there are no more houses available, and they had to double up.

Q. You say the number of houses decreased. What has been the situation about the rent, has there been a corresponding decrease in rent or an increase? A. If I may be specific, there are some groups now that are planning to

protest the increase in rent. If I may give you an example, just around the corner from me, from my house, in which the property was for white only, they removed the sign on which it said "for white only," and put one up for negroes only and increased the rent four dollars and fifty cents per unit, and they have discontinued janitor service, emptying ash pits and so on. The property, of course, ran down. Rents for negroes is not the question primarily.

Q. As a result of the overcrowding of negroes, what would you say would be the result or effect on the health, morals, generally, of the people who live in those communities? A. On your first question, as to health, the records of course bear that out. In any group, whether negro or white, submarginal income groups, when you have poor housing, housing that has vermin and rat-infested, as a lot of this happens to be, obviously, you would have a high death rate and poor health rate. You also have a high delinquency rate, a matter in which we are greatly concerned, and a study of your city will show that these things are highest in negro communities, and I do not believe, and it is not a matter of opinion, that it is because they are colored. It is because of the housing and the community in which they live—I was going to say, that they are forced to live.

Q. Have you had any contact with any of the defense industries here? A. Almost a twenty-four hour job.

Q. Do you know whether they have caused—whether the fact we do have a concentration of defense industries here, that they have caused an increase in population? A. I served as one of the witnesses before the Palen Investigating Committee, which was investigating the dislocation of labor, including migration.

Mr. Jones: Just a minute. The question was susceptible to a yes or no answer.

The Court: That is true, but he is stating his qualifications, which might possibly be relevant, but suppose we

go back to the question as to whether there has been an increase in population generally by reason of the defense industries. I think that was the question.

A. Of course, I believe that is begging the question. It is a known fact that there has been an increase in population generally. No survey has been made since April, 1941. You have had several studies in which the figures vary as to the number of persons migrating to St. Louis, and it was admitted by the Board of Education in a discussion we had two weeks ago that between two and five thousand negroes have migrated to the city for purposes of jobs; one alone brought in about two hundred families.

Q. Would you say this migration that you have reference to is of colored families? A. Yes, I was thinking of colored families.

Q. Would you say this migration has accentuated this already acute housing situation? A. Definitely, because the houses have not increased in proportion to your increase in negro population.

Q. One more question. You know what a restriction agreement against race is? A. Unfortunately, too well.

Q. With respect to its effect on colored people, what is your opinion?

The Court: What do you mean by the effect on colored people, in what way?

Mr. Richardson: Well——

The Court: Psychological or economical?

Mr. Richardson: Economically.

Mr. Jones: I object to the question.

Mr. Richardson: I think I would be justified in showing what the effect is when these restrictions remain in force.

The Court: No, I do not think that necessarily follows.

Mr. Garner: I think, your Honor, the economical question comes into this.

The Court: Well, it has been fully enough covered in this discussion about the doubling up of families, the increase in rents, and so forth. I think you have covered it as fully as you need to or as you are entitled to, and I think there is a fully enough record on that.

Mr. Richardson: That is all.

Cross-Examination, by Mr. Jones.

Q. There is just one question I want to ask you. What would you say was the increase in the white population as a result of the defense plants and other factors? A. I could only give you figures ,and you know they vary, just like figures on employment. Your Chamber of Commerce said around two hundred thousand, and that was thrown out. I believe it would be close to say that between sixty-five and one hundred thousand persons perhaps have come into St. Louis. Of course, that is a moving group, because your construction is now passing off of the scene in terms of national defense, and production is moving in, and you have a more static group in production than you have in construction.

Q. Is that true of the two to five thousand colored people? A. Unfortunately it is not.

Q. Unfortunately it is not? A. No, because of the union exclusion. You asked for it—because of union exclusions and discrimination in production and industry, your negroes are not working on jobs as construction workers. In the Small Arms plant during the time nine thousand men pay roll was in existence at no time did you have more than two thousand men working—you had forty-five hundred laborers of which about seventeen hundred and fifty were negroes. Now, they were all in laboring capacity, and they were not in the skilled capacity, and those people have a tendency to move on to the next job. Negroes who come here are coming expecting to get jobs, any type of job.

The Court: You say out of nine thousand on the pay roll seventeen hundred and fifty were colored?

The Witness: Yes, sir, that is right.

The Court: That is about one-fourth.

The Witness: That is right, but not one was in a skilled capacity, they were all laborers, because your union refused to accept negroes into those skills.

Mr. Jones (Q.): Do you know what percentage of the laborers, of the workers out there were in a skilled capacity? A. I can't tell you that. I could tell you that they sent out a call—of course, I don't know whether it is relevant, but I'll give you the figures, they sent out a call for five hundred bricklayers and they couldn't get them for the job, white bricklayers, and they refused to take in thirty negro bricklayers that were available. That is one specific instance of skilled. I only know forty-five hundred of those were unskilled laborers and we only had a portion of that. We do not have a single skilled person working on the job at the Small Arms plant. As a matter of fact, we only had three in this area when they were painters at the T. N. T. plant.

Q. With about one-eighth of the total population you have about one-fifth of the jobs available out there? A. If you wish to take that one particular plant, yes.

Mr. Jones: I see. That is all.

LOUISE ARBUCKLE,

being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in behalf of the defendants as follows:

Direct Examination, by Mr. Richardson.

Q. What is your name? A. Louise Arbuckle.

Q. Where do you live, Mrs. Arbuckle? A. 4639 North Market.

Q. Where is your house in respect to the house occupied by the defendants Richardsons? A. Next door.

Q. Do you know your father's signature when you see it? A. I think I can.

The Court: And what was your father's name?

The Witness: Captain Louis Rosche.

Mr. Richardson: Since this is a photostat, shall I attempt to identify it by page?

The Court: Let me see, maybe I can figure it out.

Mr. Jones: It is page 6 of the photostat.

The Court: Well, it is not necessary to identify it by page. You want to direct her attention to a name on the left-hand column about midway of the page?

Mr. Richardson: Yes.

Q. (By Mr. Richardson) Do you recognize that name? A. Yes, sir.

Q. Is that your father's signature? A. Yes, sir.

Q. Were you present, Mrs. Arbuckle, when your father affixed his signature to that instrument? A. Yes, sir.

Q. Do you know who brought the instrument into your house? A. That I cannot remember. I understood it was Mr. Gavigan and Dr. Potter.

Q. Were there any statements made to your father before he affixed his signature? A. Any remarks?

Q. Yes, anything said to him? A. He just mentioned that all the neighborhood were going into this covenant and he would sign with them.

Q. You would say, then, that your father signed after it had been explained that everyone was going to sign it? A. Yes, sir.

Q. Was anything said to your father with reference to any particular piece of property that was not covered or would not be covered? A. That I would not know.

Q. Do you know anything about the occupancy of the houses on Cora avenue between North Market street on the

north and Easton avenue on the south? A. Well, it is mostly colored.

The Court: How long have you lived there, Mrs. Arbuckle?

The Witness: We have lived there ever since the World's Fair year.

Q. (By Mr. Richardson) Was there anyone else present when your father signed this besides yourself and the two men who brought the paper? A. I think my brother was there. He is sitting back there.

Q. He is here in court? A. Yes, sir.

Q. Any other persons? A. No.

Q. Do you and your brother own the property now jointly? A. Yes, sir.

Q. Have you observed any tin cans or papers or clothes dug up in the yard of the defendant Richardson? A. No; I have not.

Q. Will you sign another restriction on that property, Mrs. Arbuckle? A. No.

Mr. Richardson: That is all.

Cross-Examination, by Mr. Jones.

Q. Mrs. Arbuckle, you stated you would not sign another restriction agreement on the property. Why wouldn't you? A. Well, because colored people are all along Cora and on St. Ferdinand street and on Kennerly, on Maffit, all along Taylor and Garfield.

Q. Well, do you know why, if you know, why your father signed this present agreement? A. No; I wouldn't know.

Q. You wouldn't have any idea? A. For protection with the other neighbors, I expect.

Q. Did he ever discuss it with you? A. No. In the last few years of his life he wouldn't have any more to do with it.

Q. I mean at the time he signed the agreement. A. No.

Q. You do not know if the fact is that he signed it because he saw the influx of colored people and wanted to keep his place? A. Well, at that time there was none in the neighborhood, not that long ago. I don't remember any in the neighborhood then.

Q. In 1923? A. Not in our immediate neighborhood.

Q. How far are you from the 4500 block of Garfield? A. About two blocks.

Q. Is that in your neighborhood? A. 4500, two blocks over, Garfield is a block south of North Market.

Q. How many colored families were in that block in 1923? A. I wouldn't know exactly.

Q. Well, would you say as many as 50 per cent? A. Yes, sir.

Q. How far away is the 4500 block of Cottage avenue from where you live? A. That would be about three blocks.

Q. And what percentage of colored families were in there in 1923? A. On Cottage?

Q. Yes. A. I would say about 50 per cent; there was quite a few over there.

Q. And on Cora, between Kennerly and Easton, how many colored families were there in 1923, what percentage, would you say? A. In 1923 I don't think there was any.

Q. Now, how many colored families would you say are in the neighborhood of St. Ferdinand, in the 4500 block? A. I can't say definitely. I never get around there.

Q. Well, would you say there is more than one family? A. On St. Ferdinand?

Q. Yes. A. I really wouldn't know.

Q. When you testified the colored people were moving in all around you, you really don't know? A. Well, they are. They are all over from Taylor—I couldn't say definitely how many families.

Q. You couldn't definitely say there was more than one, could you? A. On the 4500 block?

Q. Yes. A. I would want to be sure. I can't answer you.

Mr. Jones: That is all.

Redirect Examination, by Mr. Richardson.

Q. You have reference to the one street, St. Ferdinand? A. Yes, sir.

Q. What would you say would be the occupancy of Cote Brilliante with respect to colored occupancy, I mean predominantly colored or white? A. You mean from Cora to Taylor?

Q. Yes, the 4500 block. A. Oh, I would say 50 per cent over there, or more.

Q. You received a subpoena to come in here? A. Yes, sir.

Mr. Richardson: That is all.

Witness excused.

WILLIAM ROSCHE,

being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the defendants as follows:

Direct Examination, by Mr. Richardson.

Q. State your name. A. William Rosche.

Q. Where do you live? A. 4639 North Market.

Q. Where is your house with respect to the house occupied by the defendant Richardson? A. One door west.

The Court (Q.): You live in the same house as your sister who just testified? A. Yes, sir.

The Court (Q.): Who else lives there besides your sister and you? A. My son.

The Court (Q.): Your wife, too? A. Yes, she is with us, too.

Q. (By Mr. Richardson) Is Mrs. Arbuckle a widow, or does her husband reside there? A. She is a widow.

Q. There is four in the house? A. There is more than that. My son and his wife and me and my wife and the boy and my sister.

The Court (Q.): Your two sons is there? A. One is married.

Q. (By Mr. Richardson) Your father's name was Louis Rosche? A. Yes, sir.

Q. Do you know your father's signature when you see it? A. Yes, sir.

The Court: I am sure the plaintiff does not question this.

Mr. Richardson: He does not.

Q. (By Mr. Richardson) Were you present when your father signed this instrument? A. Yes.

Q. Do you know whether any representations were made to him at that time? A. The only representation that was made there was it was going to be 100 per cent white.

Q. That all the people—— A. In that block.

Q. Would sign it? A. Yes, sir.

Q. Your father signed it? A. Yes, with that intention.

Mr. Jones: I object to the intention.

The Court: I will sustain the objection to that word.

Q. (By Mr. Richardson) How long have you lived in St. Louis, Mr. Rosche? A. Fifty-nine years.

Q. How long in this house? A. Since the World Fair year.

Q. What was the situation in the immediate surrounding neighborhood in 1922? A. Well, there was colored families on Garfield avenue. They moved in there when they called it Terry place. I guess there was ten or eleven of them. Some were mail carriers, some were schoolteachers, and I think one was the principal of the Simmons School on St. Louis avenue.

Q. Would you say the occupancy of the 4500, the general occupancy of the 4500 block of Aldine, Garfield, Cote Brilliante and North Market would be predominantly white in 1922? A. Well, now it is about 98 per cent colored, the way I figure it.

Q. What was it in 1922? A. Well, it was about 90 per cent white.

Q. In other words, there has been a change in the past twenty years? A. Yes, sir.

Q. Do you know where the house is on the southwest corner of North Market and Cora? A. That is a double flat.

Q. Where is that located with respect to the lot owned by defendant Richardson? A. Right across the street.

Q. And the occupancy is white or colored? A. It is colored now. It was white.

Q. You own your property jointly with your sister? A. Yes, sir.

Q. Did you go to Mr. Koob's bakery shop on Marcus avenue and request him to institute this suit against the defendant Richardson? A. No.

Q. Did Mr. Koob ever come to your house and say anything about it? A. He was at my house one day last week. He didn't ask anything about entering any suit, because I have no jurisdiction to enter suit, because my sister and I jointly own the house and my signature wouldn't be any good on it.

Q. Were you asked to be a witness against the defendant Richardson? A. I was asked to come down and tell about the covenant that was signed, and that is all.

The Court (Q.): What is your business? A. I am a general contractor.

The Court (Q.): Do you have a place of business at home? A. No, just there.

Mr. Richardson: That is all.

Cross-Examination, by Mr. Jones.

Q. Did you ever attend a meeting of the Marcus Avenue Improvement Association? A. One.

Q. Where was it held? A. Cote Brilliante School and church on Marcus and Labadie.

Mr. Jones: That is all.

Witness excused.

JAMES P. BUSH,

being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in behalf of the defendants as follows:

Direct Examination, by Mr. Richardson.

Q. State your name. A. James P. Bush.

Q. Where do you live? A. 4200 West Page boulevard.

Q. What is your business or occupation? A. Real estate business.

Q. How long have you been in the real estate business? A. Twenty-one years.

Q. Are you a licensed broker? A. For the city and state.

Q. Have you had any experience in the selling of property to colored people which immediately prior to the sale had been owned and occupied by white persons? A. Yes, I had that experience on Enright avenue, Cook avenue, Page boulevard, Evans avenue and the 4500 block on Aldine and Cote Brilliante.

Q. After selling these properties to colored persons, did you have occasion to go back and go through the property and look at it and see what condition it was in? A. I have.

Q. Can you state whether it was run down or depreciated or whether it had been improved?

Mr. Jones: Just a minute. I think the period of time that elapsed should be established.

Q. (By Mr. Richardson) At what time did you go back? A. Well, the first——

The Court: By that he means a few months or a year or a few years.

A. The first experience I had, to give you some idea, was on Enright avenue. We did considerable financing on Enright avenue in the early 20's, when it was changing from whites to colored, and having charge of the loan, I inspected the property frequently. I had opportunity to observe how it was when we made the loan and at a time subsequent to that.

Q. (By Mr. Richardson) How long was that period? A. Well, for a period of three years, and then if we renewed it for another three years and periodically we inspected that property.

Q. Did a large number of people lose their homes or pay for them? A. I would say 75 per cent of the people who originally purchased on Enright avenue are still there.

Q. Have they kept their property up? A. Yes, sir.

Q. Have they kept it up on the other streets you mentioned? A. It is much improved to what it was when they took it over.

Q. Have you observed whether there has been a movement of colored people west in the City of St. Louis? A. Very much so for the last twenty years. Twenty years ago the only streets occupied west of Grand avenue were West Bell and a part of Cook avenue excepting in the Ville. Now they are on Enright to Taylor; there is about half a dozen families between Taylor and Wellston on Enright. There weren't any colored on Page and that is colored from Vandeventer to Taylor, and so is Cook from Vandeventer to Marcus avenue, and that has happened in the last few years.

Q. What would you say with respect to Cora avenue between Easton on the south and North Market on the

north? A. Cora avenue, twenty years ago there weren't any colored families on Cora avenue.

Q. What is the situation now? A. The east side of Cora avenue from North Market to Easton is solely colored, perhaps half a dozen white families on the west side remain.

Q. What is the situation on Evans in the 4600 block between Cora and Marcus? A. On Evans there has been quite a change in the last two years; from Taylor to Marcus it is colored territory; I presume there might be half a dozen white families remaining in there, but not any more than that. That trend there has been for the last two years.

Q. Have you had occasion to look up any property on the west side of Marcus avenue? A. What do you mean: in what respect?

Q. I mean to determine whether it is covered by restrictions or not. A. Just last week I had occasion and I found the west side of Marcus avenue, beginning with Easton avenue up to——

Mr. Jones: Wait a minute. I didn't get that. What is he testifying about, the existence of some restrictions?

Mr. Richardson: Yes, or no restrictions.

Mr. Jones: Well——

The Court: In view of your objection to any matter that might be in the Recorder's office, don't you think that is an improper way to prove that? I think probably we better have another question.

Q. (By Mr. Richardson) Would you say there has been a change from white to colored, generally speaking, in the 4500 block of Aldine, Cote Brilliante, Garfield and North Market in the last twenty years? A. Considerable change, particularly Aldine, Cote Brilliante and North Market; twenty years ago—I presume Garfield in the 4500 block was perhaps fifty-fifty, and the rest of the streets, Aldine, Cote Brilliante and North Market, remain white; but in

recent years, these last three or four years, there has been quite a turnover there; the complexion of Aldine and Cote Brilliante particularly. North Market in the last three years, I presume, now, is about 25 per cent colored.

Q. You mentioned your experience in the neighborhoods which have been turned over to colored people. Would you say that generally the colored people do not depreciate property? A. I would take actual experience on Enright avenue and all the streets occupied by colored. Before the colored moved on the street there was no market for the property and there was no value, and since then the value has increased from 25 to 50 per cent to sometimes 100 per cent. That is what exists today. Page boulevard, before 1937 they had not sold a half a dozen per year. There was no market value for it. Half of it was unrented, and it has all been sold in the last four years. It is all occupied and there has not been a for rent sign there except in one case in the last six months. That stayed there just three days.

Q. Do you know where the property is located in this restriction area, 4635 North Market? A. Yes.

Q. In that district would you say that if colored people were—would you say that the presence of colored people there would increase the property values? A. Absolutely.

Mr. Richardson: That is all.

Cross-Examination, by Mr. Jones.

Q. I take it that you feel that the presence of colored people in that block is a benefit to the block? A. Well, I don't feel that way. I know, as far as value is concerned, I know it is a benefit if they are selling and renting; you get more rent and a better price for the property when colored people move in. That has been my experience in twenty-one years on Cook avenue, Enright, Evans, Page and all those streets.

Q. Would that same thing be true of any block? A. It will be true until the housing situation is relieved.

Q. That would be true of any block in the city? A. Any block in the city, yes.

Q. You are championing, acting as a champion for such a result, are you not?

Mr. Garner: I object to that.

Mr. Jones: This is cross-examination to show the attitude of the witness.

The Court: Objection overruled.

A. I am championing extending negroes in territory adjoining where they are. I think it is the best thing for the negro, the best thing for the city, and the best thing for real estate values. I do not advocate and champion negroes moving away out; while they have a perfect right to do so, I do not champion it and have not been a party to it and will not, but interterritory adjoining where negroes are logically in, my attitude is to let the negroes move in there; it enhances the value, relieves the housing situation and benefits the city.

Q. (By Mr. Jones) As a matter of fact, you have made a statement, have you not, that you are going to put a negro in every block? A. I never made any such statement.

Q. Never made any such statement? A. No. I did make a statement in blocks adjoining where negroes were in, particularly blocks adjoining where negroes wanted to sell, or if anyone wanted to sell——

Q. Did you make a statement that you intended to run the colored people all the way to Kingshighway? A. Yes, I did that, and that is my program. I think in the next five years negroes will be at Kingshighway.

Q. And that is without regard to any contract which might be made; you are not interested in that at all? A. I am interested in bettering the situation for the negro housing.

Q. Regardless of the price or inconvenience to others? A. If you want to take it that way. I am not advocating and have not been a party to the general extension or expansion of negroes into white neighborhoods beyond where they are; as I told members of the Exchange in 1937, when Page avenue was taken over, I told Mr. Lang when Page was taken over or Evans from Vandeventer to Taylor, then I would go west of Taylor. When it is taken from Marcus avenue, then I will go west to Marcus, but I won't go out west or up north or away down south. I told Mr. Lang that in 1927 or 1937 when they went on Page avenue. I told your Mr. Lang that.

Q. He is not my Mr. Lang. A. He is executive secretary of the Exchange.

Q. As a matter of fact, when you get hold of these property owners in areas covered by restriction agreements you tell them the agreements are no good, don't you? A. No, I haven't made any such statement.

Q. You haven't made any such statement? A. No, I haven't made any such statement.

Q. Do you tell them they are not bound by the restriction agreement? A. No. Furthermore, I have not sold any property to negroes unless I was told about the restriction, when they expires. I have my own private conviction as to the restriction, but am no authority as to whether or not they are binding.

Q. You made no comment to any of the sellers with respect to the restriction agreements? A. No, only to tell them the restriction expired at a certain time, and so far as I am concerned, I don't care about them. If people want to buy knowing there is restrictions on there that is their business.

Q. Have you sold any property in the 4500 block of Cote Brilliante? A. Cote Brilliante? I think I had a transaction over there; it has been years ago, nothing recently.

Q. How long ago would you say? A. Oh, I would say in the 'twenties.

Q. What? A. If my memory serves me right, it must have been around about 1929,. 1927 to 1929. I am not just clear on that.

Q. Do you know whether that was restricted at the time you made the sale? A. Yes, I knew there were restrictions in the 4500 block of Cote Brilliante.

Q. Do you know how long they had to go at the time you made the sale? A. It has been a good while ago. The restrictions were put on there in the early 'twenties, I know; I don't recall what the facts were in the case.

Mr. Jones: That is all.

The Court: Where is your real estate office?

The Witness: 3200 West Page.

The Court: In other words, right where you live?

The Winess: Yes.

The Court: Did you make any of the sales of these properties in the 4600 block on North Market either to Dr. Payne or Mr. Bryant or Mr. Richardson or Mr. Henderson?

The Witness: No.

The Court: You didn't make any of those?

The Witness: No.

The Court: All right.

Redirect Examination, by Mr. Richardson.

Q. In districts, so-called restricted districts, in which you have sold property, were those restrictions any good?

Mr. Jones: I object to that.

The Court: Sustained. That calls for a legal conclusion.

Mr. Richardson: I would like to have the files in the case of Wapell v. Weiss brought up, in the Cote Brilliante property; I think it will show the restriction is no good.

The Court: You cannot show it through this witness.

Mr. Richardson: I mean if you want that evidence.

The Court: I doubt that it would be material. It is wholly collateral, and I do not think we could try that other case now.

Mr. Richardson: I thought that you would take judicial cognizance of it. He intimated that he violated a valid restriction.

The Court: There is a difference between a restriction one year and some years later. We will not try that other case.

Mr. Richardson: That is all.

Mr. Garner: Mark this as "Defendants' Exhibit 2." The defendants offer in evidence Exhibit 2, purporting to be a certified copy of the charter of the Real Estate Exchange, the St. Louis Real Estate Exchange.

The Court: All right.

Mr. Jones: I object to it on the ground that the Real Estate Exchange is not a party to the procedure, on the further ground that the sole capacity under which the trustees in this agreement act are as individuals who happen to have the title president, secretary and treasurer of the Real Estate Exchange.

The Court: I doubt very much if it is of very much relevancy, but in order that the defendants may put in such evidence as will bear on their pleaded defense, I will overrule the objection.

Mr. Jones: There has been no ruling on the introduction of Exhibit A, has there?

The Court: Yes.

Mr. Jones: Is it in subject to objection?

The Court: It is in without the Court feeling bound in any way in a later decision of the case to rule adversely. The objections that were presented, Mr. Garner felt if I did not rule that there would not be a proper record, and so without prejudice and without binding myself to take the same view on the whole case, but really in order

to permit the orderly trial of the matter, it was received in evidence.

Mr. Garner: The defendants rest.

This was all the evidence defendants offered to sustain the issues in their behalf.

Mr. Jones: The only rebuttal testimony we will have is as to the testimony of Pritchard, Rosche and Arbuckle.

The Court: All right, put it on.

PLAINTIFFS' REBUTTAL.

WILLIAM J. GAVIGAN,

having been previously duly sworn, was **recalled** and further testified, in rebuttal, on the part of the plaintiffs as follows:

Direct Examination, by Mr. Jones.

Q. What is your name? A. William J. Gavigan.

Q. You have previously been sworn and testified? A. Yes, sir.

Q. Were you in court when Dora Pritchard and Mrs. Arbuckle and the Rosches testified? A. Yes, sir.

Q. Did you hear them testify that at the time that the instrument was presented to them or to other people in their presence, a statement was made that 100 per cent of the people in the block would sign it? Did you hear them make that statement? A. I did.

Q. Did you present the instrument to the various people, including Mrs. Pritchard and Mr. Rosche, who is the father of Mrs. Arbuckle and Mr. Rosche? A. I did, sir.

Q. Was any statement made by you or anyone with you that 100 per cent of the people in the block would sign the instrument? A. At no time did I make any such statement.

Q. Did anyone with you make any such statement? A. There seems to be a concerted thought that someone accompanied me. The truth is that they themselves, Potter and Mrs. Pritchard and Miss Pritchard, the one that testified here, accompanied herself and Dr. Pritchard to acquaint other neighbors about the subject matter——

Mr. Garner: The answer is not responsive. He is going into another explanation.

Mr. Jones: That is correct.

The Court: All right. The answer should be whether the statement was made by you or by anyone with you. A. I say positively no.

Q. (By Mr. Jones) Mrs. Pritchard said she did not in any way assist in the circulation of the instrument. Will you tell the Court what you know, if anything, about any activities that she had?

Mr. Garner: It is immaterial if she did. His duty is to rebut on something that is material, and whether she circulated any petition is immaterial.

The Court: That is sustained.

Mr. Jones: Even as to her credibility?

The Court: Well, it is an immaterial point. This may be more material, Mrs. Arbuckle said Dr. Potter was with you when her father's signature was obtained.

Q. (By Mr. Jones) At the time was he with you or not? A. He was not, your Honor.

The Court: All right.

Cross-Examination, by Mr. Richardson.

Q. Didn't you testify on previous occasions that Mr. Potter was the one that accompanied you on a number of occasions, Mr. Potter sometimes and another individual some other time? A. Did I testify to that?

Q. Yes. A. No; not to my knowledge. I will say this, there is confusion on the subject matter——

Q. I just asked you the question and you have answered it. That will be all.

Witness excused.

At this point further proceedings were continued by the Court until March 12, 1942, at which time the same parties being present by their counsel, further proceedings were had as follows:

JOSEPH G. HAEGELE,

being first duly sworn, testified in rebuttal on the part of the plaintiffs as follows:

Direct Examination, by Mr. Jones.

Q. State your name. A. Joseph G. Haegele.

Q. Where do you live? A. 4537 North Market.

Q. Do you own any other property in that block? A. Yes.

Q. Where is that property located? A. 4663 and 5 and 9, and 2402 Marcus.

Q. What is the western boundary of that property? A. Marcus avenue, right on Marcus.

Q. Then it runs to Marcus? A. East to Marcus.

The Court: In other words, it is the northeast corner of North Market and Marcus?

The Court: You mentioned 4637?

The Witness: 4537.

The Court: That is not in that block?

The Witness: No.

The Court: You own in the block east of Marcus 4663-65 and 69?

The Witness: Yes.

The Court: Is there a 67?

The Witness: No.

Q. (By Mr. Jones) In 1923, Mr. Haegele, who owned that

property that you have just described? A. Mr. E. G. Haffner and myself.

Mr. Garner: Just a minute.

Mr. Jones: All right; that's a conclusion.

Mr. Garner: He is here for rebuttal only.

The Court: Yes; I will sustain the objection.

To which ruling of the Court plaintiffs, by their counsel, then and there duly excepted and still continue to except.

Q. (By Mr. Jones) Now, Mr. Haegele, in 1923, at the time a petition was being circulated to restrict the area bounded by Marcus on the west and North Market on the north and Cora and Wagoner place on the south, and on the east, rather, Easton avenue on the south, did you have any interest in any property located in the area which I have just described?

Mr. Garner: What is that rebutting?

Mr. Jones: I am laying the foundation for the solicitation to show that in so far as this witness is capable of establishing, there was no mention made of 100 per cent signatures.

Mr. Garner: He would have to lay the foundation by those two witnesses that testified to that. Just two witnesses testified to that.

The Court: Objection sustained.

Q. (By Mr. Jones) I will ask you, Mr. Haegele, if you know whose property abuts you on the east, your property on Marcus? A. At this time?

Q. Yes.

Mr. Garner: I object to that, because it is immaterial who owns it now unless he is going to rebut something that was testified to.

The Court: It cannot be harmful. Who is east of you, who is east of 4663 North Market now?

The Witness: A party by the name of Miller, that is, the east end of my property, is that right?

The Court: Adjoining yours, who has it?

The Witness: Well, I don't know; that was sold within the last year; I don't know the party's name now.

Q. (By Mr. Jones) Do you know whether he is white or colored? A. Colored.

Q. Would Dr. Payne sound like the name? A. That's the name I heard. I don't know the gentleman.

Q. Now, you realize, do you not, this restriction agreement, by its terms, runs out in December, 1942? A. That is right.

Q. I want to ask you, Mr. Haegele, whether you are desirous of having your property continued to be restricted?

Mr. Garner: Just a minute. Is that rebuttal of anything that came out?

The Court: You put the question to the Court. The Court is not supposed to answer it.

Mr. Garner: Well, I object to it on the ground that it is not rebuttal to any material evidence which was brought out on our side of the case.

The Court: Well, you asked about intentions on your side of the case.

Mr. Garner: Of that particular property? He cannot rebut everything he wants, but what she said about it.

The Court: This is an answer to an allegation of the answer. The objection is overruled.

(Question read.)

A. Yes, that is right, I am.

Mr. Jones: That is all.

Cross-Examination, by Mr. Richardson.

Q. What did you say your name is? A. Haegele.

Q. You say you are the record owner. How long have you been the record owner of the property, since what date? A. Well, I can't give you the exact date.

The Court: Well, what year, he means. He does not mean the exact date.

A. About 1920 or 1922.

The Court (Q.) Did you sign the agreement, the restriction agreement? A. No.

Q. (By Mr. Richardson) You did sign it? A. No, sir; I did not.

Q. You mean you never—you owned the property at the time the agreement was drawn up? A. Yes, sir.

Q. But you did not sign the agreement? A. The property was between Mr. Haffner and myself; it was owned between the two of us, a brother-in-law of mine.

The Court: I understand he is the only one of the two that signed it.

The Witness: Mr. Haffner.

Q. (By Mr. Richardson) You owned it by joint tenancy? A. That's right.

The Court: Do you at this time own only a half interest or all of it?

The Witness: All of it.

The Court: When did you acquire Mr. Haffner's part?

The Witness: Half; oh, I would say about eight years ago.

The Court: By purchase or inheritance, or how?

The Witness: By purchase.

The Court: Go ahead.

Q. (By Mr. Richardson) You stated you are desirous of having your property restricted or having the restrictions renewed on your property at the time it runs out, is that correct? A. Yes, sir.

Q. You desire that even though there are colored people who continue to live next door to you? A. What is that?

Q. You desire to do that notwithstanding there are colored people next door to you or next door to the property owned by you? A. I don't quite understand you.

The Court: He wants to know whether you are desirous of having the restriction continue in force after December of this year even though there are colored occupants in the property just next to yours?

A. Well, I—the idea would be that if it were continued like in the past there wouldn't be any there.

The Court: Maybe you know and maybe you don't know, but the property that Dr. Payne occupies was never covered by this restriction.

The Witness: Well, I see. I didn't know that.

The Court: It is not involved in this or any similar suit, and that is why counsel put the question to you even if Dr. Payne or any other colored occupant continues to occupy that property would you still want the restriction in force?

The Witness: That's right, I would.

Redirect Examination, by Mr. Jones.

Q. Were you related to Mr. Haffner? A. Brother-in-law.

Q. I will ask you whether you authorized him to sign this paper for you? A. Yes, sir.

Mr. Garner: I object to that, because it is self-serving.

The Court: I will sustain it, because a verbal authorization to sign a conveyance of a right or a covenant, in this instance, would not be effective.

Q. (By Mr. Jones) All right, did Mr. Haffner sign that instrument?

Mr. Garner: Just a minute. I move to strike that out.

The Court: Sustained; the objection will be sustained. It is immaterial whether he knew it or not.

Q. (By Mr. Jones) I will ask you if you are familiar with Mr. Haffner's signature? A. Oh, yes.

Q. I will hand you Plaintiff's Exhibit A and ask you if you can identify on signature line 13 thereof, on page 2, in the right-hand column, the signature? A. Yes.

Q. That is the signature? A. Yes, sir.

The Court (Q.): You recognize that as the signature of your brother-in-law, Mr. Haffner? A. Yes.

Mr. Garner: We move to strike that out for the reason it is not in rebuttal of anything. Mr. Haffner did not deny he signed it.

The Court: I will overrule the objection. It is a proper matter to establish at any time whether his signature is genuine.

Witness excused.

FRED W. SCHEWE,

being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in behalf of the plaintiffs in rebuttal as follows:

Direct Examination, by Mr. Jones.

Q. State your name. A. Fred W. Schewe.

Q. Where do you live? A. 4882 San Francisco.

Q. What is your business or occupation? A. I am examiner for the Title Insurance Corporation.

Q. How long have you been engaged in it? A. About eighteen years as examiner; twenty-six years in the business.

Q. Now, I will hand you Plaintiffs' Exhibit A and ask you if you have had occasion to examine that document? A. Yes, I did.

Q. I will ask you if you made an examination of the titles to the various properties described in that instrument?

Mr. Garner: Just a minute. We want it confined to yes or no.

The Court: Yes, you can answer yes or no.

The Witness: I did.

Q. (By Mr. Jones) Now, I will ask you what examination you made and how you conducted your examination? A. I just checked the records in our office.

Q. Now are those records exact duplicates of the books in the Recorder of Deeds' office in the City of St. Louis? A. They are.

Mr. Garner: Just a minute. May I ask a question? (Q.): What do you mean by duplicates? A. Well, these—as a deed comes in the Recorder's office, we have a girl taking it off and it comes to our office and we enter it in the books against the particular property.

Mr. Garner: Then I move to strike the answer, when he uses the word duplicate. That is not a duplicate.

The Court: All right, I will sustain that motion.

To which ruling of the Court plaintiffs, by counsel, then and there duly excepted and still continue to except.

Q. (By Mr. Jones) You mean it is a copy? A. Yes, these are copies.

The Court: You try to keep at your office a second set of records?

The Witness: Well, we have a record of everything, that is, the property and the names and so on, of the records in the City Hall, but we do not set out like a deed of trust, would not show the amount or anything like that, but it would contain the parties to the instrument, also the property.

Q. (By Mr. Jones) Did you check those records with the names of the persons appearing on page 1 of that instrument?

Mr. Garner: Yes or no.

A. Yes.

Q. (By Mr. Jones) Now, according to the check which you made, did those records disclose that the parties that executed, or rather, whose names appear on page 1 of that instrument were in 1923 the owners of record of the various properties described and appearing opposite the names of such persons?

Mr. Garner: We object to that, now, to the answer, for the reason there is no showing made as to the whereabouts of the original document or the original records, and the records themselves are the best evidence.

The Court: Is that the sole ground of your objection?

Mr. Garner: No, that is just one ground.

The Court: Well, state all of them.

Mr. Garner: The next is that the witness now is trying to give secondary evidence as to what the record shows kept in the Recorder's office, without showing that the records are not available. He is also testifying as to what the records showed that he himself has not seen, and it is hearsay. It is not the best evidence. There is no showing that the best evidence is not available.

Mr. Jones: I thought there was an agreement on this?

Mr. Garner: No, there was no agreement.

The Court: I think that question is too inclusive. I think that tries to sum up the whole case in one answer and I think you ought to take it up in more detail. I do not think there ought to be one general blank answer, so I will sustain the objection on that ground. I took the position the other day that somewhat for convenience we would not adhere strictly to the necessity of bringing all of the records of the Recorder's office over here and prove from those books perhaps to the total of a few hundred exhibits what the status of the ownership was in 1922 or '23, but I said we would be content with having a recognized title examiner make an inquiry and report or testify as to what he found, but I did not mean by that that one blank

answer would cover it, but I think we have to take up the various parcels.

Mr. Richardson: Did you mean also that the examination could be made from private records of a private organization or did you mean that the individual would have to go to the Recorder's office?

The Court: I had not expected that he would not go to the Recorder's office, but I do not know that that is so material and while it is not altogether regular and I do not say I would proceed this way in every case, I think I will permit this testimony on the basis of his examination for whatever value it has.

Mr. Garner: Your Honor, we would object further on the ground that the matters to which the witness is testifying, according to his statement were matters that he took from records made in his office and alleged to have been copied down from what some records in the Recorder of Deeds' office shows.

The Court: There is no doubt that is a bad feature of it. I had not thought that the examination was going to be handled—copies of that sort privately made, but all we would accomplish would be restating it and having the same thing done again, and come back another day.

Mr. Garner: Of course, your Honor understands, this is our day in court and we have to make up our record.

The Court: I think, Mr. Jones, you made a mistake in trying a short-cut. I do not know that the record would be so good on this basis. I mean, of course, if called into question later.

Mr. Jones: On that question, your Honor, I adopted the position originally that the instrument speaks for itself and that the point of requiring all of this additional proof is one that would justify the introduction of evidence that was reasonably certain to be accurate, because of the record and reputation of the company to whom the examination was made. I would say if it were made by some

little independent examiner of no standing in the business, that it would be quite a serious defect. I do not mean to say that the Appellate Court would take judicial notice of the 100 per cent of a large title company, but I feel under the circumstances, the records contained in the books of the Title Insurance Corporation of St. Louis would be just as accurate as photostatic copies of all the records in the Recorder's office.

The Court: Well, I don't know whether you have any judicial support for that, but regardless of our private feelings about the company, I think we have to be concerned with whether there is judicial support for it. Don't you think you would be in a better situation if the inquiry was made at the Recorder's office?

Mr. Jones: You mean for the witness to inspect all of the books over there and then testify as to what he found?

The Court: Yes, Mr. Garner will still have——

Mr. Garner: I won't agree to it, of course.

The Court: I am not asking you to agree to it. You will still have your objection that the books themselves will have to come over, but on that objection I do not think the Appellate Court will agree with you, because it would be a needless burden. Very often you have had experts who go over a set of papers and books and summarize——

Mr. Garner: That is when they give expert opinion.

The Court: Not always; auditors sometimes look over complicated books and they do not give opinions, they tell what they show. So, on that fact, I do not think you would be on such strong grounds, but I am willing to accept that whether it is by agreement or not. However, Mr. Jones, on this point, I think you tried to shorten your work in a way that might likely prove troublesome later.

Mr. Jones: I am going to ask the Court to continue this case for the plaintiffs until some day next week which would be convenient to the Court and counsel for defendants.

JOSEPH G. HAEGELE,

having been previously duly sworn, was **recalled** and testified further in rebuttal on behalf of plaintiffs, as follows:

Direct Examination, by Mr. Jones.

Q. Now, Mr. Haegele, you were sworn before in this case and testified, and I believe you testified you did not sign this instrument——

The Court: Direct his attention to whatever line it is.

Q. (By Mr. Jones) I hand you Plaintiff's Exhibit A, and call your attention to the signature on line 10, on the left-hand side of page 3, and ask you whose signature appears there? A. That's it.

Q. Is that your signature? A. Yes.

Q. J. Haegele? A. Yes, sir.

Q. When you testified previously that you had not signed the instrument you were mistaken? A. That's right.

Mr. Garner: That is objectionable and should be stricken because it is not proper rebuttal. He is making up his case in chief now.

The Court: No, this is something that came up later.

Mr. Garner: He is trying to correct what he said a little while ago.

Mr. Richardson: He denied it once.

The Court: He said he had not signed, and probably he was relying on memory. Now his attention is called to a particular line on a particular page and he says it is his signature. You may cross-examine him.

Mr. Garner: We say that is not proper rebuttal. He should have proved it on his direct examination.

The Court: No. The matter that he is just now correcting came up in your cross-examination a short while ago. Are there any further questions?

Cross-Examination, by Mr. Richardson.

Q. From whom did you buy the property, Mr. Haegele? A. That was bought from—I don't remember the name offhand.

The Court: You mean before—are you referring to the time when Mr. Haegele and Mr. Haffner each bought a half?

Mr. Richardson: Yes.

The Court (Q.): You don't remember, you say? A. No, I don't recall; I know the name, but I just can't mention it now.

Q. Do you know where the person lives? A. I don't know where he lives now.

Q. Did you know then? A. Oh, yes.

Q. Where was it? A. He lived on Hammett place.

Mr. Richardson: That is all.

Witness excused.

(At this point the further proceedings in said cause were continued until Thursday, March 19, 1942, at the hour of 10 o'clock a. m.)

And thereafter, to wit, on the 19th day of March, 1942, and at the February Term of said court, further proceedings were had in said cause as follows:

CHARLES PUFF,

a deputy clerk in the Assessor's office of the City of St. Louis, testified that he has been employed in the office of the Assessor for seven months, but had previously been connected with that same office for a period of fourteen years.

He further testified that a tissue plat identified as Plaintiffs' Exhibit AA shows the 1923 owners of property in city block 4472; that Plaintiffs' Exhibit BB contains the same information with reference to owners in city block

4473; that Plaintiffs' Exhibit CC contains the names of owners in city block 4474; that Plaintiffs' Exhibit DD contains the names of owners of city block 4475; Plaintiffs' Exhibit EE has the same information with reference to city block 4476; that Plaintiffs' Exhibits FF to JJ, inclusive, are, respectively, names of property owners in city blocks 4472, 4473, 4474, 4475 and 4476, for the years 1920-1922; that Plaintiffs' Exhibit KK contains the owners for city block 5638 for 1923 to 1925, and consists of two pages; that Plaintiffs' Exhibit LL contains similar information with reference to city block 5638 for the years 1920 to 1922, and also consists of two pages. Testimony by the witness and examination of the records offered, showed that the only lot not signed for in block 5638 is owned by Allen Wilson; that some transfers were made before recordation of Plaintiff's Exhibit A; that Plaintiff's Exhibits AA and FF, being record of property owners in block 4472 for 1923 and property owners in block 4472 for 1920 to 1922, respectively, show that James D. Fitzgibbon owned one lot in said block not signed for, and now occupied by owner Payne; that Plaintiff's Exhibits EE and JJ, being records of property owners in block 4476 for 1923 and property owners in block 4476 for 1920 to 1922, respectively, show no exceptions but that of a lot on the north side of Easton avenue, 87 feet, six inches west of west side of Wagoner place, of which property the Ivory Realty Company was owner, which property was conveyed to Samuel Goldstein and wife in 1923 by Joseph Zerega and wife.

After said exhibits were received in evidence, defendants' counsel, Mr. Richardson, pointed out to the Court the following facts: That Ida Pesault had not signed Exhibit A, although the plats showed that she owned the third lot north of Allen Wilson's lot; that one McKee owned some lots (to which plaintiffs' counsel replied that McKee had previously died); that the Garischs, who had

signed Exhibit A, had not acknowledged same; that three remaindermen who had interests in two lots had not signed Exhibit A, i. e., that no remainderman had signed for lot N in block 4476, nor lot F in block 4474; that as to lot E in block 4474, the Wachmans who signed Exhibit A did not get title until later; and that the proper name of Mrs. Wachman was Agnes, according to the plat, rather than Clara.

JOHN O'MALLEY,

being first duly sworn on behalf of the plaintiffs, testified as follows:

Direct Examination, by Mr. Jones.

Q. State your name, please. A. John O'Malley.

Q. What is your occupation, Mr. O'Malley? A. Clerk, Recorder of Deeds office, St. Louis, Missouri.

Q. As such, do you have in your charge the records of the Recorder's office? A. Yes.

Q. You have been subpoenaed here today to produce in court the records of said office, have you, and now have them with you? A. Yes, sir.

Q. And those are the records on the table there that you have brought in? A. Yes, sir.

Mr. Jones: Now, this will be Plaintiff's Exhibit MM.

The Court: What page do you have before you?

The Witness: Page 321.

Q. Now, it appears that you have before you and have produced here in court general record book 3848 of the Recorder's office, which you brought in this morning? A. Yes.

The Court (Q.): What is the name of the book? A. General Record Book.

The Court (Q.): It contains copies of deeds and conveyances? A. Yes.

The Court: You say it is on page 121?

Mr. Jones: 121. I desire to offer in evidence page 121 of Record Book 3848, a deed, by the terms of which Emil G. Schnurr and Margaret E. Schnurr, his wife, deed the property described to George A. Wackman, and Agnes Wackman, his wife, said property being described as a lot E, block 4 of Wagoner place, city block 4474, to wit, the eastern 50 feet of lot E.

The Court: What is the date?

Mr. Jones: The deed is dated April 24th.

The Court (Q.): What is the date of the acknowledgment? A. April 28, 1923.

Mr. Jones: It was recorded on May 7, 1923. That is Plaintiffs' Exhibit MM.

Q. Now, these are records also of your office? A. Yes, sir.

The Court (Q.): What book is that? A. Book 4689.

The Court: What is the page?

Mr. Jones: 114.

Mr. Jones: This contains the deed from Wackman to Coffman.

The Court: To Coffman.

Q. What is the page? A. 114.

Q. Of General Record Book 4689, identified by the witness.

Mr. Jones: We offer the deed made on the 27th of July, 1927, by and between George W. Wackman and Agnes, his wife, to R. N. Coffman, whereby Wackmans conveyed the same property mentioned before, subject to restrictions and conditions now of record; the deed being acknowledged on July 27, 1927, and recorded August 1, 1927, book 4689, page 114. This is Exhibit NN.

Q. Now, I'll hand you another book. What is that? A. Book 3814.

Q. Look at page 124.

The Court: What do you want to offer?

Mr. Jones: This deed from Theresa Vogt to Jake Whyman, dated March 12, 1923, conveying the south 130 feet, 6 inches of the west 45 feet of lot A in block 5 of Wagoner place, city block 4473.

The Court: I think in offering these you might indicate the date of acknowledgment and recording. Did you say it was March 12th?

Mr. Jones: It was acknowledged March 12th and recorded March 13, 1923, subject to restrictions, reservations and conditions, if any.

Q. Now, turn to book 3821, page 199. I offer page 199, wherein the same property last described is conveyed under date of April 2, 1923, by Jake Whyman to Etta Marcus, acknowledged April 2, 1923, and recorded April 4, 1923, which deed is made subject to restrictions, reservations and conditions, if any.

Mr. Jones: Now, book 3827.

The Court: What page?

Mr. Jones: 340. I offer from page 340 of the volume, book 3827, a deed dated July 1, 1923——

The Witness: 31st.

Mr. Jones: July 31, 1923, wherein Etta Marcus conveys the property last described to Joseph Bassin and Minnie, his wife, which deed also contains the provision that it is made subject to restrictions now of record.

The Court: What is the date?

Mr. Jones: Made the 31st of July, 1923, acknowledged the same day, and recorded August 1, 1923.

The Court: What is the next one?

Mr. Jones: Book 4022.

The Court: At page 100.

Mr. Jones: Page 100. I offer page 100 of this book, 4022, containing deed dated the 14th of March, 1924, wherein P. Stein and Rosa, his wife, who appear on the Assessor's books as the grantee of Joseph Arnold, convey to William

E. and Louise Beckman, title to a lot in city block 5638 of the City of St. Louis, having a front of 30 feet, six inches, on the east line of Wagoner place, by a depth eastwardly of 117 feet, 3 inches, more or less, to an alley, known as 1518 Wagoner place, subject to conditions and restrictions contained in deed recorded in book 1001, page 281, also in book 3841, page 386.

The Court: That is Plaintiffs' Exhibit A.

Mr. Jones: Yes. That is acknowledged March 14, 1924, and recorded March 14, 1924. I now offer from book 3863, page 190, a deed executed May 15, 1923, by Victor R. Dray and Jessie Myers Dray, his wife, to Augusta Halwe, whereby they convey the property in city block 5638, fronting 34 feet on the east line of Wagoner place, by a depth of 117 feet more or less to an alley, said deed being acknowledged on the 15th day of May, 1923, and recorded May 18, 1923.

At this point a recess of five minutes was declared, after which time the same parties being present by counsel, further proceedings were had as follows:

Mr. Jones (Q.): What is the next book you have? A. 3855.

Q. Look at page 243 of that book.

Mr. Jones: I offer from page 243 of this volume 3855, a deed dated May 28, 1923, whereby Elizabeth Renz conveys to Annie Wigge, and Frank, her husband, a lot in city block 5638 of the City of St. Louis, having a front of 30 feet on the east line of Wagoner place, known as 1714 Wagoner place, acknowledged on the 28th of May, 1923, and recorded on May 28, 1923.

Q. What is the next volume? A. 3892.

Q. Turn to page 51. A. Here is 51.

Mr. Jones: I offer page 51 of book 3892, being a deed dated June 5, 1923, wherein Joseph Zerega and Catherine,

his wife, convey to Samuel Goldstein and Anna Goldstein, his wife, property known as lots I and J, and the eastern 7 feet, 6 inches of lot K, and the western 2 feet, six inches of lot H, having a front of 60 feet on the north line of Easton avenue, acknowledged on June 5, 1923, and recorded June 7, 1923.

Q. What is the next book, 4969? A. Book 4969.

Mr. Jones: Turn to page 260. From page 260 of this volume 4969, I offer a deed dated May 9, 1929, wherein Sam Goldstein and Anna, his wife, convey to Mamie O'Toole, the property last described. The deed contains the provision that the property is conveyed subject to the conditions and restrictions imposed by agreement, recorded in book 3841, page 387.

The Court: What is the date?

Mr. Jones: Acknowledged May 9th and recorded May 9, 1929. Now the next book, Mr. O'Malley?

A. Book 3876.

Q. Turn to page 302.

Mr. Jones: From page 302 of this volume, I offer a deed dated June 15, 1923, wherein Alice Fowler conveys to John R. Sheehan and Annie Sheehan, his wife, property known as lot G, in block 3 of Wagoner place, and city block 4475, City of St. Louis, having a front of 40 feet on the south line of Cote Brilliante avenue, by a depth southwardly of 139 feet, six inches, acknowledged June 16, 1923, recorded June 20, 1923.

Q. Turn to page 488. This is the same book, book 3876. A. Here it is.

Mr. Jones: I offer from the same book, at page 488, a deed dated August 27, 1923, by John H. Kelsey, wherein he conveys to Joseph Stirmlinger, and Effie, his wife, property described as lot M, block 2 of Wagoner place, city block 4476 of the City of St. Louis, having a front of 55 feet on the south line of Lucky street, by a depth south-

wardly of 131 feet more or less to an alley. This was acknowledged on August 27, 1923, recorded August 27, 1923. It is subject to all existing restrictions now of record.

Q. Now turn to book 3851, page 452, Mr. O'Malley. Thank you.

Mr. Jones: From page 452 of this volume, being a deed dated July 3, 1923, wherein Ethel C. Frielingsdorf and Hugo A. Frielingsdorf convey to Rose King, property known as lot 2 in bock 5638 of the City of St. Louis, fronting 26 feet, 8 inches, on the east line of Wagoner place, by a depth eastwardly of 117 feet more or less to an alley 15 feet wide. (Examination of this deed at the Recorder's office reveals it contains the following provision: "subject to conditions and restrictions of record; also subject to restrictions contained in a certain agreement executed by the grantors therein and other owners of lots fronting on and in Wagoner place, which agreement may not yet be recorded.")

Mr. Jones: I also offer from page 354 of the same volume, book 3851, deed wherein Rose King, under date of July 30, 1923, conveys to John Ruhlman and Ann Ruhlman, the property last described, which conveyance states that it is subject to conditions and restrictions of record, also to restrictions and conditions in a certain agreement executed by former owner and other owners of lots fronting on and in Wagoner place, which agreement may not be of record, acknowledged July 30, 1923, recorded August 2, 1923.

Q. What is the next book you have? A. Book 4417.

Q. Turn to page 558. A. All right, 558.

Mr. Jones: I offer from page 558 of this volume, being a deed dated the 14th day of September, 1926, by and between Augusta Halwe, a widow, and others, to Alfred and Daisy Badley, his wife, conveying the property described

in the deed previously offered from book 3863 by Victor R. Dray and wife to Augusta Halwe, acknowledged September 14, 1926, and recorded the same day.

The Court: Recorded on what day?

Mr. Jones: September 14, 1926.

Q. Now, Mr. O'Malley, what is the next book you have? A. Book 3773.

Q. Turn to page 519.

Mr. Jones: From page 519 of this volume, book 3773, I offer a deed dated June 18, 1923, by Joseph T. Arnold and wife, Reba, to P. Stein and Rosa, his wife, conveying the property described in the deed made to Beckmans by Stein and wife, recorded in book 4022, page 100, previously offered. This deed was acknowledged June 18, 1923, recorded June 18, 1923, book 3773, page 519. It refers to property fronting 30 feet 6 inches on the east line of Wagoner place.

Q. Now, what have you next? A. Book 3933.

Q. Turn to page 463.

Mr. Jones: From page 463 of this volume 3933, I offer a deed dated October 26, 1923, from Frank Wigge and Annie Wigge, his wife, to Magnus R. Snipen and Grace, his wife, conveying the property conveyed by Elizabeth Renz to the Wigges. This has reference to lot in city block 5638, fronting thirty feet on the east line of Wagoner place, and is subject to restrictions and conditions of record.

ADAM BELKO, JR.,

a deputy clerk of the Probate Court of the City of St. Louis, Missouri, testified and identified the files in re the estate of Samuel McKee, being Probate Court File No. 39810, showing that Agnes McKee received merely a life estate in the property of Samuel McKee, with remainder vested in Margaret and M. K. Patterson.

Thereupon the Court continued further hearing in said cause to April 2, 1942.

SUBMISSION SET ASIDE.

And thereafter, on, to wit, the 2nd day of April, A. D. 1942, on oral application of defendants, the submission of said cause was set aside and said cause was reopened for further testimony.

Thereupon, the same parties again appearing by counsel, further proceedings were had in said cause as follows:

Mr. Garner: If the Court please, I have an expert witness here, and he wants a few minutes to look over some documents, and while doing that we had a couple of other matters we wanted to present and show them to Mr. Jones first and see if we can get them in while we are waiting.

Mr. Richardson: We set up in the answer, and witnesses testified, particularly Mr. Walker, that there has been an increase in the negro population since 1922, and that there was a serious housing shortage in the district—in the St. Louis area, and particularly in the colored district, because of a ring of steel thrown around them because of restrictive covenants, and in attempting to get some certain figure of the increase in population and the housing shortage we have contacted the Department of Commerce of the Bureau of Census for those figures. I think this—the Court said it would take judicial notice of the figures in population, but I want the exact figures.

The Court: All I said was I would take judicial notice of the fact that there had been an increase in population; I won't attempt to take judicial notice of what the increase was.

Mr. Richardson: The statute says the Court would take judicial notice of the census.

The Court: Maybe so—for whatever they are worth. You have the figures from 1930 to 1940?

Mr. Richardson: I have 1920, 1930 and 1940. I was

only going to put in 1920 and 1940, the Negro population for 1920.

Mr. Jones: If this purports to be a census, I object to it; as far as I can see it is just a letter.

The Court: Yes, if they send something in under their certificate, I think that might be admissible.

Mr. Richardson: Would it be admissible as a matter of course, later on? I wrote and asked for the cost and agreed to pay it, and they sent me these figures and said the charge would be one dollar for an official certificate. I will write and hand it in at a later date. Is that agreeable?

Mr. Jones: Yes; I do not see that it is particularly material except that you did make that allegation in your answer.

The Court: You can attach it to your memorandum whenever you file it. If it is a matter that we can take judicial notice of, it is always in the record and before an appellate court, whether it is finally offered or not.

Mr. Jones (apparently referring to another document which has been handed to him): It has a seal on it, so I won't object on that ground, but I do object, because it is merely an article that appeared in the newspapers and it says that it is an article that appeared in the newspapers.

Mr. Richardson: It is a report made as a result of a survey made by the Works Progress Administration in all of the Defense areas throughout the country, in January, 1941, and various other maps. In St. Louis the survey was made in January, 1941, and October, 1941, showing that there is a serious housing shortage that—it showed what the normal vacancy rate is and what the rate was in January, 1941, and what the rate was October, 1941, at the time that the defendant Richardson moved into the house which he now occupies, and I wish to offer it in evidence for that purpose and have it marked.

The Court: I have not seen it, but you gentlemen do seem to have misunderstood any statement I may have made on the subject of reopening evidence. What I said to you when we were waiting on Mr. Jones to get evidence he wanted to get as to the records in the Recorder's office, and he later also brought in records from the Assessor's office, what I said was if there was anything further you wanted to bring in that bore on that in any way, you might do so, but I did not contemplate that there was going to be a presentation of evidence of all varieties and all sorts that did not pertain to that phase of the case. I do not think that we should be receiving every kind of evidence every few days or at any time after the submission of the cause.

Mr. Garner: This is all, there won't be any more, your Honor.

The Court: I will sustain the objection to that document, because it has very slight materiality to the case. It is so slight and so insignificant——

Mr. Richardson: It can be attached to the memorandum.

The Court: No, it is not at all the sort of thing that we would take judicial notice of; the census figures you may attach, but not that. I will sustain the objection to that.

RALPH C. BECKER,

being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in behalf of the defendants, in rebuttal, as follows:

Direct Examination, by Mr. Richardson.

Q. State your name. A. Ralph C. Becker.

Q. What is your occupation? A. President of the Lawyers Title Company of Missouri and examiner of questioned documents and handwritings.

Q. What is your business address? A. 712 Chestnut street.

Q. And your residence address? A. 22 South Court drive, Brentwood, Missouri.

Q. You examine questioned documents and handwriting. What has been the extent of your experience in such work? A. I have been studying the science and examination of questioned handwriting since 1912, and since 1925 I have been actively engaged to testify as an expert witness of handwritings in dispute.

Mr. Jones: I do not question his qualification. Ralph is qualified.

Q. (By Mr. Richardson) I hand you what has been designated as Exhibit A, and ask you to examine it and tell the Court what, in your opinion, is the authenticity of each of the signatures contained therein.

Mr. Jones: There has been no groundwork laid for that.

The Court: I will sustain that objection. It is much too general and covers too much ground.

Q. (By Mr. Richardson) Calling your attention to the signatures of W. G. and Hilda Isenberg, what, in your opinion, is the characteristics of those two signatures, if there is any similar characteristic, or if they—would you say the two signatures were written by the same hand? A. Yes, sir.

The Court: In other words, looking at those signatures you are telling me it is your opinion that one and the same person wrote both of them?

The Witness: Yes, sir.

The Court: Why do you say that, or make that statement?

The Witness: By comparison of the similar letters, particularly in the word "Isenberg," the characteristics therein, the manner of writing, the formation of the letters, the spacing, and the characteristics in general, indi-

cate to me that both signatures were written by the same person. I do not know, of course, whether it was Mr. or Mrs. Isenberg, but it is my opinion that they were both written by the same person.

The Court: That is on line 24?

The Witness: Line 24 of page——

The Court: The first page of signatures. Is there any other instance in the document where you have the opinion that one person has written more than one signature?

The Witness: Yes, two others.

The Court: What are they?

The Witness: The name of Keeble, line 45, the signature designated as 45 of William B. Keeble and Joanna H. Keeble.

The Court: What do you say about them?

The Witness: The comparison of the signature "Keeble," as to the letters in there, spacing, the break between the "e" and "b" in "Keeble," the starting stroke of the first "e" in "Keeble," the ending stroke of the final "e" and the "ble," which is raised above the line of writing, leads me to the opinion that both were written by one and the same person.

The Court: Is there any other instance?

The Witness: This other set immediately below it: Edward A. Oeters and Lydia C. Oeters, his wife. It does not say "his wife," of course. I might say that I made a study of the photostatic copy of the signatures at my office, and then satisfied myself today in court that the photostat was made from the original.

The Court: You saw the photostat previously?

The Witness: That is correct.

The Court: And saw the original briefly before court?

The Witness: Yes, I examined all of the signatures at the request of this gentleman and picked out these three as being ones that were written by one person.

The Court: You feel quite clear about that? Let's take the Isenbergs first, on line 24. You feel quite definite in your opinion about that?

The Witness: Yes, I do.

Mr. Richardson (Q.): How long have you been studying the photostat? A. I would say about an hour and a half.

The Court: Let me look at that for just a second.

The Witness: There is a particular similarity as to pressure in that writing, because it is written by a good penman and there is the same irregularities in both signatures.

The Court: In the first signature the second "e" in the last syllable appears to be what I would think was an old style letter.

The Witness: Yes, sir.

The Court: And in the second, it is the more common "e," and it is identical with the "e" in the second syllable in the name.

The Witness: Yes, sir.

The Court: Wouldn't that indicate that two different people wrote it?

The Witness: It caused me to take notice of it, but the first "e" in the word he uses the conventional form of "e," so it could have been in the second one he used two of the same kind, and only one in the first. However, I found more points of similarity than dissimilarity, which I use as the basis for my opinion.

The Court: I do not know whether it happens that a husband and wife come in time to have a similarity of signatures; you studied that more than I have.

The Witness: I think it does happen. In fact, it is very much indicated in certain signatures that the attorneys thought were similar that I thought were not.

Q. (By Mr. Richardson) You had your attention directed to others besides those three? A. Oh, yes. There were some eleven sets in question.

The Court: Is there anything about those two signatures of the Isenbergs that would indicate the writing is more likely to masculine than feminine? I understood that sometimes in the science of analyzing handwriting it is possible to determine whether a masculine or feminine writer penned particular words. That, however, may be a fallacy.

The Witness: I have never been able to do it. I have met some people, cases I have seen, where the signature you would think surely was that of a man, and it would be a nice dainty little lady that did the writing. I cannot determine sex from the writing.

Q. (By Mr. Richardson) You would not have any opinion as to whether a man or a woman wrote it? A. No.

The Court: All right, counsel can inquire further if they wish.

Mr. Richardson: That is all.

Mr. Jones: I move to strike out all the testimony with respect to the signatures appearing in the places indicated by the witness, on the ground that there has been no showing that the purported signers of the instrument are unavailable or dead, and that, therefore, their appearance, or at least subpoenaes issued for them, would be the best evidence, to have them determine whether they had executed the instrument individually or whether one had signed for the two of them.

The Court: Well, I do not know that that is a necessary prerequisite, so I will overrule the motion.

To which ruling of the Court plaintiffs, by their counsel, then and there duly excepted at the time and still continue to except.

Cross-Examination, by Mr. Jones.

Q. I want to ask you whether it is not true that after a man and woman live together as man and wife for a considerable period of time their signatures frequently become very much alike? A. I have noticed such a condition, Mr. Jones, particularly where the people are of a similar age, and studied the same system of handwriting in school. That can happen, yes.

Q. As far as you know, there is nothing in that instrument that would indicate to you without any doubt whatsoever in your mind, that the signatures of which you have spoken were written by the same person? A. I don't quite follow your question. It started out as a negative question.

Q. From your examination of those signatures can you state without any qualification whatsoever and without having any doubt in your mind that the names Isenberg, Keeble and Oeters were written by one person and one person only?

Mr. Garner: I do not think that is a proper question.

The Court: Objection overruled.

A. It is my opinion, Mr. Jones, after a study and comparison of those signatures, that those signatures were written by one person. I do not mean that one person wrote all six of them, because one person wrote Isenberg, one person wrote Keebles, and one person wrote Oeters.

Q. (By Mr. Jones) That is your opinion? A. That is my opinion based on comparison of the document. We have no other writings submitted to us of those people for comparison.

Q. You base that, as you say, on the similarity of characters appearing in the various signatures? A. The similarity of the writing. The pressure at the starting and ending point.

Q. And in the case of the signature, which the Judge

was discussing with you, specifically where he indicated the different type letter "e" which had been used, in one name, compared with the use of the letter "e" in the other signature, purporting to be either the husband or wife? A. It was in the husband's signature where the Court pointed out the use of a conventional "e" in the first "e" in Isenberg and the Greek "e" in the second, the appearance of the letter "e" and in the woman's signature both "e's" are in the conventional manner.

Q. In view of the fact that husbands and wives frequently come to write alike it is quite possible, is it not, that one "e" was written by the man and the other was written by the other? A. It could be, yes. I can't tell you that without seeing other writings and having some specimens to compare.

Q. In other words, you are not prepared to testify that any of these signatures was not affixed by the persons who are described as having affixed the same, because you haven't had an opportunity to compare the handwriting? A. No. It is my opinion those three sets of signatures are written by individuals as to each of the three sets. That is my opinion based on what I had to examine.

Mr. Jones: That is all.

The Court: Let me ask counsel for defendants whether they have looked up the recorded instruments, perhaps conveyances of these parcels of grounds, at the Recorder's office so they could get another signature of the Keebles or the Isenberg couple?

Mr. Richardson: So far as the Keebles are concerned, and there is a little confusion as to the Isenbergs. I don't know whether they signed for that property—those two pieces of property still stand in the names of the persons who are supposed to have signed them.

The Court: There has been no conveyance on those?

Mr. Richardson: No.

The Court: Mr. Becker, going back to the Keeble signatures, is there any other considerable difference between the "k" in "William Keeble" and the "Joanna Keeble" names? It seems to me the difference there is the most striking thing about the two of them.

The Witness: Well, the only difference is the business of that starting stroke and the more pronounced loop in the center, but the characteristic of the double "e" in "Keeble" and the separation of the "b" and that downward slant of the "le" in "Keeble" is a characteristic. I do not think two people could have a tendency to write "ble" down this way. I grant you there is a difference in the "k's" in appearance, but taking the small letters there is that break between the double "e" and the "b" and that dropping.

The Court: Doesn't there appear to be sharper points, you might say, at the bottom of each stroke in the "Joanna Keeble" signature, and more rounded bases in "William Keeble"?

The Witness: That is true as to the first "e," but not—and the lower part of the "b," I think, is sharper. Joanna Keeble's signature, I could not determine in the original, because it was somewhat worn because of being handled, and there is some difference in the apparent sharpness of the "e." I still think, however, the same person wrote these two "Keebles."

Mr. Jones: Let me look at that, please. With respect to the signatures which are marked 49, I will ask you to examine the "r's" as they appear in Edward A. Oeters' name, and the "r" that appears in Lydia C. Oeters', and I will ask you if you do not note a distinctive mark in the stroking of those "r's"?

The Court: You mean a similarity?

Mr. Jones: No, a distinctive mark.

The Court: You mean a distinguishing mark?

The Witness: Both letters "r" have a slight stroke coming now to the left of the flat bar of the letter. It is a little higher on the "Lydia Oeters" than on the other, and they both have that distinguishing stroke. The first one you cannot see without a magnifying glass, but it is there.

Q. (By Mr. Jones) Look at the "O" in "Oeters" and the "e" following it and tell me if you think that is absolutely the same in both cases? A. Yes, I do.

Q. You do not think the fact that the "e" in the second "Oeters" is a free continuation from the "O" and makes a complete loop without any digression, from its curve, whereas, the "e" in the first "Oeters" is the result of an obvious hesitancy of some kind? A. I do not think there is any hesitancy. I think the pen did stick in the paper at the point of intersection where it came down, making a slight blot, which gives the "e" a different appearance than the one below.

Q. How about the flat part of the "O's"? A. I think they are similar, with the exception the second "O" begins below the line a little bit and the other right on top, but the stroke is identical in both of them at the point where the last stroke leaves the body of the "O" in the bottom, it is in the same relative position on both of them.

Q. How about the ending in the letter "s"? A. They are very similar as to direction. The angle in the first one is shorter than in the second. The angle of the ending stroke.

Q. In your opinion, and in view of the similarity between husband and wife, in writing, after a period of time of living together, isn't it possible that the two "Oeters" were written by two different people? A. It could be possible, yes, but I don't think they were.

Q. In reaching your decision, have you taken into consideration that frequent similarity? A. Yes, sir.

Mr. Jones: That is all.

Cross-Examination, by Mr. Crossen.

Q. Frequently the same person writing his name twice will write it so it will look somewhat differently than the first time? A. Yes, there is a natural difference.

Q. But there are certain characteristics that you can definitely identify? A. Yes, sir.

Q. And they are present in the three sets of names? A. Yes, sir.

Q. Although there are some differences? A. Yes, sir.

The Court: Your answers in such instances as these are usually based on counting the points of similarity and dissimilarity and if the points of similarity outweigh the others that induces the opinion that they were written by the same person, does it not?

The Witness: Yes; and the characteristics that the attorney spoke of, which are the unconscious things that a writer does.

The Court: That would be reflected in the point of similarity?

The Witness: Yes, that is correct.

Mr. Garner: We are anxious to get this drawing before the Court. It has been prepared from the plat that is in evidence and which has been marked.

The Court: That could not be an exhibit; that is a consummation.

Mr. Garner: I will ask the Court now if in view of the fact the original plat has been offered in evidence if we might not, in our proof refer to this one?

The Court: You may attach that other plat if you wish, as your diagnosis or analysis or consummation of the situation, but it is not evidence. It is a conclusion you have come to as to how you interpret the evidence.

Mr. Garner: That is right.

Mr. Jones: I think I had Mr. Gavigan on in rebuttal to testify that he took the signatures of the people whose

names appear there and that they all appeared before him.

The Court: Do you want to ask him specifically about any new matters that came up today, which would be proper if you want to?

WILLIAM J. GAVIGAN,

having been previously duly sworn, was **recalled** and testified in rebuttal as follows:

Direct Examination, by Mr. Jones.

Q. I hand you Plaintiffs' Exhibit A, of the signatures, on page 1 of which is identified by the number 24, being the second and third line or the second and third last line from the bottom on the left-hand side of the page, and ask you if the people whose names appear on that instrument as having executed the same acknowledged to you that they had executed the same as their free act and deed?

Mr. Garner: That document itself shows whoever acknowledged it appeared and it is the best evidence, and that is not proper rebuttal.

The Court: That is not the question. The question should be, did Mr. and Mrs. Isenberg each separately sign his and her respective names to that document in your presence?

The Witness: If the Court please, some of these signatures were gotten by the president and Mrs. Pritchard, who accompanied him on some trip and went over to the committee. In other words, I approached them, but they were a little hesitant as to whether I had the right to proceed. They then went to those homes in very isolated cases and secured the signatures.

The Court: We are talking about the Isenbergs.

The Witness: I am getting right to that. I then, of course, went to their homes and took their acknowledgments——

The Court: It does not mean anything if you are talking generally. I want to know what you did about the Isenbergs.

The Witness: I took the acknowledgments of both parties to claim——

The Court: Just listen carefully, Mr. Gavigan. I asked you whether in your presence the Isenbergs or either of them signed his or her name. Now, that is something that you can answer.

The Witness: To the best of my knowledge in this case they did.

Mr. Garner: We object to that and move to strike it out.

The Court: Put it this way, before I rule on it. Do you have any definite recollection now about that?

The Witness: Your Honor, so far as the Isenbergs are concerned, to me it appears that I got both of them, and they acknowledged it as their free act and deed.

Mr. Garner: I move to strike it out.

The Court: Overruled. If he is not able to testify positively the Court knows it, and the record shows it. The records ought to remain as the witness phrases his answer. Now, about the Keebles; do you have any recollection about that?

The Witness: I am positive that I got both of them.

The Court: Each one of them signed separately?

The Witness: Yes.

The Court: You knew the Keebles, did you?

The Witness: Just fairly well. He is an insurance man, a very old man. This is back in 1922.

The Court: And the other family, the Oeters?

The Witness: I don't remember about them, but I assume that I——

Mr. Jones: Not what you assume.

The Witness: I say I got all these figures personally. I secured the acknowledgment for all of these signatures

personally and they acknowledged it to be their free act and deed.

The Court: In other words—I want to go back to a little while ago—after all we do not expect you to remember what you don't remember. Do I understand you do not remember whether you got the signatures of the Oeters family?

The Witness: To the best of my knowledge I did except in some isolated cases.

The Court: Mr. Gavigan, I am talking about these Oeters.

The Witness: To the best of my knowledge I got both of them.

The Court: So far as the acknowledgments are concerned, and leaving the signatures out of consideration for a moment, do you have a definite recollection of getting the acknowledgment of both Mr. and Mrs. Oeters or only the one of them?

The Witness: That I say positively yes, I did get them.

The Court: Both of them?

The Witness: Yes, and the same applies to Isenberg.

The Court: As to the Isenbergs, as to their acknowledgments?

The Witness: The same applies.

The Court: You mean you are positive?

The Witness: I am positive I got their acknowledgments.

Cross-Examination, by Mr. Garner.

Q. Mr. Gavigan, I understand you say that you are positive that you got—— A. That I got their acknowledgments, that is the question.

The Court: Don't argue about it.

Mr. Garner (Q.): Of the Oeters, is that right? A. Yes, sir.

Q. You mean by that, both husband and wife appeared

before you and acknowledged they signed the instrument? A. Correct.

Q. And then the people whose names appeared before you and acknowledged they signed this instrument, their names are supposed to be on that instrument? A. I don't quite understand that.

Q. On the list of acknowledgments, whoever appeared before you and acknowledged it, those names appear on the instrument in the list of acknowledgments, don't they? A. To the best of my knowledge.

Q. See if those names appear there as acknowledging this document. A. You mean in my certificate, is that what you mean?

Q. Yes. A. It appears not.

Q. Then you were mistaken as to the Oeters appearing and acknowledging it? A. No. You will notice in the date I started to circulate this petition December 22, 1918, and at the request of the Association did not file it until—I don't remember the exact date—but many months thereafter, contrary to my idea. Now, then, this certificate of mine was made up, of course, when I completed a certain amount of work. Now, as to just the date I wrote the certificate, or dictated it, rather, I can't say, but I will state this positively that there may be an omission in my certificate of any signatures that were gotten after I had so written it. On the theory I intended to file an amended one afterwards.

Q. That is your explanation for not having them on the list that you acknowledged? A. Yes, sir.

Q. That is as to the Isenbergs? A. Yes, sir.

Q. The fact is that this document, Plaintiffs' Exhibit A, the Isenberg name doesn't appear as having appeared before you and acknowledged this instrument? A. That appears to be true unless there was an amended one filed.

The Court: Well, there has been no suggestion of that.

Q. (By Mr. Garner) Just one other question. These parties that you went out and took their acknowledgment, did you know all of those parties in person? A. Well, personally, no. I merely asked them if they were the persons that owned the property.

Q. Your answer is you did not know all the persons?

The Court: We have been over that.

Mr. Garner: That is right. I agree with the Court. I do not think we covered this before, however. Did the committee or someone introduce you to the people that you did not know?

The Witness: Well, I think Dr. Potter accompanied me.

Q. And someone else, is that the committee you referred to? A. Well, he was president of the Association, and he accompanied me.

Q. You said something about a committee? A. There was only two of us.

Q. Is that who you referred to as the committee? A. He was one of the committee, yes.

The Court: When you said committee awhile ago did you mean Dr. Potter and someone else?

The Witness: I do in some cases.

The Court: Did you put in your acknowledgment the names of the committee that introduced you to these people?

The Witness: I did not.

Mr. Garner: You did not do that. All right, that is all.

And this was all of the evidence offered in said cause.

Thereupon, said cause was taken by the Court as submitted.

FINDING AND JUDGMENT OF THE COURT.

And thereafter, to wit, on the 1st day of December, 1942, and at the December Term of the Circuit Court, to which term of court said cause had by the Court been continued, the Court being now fully advised in the premises entered its finding and judgment in said cause in favor of the defendants, and dismissed the plaintiffs' petition at the costs of said plaintiffs; to which action, ruling, finding and judgment of the Court the plaintiffs, by counsel, then and there excepted and still except.

MOTION FOR NEW TRIAL FILED.

And thereafter, to wit, on the 3rd day of December, 1942, and at the December Term of said court, and within four days after the finding and judgment of the Court, the plaintiffs filed their motion for a new trial in said cause, in words and figures as follows (caption and signatures omitted):

Come now the plaintiffs and move the Court that they be granted a rehearing in the above-entitled cause, and for grounds of said motion state as follows, to wit:

1. That the judgment of the Court is contrary to the weight of the evidence.

2. That the judgment of the Court is contrary to the law.

3. That the judgment of the Court is contrary to the law as applied to the evidence.

4. That the Court's judgment was erroneous in that it was based upon the theory that the instrument upon which the suit was filed did not contain the signatures of all of the persons owning property in the area bounded by the owners of property who did execute the agreement even

though said instrument did not set out the names of property owners who did not execute the agreement.

5. That the Court erred in permitting the defendants, over the objection of the plaintiffs, to introduce into evidence under the guise of cross-examination documents and other testimony which the plaintiffs insisted were improper on the ground that the evidence offered by plaintiffs in direct examination should not have been allowed by the Court over the objection of the plaintiffs to be so offered.

6. The judgment of the Court was erroneous in that it should have been for the plaintiffs and against the defendants.

PLAINTIFFS' MOTION FOR NEW TRIAL OVERRULED.

And thereafter, to wit, on the 15th day of December, 1942, and at the December Term of said court, by an order duly made and entered of record in said cause, the Court overruled said plaintiffs' motion for a new trial; to which order and ruling of the Court the plaintiffs then and there excepted and still except.

MEMORANDUM OF THE COURT.

And in connection with said action of the Court in overruling said plaintiffs' motion for a new trial, the Court filed the following memorandum:

"The Court refrained from writing an opinion in this cause in order to conserve the time that such writing would have required. It should be noted that while the Court did not receive the last brief of counsel until October 24th, the case on the record had been submitted many months before, and delay was to be avoided.

"However, counsel have requested that the Court in ruling on the motion for a new trial give an indication briefly of the reasons for its judgment. This the Court is pleased to do.

"The defendants established to the Court's satisfaction, and it would appear also somewhat to the point where plaintiffs could not refute, that in the original execution of the alleged restriction there had been several defects, in that some owners of property within the platted area did not sign the instrument, some signed but did not acknowledge their signatures, some who acted in a representative capacity were not duly authorized to do so, and some made sales before recording of the instrument without reference thereto. Without stating now exactly how many parcels of property within the platted area were not bound by the restrictions because of these various defects, nevertheless it seemed clear under the decision of the St. Louis Court of Appeals in Thornhill v. Herdt, 130 S. W. (2) 175, and similar cases, that the restriction was not enforceable. The Thornhill case seems to be the most recent decision by any appellate court, and, therefore, is controlling on this Court.

"Inasmuch as the ground of defense heretofore discussed had been established, and as plaintiffs therefore were not entitled to the injunction which they prayed, it was unnecessary for the Court to determine the merit or not of each and every other defense that was made.

"The Court remains of the opinion that its finding and judgment were right, and therefore plaintiffs' motion for a new trial must be overruled."

AFFIDAVIT FOR APPEAL FILED.

And thereafter, to wit, on the 19th day of January, 1943, and at the December Term of said court, being the same term at which the motion for a new trial had been over-

ruled, the plaintiffs filed their affidavit for appeal in said cause in proper form, and the Court allowed the same plaintiffs an appeal in said cause to the St. Louis Court of Appeals.

BILL OF EXCEPTIONS FILED.

And now, inasmuch as the foregoing matters and things, objections, rulings and exceptions do not appear of record in said cause, and in order that the same may appear and be preserved on the appeal of said cause to the St. Louis Court of Appeals, the plaintiffs now present this, their bill of exceptions in said cause, and pray that the same may be signed, sealed, filed, allowed, settled and approved and made a part of the record herein; all of which is accordingly done on this 29th day of February, 1944.

Robert L. Aronson,
Judge, Circuit Court, presiding in Division 2 at the time of the trial of said cause.

W. L. Mason,
Judge, Circuit Court, presiding in Division 2 at the time of the filing of the Bill of Exceptions.

O. K.:

D. Calhoun Jones,
Attorney for Plaintiffs-Appellants.

O. K.:

Silas E. Garner,
Attorney for Defendant Richardsons.

INDEX.

Defendants' Evidence.

Plaintiffs' Rebuttal.

Received a copy of Appellants' Abstract this 10th day of March, 1944.

D. E. Garner

Received a copy of Appellants' Abstract this 10th day of March, 1944

E. Fritz
Wayne Ely.

Received a copy of Appellants' Abstract this 10th day of March, 1944.

David Crowe & Dan A. Big