INDEX

TESTIMONY.

For Complainant.

BILL OF COMPLAINT.

Filed. March 6th 1929

In Chancery of New Jersey

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey.

Complainant, Frank J. Quinn, residing in the Borough of Palisades Park, County of Bergen and State of New Jersey, says:

1. On or about December 1, 1925, complainant and one Harry G. Leidinger entered into a co-partnership in the Borough of Palisades Park, each partner to contribute an equal amount and to share equally in the profits of said co-partnership. The purpose of said partnership was to conduct a real estate and brokerage business.

2. Thereafter, complainant and the said Harry C. Leidinger together with Ralph V. Quinn, brother of complainant, formed a corporation on January 14, 1926, in which complainant held five shares of stock; said Harry C. Leidinger five shares of stock and the said Ralph V. Quinn one share of stock. The purpose of forming said corporation was to act in a brokerage capacity, for parcels of real estate acquired by the partnership of Quinn & Leidinger, and to collect commission and brokerage fees on such purchases and sales. (No real estate was acquired and held by said corporation.) Thereafter, in October, 1927, a second corporation was formed known as Harry C. Leidinger, Inc. in which complainant and the said Harry C. Leidinger were to have an equal share and ownership.

3. During the month of December, 1927, complainant and the said Harry C. Leidinger being about to apply for an additional line of bank credit, were advised to take out insurance on the life of each of the partners, the policy when payable to enure to the partnership.

4. Pursuant to such agreement, complainant in December, 1927, applied for and obtained an insurance policy in the amount of $25,000.00. The said Harry C. Leidinger was rejected as an insurance risk because of the physical condition of being over the weight set up in the insurance standard tables.

5. In April, 1928, however, the said Harry C. Leidinger did secure a life insurance policy in the New York Life Insurance Company, in the amount of $25,000.00, with double indemnity, payable for the amount of $50,000.00 in the event of a sudden or accidental death. This policy, instead of reading to the co-partnership of Quinn & Leidinger, as beneficiaries, read to the estate of Harry C. Leidinger, though the insurance premiums thereon as well as on the policy of complainant, were paid by the partnership and out of the partnership funds.

6. On July 15, 1928, the said Harry C. Leidinger was injured in an explosion aboard a boat in the Hudson River, between New York City and Edgewater, and died as a result of such injuries on July 18, 1928.

7. Shortly thereafter, Anna M. Leidinger the defendant herein, was appointed administratrix of the estate of the said Harry C. Leidinger and duly qualified, and collected the proceeds of the insurance policy in the amount of $50,000.00 and

retained them as an asset of the deceased. Among the other assets of the partnership of Quinn & Leidinger were the following parcels, whose record title was vested as follows:

Two lots at Maywood, N. J., with an equity of $1,300.00, vested in Frank J. Quinn.

Parcel at 270 Broad avenue, Palisades Park, with an equity of $10,000.00, vested in Frank J. Quinn.

123 lots at Cresskill, N. J., with an equity of $23,500.00, vested in Harry C. Leidinger.

Contract for the purchase of two lots at Central Boulevard, with an equity of $150.00, vested in Harry C. Leidinger.

One-fourth interest in eight lots at Morse avenue, Ridgefield, with an equity of $2,000.00, vested in Harry C. Leidinger, Inc.

One-fourth interest in four lots at Fort Lee, with an equity of $2,000.00, vested in Harry C. Leidinger, Inc.

One-fourth interest in premises at Broad avenue near Church street, with an equity of $1,875.00, vested in Harry C. Leidinger, Inc.

Among the other assets of said partnership was a one-third stock interest in a corporation known as Bertha Bunkin, Inc., with an equity in all of $10,500.00, vested in Harry C. Leidinger personally.

Second mortgage given by the Regna Construction Company, with a value of $6,000.00, vested in Harry C. Leidinger personally.

Mortgage given by Edward Peterson, with a balance due of $998.70, vested in Harry C. Leidinger.

Anna L. Reinecke mortgage with a value of $299.70, vested in Harry C. Leidinger personally.

Two Limouze Brothers mortgages with a value of $4,200.00, vested in Harry C. Leidinger, Inc.

Five shares of stock in Morsemere Trust Company with a value of $800.00, vested in Frank J. Quinn and Harry C. Leidinger jointly.

Ten shares in Morsemere Building & Loan Association of the value of $210.00, vested in Frank J. Quinn and Harry C. Leidinger jointly.

One Packard sedan of the value of $1,000.00, formerly vested in Harry C. Leidinger, but taken over by defendant Anna M. Leidinger.

One Studebaker Coach of the value of $350.00, carried in the name of Frank J. Quinn.

In addition thereto the said partnership had four bank accounts, carried in the name of Harry C. Leidinger, Inc., Frank J. Quinn, Inc., Frank J. Quinn or Harry C. Leidinger and Frank J. Quinn respectively.

8. Since the death of the said Harry C. Leidinger, the said partnership has advanced to the Estate of Harry C. Leidinger, substantial sums of money for burial expenses of the said Harry C. Leidinger, and over $4,000.00 for the personal expenses of the said defendant Anna M. Leidinger.

9. The said defendant still retains the entire proceeds of the partnership insurance, and re-

fuses and continues to refuse, though demand has been made, to apply the said insurance to the purpose for which it was intended or to render to complainant, any account thereof.

Complainant being without relief or remedy at law, respectfully prays:

1. That defendant Anna M. Leidinger be directed to render a just and true account of all moneys received in virtue of the said partnership of Quinn & Leidinger or of the corporation known as Frank J. Quinn, Inc. and Harry C. Leidinger, Inc. and of the proceeds of the respective interests in real estate, personal property and other assets of the said partnership.

2. That defendant be ordered to pay to complainant or to said partnership of Quinn & Leidinger of said corporation of Frank J. Quinn, Inc. and Harry C. Leidinger, Inc., all moneys due or to become due from her or from the Estate of Harry C. Leidinger, or either of them as aforesaid.

3. That defendant be enjoined from further dissipating, wasting or drawing the moneys belonging to the complainant, to the said partnership of Quinn & Leidinger, or to the said corporation of Frank J. Quinn, Inc. or to the said corporation of Harry C. Leidinger, Inc., or in lieu thereof, as to the Court may seem fit, that a receiver be appointed to safeguard the moneys of all the parties in interest, pending final determination of this suit.

4. That all assets so held be determined to be held in trust for the complainant or the said partnership of Quinn & Leidinger or the said corporations of Frank J. Quinn, Inc. and Harry C. Leidinger, Inc. as their interests may appear.

5. That such further relief may be granted to complainant and the respective parties, as in law and equity seem just.

And your complainant as in duty bound will ever pray, &c.

WRIGHT, VANDER BURGH & McCARTHY,
Solicitors of Complainant.

IN CHANCERY OF NEW JERSEY.

Between FRANK J. QUINN, *Complainant,* *and* ANNA M. LEIDINGER, *Defendant.*	*On Bill, &c.* *Affidavit.*

STATE OF NEW JERSEY, }
COUNTY OF BERGEN. } SS.:

FRANK J. QUINN, the above named complainant, of full age, being duly sworn on his oath, deposes and says that he has read the foregoing complaint and is familiar with the details thereof and that the same is in all respects correct and true.

FRANK J. QUINN.

Sworn to and subscribed before me
this 27th day of February, A. D.
1919.

JOSEPHINE S. BARNEY,
Notary Public of New Jersey.

Subpoena.

New Jersey, to wit: The State of New Jersey to Anna M. Leidinger, (SEAL) GREETING: WHEREAS a bill of complaint has lately been exhibited against you in our Court of Chancery by Frank J. Quinn to be relieved touching the matters therein contained.

THEREFORE, we command you, if you intend to make a defense, that you file an answer to said bill in the office of the Clerk of our said court at Trenton, on or before the expiration of twenty days from and after the Sixteenth day of March, 1929, and in default thereof such order or decree will be made against you as the Court shall think equitable and just.

WITNESS, his Honor, Edwin Robert Walker, Chancellor of our said State, at Trenton, the Eighth day of March, in the year of our Lord one thousand nine hundred and twenty-nine.

THOMAS BARBER,
Clerk.

WRIGHT, VANDER BURGH & MCCARTHY,
Solicitors.

IN CHANCERY OF NEW JERSEY.

Between
Anna M. Leidinger,
Complainant,
and
Frank J. Quinn,
Defendant.
Sub. ad Resp.

Returnable April 6th, A. D. 1929.
Wright, Vander Burgh & McCarthy,
210 Main street, Hackensack, N. J.
Solicitors.

ANSWER AND COUNTER-CLAIM.

Filed April 6th 1929

IN CHANCERY OF NEW JERSEY.

Between	
FRANK J. QUINN, *Complainant,*	*On Bill, &c.*
and	*Answer and Counter-claim.*
ANNA M. LEIDINGER, *Defendant.*	

Defendant, Anna M. Leidinger, residing in the Borough of Palisades Park, County of Bergen, and State of New Jersey, answering the bill of complaint, says that:

1. Defendant admits the allegations contained in paragraph one of the bill of complaint.

2. Defendant neither admits nor denies the allegations contained in paragraph two of the bill of complaint, but leaves the complainant to his proof, as defendant has not sufficient knowledge to form a belief as to the truth of said allegations.

3. Defendant denies the allegations contained in paragraph three of the bill of complaint.

4. Defendant denies the allegations contained in paragraph four of the bill of complaint.

5. Defendant admits so much of paragraph five of the bill of complaint as alleges that Harry C. Leidinger secured a life insurance policy in the New York Life Insurance Company, and that the same was payable to his estate, but denies each and every other allegation therein contained.

6. Defendant admits the allegations contained in paragraph six of the bill of complaint.

7. Defendant admits so much of paragraph seven of the bill of complaint as alleges that defendant was appointed and qualified as administratrix of the estate of Harry C. Leidinger, and that she collected the proceeds of the insurance hereinbefore mentioned and retained them as an asset of the deceased, and defendant further admits that the properties, mortgages and stocks mentioned in said paragraph belonged to the partnership of Quinn & Leidinger, but denies each and every other allegation therein contained.

8. Defendant denies the allegations contained in paragraph eight of the bill of complaint.

9. Defendant denies the allegations contained in paragraph nine of the bill of complaint.

By way of counter-claim against the complainant Frank J. Quinn, defendant, Anna M. Leidinger, claims and says that:

1. Frank J. Quinn and Harry C. Leidinger were partners engaged in the real estate and brokerage business.

2. On July 15, 1928, Harry C. Leidinger was injured, and as a result of said injuries he died on July 18, 1928.

3. Shortly thereafter defendant, Anna M. Leidinger, was appointed and qualified as administratrix of the estate of Harry C. Leidinger, deceased.

4. Complainant, Frank J. Quinn, after the death of said Harry C. Leidinger continued the

business of said partnership of Quinn & Leidinger, bought and sold lands, collected the rents, issues and profits of and from the properties of the said partnership, and collected commissions due said partnership for the sale of lands of others.

5. In September, 1928, said Frank J. Quinn sold a piece of land consisting of one hundred and forty-four (144) feet on Broad avenue, Palisades Park, New Jersey, which premises belonged to the said partnership, and received for the same the sum of Seventeen Thousand ($17,000) dollars, in cash, which he retained for his own use.

6. Harry C. Leidinger was the owner of a motor boat which said boat was insured in the Old Colony Insurance Company of Boston, Mass. for Ten Thousand ($10,000) Dollars.

7. Said boat was destroyed by fire on July 15, 1928. Shortly thereafter the insurance of $10,000.00 was collected by Frank J. Quinn and retained by him for his own use.

8. Defendant, Anna M. Leidinger, since the death of Harry C. Leidinger, in July 1928, has advanced to Frank J. Quinn, and has laid out and expended for him, and at his request, moneys amounting to Fourteen Thousand Eight Hundred and Thirty-three ($14,833.00) Dollars.

9. The said partnership owned twenty-one lots in Cresskill, New Jersey, which they sold to Fritz Ravensbeck in July 1927. Said Fritz Ravensbeck assigned to defendant, Anna M. Leidinger, all his right, title and interest, in and to said lots, and defendant has paid to said Frank J. Quinn the total of Sixteen Hundred ($1600) Dollars on

account of the purchase price of said lots, but he has failed and neglected to convey title to the same to defendant.

10. Frank J. Quinn holds title to seventy-six lots on Central Boulevard, Fort Lee, New Jersey, which belonged to the said partnership.

11. Defendant has demanded of said Frank J. Quinn that he account for the assets of the partnership of Quinn & Leidinger, and that he repay to her the insurance moneys collected by him and the moneys advanced to him and laid out and expended by her on his behalf, and at his request, but he has wholly refused and neglected to do so.

Defendant, Anna M. Leidinger, therefore respectfully prays:

1. That the complainant, Frank J. Quinn, answer this counter-claim.

2. That Frank J. Quinn be directed to render a just and true account of all moneys received by him, in virtue of said partnership of Quinn & Leidinger, or the corporations known as Frank J. Quinn, Inc., and Harry C. Leidinger, Inc., and of the proceeds of the respective interests in real estate, personal property, and other assets of the said partnership.

3. That said Frank J. Quinn be ordered to pay to Anna M. Leidinger, or the estate of Harry C. Leidinger, deceased, the insurance moneys collected by him, and that he pay back to Anna M. Leidinger the moneys advanced by her to him, and laid out and expended by her on his behalf and at his request.

4. That said Frank J. Quinn be enjoined from further dissipating, wasting, conveying, assigning or drawing the real estate, personal property, or moneys, belonging to the defendant, to the partnership of Quinn & Leidinger, or to Frank J. Quinn, Inc., or to Harry C. Leidinger, Inc.

5. That all assets so held be determined to be held in trust for defendant, Anna M. Leidinger, or the said partnership, or Frank J. Quinn, Inc., or Harry C. Leidinger, Inc., as their interest may appear.

6. That such further relief may be granted to defendant, Anna M. Leidinger, as in law and equity may seem equitable and just.

And defendant, Anna M. Leidinger, will ever pray, etc.

GEORGE R. SOMMER,
Solicitor for and of Counsel
with Defendant.

ANSWER TO COUNTER-CLAIM.

Filed April 10th 1929

IN CHANCERY OF NEW JERSEY.

72/296.

Between	
FRANK J. QUINN, *Complainant,*	*On Bill, &c.*
and	*Answer to Counter-claim.*
ANNA M. LEIDINGER, *Defendant.*	

Complainant by way of answer to defendant's counter-claim says:

1. He admits the allegations of paragraphs one, two and three.

2. He denies the allegations of paragraphs four, five, six, seven, eight, nine, ten and eleven.

WRIGHT, VANDER BURGH
& McCARTHY,
Solicitors of Complainant.

ORDER OF REFERENCE.

IN CHANCERY OF NEW JERSEY.

72/296.

Filed April 17, 1929.

Between FRANK J. QUINN, *Complainant,* *and* ANNA M. LEIDINGER, *Defendant.*	*On Bill, &c.* *Order of Reference.*

This matter being opened to the court by Wright, Vander Burgh & McCarthy, solicitors of complainant, and it appearing that George R. Sommer, solicitor of defendant has consented hereto, it is on this 17th day of April, 1929, on motion of Wright, Vander Burgh & McCarthy, solicitors of complainant,

ORDERED that the above-entitled cause be referred to Hon. V. M. Lewis, one of the Vice-Chancellors of this court, to hear the same for the Chancellor and to report thereon to him, and to advise what order or decree should be made therein.

E. R. WALKER,
C.

A True Copy.

FRED GARRETSON,
Clerk.

Order of Reference.

We hereby consent to the entry of the foregoing order.

WRIGHT, VANDER BURGH
& McCARTHY,
Solicitors of Complainant.

GEORGE R. SOMMER,
Solicitor of Defendant.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between

FRANK J. QUINN,
Complainant,

and

ANNA M. LEIDINGER,
Defendant.

Hackensack, New Jersey, July 10, 1929.

Before Honorable Walter G. Winne, Special Master in Chancery.

Appearances:

For the complainant, Wright, Vander Burgh & McCarthy, by Charles J. McCarthy, Esq.

For the defendant, John A. Bernhard, Esq., and George R. Sommer, Esq.

Mr. Bernhard: First. Among other matters the litigation involves the terms and conditions of a certain insurance policy made payable to the Estate of Harry C. Leidinger, for $25,000, on which there was collected by the executrix $50,000; the claim is on behalf of the complainant that this life insurance policy was a partnership asset by reason of the fact that the complainant claims that the policy should have been made payable to the partnership.

Second. The complainant collected $10,000 fire insurance on a motor-boat, which sum defendant contends should be divided into two parts of $5,000 each, it being admitted that said

vessel was a partnership asset, and that they were each entitled to one-half interest in it.

Third. Some of the real estate set out in the bill is in the record name of the complainant, and the balance is in the record name of the deceased, Leidinger and Harry C. Leidinger, Inc., but it is conceded that regardless of the record name of the holder of the real estate specified in the bill, all of the real estate so specified is partnership property.

Fourth. Involved in these proceedings are two corporations, namely, Frank J. Quinn, Inc., and Harry C. Leidinger, Inc. As to these two corporations, it is conceded that the corporations represent the interest of Quinn and Leidinger equally in and to the matters in litigation.

Fifth. It is admitted that the interest of Harry C. Leidinger in Bertha Bunkin, Inc., is a partnership asset.

Sixth. Regardless of the principal due on the four mortgages specified in the complaint, it is admitted that these mortgages are partnership assets.

Seventh. It is also admitted that the five shares of stock of the Morsemere Trust Company, as well as the ten shares in the Morsemere Building & Loan Association is a partnership asset.

Eighth. It is admitted that the Studebaker coach mentioned in the bill is a partnership asset, and that the respective interests are worth $175.

Ninth. It is admitted that the bank account in the name of Harry C. Leidinger, Inc. and Frank J. Quinn, Inc. were the joint assets of the complainant Quinn and the defendant Leid-

inger; as to the other three bank accounts mentioned in the last paragraph in the name of Frank J. Quinn or Harry C. Leidinger or Harry C. Leidinger and Frank J. Quinn, jointly, is a partnership account.

Tenth. The ownership of the Packard sedan is disputed by defendant, Leidinger, as well as the allegation of expenditures of substantial sums for funeral expenses.

Eleventh. We now turn to the claims of the administratrix as set forth in her cross-bill, which are:

(a) That the complainant sold real and personal assets of the partnership for which he has not accounted which is disputed by the complainant.

(b) The defendant, Leidinger, contends that she has advanced to Frank J. Quinn $14,833 since July, 1928, for which he has not accounted, which is disputed by the complainant.

(c) That the complainant holds in his own name twenty-one lots at Creskill, New Jersey, which are the sole property of Anna M. Leidinger, which is disputed by the complainant.

(d) That the complainant, Frank J. Quinn, holds title to seventy-six lots on Central Boulevard, Fort Lee, New Jersey, which in fact is the property of the partnership, which contention is disputed by the complainant.

FRANK J. QUINN, called as a witness, having been duly sworn, testified as follows:

Direct examination by Mr. McCarthy.

Q Mr. Quinn, about when did you start in this partnership with Harry C. Leidinger? A It was around December—sometime between the first of December and first of January in the year 1924, I think; I am not sure.

Q 1925? A Yes.

Q What kind of partnership arrangement did you have as to profits and liabilities? A Just fifty-fifty.

Q Was the partnership agreement in writing? A No.

Q Now, how long did you continue as a partner of Harry C. Leidinger? A Until the time of his death.

Q When did he die, as near as you can remember? A July 18, 1928.

Q And in the course of your partnership business, under what names did you act? A Acted under the names of Frank J. Quinn, Inc., Harry C. Leidinger, Inc., and Quinn and Leidinger; and we even bought some stuff in my own name, Frank J. Quinn.

Q Regardless of the name under which you acted, were the transactions partnership transactions or not? A All partnership transactions.

Q And when did you form the corporation known as Harry C. Leidinger, Inc.? A Early part of 1928.

Q Now, did the partnership ever apply for an insurance policy on your life? A Yes.

Q Did it ever apply for one on the life of Harry C. Leidinger? A Yes.

Mr. Bernhard: I object and ask the answer be stricken out; it is agreed the answer "yes" be stricken out; I object to the form of the question for the reason that it does not yet appear whether the application was verbal or written, and I would like an opportunity to examine first.

Mr. McCarthy: I will withdraw the question to clear it up.

Q How did you or Harry C. Leidinger happen to take out insurance in December, 1927?

Mr. Bernhard: I want to object at this time to the question because it obviously involves conversations with the deceased, which are prohibited under well-settled rules.

The Master: You want me, then, to rule on that?

Mr. McCarthy: I agree that the testimony should be stricken out and not considered by the Special Master unless I produce proof independent of this witness' testimony on the subject.

The Master: All right; it will be received subject to that qualification.

Mr. McCarthy: Proceed, Mr. Quinn.

The Witness: Back in 1927, the first part of November, we were making a deal with a party by the name of Regner, an exchange deal for an apartment house in Jersey City for which we were giving him a piece of property now located at 270 Broad avenue, Palisade Park, and the mortgage which we took back on the Regner building over at Ridgefield Park; just before the deal went

over—Mr. Leidinger handled the entire transaction — there had been no contract made with these people, and everything was practically in the word—just word. We had gone up to Judge Labson's office in Englewood and there started to be quite a little argument about it, and I was busy at the time, and he said, "Well, instead of making a contract on this, Mr. Leidinger knows what the deal is," he said, "Yes," and "Mr. Regner knows what the deal is," he said "Yes." "Let's just come here on the first of December, the time you intend to pass the deeds and just pass the papers." There was no money to the transaction, we were taking this apartment house. So it happened that title was to be passed on the first of December and about the 29th of November Regner started to build on this property which we were giving him at Broad avenue, Palisade Park, he had a steam shovel in there, and Mr. Leidinger came in to me and said, "Listen, I wish you would go down and see this apartment house." So I said, "Why, aren't you satisfied with it?" He said, "I want you to see it, I am kind of a little afraid of it." I said, "All right, I will go down if you think there is anything wrong." So we went down to see the apartment house, and there was supposed to be no vacancies and the taxes of it were represented as being $1,800, and there was quite a number of things not up to specifications. So I said, "We will just call the deal off." He said, "All right, I am glad you come down, that was quite a headache to me." So we went back and saw Regner and I told

Regner the deal was off, but if he wanted to go ahead and build the building, which was our plans originally he was putting up, that we would pay him for the job, that we had figures on it and we knew just exactly how much the job should run. So he said no, and he got kind of peeved about it, and I said, "Then you better go over and get the steam shovel out of the hole, otherwise the building next door will fall into the hole and we will be responsible"; he got real nasty. We weren't in position then to build, we had a hole there and the plans, so we went out to borrow money. We went down to the bank we used, Morsemere Trust Company, to find out if we could borrow $7,500 for the use in this new building, and at that time they had been just building, and their Christmas Club was due to be paid in a couple of weeks, and they said they weren't able to do it because they were financing their own building. So we went down to the Franklin National Bank in Jersey City and spoke to those men down there, Mr. Ross and Dr. Freely, and they said, yes, that they would loan us the money, and they asked us if we could put up any collateral, so we told them about this mortgage which we were going to exchange to Regner in the amount of $7,500, so Dr. Freely said at that time, "You fellows are a good risk; how do you stand on your insurance, how are you fixed as far as insurance goes? What would happen to the remaining party if one of you fellows died? And you are signing mortgages like wild men? Have you made arrangements to protect that?" We said,

"No." He asked me, I didn't have any; he asked Mr. Leidinger, he had $2,000 worth; so we immediately went out to get this life insurance. We then called in a man from the Mutual Benefit Life Insurance Company of Newark, Mr. Stowe, and we got some information along the line of life insurance. We spoke along about the high cost of rates, and we were advised ordinary life rates were high, but there was a special business men's policy known as term insurance. We filled out applications and took examinations, and I passed and Leidinger didn't pass, because he was over-weight they told him. So I took my policy out at that time.

Q Who paid the premiums on that policy? A The partnership, one of them; using differen accounts all the time we got them all mixed up.

Q Was it a partnership account? A Yes.

Q Go on. A So about—

The Master: How much was that policy?

The Witness: $25,000.

The Master: And how was it paid, who was beneficiary?

The Witness: It was made to the Estate of Frank J. Quinn on the advise of Mr. Stowe, during which time we spoke about the beneficiary and how it could be left, and he asked us if we had partnership papers, we said no; then he said "While the partnership exists there is no partnership, there is no partnership to leave the money to in the event of death, and that it would have to be left this way and then assigned over," he said "which you can do any time." Later

on another man came into the office, by the name of Valk, I don't know his first name, and he solicited insurance from Leidinger, and Mr. Leidinger did pass an examination for the New York Life, and I wasn't in on any of the conversations, which transpired between Mr. Leidinger and Mr. Valk, but that insurance was paid in full at the time.

Q The premium, you mean? A The premium; I think it was in April, 1928.

Q What funds were used to pay that premium? A The partnership funds.

Q And do you know the amount of that policy? A $25,000.

Q Straight $25,000? A Yes, term insurance.

Q Was there a double indemnity clause in it for sudden death? A Yes.

Q Is there a double indemnity in your policy? A No, the company I used don't sell that type of insurance.

Q What was the name of the company you are insured in? A Mutual Benefit Life Insurance of Newark, I think.

Q And which was the company Mr. Leidinger was insured in? A New York Life.

Q When was your policy delivered to you? A Sometime December, 1927.

Q And who was the beneficiary, if you know, in the policy written on the life of Mr. Leidinger? A The Estate of Harry C. Leidinger.

Q Did you go ahead and borrow the money you are talking about from the Franklin National Bank? A Yes.

Q How much did they loan you? A $7,500 from them.

Q Was that before or after this insurance was secured? A That was before.

Q And what happened to that note? A That note was eventually paid for by some of the insurance money that was advanced by Mrs. Leidinger for that purpose.

Q The insurance was collected? A Yes, the insurance was collected.

Mr. Bernhard: The defendant will contend with reference to this subject that Mr. Leidinger's policy was a policy independent of the partnership, for the reason he had personally endorsed the note, and was personally responsible for it, regardless of the policy, and furthermore, the life insurance was simply security for the note, for the amount of the note, which had been discounted by the bank, and could not in any event be held a partnership asset in excess of the amount borrowed.

Q Did anything happen to Mr. Leidinger in July, 1928? A Yes, on July 15th there was an explosion of our boat, and he was quite badly burned, and he passed away on July 18, 1928.

Q Was anything paid to you or to the partnership out of the proceeds of the insurance policy on the life of Harry C. Leidinger?

Mr. Bernhard: It is admitted that nothing was paid to Mr. Quinn or to any of the companies, or to the partnership out of that insurance, and that the defendant as Administratrix of Harry C. Leidinger, collected and retained the sum of $50,000.

Frank J. Quinn, cross.

Cross examination by Mr. Bernhard.

Q When was your policy delivered to you? A In December, 1927.

Q And your payments for premium were to be made quarterly, were they not? A Yes.

Q Did you make more than the first payment? A Yes, we made the first payment, we made a payment in March, and there was another payment due June, 1929.

Q It wasn't paid? A No.

Q Therefore your policy lapsed? A It hadn't lapsed, because we had thirty days on it.

Q It did subsequently lapse? A Yes, after the accident I let it go.

Q Did you at any time borrow some money from the Morsemere Trust Company? A Yes.

Q Did you borrow more often than on one occasion from the Morsemere Trust Company? A Yes.

Q From when to when? A From the time they opened until about the Spring—no, until last September.

Q They were for small amounts? A They varied.

Q From what? A To about $5,000, from $1,000 to $5,000.

Q At the time of Mr. Leidinger's death had all of these notes been paid with the exception of a balance of $5,000 on one note so far as you recall? A I couldn't say unless I refer to the books myself.

Q Was it not in connection with a loan of $5,000, with the discount of a $5,000 note by the Morsemere Trust Company that this conversation occurred with reference to the life insur-

ance policies and not the loan of the Franklin National Bank? A No, sir.

Q Just where did this conversation occur with reference to the Franklin National Bank? A Down at the Franklin National Bank.

Q Were the two gentlemen in their offices or at their desks? A Yes.

Q Do you recall when you borrowed the $5,000 from the Morsemere Trust Company? A No, I don't recall just exactly when.

Q But you do know at the time of Mr. Leidinger's death there was $5,000 due on a note to the Morsemere Trust Company? A I don't recall any note, there was money due, but just offhand I couldn't say.

Mr. McCarthy: We will admit at the time of death of Harry C. Leidinger there was due the sum of $5,000 on a partnership note to the Morsemere Trust Company, which note was paid by Mrs. Leidinger on July 25, 1928.

Mr. Bernhard: No further cross examination on this point.

By the Master.

Q I would like to know why you allowed your policy to lapse after the death of your business partner? A Well, because we were short of money at the time, and that was why the premium wasn't paid, we had a deal that was to go over the first of July and we depended on that money coming in to clean up certain obligations we had, and the deal hung fire for quite a little while, and it was finally rumored it was going over sometime about the middle of July, possibly the 16th, which was a Monday, and Mr.

Leidinger was burned on the 14th, and I went over to the hospital on the 16th to get power of attorney from him so I could pass title, because the property was in his name, but due to the condition of his hands I wouldn't disturb him, so, consequently we were kind of tied up for funds at the time, and that was the reason I let it lapse, wasn't in position to carry it.

Mr. McCarthy: Proceeding to the second item.

By Mr. McCarthy.

Q The second item is a fire insurance policy of $10,000 upon the yacht, was there such a policy in existence? A Yes.

Q Was it in existence at the time the yacht burned, July 15, 1928? A Yes.

Q Who collected that policy? A I collected the policy.

Q How much? A It was in the amount of $10,000.

Q And what did you do with the money? A I deposited it in an account and paid out for the boat and certain other obligations which were against us.

Q What were they? A The boat was $4,000 and I paid off a note for $1,500.

Q What kind of note, partnership or private? A Partnership note.

Q Where was that note? A Morsemere Trust Company, and if I could refer to the records I could give you the entire information on it.

Q Can you state approximately about how much you paid out of that $10,000? A Approximately about $9,000.

Frank J. Quinn, cross.

Q Have you a record of the payments? A Yes, I have the check books.

Q If this hearing be continued, will you produce the record showing what you did with the proceeds of the fire insurance policy? A Yes, sir.

The Master: The boat was owned by the partnership?

The Witness: Yes.

By Mr. Bernhard.

Q Did you say at the time of Mr. Leidinger's death, Mr. Quinn, there were obligations against the boat of $4,000? A Yes, we had never paid for the boat.

Q In what company was the boat insured? A I can't say certain about that, I could refer to my records.

Q And will you let me know next time? A Yes.

Q You had to file a written application for insurance on the boat? A Yes.

Q And in that application did you not state (withdrawn). And you did not file an application until after you bought the boat, did you? A No.

Q You call that a charter, isn't it, is that what you get, or bill of sale? A I don't know.

Q Did you get a paper from the seller of the boat? A Mr. Leidinger got most of that, he handled that.

Q Didn't you make the application for the insurance yourself? A I may have.

Q And in that application did you not state there were no debts against the boat? A I don't remember.

Q Who was the man from whom you bought the boat? A A party by the name of August Rietzschke.

Q When was the boat purchased? A I think October, 1927.

Q And you kept it until it was burned? A Yes.

Q And what was the purchase price of the boat regardless of how it was paid? A $5,000.

Q And of that amount you paid what amount in cash, or did you turn in another boat? A We turned in another boat.

Q At what figure? A I think $1,000.

Q That left $4,000 to be paid? A $4,000 to be paid.

Q And that $4,000 was represented by notes that Rietzschke owed? A Yes.

Q And you liquidated those notes? A That's right.

Q Didn't you liquidate those notes before Mr. Leidinger's death? A No.

Q That is the $4,000 you spoke of as obligations? A Yes, there were really $4,500 in notes.

Q You paid a part of that? A I paid them all afterwards.

Q But none of them before? A No.

Q Do you recall what bank held those notes? A The Englewood Title, Guaranty & Trust Company held one note of $500, and the other note was held by a party—it was a bank.

Q Who was it? A A party by the name of Stephen Jones from West New York.

Mr. Bernhard: That is all on that subject.

Frank J. Quinn, direct.

By Mr. McCarthy.

Q The Regner Construction Mortgage, do you know how much was due on that mortgage at the time of Mr. Leidinger's death? A That was originally in the amount of $9,500, of which $2,000 was paid, that brought it down to $7,500, and we had an agreement with the broker on there, he was my brother, to pay him $1,500 only when the full amount of the mortgage was paid.

Q Was that agreement in writing? A Yes.

Q Can you produce that? A I think he can.

Q Do you recall the Edward Peterson mortgage? A Edward Peterson mortgage, that was one handled by Harry, which he sold to Mr. Peterson, some friend of a friend of their family.

Q Do you know the amount due at the time of his death? A No, I don't.

By Mr. Bernhard.

Q Was it about $998? A If it says so there, I really don't know.

By Mr. McCarthy.

Q Now, the Anna Reinecke mortgage, have you any idea how much was due to the partnership on that mortgage at the time of his death? No, I couldn't say.

Mr. Bernhard: The accountant says it was $299.70.

The Witness: That must be right.

Q Do you recall the two mortgages in the name of Limoneze? A Yes.

Q Can you give us an idea of how much was due to the partnership on those two mortgages at Mr. Leidinger's death? A $1,200 on each.

Frank J. Quinn, cross.

Q Directing your attention to the Packard sedan mentioned in this case, who paid for that? The partnership paid in a lot which we turned over to Mr. Meuter, Meuter Bros., in Ridgefield, they are agents for the Packard.

Q And who owned the lot at the time you turned it in? A The partnership.

Q And what use was made of the Packard sedan? A Well, it was used mostly by Mr. Leidinger; I used it very little; we kept it in shape, cost quite a little money to keep it up.

Q Who supplied the money you spent? A The partnership.

Q In whose name was this Packard sedan carried at the time you first bought it? A Mr. Leidinger's name.

Q Did it continue in that name down to the present? A No, Mrs. Leidinger had it transferred over to her name after his death.

Q How did that happen? A I don't know.

By Mr. Bernhard.

Q Identify the lot, will you Mr. Quinn, please, which was turned over? A It is located on the north side of Central Boulevard, about fifty feet went of Sixteenth street, in the Borough of Fort Lee.

Q Now, Mr. Quinn, just reflect for a moment, wasn't that lot in Mr. Leidinger's name before the beginning of your partnership? A No, sir.

Mr. Bernhard: It is agreed that the Packard car may be considered as a partnership asset.

Q You said you put the $10,000 in a bank? A Yes.

Jacob Feit, direct.

Q Are you able to say in which bank, and to which account the $10,000 was credited? A I put it in the Palisade Park Bank, in my own name.

Q Was that an account which you had at the time of the partnership, or was it an account which you subsequently opened in the Palisade Park Bank? A No, it was an account which I had all along standing as a formal account, but there wasn't anything in there, so I put it in there.

Q A dormant account? A Dormant account.

Q During the course of the partnership did you use that account for partnership purposes except on this occasion? A Only on this occasion.

Q So that the vouchers from that account would show the distribution of this $10,000, or part of it? A Yes.

By Mr. McCarthy.

Q And those you can locate and get for us next time? A Yes.

(Witness withdrawn by consent for the present.)

JACOB FEIT, called as a witness, having been duly sworn, testified as follows:

Direct examination by Mr. McCarthy.

Q Mr. Feit, directing your attention to monies paid out of partnership funds for the account

of Mrs. Leidinger, have you your records there before you showing that? A Yes.

Q Do your records show any payment on November 28, 1928 for a monument? A They do.

Q How much? A $1,000.

Q By whom was it paid? A Just by check drawn on the account of Harry C. Leidinger, Inc.

Q Now, have you an item of December 10, 1928 paid for the inheritance tax on the estate of Harry C. Leidinger? A I have.

Q How much was that? A $1,500.

Q What account was that paid out of? A Same account. My answer is, the $1,500 was paid on December 10th in the form of check drawn to Aaron Katz on account of inheritance tax, was drawn on Harry C. Leidinger, Inc. account on the Morsemere Trust Company.

Q To go back to the monument? A Same account, same way, check to William F. Regan.

Q On October 23, 1928 have you any disbursement item there from Harry C. Leidinger, Inc.? A I have a check to the order of Anna Leidinger, marked personal, for $250, that was made payable to the Morsemore Trust Company; I believe that was cabled across.

Q What is the next entry you have? A In that same account?

Q Yes. A November 5th, Walter W. Ashof, $99.80, of the same account.

Q Next one? A Are you following the report?

Mr. Bernhard: What was that for?

The Witness: I think Walter W. Ashof, coalman, for Mrs. Leidinger; the check was charged to Anna Leidinger.

Q Now, what is the next one after that? A Are you following from the report?

Q From the report? A William Wurster?

Q Yes. A That is on November 28th also, made out to Morsemere Trust Company, $161.25.

Q You don't know of your own knowledge what that was for? A All I have is for account of William Wurster.

Q What is your next item now, the monument item? A $50 in cash.

Q When made out? A December 5th, just cash $50.

Mr. Bernhard: By whom was it endorsed?

The Witness: I couldn't recollect now.

Q What is the next item after inheritance tax, item August 27th? A William Regan, $50.

Q Do you know what that was for, of your own knowledge? A That came out of a different account, I know that came out of account in Palisade Park National Bank.

Q In whose name? A The account stood in the name of Frank J. Quinn, and that was August 27th, William F. Regan, on account of stone, $50.

Q What is the next item? A August 31st, cash $50; that also came out of the same account on August 31st, made out to Mrs. Leidinger, $50.

Q Same account, repeat that again, what was the name of the account in both those last items? A Palisade Park National Bank, under the name of Frank J. Quinn, that is that boat account.

Q Do you see any other items of disbursements? A There is $316, that represents various, as I put it there, miscellaneous items

that I grouped together, drawn on Frank J. Quinn, Inc. account, representing telephone and gas bills.

Q For whom? A Mrs. Leidinger, all taken from the check book, and the checks are so labeled.

Q I direct your attention to the next item in your summary $560, and ask you if your records explain that item? A They do, to the extent, note and interest was due to Anna L. Reinecke by Harry C. Leidinger, and the Reinecke mortgage was so much more; Reinecke only owed the amount of the mortgage $704, with the interest and taxes to date thereon total $859.70. Now, it seems that he owend her a note with accrued interest of $560, so for the purpose of the partnership statement, I deducted that and made the net amount $299.70 as a partnership asset.

Q That is the balance set forth in this complaint as being due on the Reinecke mortgage, $299.70? A I understand that represents a personal obligation from him to her had nothing to do with the partnership.

Mr. Bernhard: Our contention is that the note was a partnership note; we do not quarrel with that figure, or the method, but simply make the contention that it was a partnership note; the figures are all right; question of fact.

Q Have you tabulated the total of these amounts you have just been talking about? A The total amount due from Mrs. Leidinger is $4,037.94.

Mr. Bernhard: Which includes the deduction of $560?

Mr. McCarthy: Yes, make that part of your answer.

The Witness: That is right.

Cross examination by Mr. Bernhard.

Q Let me take you back to the payment of $1,500 on account of inheritance tax, how is that amount paid? A I will trace the entire thing; the total amount we figured out the inheritance tax, Mr. Katz and myself worked up the tax return, and at that particular time they were trying to turn over a piece of property which they wanted released, otherwise they couldn't do anything with it, so Mr. Katz went down there personally to see if he could get a release, before they compute and tabulate everything, because we were over to see Mr. Moore several times and he wouldn't do anything. It finally got to the point, he had $1,500 of the amount—the entire tax was $1,564.50, he advanced his own check; I did his work, too.

Q Mr. Katz advanced it? A Yes, and I believe that is the amount in reimbursement; in turn we have $1,500 he advanced and later on, I think $60 he also advanced that, he has taken that out of certain monies he has that belonged to Mrs. Leidinger.

Q Do the records not show that the $1,500 and the other items you have just mentioned as having been paid by Mr. Katz, that Mr. Katz had collected for Mrs. Leidinger $3,000 insurance, and that it was a part of that $3,000 that he advanced to make these payments? A No, for the reason—indirectly, yes. I will trace that further back. He collected $3,020.36 on September 12th; he advanced out of that money $2,000, which

went into the account of the estate of Harry C. Leidinger, that was the estate, Mrs. Leidinger was administratrix of it, $50 and $2,000; and he also advanced to F. Rothman $30, and to the Van Realty Company $120 also representing interest, which left in his hands at that particular time the report was drawn, $870.36, so it couldn't possibly cover $1,500 additional.

Q Just refer to your statements, you will notice that at the top it says, "Monies paid out for Mrs. Anna Leidinger," does that mean the monies that are on that page which are paid out of the account of Harry C. Leidinger, Inc. and Frank Quinn, Inc.? A Just as I have them headed there, paid by Leidinger, Inc., that means from that account.

Q From October 25th to August 31st? A Those particular items were paid from the account of Harry C. Leidinger, Inc., and others from the account of Frank Quinn, Inc.

Q That would be the account in the Palisade Bank? A No, these were both accounts, entered for two accounts personal in the Palisade Bank and Frank Quinn, Inc., in the Morsemere Trust Company. I differentiate the two, the Quinn, Inc. and Quinn account; this would be the account I kept the commission of the real estate operations in.

Q The item $316, from what account is that? A From Frank Quinn, Inc., from the Morsemere Trust Company.

Q But the Regan item of August 27th, and cash item of August 31st weren't paid out of the Leidinger account? A No; I see that now, yes, that should be an indentation there; put it this way, first six items are Leidinger, Inc., the next two are that personal account.

Q All right. So that you are able to identify all of the items on that page with the exception of the two cash items $50, and the item of William J. Regan, $50? A I have seen the actual vouchers returned from the bank, that is where I took the figures from.

Q For identification; I mean for what purpose? A William Regan is the monument; also the cash items; I don't know for what purpose.

Q And the item of $161.25, you don't know what that was for, paid to Morsemere Trust Company? A It was sent to Walter Wurster.

Mr. Bernhard: We concede the item of $161.25 to be charged against Mrs. Leidinger.

Q In the miscellaneous items of $316.89, there seems to be no dates? A No.

Q Do you know whether or not the bills had accrued before or after Mr. Leidinger's death? A I couldn't say off-hand.

Mr. Bernhard: I think I will suspend the examination of this witness at this time.

The Master: This hearing will stand adjourned to Friday, July 19, 1929, at 10:30 A. M.

Jacob Feit, recalled, direct.

Hackensack, N. J., July 25, 1929.

(Same appearances.)

Mr. McCarthy: It is stipulated that there is a typographical error, in the 21st line on page 26, the words "real estate" should be substituted for the word "Wurster."

MR. FEIT, recalled.

By Mr. McCarthy.

Q Mr. Feit, when you last testified you said that you could produce checks showing the payments under the account of monies paid out from Mrs. A. M. Leidinger, which appears on page 5 of your report, you have those checks? A Yes.

Q That includes all the items except the miscellaneous disbursements? A Yes, outside of miscellaneous.

Mr. McCarthy: I offer this series of checks in evidence.

Mr. Bernhard: Read them, will you please.

Mr. McCarthy: The first is a check dated October 23, 1928, on the Morsemere Trust Company, on the account of Harry C. Leidinger, Inc., signed by Frank J. Quinn, it is to the order of the Morsemere Trust Company for the sum of $250 and bears on its face a notation, "For Anna M. Leidinger."

Mr. Bernhard: Admitted.

Mr. McCarthy: The next is a check on the same bank same account, to the order of Walter W. Aschoff, in the amount of $99.80, dated November 5, 1928.

Jacob Feit, recalled, direct.

Mr. Bernhard: He is the coal-man, isn't he, that is already in evidence, or admitted.

Mr. McCarthy: The next item $161.25 you conceded?

Mr. Bernhard: Yes, we conceded that.

Mr. McCarthy: The next item of $1,000, I think they conceded that was for the monument?

Mr. Bernhard: That is conceded.

Mr. McCarthy: The next is a payment by check out of the funds of the company to William F. Regan.

Mr. Bernhard: Admitted.

Mr. McCarthy: The next is for $50, December 5, 1928, admitted as having been paid to Mrs. Leidinger out of the funds of Harry C. Leidinger, Inc.

Check dated December 10, 1928, to the order of A. Katz, $1,500 on the account of Harry C. Leidinger, Inc., admitted as having been paid on account of inheritance tax.

Mr. Bernhard: Admitted as having been paid by Frank J. Quinn out of partnership funds; the same is true of check August 31, 1928, signed by Frank J. Quinn to the order of Mrs. Leidinger for $50, bears her endorsement as having been deposited to her account.

Q Mr. Feit, have you continued on the accounting from the date of your audit, December 12, 1928, to date? A Yes, I worked it out to July 17th.

Q And were there any further disbursements of partnership funds? A There are quite a few changes.

Jacob Feit, recalled, direct.

Q Out of what funds were they drawn, the names of the accounts? A I think Harry C. Leidinger, Inc. account Morsemere Trust Company, disbursements were from December 31st; they paid off notes of Morsemere Trust Company of $1,000 which that account had borrowed on December 5th, and they paid check on January 22, 1929, to A. Peterson, which is interest on second mortgage, of $234.45.

Mr. Bernhard: Second mortgage of what?

The Witness: Peterson has the Creskill mortgage; and the same day there was a check to the Borough of Creskill for taxes for 1928-9. Those are all the disbursements. There were some deposits to the account on December 31st, Frank J. Quinn deposited a transfer from the Palisade Park National Bank of $400, and on January 22nd, same thing, with $100; on February 5th they received from Mrs. Rockline the interest that was computed on the statement December 12th, of $123.30, which was deposited, and February 5th was the date of the deposit.

Q Have you got the last bank statement of Harry C. Leidinger account? A Something did happen since then which I could not find from the records I had from there, that gave me a balance of $270.85.

Q Is that the present balance? A No, my last statement showed a balance of $446.85, which means there was a deposit of $126 in between, a deposit of $50, which I cannot account for; I am informed $126 was the interest on a $4,200 mortgage, the LaMeus mortgage; July 16th, $50, that

is just a payment from Mr. Peterson on the interest he owes us on his lot, a part payment.

Q That includes that account, leaving a credit balance at the present time of what amount? A $446.85.

Q So that the company has a balance of $446.85 in the Morsemere Bank. Are there any notes to the Morsemere Bank? A No, nothing at all. Since the date of my last report another $100 has been added to the account, being interest on mortgage of Anna L. Reinecke, and also part payment on it, on the second mortgage, on the Harry C. Leidinger, Inc., Franklin National Bank check, deposits, first on February 5, 1929, a note of $2,000 less interest of $30, was discounted, net proceeds in the sum of $1,970, that was the only deposit; disbursements on February 5, 1929, to the Van Realty Company which is interest of Creskill mortgage, $365.45, and the same day to Irauiewsky of $120, also interest on mortgage, and same date to M. Peterson of $300, which also represents interest on Creskill mortgages. February 7th a check to the Borough of Palisade Park, taxes for 1928, $582.86; February 25th, check to Bedford Advertising Agency $18.40; March 1st, check to Borough of Maywood 1928 taxes $16.66; March 20th, a check to Bertha Bunkin, Inc., representing an old assessment of $108.57; March 19th, check to Borough of Creskill, 1928 taxes of $398.21; April 13th, check to Bedford Advertising Agency for $1,840, and deposit of July 16th or 17th, $45.62, representing a balance that was in the Leonia Bank & Trust Company, closing out that account.

Q Is that all at the Franklin National? A There seems to be a check withdrawn on June

27th of $124.17, which I don't know what it is for; as I understand it that is for our share in the interest and bonus that we paid for the Bertha Bunkin, Inc. The balance on hand as of July 17th was $64.62, and there was owing to the bank the sum of $2,000 being note that was discounted. The next one will be the Leonia Bank, which they had a balance in and cleaned out. The account in the Leonia Bank was in the name of either Frank Quinn or Harry C. Leidinger, the old balance of $355.99, according to my report of December 12th, from that time deposits were as follows:

February 5th, Chamber of Commerce..$120.00
February 13th, Democratic Club..... 90.00
May 19th, Chamber of Commerce..... 160.00

Disbursements were quite a few, do you want them in detail?

Mr. Bernhard: No.

The Witness: About $680.

Mr. Bernhard: Disbursements representing what?

The Witness: Star Fuel, Hackensack Water, Ridgefield Coal, Master Builders.

Mr. Bernhard: And the total amounts to?

The Witness: $680.37, which left a balance of $45.62, which balance was withdrawn and transferred to the Franklin National Bank.

Mr. Bernhard: Is there any money owing to the Leonia Bank?

The Witness: Nothing that I know of; take the Palisade Park National Bank account there is in the name of Frank J. Quinn, since the date of my report the balance was $1,207.10; there were no deposits outside of

interest credited to the account of $3.29; disbursements were as follows:

January 22nd, transfer to account of Harry C. Leidinger, Inc.....$100

December 31st, transferred to the account of Harry C. Leidinger..... 400

On January 26th a payment to D'Ursi, which money, I understand represents a note of the partnership of $355.37. I am informed as to this item that certain Creskill lots were sold to D'Ursi and he was unable to complete his payments, before Mr. Leidinger's death it was agreed that he should have his deposit returned to him, there was no money, and in October, 1928, Mr. Quinn gave him a note, which note was paid when due, that accounts for that item for that date, on that same bank it seems he closed out the account in the Morsemere Trust Company and used this account to run the business, the transactions from that day on, are as follows:

A note was discounted in that bank of $1,000, less interest of $15, or net credit of $985, that is February 15th.

February 20th deposited check for the account of Bertha Bunkin, Inc. representing rents collected of $65.

Disbursements totalling $469.85, which disbursements represent office expenses of $217.94, Frank J. Quinn drawing $173 for the account of A. M. Leidinger, $3.91. $65 representing an exchange of the rent collected for Bertha Bunkin and $10 on account of Electrolux machine.

Mr. Bernhard: We cannot concede these items for reasons which will be advanced later, but we do not challenge the accuracy of the items as testified to by the accountant.

The Witness: That left a balance as of March 1st of $935.17, which date I understand Mr. Quinn took over the business in his own name, and at that time there was due the Palisade Bank $1,000.

Mr. Bernhard: Did he take over the debt to the Palisade Bank?

The Witness: No.

Mr. Bernhard: He took over the assets but not the liabilities?

The Witness: In other words, from what I understand that was the finish of the partnership arrangement, in other words he started working under his own name, the way he told me the old balance remained to the credit of the partnership estate.

Mr. Bernhard: The records show he transferred the $900—

The Witness: No, $937, representing monies belonging to the estate.

Mr. Bernard: Where is it?

The Witness: I don't know.

Mr. Bernhard: What became of it, it isn't in the bank?

The Witness: No, he kept using that account.

Mr. Bernhard: Until the money was withdrawn? When was the money withdrawn?

The Witness: I wasn't interested, he said that was his own. I can tell you they owed $1,000 to the Morsemere Trust; to liquidate

that $1,000 they took $1,000 from this account; took $1,000 from Palisade National Bank in which they had funds, to pay off a note of the Morsemere Trust Company. Now, as of December 12th, balance, Frank J. Quinn, Morsemere Trust $1,228.25, and additional deposits to that account in December $241.50, representing commission, items of $96, interest items of $25.50 and the exchange of $120 with a party by the name of Holtman; disbursements were $501.10, that represented quite a few items, represented office expense of $111, from December 12th to the end of the month, also represented Frank J. Quinn $250 and $25 a deposit on a lot, made payable to the order of Joseph Forest, $55.10, account of Hackensack Motor, note on account of Studebaker, and $60 which was advanced to Holtman. The month of January there was a deposit January 10th from a party by the name of Eggaling, $300, which is on account of advance to him, and interest of eleven cents, being total $1,269.46, which represents office expenses $290.61, Frank J. Quinn $273 on account of the note Morsemere Trust Company $500, on account of Electrolux $10, on account of the Studebaker $55.10 and on account of note $34.75; $90 to the Morsemere Building and Loan and $15 interest on a note that was renewed. That wound up the bank. To get back to the note, that left a balance owing to the Morsemere Trust of $965.25 at that particular time for which Quinn used his own check drawn on the Palisade National Bank of $965.25 to liquidate that $1,000 note.

Mr. Bernhard: $965.25 was partnership funds?

The Witness: That will have to be shown.

Mr. Bernhard: Yes, which were partnership funds?

The Witness: Let me ask this, is the partnership still carrying on as such?

Mr. Bernhard: No, Frank J. Quinn account, as I understand it, there is one Frank J. Quinn account, and while it appears it is apparently a personal account, it isn't; it is a partnership account.

The Witness: On March 1st he contends he used that account as his own, that he would owe that. There is no balance in the Morsemere Trust Company, and they did not owe anything. That is all as far as the bank accounts are concerned, but there have been several transactions sinec then. It seems that they owed $1,798.43, which I have a statement of June 5th from the Walrod Company, and which their one-quarter interest in some property, as follows: $1,681.39 they demand for their one-quarter interest in church property, $82.84 one-quarter interest in Fort Lee property, and $34.20 interest in the Ridgefield property. I have their statements and deposit on lot $25 was returned, and it seemed it was cashed by Frank J. Quinn, should be charged to his account. The Morsemere Building & Loan, which my report showed a credit of $210, is now $300 that has just been paid in, I don't know what the withdrawal value would be. There was a mortgage which the Quinn, Inc. held on account of commissions of $1,000,

which was collected, and which Frank J. Quinn used against monies that he advanced for the partnership estate. The total amount due from A. M. Leidinger today is $4,041.85, being an addition of $3.91 for an ice bill that was paid for her account. It seems after March 1st these are monies Quinn collected. The mortgage was $1,015 and $25 which was returned, deposit, that is that Forest, against which he advanced $965.25 to pay the balance of the note in the Morsemere Trust Company, $16.50, which they owed on Electrolux, $66 to the Hanover Bond and Mortgage which represents interest on Maywood mortgage, $22 to the Hanover Bond and Mortgage, which represents bonus for renewal of that mortgage, and he paid back $5.00 which was an overpayment when he paid on the mortgage, and $900 to the Fidelity Title Guaranty Mortgage Company, which represented interest on Broad avenue property mortgage.

Mr. Bernhard: When was that?

The Witness: I haven't got the dates.

Mr. Bernhard: After December?

The Witness: Yes, this was in March, in fact, this is all after that day. On the building, from December 12th, 270 Broad avenue, Palisade Park, there was total rents collected $370, against which there was expenses paid out of $608.37; those expenses are not all that particular period. Total income that I have is $135.01, between December 12th to July 17th, that is excluding $1,000 mortgage which belongs to the prior period, that is, before December 12th, al-

though collected between December 12th and July 17th. Total office expenses for $680.55, and Frank J. Quinn salary or drawing account was $696.

Mr. Bernhard: What period did the office expenses cover?

The Witness: That covered from December 12th to March 1st.

Mr. Bernhard: What period did the salary cover, the same period?

The Witness: Excess drawings, Frank J. Quinn, advanced to account of Eggaling $1,500, which is to be charged to him; advanced to Ralph Quinn $500, New York Life Insurance $385.25—this is all after December 12th—Dragner $159; International Fire Works, $85, against which he is entitled to credit of $13.41 which was the old balance in the Palisade Park National Bank which belonged to him personally, and deposits to that account of $38.40, against which another credit of $300 which was repaid by Eggaling, showing the net amount due from Quinn is $1,277.84. There are quite a few items, or accruals which I have not got that come up since, for interest on mortgages I didn't figure out.

Mr. McCarthy: The report of the accountant introduced in evidence, subject to objections, if any objections are noted after examination of the record.

(Received in evidence and marked Exhibit P. 9.)

Jacob Feit, recalled, cross.

Cross examination by Mr. Bernhard.

Q How did you happen to determine this specific date of March first as the division date after which Mr. Quinn—you determined that these figures were based upon Mr. Quinn's personal operation of the business, independent of the partnership? A Just from Mr. Quinn.

Q Have you a statement which shows the financial situation as of the date of Mr. Leidinger's death? If not, can it be deduced from the statement which Judge McCarthy has just offered in evidence? A No.

Q And the figures to which you have testified to— A We can get the exact condition, I have the figures we submitted for our inheritance tax.

Mr. Bernhard: The figures testified to by Mr. Feit are down to July 17th, 1929 from information received by Mr. Feit from Mr. Quinn, he has made certain other calculations from and after March 1, 1929, at which time he understands that Mr. Qiunn conducted the real estate business on his own account. A legal question will arise as to when this partnership ended and consequently that question will have to be first determined in order to ascertain just what charges and credits the respective parties are entitled to in order to arrive at a conclusion as to what the financial situation was with reference to this partnership if and when it is determined by the special master that the partnership, either by operation of law or otherwise, has been concluded. Will you submit to the Master a statement of the financial condition of these companies as of the date of Mr. Leidinger's death?

The Witness: I can.
Mr. McCarthy: Yes, we will.
Mr. Bernhard: All right.
(Witness excused.)

JOHN KELLY, called as a witness, having been duly sworn, testified as follows:

Direct examination by Mr. McCarthy.

Q Mr. Kelly, did you know Harry C. Leidinger in his lifetime? A Yes, very well.

Q You are in what business? A Real estate.

Q Where is your real estate office? A Teaneck, Cedar Lane.

Q Engaged in business only in Teaneck? A All over the State, Beach Haven, Toms River.

Q Did you ever have any conversation with a Mr. Leidinger with reference to insurance? A Yes, that is sort of a story, though, if you will permit me to go ahead?

Q Yes. A They had some lots in Creskill they wanted to sell very badly, and Mr. Leidinger came over to me and wanted to know if I would look at them. He said, "We need money badly, we are trying to borrow money on a building we are putting up," and he said they were down to the Morsemere Trust Company trying to borrow money and they entertained the proposition for awhile, and they asked him what they had in regard to protection for insurance, he and Mr. Quinn. He said they hadn't any. They said "you will have to get some out, if you fellows want to get a loan." He asked me what I knew about it. I said I hadn't any

experience with the proposition at all. He said, "Quinn and I got to take out partnership insurance if we want to get a loan on our building and to take care of the proposition." So it seems as though a day or two after that Mr. Leidinger came over to my office and he said, "We are going down Jersey City," and I think he said the Franklin National, or something, and he said "we are going down there," but he said the same thing arises down there as I understand it, but they are going to let us know. So I saw Mr. Leidinger again, and I said, "What are you going to do?" He said, "Quinn and I got to take out partnership insurance," he said, "and I don't know how we are going to pass. Did you ever have insurance?" I said, "Yes." I said, "I am too fat, and they charge an extra rate." "Well," he said, "I am about as heavy as you are, it looks as if I would have to pay the rate, too. We have to take it out or we can't get any money, for our protection, we have to take out insurance or they won't entertain our proposition," he told me. I believe he was going to be examined in a week or so; I met him and he said he was going to go down to the doctors to be examined for insurance.

Q That is all the conversation? A That is all along that line.

Cross examination by Mr. Bernhard.

Q How is real estate business? A Kind of quiet.

(Witness excused.)

JOHN VALK, JR., called as a witness, having been duly sworn, testified as follows:

Direct examination by Mr. McCarthy.

Q Mr. Valk, you are in the insurance business ? A That is right.

Q Where is your office? A West Hewitt avenue, Palisade Park.

Q Were you acquainted with both Harry C. Leidinger and Frank J. Quinn? A I was.

Q And during the year 1928, or any other time, did you have any conversation with either of them with reference to insurance? A I did, I spoke to Mr. Quinn first, as a matter of fact I saw Mr. Quinn about a month before the general transaction to have him come in and have him swear to an affidavit, like every business man, you walk in—

Q Not like every business man; just tell what you said? A So I walked in to Mr. Quinn—

Mr. Bernhard: No, I object to what Mr. Valk said to Quinn and Quinn to Valk.

Mr. McCarthy: I will agree with you on that.

Q I want to direct your attention more specifically to conversation with Mr. Leidinger, no conversation when Mr. Leidinger was away? A You just want me to relate to you about selling the insurance?

Q That's it, as far as it concerns Mr. Leidinger? A I saw Mr. Leidinger for life insurance; he said, "I would like to have some life insurance, but I can't get it, I am overweight." I said, "It is something we can fix in our company

because we issue substantive policies as well as other contracts." So he was examined for my company, and at the time he signed the application, the question came up as to the beneficiary of the life insurance contract. I, of course, asked him, "Whom shall we make beneficiary, as long as this is going to be partnership insurance, who shall I make beneficiary?" Mr. Leidinger said, "Quinn's insurance, he has his insurance that is made to his estate; I think I will take mine the same, that question has already been threshed out as to the beneficiary." That is as far as I went with Mr. Leidinger. I got his contract through and it was delivered. If you want to find out anything more about that—I will also say this, that when I delivered the contract about three or four days later I received a check from Mr. Quinn, signed both by Mr. Leidinger and Mr. Quinn, because I remember this distinctly because Mr. Quinn signed the check first and he couldn't give it to me until Mr. Leidinger had signed it, made payable to the New York Life Insurance Company, which, in turn, was forwarded to them.

Q And that check was for what? A For the life insurance contract I sold him.

Q On whom? A On Harry C. Leidinger.

Q Is this the check? A That is the one.

Mr. McCarthy: I offer the check.

Mr. Bernhard: What is the date of the check?

Mr. McCarthy: April 16, 1928.

(Received in evidence and marked Exhibit P. 10.)

Cross examination by Mr. Bernhard.

Q Mr. Valk, you know this check is dated April 16, 1928? A That's right.

Q Do you recall whether or not it was on that date on which the policy was delivered? A I can't just recall whether it was the same date I delivered the policy I got the check or not, because I left the policy subject to an examination.

Q Can you testify as to whether or not the check was paid after the delivery of the policy or before the delivery of the policy, or don't you know? A The check was drawn two days after I gave Mr. Leidinger the policy, subject to looking it over to see if it was right as I had represented it to be, and when the policy was found satisfactory Mr. Quinn told me to stop in for the check; I don't know when I stopped in.

Q So about two days after the policy was delivered the check was paid, is that right, as you recall it? A Yes.

(Witness excused.)

Mr. McCarthy: I offer the policy together with two checks in payment for two quarters on the same.

Mr. Bernhard: So far as it is pertinent and material I have no objection; I do not object to the competency of the offer. Let the record show: (a) That property at Palisade Park, 270 and 272 Broad avenue, is represented by a deed in Mr. Katz's possession, unrecorded, from Frank J. Quinn and Edna Quinn, his wife, to Harry C. Leidinger, Inc.

(b) That the deed for the property at the irregular plot 50x140 Palisade Park, New

Jersey, on the east side of Broad avenue, 50 feet north of Homestead avenue, is recorded in the name of, I believe, the Walrod Company, Dr. Shulte and H. C. Leidinger, Inc., representing their respective interests in the premises.

(c) That the deed for the property on the southwest corner of Edsal Boulevard and Broad avenue, Palisade Park, New Jersey, upon which there is erected a two-story frame dwelling is in the name of Bertha Bunkin and Mr. Katz holds stock certificates representing the interest for 33 1/3 shares representing the interest of the parties to this litigation, which stock certificate was assigned to Anna M. Leidinger, as administratrix of the Estate of Harry C. Leidinger, to H. C. Leidinger, Inc., but which transfer has not been noted on the stock records.

(d) That the deed for the property at the corner of Morse avenue, Ridgefield, New Jersey, is a recorded deed in the same names as "b" and that the deed reflects the respective interests of the parties in that property.

(e) The stipulation as to "d" is to cover the Fort Lee property also.

(f) The deed for the property 123 lots at Creskill, New Jersey is an unrecorded deed in my possession made by Franz Weber, husband of Margaret Weber, and Margaret Weber, only heir at law of Harry C. Leidinger, deceased, to Harry C. Leidinger, Inc., which deed covers lots described therein.

(g) The deed for the two lots located on the southwest corner of Oak and Grove streets, Maywood, New Jersey, is unrecorded, description of that contract is also contained in description in the 270 Broad avenue; it is all in one deed, going back to that deed showing it has two tracts, covering the Maywood tract.

I hold two unrecorded assignments, both made by Anna Margaret Leidinger and as administratrix of the Estate of Harry C. Leidinger, deceased, to Harry C. Leidinger, Inc., covering a mortgage made by Anna L. Reineke, single, to Harry C. Leidinger, recorded in 1054 of Mortgages, page 491, which mortgage is in the sum of $704, and the mortgage of Edward Alfred Peterson to Harry C. Leidinger for $856, recorded in 1054 of Mortgages, page 495, respectively, which two mortgages it is agreed are partnership property.

Mr. McCarthy: Are you holding, Mr. Katz, any monies which are partnership assets?

Mr. Katz: I don't know whether they are partnership assets; I am holding some monies.

Mr. McCarthy: What monies are you holding, eliminating the proposition whether they are partnership assets or not?

Mr. Katz: Those are personal monies I have at the present time, in the possession of Katz & Cooper, balance, $625.86, unexpended; I have a certificate for five shares of stock of the Morsemere Trust Company, made payable to Frank J. Quinn, in favor of

Frank J. Quinn and Harry C. Leidinger, the certificate was also signed by both Quinn and A. M. Leidinger, as administratrix of the estate, to Leidinger, Inc., transfer of which has not been noted.

(Policy and two checks received in evidence and marked Exhibits Nos. 11, 12 and 13, respectively.)

MR. QUINN, recalled.

By Mr. Bernhard.

Q Out of any of the partnership transactions arising out of any of the partnership transactions are there any accounts receivable? A Now?

Q Yes. A Nothing that the statement does not show that I know of—yes, there is.

Q What? A Some rent due from Mr. Katz, and there is rent due from the Chamber of Commerce, offhand, I can't say how much.

Q Anybody else? A No, that is all.

Q Do you know how much is due from the Chamber of Commerce? A About two months; I am not so sure.

Q Do you know about how much is due from Mr. Katz? A There are some rents due from Katz & Cooper.

Q Except for those two accounts, any other amounts due? A I think everything else is taken in the report.

Q Were there any other building and loans except the one? A Just the one.

Q I want to call your attention to some Creskill lots, do you remember a F. Ravenbeck,

who had some agreement to purchase lots at Creskill? A Yes.

Q There was such an agreement, was there not? A Yes.

Q And he paid on account of that $1,060? A $1,000.

Q Subsequently, do you know whether Mrs. Leidinger took over that contract and paid to Mr. Ravenbeck $1,060? A I understand she paid him back the $1,060.

Q There was a written agreement between the owners of the property and Mr. Ravenbeck, was there not? A I don't know.

Q Are those twenty-one lots included in the 123 lots in Creskill? A Yes.

Q Mr. Quinn, I show you a letter dated September 12, 1928, signed, "Yours, Frank," and ask you whether or not you wrote that letter, or caused it to be written? A Yes.

Q I call your attention to the second paragraph in which you say, "I then took the check which you already gave him in the amount of $2,000, which was for the purpose of taking title with Dr. Lillienfield for the 241 lots in Norwood, and deposited that as follows: Credited Frank J. Quinn, Inc., with $1,000, and Harry C. Leidinger, Inc., with $1,000," was that so? A Yes.

Q That was Mrs. Leidinger's money, was it not? A Yes.

Q It went to the credit of Frank J. Quinn to the extent of $1,000 and Leidinger, Inc., the other $1,000? A That is right.

Q No question about that? A No.

Q You knew Mr. Quinn, did you not, of the filing by Mr. Katz, I think, of the inheritance tax affidavit? A I knew it was being filed.

Q Were you consulted about it? A From time to time.

Q By Mr. Katz? A Yes.

Q You actually inspected it before it was filed, did you not? A I can't remember about that.

Q Can you say whether you did or whether you did not? A I couldn't say.

Q You do know of the $50,000 insurance collected by Mrs. Leidinger was included in the inheritance tax affidavit? A I couldn't say.

Q You now state that you cannot state whether you did know it had been included, or you did not know whether it had been included? A I don't know whether it had been.

Q Didn't know one way or the other? A No.

Q Did you know about what the estimated fee on the inheritance tax would be against the Leidinger Estate? A No, I didn't, I heard several times, but I have just forgotten what they were.

Q Didn't Mr. Katz suggest to you tentatively that the inheritance tax would be in the neighborhood of $2,500? A Maybe he did.

Q That is your letter, isn't it, dated September, 1928? A Yes.

Q See if that refreshes your memory? A Yes, I believe that is what he did say.

Q Now, having recalled to your mind that situation, do you not now recall that the reason for the substantial tax of $2,500 was due to the fact that the affidavit included the receipt by the estate of the $50,000 insurance? A No, I couldn't say that.

Q Mr. Quinn, you were familiar with the Regner mortgage? A Yes.

Frank J. Quinn, recalled, direct.

Q That mortgage was for how much? A The original amount of the mortgage was $9,500.

Q And from time to time there were some installments paid on account? A Yes, two installments, $1,000 each.

Q Finally reduced to $7,500? A Yes.

Q Was that mortgage ever deposited as collateral security for a loan? A Yes.

Q With what bank? A Franklin National Bank.

Q Mr. Quinn, do you recall when that mortgage was recorded? A No, I don't.

Q I show you an assignment from Harry C. Leidinger to John G. Edsal of that mortgage on the 6th day of December, 1927, and ask you whether or not you recognize Mr. Leidinger's signature? A Yes, sir.

Q It was never recorded, if you will observe? A Yes, sir.

Q The mortgage, according to the assignment was dated August 31, 1927, and made by the Regner Construction Company, was that about the date it was made? A Yes.

Q Now then, wasn't the mortgage made by the Regner Construction Company to Harry C. Leidinger dated August 31, 1927, deposited with the Franklin National Bank of Jersey City as collateral for your loans? A Yes, sir.

Q And it remained as collateral until the loans were paid, did it not? A Yes, sir.

By Mr. McCarthy.

Q Referring to the letter you wrote and this $2,000, what was that transaction where you deposited $1,000 in the account of Frank J. Quinn, Inc., and $1,000 in the account of Leidinger, Inc.?

A Well, when Mrs. Leidinger went away we were to take title to a piece of property from F. L. Realty Company, who were sellers, in partners with a doctor by the name of Lillenfield, and in the meantime Mrs. Leidinger had gone away, and we would require $2,000 to take title as our share of the purchase price. She left me a check on her account which was to be used when I collected the insurance for her, the personal insurance which was already on the life of Harry C. Leidinger before we entered into the partnership, and upon collecting that insurance I turned it over to Mr. Katz as the lawyer for the estate, and he deposited to his own trust account, and in turn gave me a check on the account upon which I had a check issued by Mrs. Leidinger, so, in the meantime the deal with Lillienfield had fallen off, that is, we weren't required to follow through on the contract, and inasmuch as both of the accounts were a little short at the time I cashed the check of Mrs. Leidinger for the $2,000 and deposited it as a loan for each of the companies from Mrs. Leidinger.

Mr. Bernhard: That loan has never been repaid?

The Witness: No.

Q At the last hearing you promised to show proof at the adjourned date of what you did with the fire insurance, which was received after the boat was destroyed, have you brought the vouchers with you? A I have the checks, yes.

Q What are the checks for? A Checks are for miscellaneous debts.

Q Debts of whom? A Debts of the partnership.

Q And have you totaled them? A No.

Q How much money is left in the account that you put the $10,000 in? A That has been fully drawn out, the $10,000.

Q That is the account, then, in what bank? A Palisade Park National Bank.

Q That is the account Mr. Feit referred to in his testimony this morning? A Yes.

Q What was the check for $4,000, dated August 3, 1928, to the order of August Irauiewsky who was the owner of the boat? A That check I made out to August Irauiewsky in the office of Mr. Katz, inasmuch as Mr. Katz was representing the estate and the partnership, we were down in his office, and at that time I gave Mr. Irauiewsky the check and he endorsed it and turned it over to Mr. Katz to take care of the notes which were issued by the partnership so that he might take care of them when they became due.

Q That was in payment of the boat? A Yes, for the boat.

Q Who is Mrs. J. Hansen $22.95? A That was a personal account of my own.

Q That should be charged to your account? A Yes.

Q The check for $15.05 August 4th to the Grantwood Battery & Electric Company, was that a partnership obligation? A Yes, that was fixing the batteries on the boat, it wasn't the batteries it was the starting.

Q Palisade Lumber Supply, what was $29.54 for? A Some equipment we bought for the boat in the line of cook stove, I think.

Q Another check $300 dated August 9th, to the order of cash, endorsed by you and John R. Quinn, is that a partnership obligation? A I recognize the check, I needed some cash to take

care of little petty expenses around different little things I had to take care of.

Q That is an obligation of yours? A No, I wouldn't say entirely, I used some of it.

Q How much did you use and for what purpose, approximately? A I couldn't say.

Q I notice another check dated August 9th to the order of Ralph Quinn, out of the same account? A That is my brother.

Q What is it for? A It is money I borrowed off him.

Q This should be charged to your account then? A Yes.

Q Charged against you personally? A It is so charged.

Q The check for $1,500 to the order of Morsemere Trust Company was in full payment of a note of the company? A The partnership.

Q Check for $1,250 to the order of Walrod, what was that for? A Taking title to the property next to the church, partnership.

Q Check for $150 signed by you and evidently cashed by you was a personal obligation of yours, wasn't it? A I think so, yes.

Q Another one for $50 dated September 8th cashed by you? A Yes.

Q What about this one, that should be charged to you, is that right, $50? A Yes.

Q Another one dated September 17th for $385, to the order of New York Life Insurance—I recall, I think that was to pay the premium on your policy, is that right? A Yes.

Q Did you have a radio on the boat? A No, sir.

Q I notice a check for $159 dated September 17, 1928, Dragner's Music Shop? A Yes, that is balance due on my radio, personal obligation.

Frank J. Quinn, recalled, cross.

Q Who is Robert McDonald? A Lives in Palisade Park, and I loaned him $100; I got it back in another account; he paid it back.

Q It shouldn't be deducted? A It shouldn't be deducted, it is back again.

By Mr. Bernhard.

Q All of these notes were on the Englewood Title, Guaranty & Trust Company, weren't they? A No, sir.

Q This $4,000 in notes represent what notes and held by whom? A One note held by Stephen Jones in the amount of $3,500 and a note given to August Irauiewsky and deposited in the Englewood Title & Guaranty & Trust Company, $500.

Q What became of the note that was paid off to Stephen Jones, after it was paid what happened to the note? A Mr. Katz handled that matter.

Mr. Katz: I got the note, together with the mortgage that Mr. Irauiewsky had given to Mr. Jones to secure that note, and I don't remember now whether I returned it to Mr. Irauiewsky or whether I still have it.

Mr. Bernhard: Mr. Katz, did the note come back to you?

Mr. Katz: Yes; here is what happened: Irauiewsky borrowed some money from Mr. Jones and gave him a mortgage on his own property as collateral security for this particular note, additional security on this note, I will say.

Mr. McCarthy: The boatman endorsed it to the bank and Jones to secure other obliga-

tions of his own, and rediscounted that Jones one with the bank?

Mr. Katz: That's right.

Mr. McCarthy: And one was paid?

Mr. Katz: I got the note back in satisfaction of that mortgage, I don't remember now whether I gave it to Mr. Irauiewsky.

Mr. McCarthy: He discounted the note partly with Jones and partly with the bank.

By Mr. Bernhard.

Q Do you hold a parcel of land, Mr. Quinn, in Haworth, New Jersey, title to that land, and if you do, has it anything to do with the partnership transactions? A No, but there is a strip of property up there in the name of Frank J. Quinn and Harry C. Leidinger, ten foot strip, and there is no warranty deed on it.

Q It is in the name of those two people? A Yes.

Q If it isn't, it should be? A Yes.

Q Have you $1,500 commissions due you on real estate transactions with Mayor Heater? A Yes; the mayor of Palisade Park.

Q Have you $1,500 commissions due on any real estate transactions which you have not yet been paid? A No.

(Recess taken for one hour for luncheon.)

E. S. STOWE, called as a witness, testified as follows:

Direct examination by Mr. McCarthy.

Q Mr. Stowe, you live in Ridgewood? A Yes.

Q And you are in the insurance business? A Yes.

Q Your office is where? A 790 Broad street, Newark.

Q Did you ever have any conversations with Harry C. Leidinger with reference to insurance? Yes.

Q Will you tell us what it was? A Mr. Leidinger and Mr. Quinn sitting opposite each other at a desk in the Palisade Park office, talked with me in regard to a certain form of policy that could be used to protect the business interests of each partner; after some conversation applications were given to me—this is in December 1927—by both Mr. Leidinger and Mr. Quinn, each application for $25,000. The form of insurance was discussed at length before I knew what either Mr. Quinn or Mr Leidinger wanted to use this insurance for, and I suggested what we call the ordinary life policy, leaving the dividends to make the policy in each case a semi-investment. Either Mr. Quinn or Mr. Leidinger, I don't recall which, said that kind of insurance would not be satisfactory for the purpose, because the premium was too high. Mr. Leidinger in this case said, "We want something that has a very low premium because we don't want to have the business, or the partnership, I don't recall the exact word, spend any more money than necessary, we want plain every-day protec-

tion." For that reason both applications were put on what we call the term form. It is more or less temporary form of insurance with a very low premium and no cash values. When we came to the part of the application where the beneficiaries are named, we talked at length about the wording and also we went back over another form of insurance that might be used, which is called a joint-life policy and is taken by two, sometimes three people, the death of one person terminating the contract and the money is paid to the survivor. I urged against this form of insurance because in this form of insurance if one partner dies the contract is immediately canceled and it doesn't give the other partner the opportunity of making a new business connection unless the surviving partner is in good health, whereas if two contracts are taken out and one partner dies, the other partner still having the policy can make a new business connection and have the new partner take out insurance. Both Mr. Quinn and Mr. Leidinger agreed that the joint-life policy would not be acceptable. I then asked Mr. Quinn in this case what the word "incorporated" meant, and either Mr. Quinn or Mr. Leidinger said, "Well, our business interests are all tied up together here, and each of us knows what the other does, and some of our business is handled in the incorporated concern and some through the partnership." I then asked how about the partnership papers, whether there was anything in that that would have any bearing on life insurance, and to the best of my recollection, one of the men said, "We have no partnership papers." Then Mr. Quinn said, 'Happy and I are just like two brothers; everything we do is agreed to by both of us, and we want this in-

surance so if anything happens to either one of us the one of us who is left will have the money to wind up the business, or to carry on as he sees fit." Mr. Quinn's policy was issued shortly after the application was made; Mr. Leidinger's application, the company, with much regret, had to decline, on account of his weight. Physically he was in fine shape, but the excessive weight made it impossible for us to grant the insurance. That is the substance of the conversation I had at the time.

Mr. Bernhard: No questions.

(Witness excused.)

Mr. Bernhard: It is consented on the record that the witness' testimony may be taken as if the witness had been sworn by the Master.

Mr. McCarthy: Yes.

DR. JAMES H. FREILE, called as a witness, having been duly sworn, testified as follows:

Direct examination by Mr. McCarthy.

Q Doctor, you live in Ridgefield, do you? A I do.

Q And what connection have you, if any, with the Franklin Bank of Jersey City? A President.

Q And do you know Frank Quinn here? A I do.

Q And did you know Harry C. Leidinger? A I did.

Q Did you ever have any conversation with Leidinger, or in his presence, about insurance? A I did.

Q Will you tell us, doctor, what that was? A I will have to refer to a note from our liability ledger to give you a date on that, it was either in the latter part of November or the first of December, 1927; both these gentlemen applied for a line of credit at the bank, and having done business with both of them, and knowing the condition of their partnership, it wasn't really a partnership, I suggested they should get insurance, both of them; while they were alive they were all right, but didn't want to get frozen, that was my suggestion.

Q Was anything said what kind of insurance they ought to get, or whom it should be paid, or anything of that sort? A No, I recommended term insurance and told them they could make it direct to the estate, that is usually the form we have.

Q And was the loan allowed at that time? A It was.

Q Do you recall off-hand the amount of the loan they applied for? A $7,500.

Cross examination by Mr. Bernhard.

Q Dr. Friele, have you a copy of your liability ledger there with you? A Yes.

Q Can you by referring to it tell when the loan of $7,500 was granted? A The note was dated on December 16, 1927.

Q Was it discounted on its date, doctor? A Yes.

Q At that time had you any collateral? A Yes.

Q A $7,500 mortgage? A Right.

Q And you accepted that as collateral for that loan? A Yes.

Q No insurance policies were ever delivered to you? A No.

(Witness excused.)

Mr. McCarthy: That is our case.

ANNA M. LEIDINGER, called as a witness, having been duly sworn, testified as follows:

Direct examination by Mr. Bernhard:

Q In your counter-claim to this action you allege that you had advanced and expended $14,833, which advance was to Mr. Frank J. Quinn, will you tell us just exactly upon what basis that allegation was made? A On them two notes I laid the money out when the note came due, I don't know the date, but I believe in July, Mr. Quinn didn't have any money, so I offered, I lay it out.

Q How much did you lay out on those two notes? A That one note was over $5,000—$500—I give everything to Mr. Sommer.

Q Have you checks showing the amount of money you disbursed on account of the $14,000? A Yes.

Q I show you a cancelled note dated June 25, 1928 for $5,000, due July 25, 1928, with the signatures torn off, except "Frank J.", and marked "paid" or perforated paid, did you pay that note? A Yes, I paid that note.

Q How did you pay it in cash or by check? A I made a check, Mr. Quinn made a check out and I signed the check.

Q I show you a check dated July 25, 1928 for $5,000 to the Morsemere Trust Company, alleged to be signed by Anna M. Leidinger as administratrix of the estate of Harry C. Leidinger, is that your signature? A Yes.

Q And was this check for $5,000 in payment of the $5,000 note? A Yes.

Q That accounts for $5,000.

Mr. Bernhard: I offer the check in evidence.

Mr. McCarthy: We concede it.

Q Now, there is about $9,000 left. Did you pay out $9,000 more? A Yes.

Q I show you a check for $7,000 dated August 14, 1928 to the order of Franklin National Bank, signed by Anna M. Leidinger, is that your signature? A Yes.

Q And for what did you pay that? A They told me for a note in the Bank of Jersey City.

Mr. Bernhard: I offer that check in evidence.

Mr. McCarthy: That is conceded.

Q I show you another check to the order of Morsemere Trust Company dated August 7, 1928 for $2,070.23, and ask you whether or not the signature to that check is your signature? A Yes.

Q And is the Frank J. Quinn to whom that check appears to have been paid deposited by Frank J. Quinn and endorsed by Frank J. Quinn

and deposited to the order of Quinn, Inc., is this the Mr. Quinn to whom you handed the check? A Yes.

Q You know that this check was deposited to the order of Frank J. Quinn, Inc., do you? A No, that I don't know.

Q I just showed it to you. What did Mr. Quinn say he wanted that money for, for what did he say he wanted that money? A I think he told me he has to pay insurance and taxes.

Q What was it a loan to Mr. Quinn? A No, he said corporation has debts and for insurance, to pay insurance and taxes.

Q Now, there is still $800 for which you have not accounted. I show you a check for $505 to the order of Morsemere Trust Company, dated August 11, 1928, is that check signed by you as administratrix of your son's estate? A Yes, signed by me.

Q Bearing a notation payment of note of S. Lillienfield one-half interest 241 lots west Norwood, New Jersey, was that the purpose of giving the check? A Mr. Quinn came and told me they not have money for that.

Q For this purpose? A Yes.

Q In whose writing is that? A Mr. Quinn's writing.

Q Now, check to the order of Irauiewsky for $365.55, dated July 31, 1928, did you draw that check, is that your signature? A That is my signature.

Q What did you do with it after you signed it? A Mr. Quinn took care of it.

Q And these checks make up a total of $14,833, do they? A Yes.

Q And they came out of money which you advanced out of your bank account? A Yes.

Q Now, I want to call your attention to 21 lots, after you paid Mr. Ravenbeck $1,000 with a little interest, did you make any payments on account of the purchase price of those lots? A Not after my boy's death.

Q You didn't understand. After you paid the $1,000 did you make any payments after that, even before Mr. Leidinger's death? A Yes, Mr. Ravenbeck he brought the money always to me, then, every month it was paid.

Q Who paid it? A I laid it out sometimes for Mr. Ravenbeck and sometimes he brought it.

Q How did you pay it? A $50 a month.

Q Did you pay it in cash? A No, sometimes in checks, sometimes I give my boy in cash.

Q We will only consider those payments represented by check. I show you check dated September 9, 1927 to the order of Frank J. Quinn, Inc. for $100, bearing notation, "Installment for two months on Creskill lots," is that your check? A Yes.

Q And the purpose of the $100 was to pay two installments of $50 each? A Yes.

Q Do you remember making any other payments by check? A I don't remember making any more by check.

Mr. McCarthy: We concede September, 1927.

Q On August 16, 1928 did you reimburse Mr. Ravensbeck to the extent of $1,060, the amount which he had advanced toward payments on these lots? A Yes.

Q Now, then, Mrs. Leidinger, there has been some statement, if I remember, that over $4,000 was advanced to you for your personal expenses,

what have you to say as to that statement? There was some money advanced to you for your personal expenses, was there not? A Yes.

Q Have you any memoranda of what amount was advanced to you for personal expenses? A We have all the checks for that.

Q What amounts did you pay out of the insurance money for your personal expenses? I show you a check to the order of the Steneck Trust Company, dated August 15, 1928, $562.50, that was money paid out of the insurance monies for three passages on steamship Cleveland for Germany? A Yes.

Q Paid out of the insurance? A Yes.

Q At the same time you needed some cash, didn't you? Did you draw this check for $1,000 dated August 25, 1928, endorsed by Frank J. Quinn? A Yes.

Q Now, what was that $1,000 for? A Traveler's checks.

Q Now, that is $1,500 or $1,600. I show you another check for $202 drawn out of your Administratrix Accounts to the order of Morsemere Trust Company, July 27, 1928, what was that money used for? A My sister had given one years ago, a loan.

Q That was in repayment of the loan? A Yes, it was no present, but I didn't say all the time what it was; she put it up to pay when they bought the first property.

Q Now, on August 21, 1928, you drew another check out of the Administratrix Account for $547.50, payable to Staneck Trust Company, what was that money for, do you remember? A For the return passage.

Q And check to the order of yourself for $1,000 on August 7th and deposited, what was that money for? A August 7th?

Q August 7th, 1928? A I think that is for personal expenses. This check is for $180, represents three months' salary which my son promised to deposit for a young lady who asked him to do so, as he did not do that I had to return the amount to her.

Cross examination by Mr. McCarthy.

Q Didn't you have a note in the Morsemere Trust Company which you paid on July 25, 1928, for $500? A Yes.

Q What note was that? A Personal note for the household.

Q Didn't you draw another check on July 27th to the order of cash for $1,000? A No, but I did draw a check on July 27th to the order of cash for $2,000 of which sum I kept $1,000 and delivered the other $1,000 to Frank J. Quinn, Inc.

Q On August 21st didn't you draw a check for $1,250 to cash? A Yes, I did draw a check for $1,250 payable to cash on August 21st, which check was endorsed by Frank J. Quinn and bears a notation, deposit $1,000 to the account of Mrs. A. M. Leidinger, cash $250, for Mrs. Leidinger.

Q And on the same day wasn't there a check for $65 which you drew to the order of Gus Mehle? A Yes, he was a friend of my son, and that was coming to that boy.

Q For what? A For a loan.

Q Have you a check for $816.55 dated on or after August 25th, transfer of funds to your own account? A We have no check, but according to notation on the stub, which stub does not bear

a date, a check for $816.55, with a notation closing out account appears to have been drawn, we haven't the check.

Q Did you take that $816.55 and keep it for yourself? A Take it?

Q Did you transfer it to your own personal account? A I think it was transferred to my own personal account.

Q And the balance from all these monies that you spent you have kept to yourself, haven't you? A Yes.

Q Transferred to your own personal account? A Yes.

Q You didn't give it to Quinn and Leidinger, the balance? A What do you mean?

Q You kept the balance? A Yes.

(Witness excused.)

Mr. Bernhard: The witness we want to produce is Mr. Meyerhoff of the Morsemere Trust Company, if we can agree for him to make an affidavit to save you the trouble of coming over and all of us, and submit his affidavit subject to cross examination by Judge McCarthy, if he thinks it necessary, we might do that and save a lot of time and trouble.

Mr. McCarthy: That is satisfactory to me.

(Hearing adjourned sine die.)

REPORT OF SPECIAL MASTER.

Filed January 2nd, 1930

IN CHANCERY OF NEW JERSEY.

Between	
FRANK J. QUINN, *Complainant,*	*On Bill for Accounting.*
and	*Report of Special Master.*
ANNA M. LEIDINGER, *Defendant.*	

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

The complainant Frank J. Quinn and Harry C. Leidinger, now deceased, were partners. Their business was principally the purchase and sale of real estate for the partnership account. Title to properties were taken in the name of either of the partners, or in the name of one or more corporations which the partners owned jointly, but the interest of Quinn and Leidinger were equal regardless of how title was held.

Leidinger died as a result of an accident on July 18, 1928, and the defendant Anna M. Leidinger was appointed administratrix of his estate. She is not made a party defendant as administratrix, and the proceedings are faulty in this regard.

During the lifetime of Harry C. Leidinger, he took out a policy of insurance in the sum of $25,000.00 with double indemnity payable in the amount of $50,000.00 in the event of his accidental death. Anna M. Leidinger, as administratrix of his estate, collected $50,000.00 from the

Insurance Company and the prayer of the bill is that Anna M. Leidinger be directed to account for all of the assets of the partnership which came into her hands and to pay such monies as she might receive or be entitled to receive from the Estate of Harry C. Leidinger to the complainant, or the partnership, or to one of the corporations jointly owned by the complainant and Harry C. Leidinger.

The bill of complaint alleges that the life insurance policy referred to was intended to name the partnership as beneficiary. It has been proved by several witnesses that in December, 1927, when the partnership wanted a loan from the Franklin National Bank, that the President of the Bank inquired whether they had ample insurance to protect the loan and that thereupon, Frank J. Quinn took out a $25,000.00 term policy payable to his estate and paid the premium out of the firm account. At that time Harry C. Leidinger could not obtain a policy because of his physical condition, but later he did obtain the policy in question and the premium was paid by the partnership and the beneficiary was made the Estate of Harry C. Leidinger. Frank J. Quinn testified, over objection, to this transaction involving the Harry C. Leidinger insurance. Assuming that Anna M. Leidinger, the defendant in this action, is being sued in a representative capacity, she took the stand herself later and testified, thereby making competent testimony of Frank J. Quinn. However, Frank J. Quinn did not testify to any different agreement that the insurance on the life of each partner should be payable to the partnership, but on the contrary testified that it was agreed that each assured would make his estate the beneficiary.

A witness named Kelly testified that Harry C. Leidinger told him that he and Quinn intended to take out partnership insurance but that he, Leidinger, could not pass the examination, and again that "We have to take out insurance or they won't entertain our proposition." The agent Valk, who wrote the Leidinger insurance, said he asked Mr. Leidinger who should be named as beneficiary and Leidinger said "Quinn's insurance, he has his insurance that is made to his estate. I think I will take mine the same, that question has already been thrashed out as to the beneficiary." Another witness, Stowe, who is in the insurance business, testified to conversations with Quinn and Leidinger and said they talked about the form of policy at great length, and that Quinn said "We want this insurance so if anything happens to either one of us, the one of us who is left will have the money to wind up the business, or to carry on as he sees fit."

It seems to me that the complainant has not proved the allegations of the bill of complaint in the certain, definite, reliable and convincing manner required. This is an attempt to establish a trust by parol evidence and the complainant's proofs do not measure up to the standard fixed by law.

It cannot be disputed that the partnership terminated upon the death of Harry C. Leidinger. The remaining questions to be decided concern the value of the respective interests in the partnership at that time and the charges and credits against the parties to this suit as proven by competent evidence.

The complainant Frank J. Quinn has asserted that the sum of $4,037.94, detailed on page 5 of the report of the Accountant as of December

12, 1928, consisted of partnership funds advanced for the benefit of Anna M. Leidinger. These items have been proven to my satisfaction and are allowed as a charge in favor of the partnership and against the defendant.

The complainant Frank J. Quinn collected $10,000.00 insurance because of the destruction of a boat which was the property of the partnership. This money was placed in the Palisades Park National Bank in the account of Frank J. Quinn and the entire sum was sued for the benefit of the partnership, with the exception of the following:

$ 22.95	to Mrs. J. Hansen
500.00	check of August 9th to the order of Ralph Quinn, return of loan
150.00	personal obligation
50.00	personal obligation
159.00	personal obligation for radio
$881.95	Total

It should be noted that in the testimony, page 56, the check of August 9th to the order of Ralph Quinn is referred to and the amount is not stated. The amount of this check according to the accountant's figures is $500.00.

It should also be noted that at the bottom of page 56 there is a reference to a check of $50.00 dated September 8th and it might appear that there were two checks for this amount, but the fact is that only one check was produced and offered in evidence.

Quinn should be charged with the item of $469.85 referred to in the testimony of Mr. Feit, page 34, and also the item of $935.17 referred to on the same page, but should receive credit for

the payment of the $1,000.00 note of the Morsemere Trust Company referred to on page 35.

The entire claim of Mrs. Leidinger as expressed in the counter-claim in the sum of $14,833.00 is allowed. The testimony supports this claim in a very much larger amount, but in the present status of the pleadings the defendant is limited to the amount claimed which is hereby allowed.

The assets of the partnership as shown by the Accountant's report as of the date of death of Harry C. Leidinger, amount to $14,281.72. This is without taking into consideration the real estate. The value of the real estate has been determined by the appraisers to be $92,575.00. To this should be added $500.00 as the excess value of the Bunkin property on the southwest corner of Edsall Boulevard and Broad avenue, Palisade Park, New Jersey, over the appraised value of the stock in the Bunkin corporation, the true interest of the partnership being one-third of the equity in said property, which equity is appraised at $11,500.00. Thus, the total assets are determined to have been at the time of the death of Harry C. Leidinger, $107,356.72.

The liabilities of the partnership have been determined according to the accountant's figures, to be the sum of $19,052.90 and mortgages payable to be $73,365.27, so that the net worth of the partnership at the time of the death of Harry C. Leidinger is determined at $14,938.55. This may be set out concisely in the following manner:

Assets exclusive of real estate	$ 14,281.72
Bunkin property (excess value)	500.00
Real Estate	92,575.00
Total	$107,356.72

Liabilities exclusive of mortgages	$19,052.90	
Mortgages payable	73,365.27	
Total		$ 92,418.17
Net Worth		$ 14,938.55

Frank J. Quinn owes the partnership the two items referred to above, namely, $881.95 and $1,405.02 and the partnership owes Frank J. Quinn $1,000.00, that is to say:

Net Worth	$14,938.55	
Due from Quinn	881.95	
Due from Quinn	1,405.02	
		$17,225.52
Due to Quinn	1,000.00	
		$16,225.52

There is due Mrs. Leidinger from the partnernership, $14,833.00, but there is due the partnership, from Mrs. Leidinger, $4,037.94, so that Mrs. Leidinger more properly as administratrix of Harry C. Leidinger, is a creditor of the partnership in the sum $10,795,06.

The testimony would indicate that it is possible that Frank J. Quinn and Mrs. Leidinger acted as partners after the death of Harry C. Leidinger and if this is so, there should be a further accounting. However, as I view the issues raised by the pleadings and to the extent testimony was offered before me, I find as stated above.

WALTER G. WINNE,
Special Master.

STIPULATION.

IN CHANCERY OF NEW JERSEY.

72/296.

Between	
FRANK J. QUINN, *Complainant,*	*On Bill, &c.*
and	*Stipulation.*
ANNA M. LEIDINGER, *Defendant.*	

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that argument of the exceptions to the Master's Report filed in the above matter and consideration of confirmation of said Master's Report, which were continued by Order of the Court made March 3rd, 1930, until Monday, March 31st, 1930, be and the same are continued until Monday, April 28th, 1930, before Vice-Chancellor Lewis at Chancery Chambers, 1 Exchange Place, Jersey City, New Jersey, at 10 A. M. in the forenoon of that day or as soon thereafter as counsel can be heard.

J. EMIL WALSCHEID,
Solicitor of Complainant.

Solicitor of Defendant.

Dated, March 31st, 1930.

MEMORANDUM FOR COMPLAINANT.

Filed January 11th 1930

IN CHANCERY OF NEW JERSEY.

72/296.

Between

FRANK J. QUINN,
Complainant,

and

ANNA M. LEIDINGER,
Defendant.

On Exceptions to Master's Report.

INTRODUCTORY STATEMENT.

This matter comes up on exceptions to the report of the Master filed in the above matter.

Complainant filed his bill alleging *inter alia* that he and defendant's son, Harry C. Leidinger, were partners, that various assets of the partnership came into the hands of defendant, who was appointed Administratrix of the Estate of her son, the said deceased partner, and praying for an accounting by defendant of such assets, and for an order determining that all such assets are held by her in trust for said partnership and for an order directing her to pay and deliver over such assets to or for the benefit of said partnership.

The bill alleges that one of those assets is the sum of $50,000, being the proceeds of an insurance policy on the life of Harry C. Leidinger made with the New York Life Insurance Company, which proceeds were collected by defendant.

So, in Wolf *v.* Selling, 25 N. Y. Supp. 963, the partnership was held the owner in equity of a liquor license obtained with funds of the partnership. There was here absolutely no evidence that the partner in whose name the license stood intended or expressed an intent that the license be held for the benefit of the firm. In fact she testified unequivocally that such had not been her intent. The Court must therefore have proceeded upon the theory of a resulting trust. While it is true that in this case the license had been used by the firm after it had been obtained, it would seem that this user is immaterial, for it is clear that a resulting trust arises if at all at the moment of the purchase.

Citations could be multiplied but further citations would be superfluous.

Any doubts that might have existed on the law of partnership before the act have been dissipated by the Uniform Partnership Act which applies here clearly and without any qualification or contradictory evidence. And the existence of the partnership and the consequent application of the Partnership Act furnish an additional basis, if one were needed, to support the conclusion that the partnership is the owner in equity of the policy moneys, which conclusion follows on well settled principles of resulting trust which would apply, even in the absence of partnership.

NOTICE.

IN CHANCERY OF NEW JERSEY.
Filed March 3rd 1930
72/296.

Between	
FRANK J. QUINN, *Complainant,*	*On Bill, &c.*
and	*Notice.*
ANNA M. LEIDINGER, *Defendant.*	

To George R. Sommer, Esq., solicitor of defendant.

SIR:

PLEASE TAKE NOTICE that the complainant shall move the hearing upon the exceptions filed to the Master's report in the above-entitled matter, before the Honorable Vice-Chancellor Vivian M. Lewis, at the Court House in the City of Paterson, on February 17, 1930, at ten o'clock in the forenoon.

WRIGHT, VANDER BURGH & McCARTHY,
Solicitors of Complainant.

Due service of the foregoing notice is hereby acknowledged.

GEORGE R. SOMMER,
Solicitor of Defendant.

ORDER.

IN CHANCERY OF NEW JERSEY.

72/296.

Filed March 3rd, 1930

Between	
FRANK J. QUINN, *Complainant,*	*On Bill, &c.*
and	*Order.*
ANNA M. LEIDINGER, *Defendant.*	

This matter being opened to the Court by J. Emil Walscheid, Esq., solicitor of complainant, and it appearing that the consent of George R. Sommer, solicitor of defendant, is appended hereto;

It is on this Third day of March, Nineteen Hundred and Thirty, ORDERED that the argument of the exceptions to Master's Report filed in the above matter and consideration of confirmation of said Master's Report be and the same are hereby continued until Monday, March 31st, 1930, and

It is FURTHER ORDERED that the argument on said exceptions be presented on briefs, reserving the right to either party to request oral argument after submission of such briefs.

Respectfully advised,

VIVIAN M. LEWIS,
V.-C.

I hereby consent to the making and entry of the above order.

GEORGE R. SOMMER,
Solicitor of Defendant.

ORDER TO SHOW CAUSE.

Filed November 12, 1930.

IN CHANCERY OF NEW JERSEY.

72/296.

Between FRANK J. QUINN, *Complainant,* *and* ANNA M. LEIDINGER, *Defendant.*	*On Bill, &c.* *Order to Show Cause.*

A petition duly verified having been presented by the complainant, Frank J. Quinn, setting forth that the Master's Report filed in the above cause has been confirmed as modified, that if the assets of the partnership could be liquidated at the values fixed by the Master as the values at the date of the dissolution of said partnership as augmented by the sum of Fifty Thousand ($50,000.00) Dollars, proceeds of the life insurance policy determined to be partnership assets, complainant would be entitled to receive Thirty-three Thousand Eight Hundred Forty-four and 76/100 ($33,844.76) Dollars; that the value of the assets, other than the said $50,000 proceeds, have greatly depreciated in value or have been entirely lost since the said dissolution of the partnership; that said assets are now in the names of the deceased Harry C. Leidinger, defendant, Anna M. Leidinger, individually or as administratrix of the Estate of Harry C. Lei-

dinger, deceased, Frank J. Quinn, Inc. and Harry C. Leidinger, Inc. and that liquidation and distribution of the assets of the partnership in view thereof is difficult, if not impossible; that defendant Anna M. Leidinger, individually and as administratrix of the Estate of Harry C. Leidinger, deceased, has been dissipating and will further dissipate the Fifty Thousand ($50,000.00) Dollars, proceeds of the life insurance policy, which is an asset of the partnership, and that the sum of Sixty-five Hundred ($6500.00) Dollars, proceeds of the sale of one of the assets of the partnership is now held by Otto Cooper, an attorney at law of this state, and that distribution of the assets of the partnership pursuant to the accounting made in this cause cannot be accurately made unless a Receiver is forthwith appointed to collect such assets, and an accounting is made of the present condition of the business and assets of the partnership and where and how located and invested and by whom held or possessed.

It is therefore on this 12th day of November, A. D. 1930,

Ordered that defendant, Anna M. Leidinger, individually and as administratrix of the Estate of Harry C. Leidinger, deceased, Harry C. C. Leidinger, Inc. and Frank J. Quinn, Inc. and Otto Cooper show cause on the 17th day of November, 1930, at ten o'clock in the forenoon or as soon thereafter as counsel may be heard in the premises, before the Chancellor at Chancery Chambers in the Court House, in the City of Paterson, why a Receiver should not be appointed of the assets of the partnership of Quinn and Leidinger, referred to in the petition filed herein, and why defendant, Anna M. Leidinger, indi-

divually and as administratrix of the Estate of Harry C. Leidinger, deceased, should not be directed to convey and transfer to said Receiver the assets, rights and credits of the partnership in her charge, possession, or name, including Fifty Thousand ($50,000) Dollars, proceeds of life insurance policy collected by her, and adjudged to be an asset of the partnership, together with interest from the date of collection, and why said Harry C. Leidinger, Inc. Frank J. Quinn, Inc. Otto Cooper and complainant, Frank J. Quinn, should not be directed to transfer and convey to said Receiver the property, rights and credits of the partnership in their charge, possession or names, respectively.

It Is Further Ordered that in the meantime and until the further order of this Court, said defendants Anna M. Leidinger, individually or as administratrix of the Estate of Harry C. Leidinger, deceased, Harry C. Leidinger, Inc. Frank J. Quinn, Inc. and Otto Cooper be and they are hereby restrained and enjoined from disposing of, dissipating, waiving or dealing with such assets until the further order of this Court.

It Is Further Ordered that copies of this order, certified by the solicitor of petitioner, to be true copies, be served upon said defendants, Anna M. Leidinger, individually and as administratrix of the Estate of Harry C. Leidinger, deceased, Harry C. Leidinger, Inc. Frank J. Quinn, Inc. and Otto Cooper, within one day from the date of this order, and that service of such order may be made on defendant, Anna M. Leidinger, individually and as administratrix of the Estate of Harry C. Leidinger, deceased, by serving George R. Sommer and/or John A.

Order to Show Cause.

Bernhard, Esq., solicitor for and of counsel with said defendant.

E. R. WALKER,
C.

Respectfully advised,

VIVIAN M. LEWIS,
V.-C.

OPINION.

IN CHANCERY OF NEW JERSEY.

Filed November 17th 1930

Between

FRANK J. QUINN,
Complainant,

and

ANNA M. LEIDINGER,
Defendant.

On Exception to Master's Report.

Opinion.

(Syllabus.)

1. On the death of a partner held that the proceeds of a policy on his life payable to his estate was intended to be for the benefit of the partnership, and said proceeds impressed with a trust therefor.

2. In the partnership in question held that the partnership had an insurable interest in the life of Harry C. Leidinger.

3. The existence of the partnership and the necessary application of partnership doctrines require a determination that the proceeds of the policy are assets of the partnership.

J. Emil Walscheid, Esq., solicitor of complainant;

John A. Bernhard, Esq., solicitor of defendant.

LEWIS, *V.-C.:*

This matter is before the Court on exceptions to the master's report after hearings on bill for an accounting.

In 1925 complainant and one Harry C. Leidinger formed a partnership to conduct a real

estate business and to share equally in the profits. Subsequently two corporations were organized by them for convenience in conducting their business. Each of these corporations had a nominal amount of stock which was held equally between them. The business was conducted and the assets and business of the two corporations were handled substantially as though the corporations did not exist, the two corporations being used by the partners apparently as a mere matter of convenience and the lines between the corporate and individual transactions of the partners were substantially ignored. On July 18, 1928, Harry C. Leidinger died as a result of an accident. At the time of his death there was an insurance policy payable to his estate in the sum of $25,000.00 with a double indemnity clause in case of accidental death. This policy was collected in the sum of $50,000.00 by Anna M. Leidinger as administratrix of the Estate of Harry C. Leidinger. After this action was commenced and by stipulation Anna M. Leidinger was made a party defendant to the action in her representative capacity as administratrix of her husband's estate.

The master found there were certain charges and credits as between the respective partners. The master found as against the claim of the complainant that the $50,000.00, the proceeds of the insurance policy of Harry C. Leidinger, was not a partnership asset. The sole ground of exception to the master's report is based on his failure to find that the complainant is to be credited with a one-half interest in this insurance policy.

Complainant contends that it was the intention of the partners that this policy should enure to the benefit of the partnership.

New Jersey State Library

Opinion.

The master found that the contention of the complainant that the policy on the life of Leidinger was impressed with a trust in favor of the partnership was not sustained because the complainant's proofs did not measure up to the standard fixed by law in that they were not sufficiently definite, reliable and convincing. In my opinion, however, the proofs do show with sufficient certainty that it was the intention of the parties that the insurance should be for the benefit of the partnership. The history of the policy taken out on Leidinger's life as well as that taken out on complainant's life seems to show this. In December 1927, the partners wished to secure a loan for the financing of a transaction in which they were interested. The President of the bank to whom they applied for the loan said to them "How do you stand on your insurance; how are you fixed as far as your insurance goes? What would happen to the remaining party if one of you fellows died?" The partners then proceeded to investigate the question of insurance, although before any insurance was taken out they had secured the loan from the bank in question. They first saw an insurance broker who testified that they told him that they discussed with him the form of policy that could be used to protect business interests of each partner. This broker further testified that complainant said in the presence of Leidinger, "We want this insurance so if anything happens to either one of us, the one of us who is left will have the money to wind up the business or to carry on as he sees fit." The broker told them, erroneously it would seem, that insurance could not be taken out payable to the partnership, and told them it would be necessary for each of them to take out insurance on his

own life payable to the estate of the insured. Up to this point it seems absolutely certain and there is no evidence to the contrary that the two partners intended that each should insure his life for the benefit of the partnership. As a matter of fact each of them applied for $25,000.00 of insurance. Complainant's application was accepted and the policy issued to him, but Leidinger's application was rejected because he was found to be overweight. A few months later, namely, April, 1928, Leidinger was accepted as impaired risk in another company. The fee of the policy was $25,000.00 with double indemnity in case of accidental death. This second policy was taken out through another broker who testified he asked Leidinger "Whom shall we make beneficiary. As long as this is going to be partnership insurance, who is going to be beneficiary?" As Leidinger had already been advised by his broker that the partnership could not be named as beneficiary he naturally answered "That question has already been threshed out as to the beneficiary."

The premiums on both of the policies were paid from the partnership funds. The Partnership Act, Laws of 1919, Chapter 212, Section 8, subdivision 2, provides "Unless the contrary contention appears property acquired with partnership funds is partnership property." The section is perhaps not controlling since it is undisputed that these partners were in the habit of indiscriminately paying individual obligations with partnership funds. There is no evidence whatever that it was the intention of the partners in regard to these two insurance policies that they should not be partnership funds, except such conclusion as can be reached from the fact that the policies were taken out payable to the individual

estate. It seems perfectly clear, however, that the naming of individual beneficiaries was based wholly on the statement of the broker that no other course could be pursued. The broker Stowe who wrote the policy on complainant's life testified that when the partners discussed the form of policy complainant said "We want this insurance so if anything happens to either one of us, the one of us who is left will have the money to wind up the business, or to carry on as he sees fit." Such an expression could have no meaning if on the death of one of the partners the proceeds of the insurance on his life were to go to his individual estate. It could only have meaning if the proceeds of the policy were to go to the benefit of the partnership.

The defendant lays stress upon the fact that complainant paid no further premiums and allowed his policy to lapse after the death of Leidinger. I cannot see that this has any bearing, since if the policy on complainant's life was for the benefit of the partnership and since the partnership terminated on Leidinger's death, there would be no occasion to carry insurance any longer for the benefit of the partnership.

From the foregoing it seems clear to me that the partners intended to take out insurance on the lives of both of them so as to protect the partnership in case of the death of either of them. The insurance was taken out on the life of each partner and it is immaterial that the insurance was taken out in the individual names, since the proceeds of each policy would be in trust for the benefit of the partnership. I find ample evidence to sustain the contention of the complainant as to the existence of this agreement and I do not find any evidence inconsistent therewith and ac-

cordingly the exceptions to the master's report are sustained. I find that the complainant is entitled on this accounting to a credit for one-half of the insurance policy on the life of Leidinger.

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

72/296

Filed January 6th 1931

Between

FRANK J. QUINN,

Complainant,

and

ANNA M. LEIDINGER,

Defendant.

On Bill, &c.

Final Decree.

This matter being opened to the Court by J. Emil Walscheid, Esq., of counsel with complainant, in the presence of John A. Bernhard, Esq., of counsel with defendant, and it appearing that the report of Walter G. Winne, Esq., one of the Masters of this Court, made pursuant to an Order of Reference in this cause made on April 29, 1929, has been duly filed and that exceptions were filed by complainant, Frank J. Quinn, to the said report, and that said exceptions came on to be heard by this Court in the presence of J. Emil Walscheid, of counsel with complainant, and John A. Bernhard, Esq., of counsel with defendant, Anna M. Leidinger, individually and as administratrix of the estate of Harry C. Leidinger, deceased, and the Court having considered the matter and the argument of counsel thereon,

It is now on this 29th day of December, A. D. 1930,

ORDERED that the exceptions to said Master's Report be and the same are hereby allowed and that said report be modified so that the same

shall find and provide that the proceeds of the life insurance policy in the New York Life Insurance Company, on the life of Harry C. Leidinger, deceased, payable to the Estate of Harry C. Leidinger in the amount of Fifty Thousand ($50,000.00) Dollars, collected by Anna M. Leidinger, as administratrix of the Estate of Harry C. Leidinger, deceased, on July 20, 1928, are assets of the partnership of Quinn & Leidinger, to be administered and distributed as such assets, and that on the accounting in this proceeding, complainant and defendant, Anna M. Leidinger, as administratrix of the Estate of Harry C. Leidinger, deceased, are each entitled to a credit for one-half of the proceeds of said policy together with interest thereon from the date of collection thereof by the said Anna M. Leidinger as aforesaid, and

It Is Further Ordered that, as modified in accordance with the foregoing, said Master's Report be and the same is hereby in all things rectified and confirmed, and

It Is Further Ordered that William C. Asper, Esq., of the Township of Weehawken, in the County of Hudson, be and he hereby is appointed Receiver to collect, get in, take and receive the outstanding debts and moneys due to or on account of the late partnership business of Quinn & Leidinger, mentioned in the Bill of Complaint in this cause; and also to receive and take possession of the assets, effects and property of every kind and nature of or belonging to said partnership including all of the shares of capital stock of the corporations known as Harry C Leidinger, Inc., and Frank J. Quinn, Inc., and all of the assets belonging to or now standing in the names of said two corporations, upon his filing a bond

with the Clerk of this Court for the benefit of the parties to this suit in the penal sum of Ten Thousand ($10,000.00) Dollars, with sufficient surety to be approved by one of the Special Masters of this Court, conditioned for the faithful performance of his duties as such Receiver; and,

It Is Further Ordered that defendant, Anna M. Leidinger, individually and/or as administratrix of the Estate of Harry C. Leidinger, deceased, is hereby required and ordered forthwith to deliver to said Receiver all of the shares of capital stock held by her or in her possession or under her control in the two corporations aforesaid, namely, the corporation known as Harry C. Leidinger, Inc., and the corporation known as Frank J. Quinn, Inc., as also all money, stock in trade, assets, effects and property, of every kind and nature belonging to said partnership and now in her hands or in her possession or under her control, and that she, also forthwith pay to said Receiver, the sum of Fifty Thousand ($50,000.00) Dollars with interest thereon from July 20, 1928, being the sum of Fifty Thousand ($50,000.00) Dollars, by her received upon said date as the proceeds of the life insurance policy issued by the New York Life Insurance Company upon the life of Harry C. Leidinger, deceased, and payable to his estate, and that complainant Frank J. Quinn be and he hereby is required and ordered to forthwith deliver to said Receiver all of the shares of the capital stock of the two corporations known as Harry C. Leidinger, Inc., and Frank J. Quinn, now in his hands or in his possession or under his control, and that he also forthwith deliver to said Receiver all moneys, stock in trade, assets, effects and property of every kind and nature, belonging to said partner-

ship and now in his hands or in his possession or under his control, and that the said two corporations known respectively as Harry C. Leidinger, Inc., and Frank J. Quinn, Inc., and each of them are hereby required and ordered to deliver to said Receiver all moneys, stock in trade, effects and property of every kind or nature, which they or either of them now have in their possession, or under their respective control, together with their respective seals and all books of accounts or otherwise, deeds, documents, vouchers and papers belonging to said corporations; and

It Is Further Ordered, that said defendant, Anna M. Leidinger, individually and as administratrix of the Estate of Harry C. Leidinger, deceased, Harry C. Leidinger, Inc., and complainant Frank J. Quinn, and each of them are hereby restrained and enjoined from collecting any of the assets of said partnership, and from using, spending, injuring, conveying, waiving, transferring, selling or in any manner disposing of or encumbering any of the effects or property aforesaid except to deliver them into the hands of said Receiver and said persons and corporations named and each of them are hereby required to make, execute and deliver to said Receiver any and all conveyances, instruments and transfers in writing necessary or proper to effectually vest in said Receiver any part of the assets or property of said partnership in their respective possession or under their respective control; and

It Is Further Ordered, that said Receiver be and he hereby is directed and empowered to ascertain the present condition of the assets of said partnership, and the present value thereof, to collect the same by suit or otherwise, and to

liquidate the same and to report the same to this Court for distribution to the complainant, Frank J. Quinn and to the defendant, Anna M. Leidinger, as administratrix of the Estate of Harry C. Leidinger, deceased, and to any other persons entitled to the same or to any portion of the same, in the proportions fixed pursuant to the findings of this Court on the accounting hereinbefore had in the above entitled cause, and now confirmed as modified by this decree, and

It Is Further Ordered that said Receiver be and he hereby is required to file in the office of the Clerk of this Court within thirty days from the date of this Decree, an inventory of all and singular said property so far as the same has come into his hands or possession, and from time to time to make report to the Court of his doings under this Decree, and that the parties to said cause or any of them, or the said Receiver shall be at liberty to apply to the court from time to time for such further order or directions as may be necessary, and

It Is Further Ordered that the sum of Three Hundred ($300.00) Dollars be and the same is hereby allowed unto Walter C. Winne, Esq. for the services rendered by him as Master in the above entitled cause, said sum to be taxed in the costs of this suit, and

It Is Further Ordered that defendant, Anna M. Leidinger, individually and as administratrix of the Estate of Harry C. Leidinger, deceased, pay to said complainant the costs of this suit to be taxed, and that in default of such payments so to be made execution issue against the goods and chattels, lands, tenements, hereditaments and real estate of the said defendant, Anna M. Leidinger, individually and as administratrix of the Estate

of Harry C. Leidinger, deceased, according to the practice of this Court.

E. R. WALKER,

C.

Respectfully advised,

VIVIAN M. LEWIS.

A true copy,

J. EMIL WALSCHEID,
Solicitor of Complainant.

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

Filed May 1st 1931

72/296

Between	
FRANK J. QUINN, *Complainant,*	*On Bill, &c.*
and	*Notice of Appeal.*
ANNA M. LEIDINGER, *Defendant.*	

To: J. Emil Walscheid, Esq., Solicitor of Complainant, Dispatch Building, Union City, New Jersey:

SIR:

The defendant, Anna M. Leidinger, individually and as administratrix of the Estate of Harry C. Leidinger, deceased, hereby appeals from the final decree made in the above entitled cause by the Chancellor on the advice of Vice-Chancellor Vivian M. Lewis on the 29th day of December, 1930, from the whole and every part thereof to the Court of Errors and Appeals in the Last Resort in all Causes.

Dated: April 14, 1931.

GEORGE R. SOMMER,
Solicitor for Defendant.

Notice of Appeal.

I conceive there is good cause for appeal in the above entitled cause.

JOHN A. BERNHARD,
Of Counsel with Defendant.

Copy of the within Notice of Appeal is hereby acknowledged this 22nd day of April 1931.

J. EMIL WALSCHEID,
Solicitor of Complainant.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Filed May 1st 1931

FRANK J. QUINN, *et al.*, *Complainant-Appellee,* *vs.* ANNA M. LEIDINGER, *Defendant-Appellant.*	*On Appeal from Court of Chancery.* *Petition of Appeal.*

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The petition of Anna M. Leidinger, individually or as administratrix of the Estate of Harry C. Leidinger, deceased, the appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Walker, Chancellor of the State of New Jersey, bearing date the 29th day of December 1930, in a certain cause in said Court of Chancery, wherein Frank J. Quinn was complainant, and the said Anna M. Leidinger was defendant in this respect, to wit, wherein it is decreed that the proceeds of the life insurance policy in the New York Life Insurance Company, on the life of Harry C. Leidinger, payable to the Estate of Harry C. Leidinger, in the amount of $50,000.00, collected by Anna M. Leidinger, as administratrix of the Estate of Harry C. Leidinger, deceased, on July 18, 1928, are assets of the partnership of Quinn and Leidinger, to be administered and distributed as such assets, and

that on the accounting in this proceeding complainant and defendant, Anna M. Leidinger, individually or as administratrix of the Estate of Harry C. Leidinger, deceased, are each entitled to a credit for one-half of the proceeds of said policy, together with interest thereon from the date of collection thereof by the said Anna M. Leidinger, aforesaid, whereas it should have been decreed that the entire sum of $50,000.00 is not an asset of the partnership of Quinn and Leidinger, but is the sole property of the said Anna M. Leidinger, administratrix.

2. Said decree appoints William C. Asper, Esq., receiver of the business of Quinn and Leidinger and of the corporations known as Harry C. Leidinger, Inc. and Frank J. Quinn, Inc. and that said decree is erroneous in that the appointment of the receiver was not an issue in the proceedings on which the decree was based.

3. Said decree is indefinite in that it does not direct Frank J. Quinn, complainant, Harry C. Leidinger, Inc. and Frank J. Quinn, Inc. to return, deliver and pay over to the said Anna M. Leidinger, individually or as administratrix of the Estate of Harry C. Leidinger, deceased, the amount of money loaned, advanced and paid out by the said Anna M. Leidinger for and on account of the debts and obligations of Frank J. Quinn and Harry C. Leidinger, partners, Frank J. Quinn, Inc. and Harry C. Leidinger, Inc. according to the amounts found to be due the said Anna M. Leidinger, either individually or as administratrix of the Estate of Harry C. Leidinger, deceased.

4. Petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the

ground that the same is erroneous for the reasons aforesaid.

Petitioner, therefore, prays that the said decree made by the said Chancellor, may be in the particulars aforesaid, wholly reversed, set aside and for nothing holden and that petitioner may have such other relief in the premises as to this Court shall seem proper.

ANNA M. LEIDINGER,
Petitioner.

JOHN A. BERNHARD,
Solicitor of Defendant-Appellant
and of Counsel.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.:

ANNA M. LEIDINGER, of full age, being duly sworn on her oath, says:

I am the petitioner named in the foregoing petition and the matters and things contained therein are true to the best of my knowledge and belief.

ANNA M. LEIDINGER.

Sworn and subscribed to before
me this 21st day of April,
1931.

JOHN A. GRAMMER,
A Master in Chancery of New Jersey.

Service of a Copy of the within Petition of Appeal is hereby acknowledged this 30th day of April, 1931.

J. EMIL WALSCHEID,
Solicitor of the Complainant-Appellee.

NOTICE OF HEARING.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Filed September 25th 1931

Between	
FRANK J. QUINN, *Complainant-Respondent,*	*On Appeal from Court of Chancery.*
and	
ANNA M. LEIDINGER, *Defendant-Appellant.*	*Notice of Hearing.*

To the Appellee, Frank J. Quinn:

TAKE NOTICE, that the argument of the appeal in the above-entitled cause will be brought on at the next term of the Court of Errors and Appeals to be held at the State House, at Trenton, on Tuesday, the 20th day of October, 1931, at the hour of eleven o'clock in the forenoon, or as soon thereafter as counsel can be heard.

Dated: September 15, 1931.

GEORGE R. SOMMER,
Solicitor for Appellant.

JOHN A. BERNHARD,
Of Counsel with Appellant.

Affidavit of Service.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.:

WILLIAM T. BERNHARD, of full age, being duly sworn on his oath, according to law, deposes and says:

I served a true copy of the within notice upon J. Emil Walscheid, solicitor for respondent, by leaving the same with an employee of J. Emil Walscheid, Esq., at his office, 404 38th street, Union City, New Jersey, on Saturday, September 19, 1931, at eleven o'clock in the forenoon.

WILLIAM T. BERNHARD.

Sworn to and subscribed before me this 24th day of September, A. D. 1931.

FRED W. MITCHELL,
An Attorney at Law of New Jersey.

20 FEB.T.1932

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

FRANK J. QUINN,
Complainant-Respondent,

and

ANNA M. LEIDINGER,
Defendant-Appellant.

On Appeal from Court of Chancery.

BRIEF FOR DEFENDANT-APPELLANT.

Facts.

On July 18, 1928, Harry C. Leidinger died as a result of an accident. At the time of his death, there was an insurance policy payable to his estate in the sum of $25,000, with double indemnity in case of accidental death. This sum was paid to Anna M. Leidinger as administratrix of the estate of her son, Harry C. Leidinger. Anna M. Leidinger was subsequently made a party in a representative capacity. The decree of the Court of Chancery directed that one-half of the insurance policy be paid to the complainant. From that decree Mrs. Leidinger appeals.

Prior to July 18, 1928, the date of Mr. Leidinger's death, he and the complainant had formed a partnership to conduct a real estate business and to share equally in the profits. Subsequently, two corporations were organized by the two partners for convenience in conducting their business. The stock of these two corporations was held equally by Quinn and Leidinger and the business of all three companies seems to have rested on a general agreement to share profits equally. In effect, the suit was for an account-

ing as to the transactions of the three companies. By consent of the parties, it was referred to a Special Master. The Master reported that the proceeds of the $50,000 policy was not a partnership asset. He also reported that Mrs. Leidinger "is a creditor of the partnership in the sum of $10,795.06. Page 84.

The exception filed to the Special Master's report was based solely on his finding that the $50,000 policy was not a partnership asset. There was no exception to the finding that Mrs. Leidinger was a creditor of the partnership in the sum of $10,795.06. The Court of Chancery by its decree affirmed the Master's report with the exception that it determined that Mr. Quinn was entitled to one-half of the $50,000. Consequently, the appeal before this Court is limited to that matter.

The question then under the facts and law

I.

Is complainant entitled to a credit of one-half of the $50,000.00.

Concededly, the policy was payable to the "estate of Harry C. Leidinger."

Some months prior to the issuance of the policy, the partnership required money to finance a real estate transaction. They had to obtain funds from the Franklin National Bank in Jersey City. The president of that company suggested:

> "They should get insurance, both of them, while they were alive they were all right, but didn't want to get frozen, that was my suggestion.
>
> Q Was anything said, what kind of insurance they ought to get, or to whom it should be paid or anything of that sort?

A No, I recommended term insurance and told them they could make it direct to the estate, that is usually the form we have." Page 71, lines 15-20.

The loan was granted, not upon life insurance policies as collateral, but on the assignment to the bank of the $7,500 mortgage.

"Q And you accepted that as collateral for that loan?
A Yes.
Q No insurance policies were ever delivered to you?
A No."

Subsequently, however, there was issued to Mr. Quinn, a life insurance policy for $25,000, payable to the partnership. This policy was not for the purpose of providing security to deposit as collateral for the discount of the $7,500 note.

Mr. Leidinger's first application for insurance was declined but upon further examination a $50,000 policy was issued to him. Premiums on both policies were issued some time about the latter part of the year of 1927, and were paid out of the partnership funds. It is, therefore, contended that the Franklin National Bank, having accepted an alternative security, Mr. Quinn cannot in equity, claim any part of the proceedings of the Leidinger policy because the agreement, if there was an agreement, to protect the bank by joint policies was not a consideration upon which Quinn can now rely.

II.

Mr. Quinn's policy was made to the "Estate of Frank J. Quinn."

It is fair, therefore, to assume that the agreement between the parties was to have both

policies payable to their respective estates. Mr. Quinn admits, page 23, line 30, that the policy issued to him was payable to his estate. Moreover, his policy did not contain a double indemnity clause.

> "Q Is there a double indemnity in your policy?
> A No, the company I used didn't sell that type of insurance."

Quinn admits that the $7,500 loan was obtained without the necessity of lodging the policies.

> "Q Did you go ahead and borrow the money you are talking about from the Franklin National Bank?
> A Yes.
> Q How much did they loan you?
> A $7,500 from them.
> Q Was that before or after this insurance was secured?
> A That was before."

It seems obvious on these facts, that there was no mutuality of agreement and that when the necessity for obtaining the insurance to secure the loan had passed, that both partners obtained life insurance policies and that the only relation these policies had to the partnership fund was the fact that the premiums were paid out of such funds. Page 24, line 10.

III.

Mr. Quinn permitted his policy to lapse and never revived it.

If, therefore, the policy had been intended as a partnership asset, it could be of no benefit in case of Mr. Quinn's death to pay partnership assets. In March, 1929, the first premium

was paid. Another premium was due in June, 1929.

"Q Was it paid?
A No.
Q Therefore, your policy lapsed?
A It had not lapsed, because we had thirty days to pay.
Q It did subsequently lapse?
A Yes, after the accident I let it go."

Mr. Leidinger died on July 18, 1928. The Special Master reported that Mrs. Leidinger was a creditor of the partnership in the sum of $10,795.06. From these facts it seems to me Mr. Quinn is now equitably estopped from asserting any right to a credit of one-half of the $50,000 received by Mrs. Leidinger, particularly in view of the pleadings which do not seek a reformation of the policy issued to Mr. Harry C. Leidinger.

Law.

Evidence on which to erect constructive trusts for violation of express or promise to reconvey must be clear, full and satisfactory. *Broadway Building Co.* v. *Salafiia,* 132 Atl. 527.

Implied trusts never arise where express terms of document are unambiguous, although it might arise where precatory words needs interpretation (*supra*).

On the basis of these principles, the clear evidence is that both policies were payable to the respective estates of the two insured partners. Therefore, if any trust was created by oral agreement it would fail in this case because the documents (insurance policies) are unambiguous and do not require interpretation.

While it is true that an implied trust—that is, a constructive resulting trust—can be created, although an oral express trust fails, it is likewise true that "a declaration of intention to create a trust in certain property by the investment of a trust fund therein, is not alone sufficient to create a trust in the property. *Johnson* v. *Bee,* 7 A. L. R. 252.

So far as the evidence discloses, the alleged declaration of intention to create a trust in favor of the partnership, by the issuance of the two policies, was for the sole purpose of discounting a note in the Franklin Trust Company. Here too the evidence indicates clearly that the two partners did not insure their lives for the general benefit of the partnership but for a specific purpose. When the purpose ceased to exist, the trust itself ceased to exist. "When a trust has been created in personalty, and all the purposes of the trust have ceased or are at an end, the absolute estate is in the person entitled to the last use." *Rice* v. *Burnett,* 42 Amer. Decisions 336.

It is, therefore, respectfully submitted that the decree be reversed.

GEORGE R. SOMMER,
Solicitor, Defendant-Appellant.

JOHN A. BERNHARD,
Of Counsel.

20

20 FEB.T.1932

New Jersey Court of Errors and Appeals

Between

FRANK J. QUINN,
Complainant-Respondent,

and

ANNA M. LEIDINGER,
Defendant-Appellant.

On Appeal from Court of Chancery.

BRIEF FOR COMPLAINANT-RESPONDENT.

Statement.

This is an appeal from a decree advised by Vice-Chancellor LEWIS sustaining complainant's exceptions to the Master's Report filed herein. The exceptions taken and sustained were directed solely to the Master's finding that the proceeds of a certain policy of insurance on the life of Harry C. Leidinger, deceased, were not assets of the partnership of Quinn & Leidinger, but were property of the estate of Harry C. Leidinger, deceased.

In 1925 complainant and one Harry C. Leidinger formed a partnership to conduct a real estate business and to share equally in the profits. Subsequently two corporations were organized by the two partners for convenience in conducting their business. Each of these corporations had a nominal amount of stock which was held equally between them, and the business was conducted and the assets and business of the two

corporations were handled substantially as though the corporations did not exist, the two corporations being used by the partners apparently as a mere matter of convenience and as part of the partnership under the general partnership agreement to share profits equally. On July 18th, 1928, Harry C. Leidinger died as a result of an accident.

Complainant filed his bill alleging *inter alia* that he and defendant's son, Harry C. Leidinger, were partners, that various assets of the partnership came into the hands of defendant, who was appointed Administratrix of the Estate of her son, the said deceased partner, and praying for an accounting by defendant of such assets, and for an order determining that all such assets are held by her in trust for said partnership and for an order directing her to pay and deliver over such assets to or for the benefit of said partnership.

The bill alleged that one of those assets is the sum of Fifty thousand ($50,000.00) Dollars being the proceeds of an insurance policy on the life of Harry C. Leidinger, made with the New York Life Insurance Company, which proceeds were collected by defendant, Anna M. Leidinger, as administratrix of the estate of the deceased partner. The bill alleged that in December, 1927, when complainant and defendant applied for an additional line of bank credit, complainant and defendant were advised to and determined to take out policies of insurance on the life of each of them, the policies when payable to enure to the benefit of the partnership (Par. 3); that pursuant to said determination, they each applied for insurance (Par. 4); that complainant's application was accepted and a $25,000 insurance policy

granted on his life, but Leidinger's application rejected because of his physical condition (Par. 5); that thereafter, Leidinger succeeded in getting insurance from the New York Life Insurance Company, the policy being likewise in the amount of $25,000, in which policy the estate of Harry C. Leidinger was named as beneficiary. The insurance premiums thereon as well as on the policy of complainant were paid by the partnership and out of partnership funds (Par. 5). The said policy provided for payment of double the amount thereof in the event of a sudden or accidental death; Leidinger's death was sudden or accidental. Defendant collected the proceeds of said policy of $50,000 and retains them as an asset of the deceased (Pars. 6 and 7). The proceeds of said insurance are assets of the partnership but defendant refuses to deliver them to the partnership (Par. 9).

The bill also listed various other assets of the partnership collected by defendant. Complainant prayed for an order requiring defendant to render an account of the moneys collected on said insurance policy and other partnership moneys and assets so collected, and for an order determining that such moneys and assets are held in trust for the partnership and directing payment thereof to or for the benefit of the partnership.

Defendant Anna Leidinger, individually, filed an answer admitting that all the assets referred to in the bill of complaint were assets of the partnership excepting only the proceeds of the insurance policy referred to.

Defendant also filed a counterclaim in which she alleged that complainant had himself collected various assets of the partnership for which complainant should account to her, and that "defend-

ant, Anna M. Leidinger since the death of Harry C. Leidinger, in July, 1928, has advanced to Frank J. Quinn, and has laid out and expended for him, and at his request, moneys amounting to $14,833.00" (Par. 10, T. p. 40), and prayed that complainant be directed to return to her the said $14,833 advanced for him and to render an accounting of the partnership assets collected by him.

After the action was commenced, Anna M. Leidinger was made a party defendant in her representative capacity as administratrix of the Estate of Harry C. Leidinger, deceased.

The questions presented by the bill and counterclaim were referred to a Master. The Master found certain charges and credits as between complainant and defendant. The Master found as against the claim of complainant, that the $50,000 proceeds of the insurance policy of Harry C. Leidinger was not a partnership asset.

The sole ground of exception to the Master's Report was based on his failure to find that such insurance policy proceeds were partnership assets and that complainant is to be credited with a one-half interest therein. The Vice-Chancellor sustained complainant's said exception.

Introductory Analysis.

The Issue.

The issue presented on which affirmance or reversal of the decree below depends is:

Do the proceeds of the Leidinger insurance policy belong *in equity* to the partnership, even though the estate of Leidinger is named in the policy as beneficiary and even though the party

entitled *at law* to such proceeds is the *Estate of Leidinger,* or more properly (since the "Estate" is not a legal entity) his administratrix?

The Master's Findings.

The Master missed the issue presented and thought the crucial question for him to determine was whether the insertion of "Estate of Harry C. Leidinger" as beneficiary in the policy of insurance was intended, or whether that was erroneous and the intention instead to physically insert the partnership "Quinn & Leidinger" as beneficiary.

The Master says: "The bill of complaint alleges that the life insurance policy referred to was intended to name the partnership as beneficiary" (p. 80). The Master apparently thought that unless adequate proof was offered showing that the physical insertion of the name "Estate of Harry C. Leidinger" as beneficiary was not intended and was a mistake—an error—that complainant's claim must fall. He proceeded to examine the evidence with reference to that lone question, calls particular attention to the fact that "Frank J. Quinn (complainant) did not testify to any different agreement that the insurance on the life of each partner should be payable to the partnership, but on the contrary testified that it was agreed that each assured would make his estate the beneficiary" (p. 2).

Believing that the bill of complaint and relief prayed therein must stand or fall on proof that the insertion of the name "Estate of Harry C. Leidinger" as beneficiary was erroneous and unintended and that the insertion of the name of the partnership was intended instead, and finding that both partners agreed that their respective

estates should be named beneficiaries in the policies, and that therefore, the insertion of the name "Estate of Harry C. Leidinger" was not erroneous, the Master found as his conclusion that the allegations of the bill of complaint were not sustained and that the proceeds of said insurance policy were property of the estate of the deceased partner, and not of the partnership.

The frailties in the reasoning of the Master are apparent. The bill of complaint does not allege that "the life insurance policy referred to was intended to name the partnership as beneficiary", as the Master seemed to think. And whether the physical insertion of the name of the estate was intended or erroneous is not material on the issues raised herein, though it would be if this was a bill for reformation of the insurance policy to correct a misnomer of beneficiary.

It is admitted that the physical insertion of the names of the estates of the respective partners in the respective policies as beneficiaries was intended and while the result of a mistake as to the law, was not a physical error.

The question here is, however:

Do the proceeds of the Leidinger insurance policy belong in equity to the partnership, even though the estate of Leidinger is named on the policy as beneficiary and even though the party entitled at law to the proceeds is the Estate of Leidinger?

The problem thus presented of differentiation between legal ownership and beneficial or equitable ownership, is not rare or obscure. In every case of alleged express trust, legal title is in A, and intended to be put in A, though it is alleged that beneficial or equitable ownership is in B. So in resulting trusts, which arise by operation

of law, legal title is in A, but it is alleged that by operation of law and the erection of a resulting trust, beneficial ownership is in B. In neither of these cases, can it be alleged that the acquisition of legal title by A was a fraud or unintended—for that presents the stage for a constructive trust. Nevertheless, though A has legal title to real or personal property or to a chose in action, through no mistake or error, it is alleged that A is not the real beneficial owner thereof, but that B is. It is elementary that in order to reach a decision that B is the beneficial owner—the owner in equity whom equity will protect—it is not necessary to first find that it was intended that legal title should be in B and not in A and that legal title was put in the name of A only through error. It, therefore, follows as a corollary to this elementary proposition that the Master was in error in his analysis. The error in analysis and reasoning led the Master to ignore the pertinent facts and to reach an erroneous conclusion.

Vice-Chancellor's Opinion.

The Vice-Chancellor properly analyzed the issues presented. He found that the fact that insurance is taken out in the individual names of partners, of course, does not prevent a finding that such insurance was a partnership asset; that the general rule applies with particular force in the instant case where the partnership was not physically named as beneficiary in the insurance policy only because of a mistaken belief that it could not be directly so named.

The Vice-Chancellor further found that the evidence clearly established the intention and agree-

ment of both partners, each to insure his life for the benefit of the partnership and that the policies in question were issued pursuant to said intention and agreement.

He further found that the premiums were paid by the partnership from partnership funds, as did the Master (p. 80), that there was not only no evidence to rebut the presumption of resulting trust arising irrespective of the partnership, or to countervail Section 8, subdivision 2 of the Partnership Act (L. 1919, Ch. 212), that "unless a contrary intention appears property acquired with partnership funds is partnership property", but that all the evidence affirmatively supported the said presumption and the Act. He accordingly found the insurance policy and its proceeds to be assets of the partnership and impressed with a trust therefor.

Defendant's Brief.

Defendant's brief does not attempt to meet the Vice-Chancellor's findings or argument; the listed points are either foreign to the issue or clearly unsupportable. They will be dealt with seriatim after presentation of the argument on the questions raised by the issue presented.

ARGUMENT

POINT I.

The proofs establish the creation of an express trust of the proceeds of the insurance policy for the benefit of the partnership as cestui que trust.

The testimony shows clearly the determination and agreement of both partners to take out insurance on their respective lives for the benefit of the partnership; that the policies were not made payable to the partnership in the first instance because of advice that it could not be done; that the policies were taken out in the form they were with intent that they should be partnership insurance for the benefit of the partnership.

Complainant and Leidinger were partners, and the partnership business was chiefly real estate. This is admitted.

They applied to the Franklin Bank of Jersey City, N. J., for a loan to finance a building operation and Dr. Friele, its President, suggested to them that they should have insurance (p. 71). He said "You fellows are a good risk; how do you stand on your insurance; how are you fixed as far as your insurance goes? What would happen to the remaining party if one of you fellows died" (p. 22)?

They immediately determined to get such insurance (p. 23). They called in E. S. Stowe, one of the witnesses, an insurance broker and "talked with him in regard to a certain form of policy that could be used to protect the business interests of each partner" (p. 68, Stowe).

Both partners wanted insurance for the partnership. Leidinger's intention was clear. He

told John Kelly, a witness: "Quinn and I got to take out *partnership* insurance" (p. 53). Quinn's intention was the same. Stowe testified Quinn said in the presence of Leidinger: "Happy (Leidinger) and I are just like two brothers; everything we do is agreed to by both of us, and we want this insurance so if anything happens to either one of us, the one of us who is left will have the money to wind up the business, or to carry on as he sees fit" (pp. 69, 70).

They discussed the type of insurance with Stowe, and their discussion is illuminating.

> "I suggested that we call the ordinary life policy, leaving the dividends to make the policy in each case a semi-investment. Either Mr. Quinn or Mr. Leidinger, I don't recall which, said that kind of insurance would not be satisfactory for the purpose, because the premium was too high. Mr. Leidinger in this case said 'We want something that has a very low premium because we don't want to have the business, or the partnership, I don't recall the exact word, spend any more money than necessary, we want plain everyday protection.' For that reason both applications were put on what we call the term form. It is more or less temporary form of insurance with a very low premium and no cash values" (pp. 68-69, Stowe).

Then they turned to the question of beneficiaries, and decided on Stowe's advice that the policy could not name the partnership as beneficiary because it could not take, and on his advice the policies were to name the estates as beneficiaries.

Stowe testified: "When we came to the part of the application where the beneficiaries are named, we talked at length about the wording and also we went back over another form of insurance that might be used, which is called a joint-life policy and is taken by two, sometimes, three people, the death of one person terminating the contract and the money is paid to the survivor. I urged against this form of insurance because in this form of insurance if one partner dies the contract is immediately canceled and it doesn't give the other partner the opportunity of making a new business connection unless the surviving partner is in good health, whereas if two contracts are taken out and one partner dies, the other partner still having the policy can make a new business connection and have the new partner take out insurance. Both Mr. Quinn and Mr. Leidinger agreed that the joint-life policy would not be acceptable. I then asked Mr. Quinn in this case what the word "incorporated" meant, and either Mr. Quinn or Mr. Leidinger said "Well, our business interests are all tied up together here, and each of us knows what the other does, and some of our business is handled in the incorporated concern and some through the partnership." I then asked how about the partnership papers, whether there was anything in that that would have any bearing on life insurance, and to the best of my recollection, one of the men said, "We have no partnership papers" (p. 69).

Stowe advised that the policies would have to be made to the respective estates of the partners, that it couldn't be made to the partnership, because as he said: "While the partnership exists there is no partnership, there is no partnership to leave the money to in the event of death, and

then it would have to be left this way and then assigned over" (p. 23).

The legal difficulty which Stowe thought existed to naming the partnership as beneficiary is of course easily understood. Lawyers, supposedly trained in the law, have been likewise confounded.

The books are full of cases of attempts to make conveyances to a partnership by its firm name, which happened to be artificial name, which did not contain the name of any partner. In such case, the uniform rule is that no legal title passes and the firm takes nothing.

Tidd v. *Rines,* 26 Minn. 201;
Riddle v. *Whitehill,* 135 U. S. 621;
Africa v. *Trexler,* 232 Pa. 493;
Spaulding Mfg. Co. v. *Dodbold,* 92 Ark. 63;
Gordner v. *Pankonin,* 83 Neb. 204.

Of course, the rule is that if the firm name includes the surnames of all the partners, they take as tenants in common but subject to equities for firm purposes.

Thrasher v. *Lawrence,* 78 N. H. 437;
Liebert v. *Reiss,* 160 N. Y. S. 535;
Mann v. *Paddock,* 108 Va. 827;
Curtis v. *Reilly,* 188 Iowa 1217.

That Stowe was mistaken, and gave incorrect advice is, however, of course immaterial. It is important, however, to note that it was because of Stowe's mistaken advice that this case has arisen; that it was because of Stowe's advice that it was agreed to insert the names of the respective estates as beneficiaries in the first instance,

and not the partnership, because, on that advice, it was felt that the desired result of getting partnership insurance could not be achieved in any other way.

But the purpose and intent of the partners and the result they desired to achieve by the insurance taken in that manner is clearly proved.

To repeat Stowe's testimony, Quinn's statement in the discussion between Quinn, Leidinger and Stowe on the insurance question was:

> *"Happy and I are just like two brothers; everything we do is agreed to by both of us, and we want this insurance so if anything happens to either one of us the one of us who is left will have the money to wind up the business, or to carry on as he sees fit."*

The applications were made in the form suggested, pursuant to agreement. Complainant was accepted and his policy issued; Leidinger was rejected because he was overweight (p. 70).

The premiums on complainant's policy, which was issued in December, 1927, was paid by the partnership from partnership funds (p. 23).

Leidinger, though rejected by the company which insured complainant's life, was finally accepted by a different company in April, 1928, the policy issued being the one in question. The agent who wrote the policy, John Valk, Jr., testified at the hearings. He testified that he told Leidinger that he could get insurance in Valk's company, despite the fact that he was overweight (p. 54). Leidinger told Valk that this was to be partnership insurance, so when the application came to be filled out, Valk testified he asked Leidinger: "Whom shall we make beneficiary, as

long as this is going to be partnership insurance, who shall I make beneficiary" (p. 55)?

Leidinger had already, together with complainant, discussed the question of making the partnership beneficiary with Stowe as hereinabove stated, and Stowe had advised that the partnership could not be named, but that the result could be achieved by naming the respective estates. Hence, Leidinger, in answer to Valk's question, told him to name his estate as beneficiary, saying: "that question has already been been threshed out as to the beneficiary" (p. 55, Valk).

The premium was paid by the partnership out of partnership funds (p. 24). Valk testified that first complainant signed the check but Leidinger was not around and a few days later the check was also signed by Leidinger (p. 55). The said partnership check in payment for the premium was introduced in evidence marked Exhibit P-10 (p. 55). The Master found that the premiums were paid by the partnership with partnership funds (p. 80).

It is well settled that "no particular formality" is required nor need any special language be employed to create a trust.

1 Lewin (7th Ed. 1929), Section 82.

It is likewise settled that any personal property can be the subject of a trust.

> "Every kind of valuable property, both real and personal, that can be assigned at law may be the subject matter of a trust. * * * So choses in action, expectancies, contingent interests and even possibilities may be assigned and a valid trust created in them.

> Property not owned by the assignor at the time and not even in esse may be assigned in equity and a valid trust may be created in a naked power or authority."

The rule has been specifically applied to insurance policies.

> *Rahders* v. *People's Bank,* 113 Minn. 496 (1911);
> *In re: Policy No. 6402* (1902), 1 Ch. 282.

The partnership is a proper "object" or beneficiary of a trust.

> *Rahders* v. *People's Bank,* 113 Minn. 496.

In this case A, B and C formed a co-partnership under the name of A, B and C. Later they formed a corporation under the name of A, B, and C. While they were a partnership, each of the partners took out insurance policies on their respective lives, payable to their respective estates. The premiums were all paid by the co-partnership until the corporation was formed. When the corporation was formed the business of the co-partnership was transferred to the corporation, A, B and C each taking one-third of the capital stock. Thereafter, the corporation paid one premium on C's policy when C died.

The administrators of C claimed the proceeds as their own by virtue of the fact that the estate was named beneficiary; and the corporation claimed the proceeds as its own. The Insurance Company, by agreement, deposited the money in a bank and this suit was instituted to contest the right to the proceeds.

The case was heard and the trial court found that the partners had insured their respective lives with the intention that the policies should inure to the benefit of the partnership; that the partnership paid all the premiums and that if the corporation had not been formed the partnership would have been entitled to the proceeds.

On appeal the finding of fact was not controverted. The administrators raised the legal question that "there was no insurable interest in the two other members of the co-partnership at the time the policies were issued."

The Court dismissed this contention, saying at page 300:

> "Each member of a co-partnership certainly has an interest in the continuance of the lives of his co-partners growing out of the partnership relation. The necessities of the business incur more or less liability which might be serious financially, if one were removed by death.
>
> *Conn. Mut. Life Ins. Co.* v. *Luchs*, 108 U. S. 498.
>
> This is the general rule and we hold that the partnership in question had an insurable interest in the life of Mr. Merill (C)."

The next question considered was whether, since the partnership transferred its assets to the corporation and was no longer in existence, the corporation had any standing to claim the proceeds. The corporation's claim rested merely on a general assignment to it by the partnership of the assets of the partnership. The administrators first contended that the corporation had no standing because it had no insurable interest in the

life of C. The Court disposed of that contention finding it well settled that

> "a policy, valid when issued may be assigned as a chose in action to one having no insurable interest in the insured."

The Court then took up the remaining question in these words:

> "It only remains to notice appellant's third point, that the assignment, if made, was made by parol and contrary to the terms of the written contract. There are three answers to this objection: First, the writing—that is, the policies—do not forbid an assignment of the contract and do not provide in what manner an assignment shall be made. Second, the Court found that the policies became the property of the corporation, and appellant does not question the fact; and Third, the Insurance Company admits its liability on the policies and makes no objection to the method of the transfer or assignment and as between the assignor and assignee an assignment by parol was sufficient."

The intention, subject and object required were clearly established by the proofs offered. Four witnesses: Stowe, Valk, Kelly and Quinn, testified to the agreement and intention of Quinn and Leidinger to have the insurance policies enure to the benefit of the partnership. No attempt was made to discredit any of these witnesses nor was any one of them discredited in any way. The defendant offered no testimony in contradiction and made no attempt to show that the

testimony was erroneous in any way or that Mr. Leidinger intended any other beneficial owner than the one testified to by the said witnesses.

The Court of Errors and Appeals has enunciated the rule applicable in these circumstances:

> "Where, as here, the character of a party for truth and veracity is unimpeached, and his testimony is uncontradicted, is not contrary to circumstances in evidence, and contains no inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to the truth of the testimony, it will be given effect."
>
> *Cartan* v. *Phelps,* 91 N. J. Eq. 312, at pages 316 and 317 (E. & A.).

The application of the rule thus stated to the case, *sub judice,* follows a *fortiori.* For we have here, not merely the evidence of a party to the cause, but we have that testimony substantiated, corroborated and supplemented by a number of disinterested witnesses.

POINT II.

Even if it be conceded arguendo that the proofs do not sustain an express trust, the proceeds of the insurance policy are in equity property and assets of the partnership under the well-settled doctrines of resulting trust.

The beneficial ownership of the proceeds of the policy would result to the partnership of Quinn & Leidinger by virtue of a resulting trust even if no partnership existed between the parties.

The rule is well-settled that where legal title is taken in the name of B, and the consideration moves from A, a trust at once results in favor of A, the party from whom the consideration moved, and A is the owner in equity of the property.

3 Pomeroy, Equity Jurisprudence, Section 1037;
1 Perry Trusts (7th Ed.) Sections 130-139;
26 R. C. L. 1220;
39 Cyc. 125;
Cuttler v. *Tuttle,* 19 N. J. Eq. 549;
Vigne v. *Vigne,* 98 N. J. Eq. 274;
In re Policy No. 6402 (1902), 1 Ch. 282.

The doctrine is long established—indeed as far back as 1683.

> "Where a man buys land in another's name, and pays money, it will be in trust for him that pays the money, tho' no deed declaring the trust, for the Statute of 29 Car. 2 called the Statute of Frauds, doth not extend to trusts, raised by operation of the law."

Anonymous, 2 Vent. 361 (1683).

The doctrine is now of almost universal application. The authorities are gathered and the rule is thus stated in 3 Pomeroy, Section 1037:

> "In pursuance of the ancient equitable principle that the beneficial estate follows consideration and attaches to the party from whom the consideration comes, the doctrine is settled in England and in a great majority

> of the American states, that where property is purchased and the conveyance of the legal title is taken in the name of one person, A, while the purchase price is paid by another person, B, a trust at once results in favor of the party who pays the price, and the holder of the legal title becomes a trustee for him."

The rule applies whether title is taken in the name of one stranger, or of several strangers jointly, or of one stranger and one privy to the consideration, and applies likewise whether two or more have advanced the consideration.

> *3 Pomeroy,* op cit. *supra,* Section 1038;
> *1 Perry,* op. cit. *supra,* pages 203, 207.

The rule is accepted and applied in this state.

> *Cuttler* v. *Tuttle, supra;*
> *Vigne* v. *Vigne, supra.*

In *Cuttler* v. *Tuttle, supra,* the Court said at page 558:

> "It is a settled principle, that where one person purchases property for a stranger, and the purchase money is paid for by the stranger, or out of his funds, although the title is taken in the name of the person making the purchase, a trust results, and the land is held in trust for the party whose money is paid. * * * A similar rule prevails in cases where the consideration proceeds from two or more persons jointly. A resulting trust will arise in proportion to the amount of the consideration which they

may have respectively contributed. Hill on Trustees 92."

The doctrine applies in all its phases to personal property.

1 Perry on Trusts (7th Ed., 1928) Section 130;
3 Pomeroy, Equity Jurisprudence, Section 1038, page 1996;
26 R. C. L. 1220;
Vigne v. *Vigne,* 98 N. J. Eq. 274;
40 Harv. L. Rev. 657.

The rule is thus stated in *Vigne* v. *Vigne, supra,* at page 298:

> "This doctrine of resulting trusts in all of its phases applies alike to personal and to real properties. 3 Pom. Eq. Jur., sect. 1038, page 2353."

Cases are gathered and the rule thus stated in 39 Cyc. 125:

> "The equitable rule of a resulting trust arising from the payment of the purchase money applies to lands, and also to personal property."

So Perry says it embraces all personal property applying equally to bonds, annuities, stocks, mortgages or any other personal interest.

1 Perry, op. cit. *supra,* Section 130, and cases there cited.

Indeed, the doctrine of resulting trust is applied to even greater extent in the case of personalty than in the case of realty.

40 Harv. L. Rev. 657, annotating *Hudson Bay Co.* v. *Hosie,* 4 D. L. R. 489 (1926).

As the writer there points out:

> "Although a voluntary conveyance of realty raises no presumption of a resulting trust, the courts have generally refused, as in the principal case, to draw a distinction between the purchase of stock in the name of another and a voluntary conveyance to another."

The doctrine has been expressly applied to the proceeds of a life insurance policy

> *In re Policy No. 6402 of the Scottish Equitable Life Assurance Company* (1902), 1 Ch. 282.

The facts in this case were as follows: A policy of insurance was taken out by A, on his own life "for behoof of B," his wife's sister, and the policy provided that B, her executors, administrators and assigns, should be entitled to receive the policy moneys on A's death. A paid all the premiums on the policy, survived B, and continued to pay the premiums until his death. B's personal representatives claimed beneficial ownership in the policy as well as legal ownership. A's personal representatives, however, claimed that although B's personal representatives had legal title to the proceeds, there was a resulting trust to them.

Held, that the legal personal representatives of B were trustees of the policy moneys for the legal personal representatives of A.

The Court in its opinion first cited the general rule on resulting trusts, saying at page 284:

> In the leading case of Dyer *v.* Dyer (1788) 2 Cox. 92, 93, Eyre, C. B. in giving his judgment says, "The clear result of all the cases, without a single exception, is that the trust of a legal estate, whether freehold, copyhold or leasehold; whether taken in the names of the purchasers and others jointly; or in the names of others without that of the purchaser; whether in one name or several; whether jointly or *successive,* results to the man who advanced the purchase money, and although the judgment goes only to real estate or to leaseholds, I think the law is correctly laid down in Levin on Trusts, 10th Edition, page 125, where it is stated: 'Not only real estate, but personalty also, is governed by these principles, as if a man take a bond, or purchase an annuity, stock or other chattel interests in the name of a stranger, the equitable ownership results to the person from whom the consideration moved.' "

The Court then proceeded to a consideration of analogous cases, taking up three cases, one dealing with the purchase of a bond, and two with the purchase of an annuity. In the first case, as the party paying the consideration stood in *loco parentis* to the party in whose name title was taken, it was held that the presumption of resulting trust was rebutted by the counter presumption of gift by parent to child. In the others, the parties were not in *loco parentis,* and it was held that a trust resulted to the party advancing the consideration. No proof being

adduced by way of rebuttal of any intention that the legal title holder should have the beneficial interest also.

The Court said in summary of the cases:

> "And Lord Romilly puts it quite generally in the case of Garrick *v.* Taylor, 29 Beav. 79, 83, which was affirmed by the Court of Appeals 31 L. J. (Ch.) 68. He says 'If a purchase be made by one in the name of another the presumption is that the latter is a trustee for the person who pays the money, unless the parties stand in the relation of parent and child.' "

Turning to the case at hand the Court said that it

> "is a case of a man taking the policy out in the name of another, that other person being a sister of his wife, and therefore not standing in any relation to him 'that would meet the presumption' as Lord Eldon expressed it. It comes really to this: A purchase by one in the name of another with no other circumstances at all proved. Therefore, in my opinion, although the legal personal representatives of the lady in this case would be the persons entitled to receive the money at law and to give a receipt for it, in equity the money belongs to the legal personal representatives of Mr. Sanderson (a) who took the policy."

It seems unnecessary to cite further cases illustrating the application of the doctrine. Its application to the facts of the case at bar is clear. The facts have been set out above under Point I.

It was shown clearly that the partnership paid the premiums on the policy from its funds. The Master found as a fact that "the premium was paid by the partnership" (Report, p. 82).

Of course, it is true that the doctrine of resulting trust is one of presumption which may be rebutted by other proof. The rule is thus stated by Perry:

> "It follows that as a resulting trust may be shown by parol proof, as a presumption of law arising out of the transaction, so the presumption may be rebutted by parol proof showing that no trust was intended by the parties at the time of the transaction and that it was the intention to confer the beneficial interest upon the supposed nominal purchaser * * *. *The presumption, however is in favor of the trust resulting to the party paying the consideration and the burden of proof is upon the mere nominal purchaser to show that he was intended to have some beneficial interest.*"
>
> *1 Perry,* op. cit. *supra,* Section 139.

But not merely was no evidence of any kind offered to rebut the presumption of resulting trust but all the testimony adduced was in support thereof, even though evidence in support is unnecessary.

POINT III.

The existence of the partnership and the necessary application of partnership doctrines require a determination that the proceeds of the policy are assets of the partnership.

The result is required by statute. The Uniform Partnership Act. P. L. 1919, Chap. 212 (p. 481) provides:

> "Unless a contrary intention appears, property acquired with partnership funds is partnership property."
>
> L. 1919, Chap. 212, page 481, Section 8, Subsection 2.

It is unquestioned that no contrary intention has been shown.

The same rule would be applicable even apart from the statute.

> *Lindley, Partnership* (7th Ed.), page 362, *et seq.;*
>
> *1 Rowley, Partnership,* page 308, Section 276;
>
> *22 Am. & Eng. Encyc. L.* (2nd Ed.), page 91, 30 Cyc. 152.

The rule is thus stated by *Rowley,* op. cit. *supra,* Section 276:

> "When partnership funds have been used in purchasing property, it is presumed that such property was intended to belong to the firm: citing
>
> *Allen* v. *Hawley,* 6 Fla. 142;
>
> *Loubat* v. *Nourse,* 5 Fla. 350;

Alline v. *Kahla,* 123 Ill. 496;
Bradbury v. *Smith.* 21 Maine 117;
Scott v. *McKinney,* 98 Mass. 344;
Catron v. *Shepher,* 8 Neb. 308;
Davson v. *Parsons,* 31 N. Y. S. 71, aff'd 41 N. Y. S. 1111;
Thursby v. *Lidgerwood,* 69 N. Y. 198;
Keming v. *Moss,* 40 Utah 501;
Ex Parte Hinds, 3 DeG. & Sm. 613;

and this though the title thereto has been made to a partner or partners individually.

Citing:

Lewis v. *Buford,* 193 Ark. 57;
Bopp v. *Fox,* 63 Ill. 540;
Homes v. *Stix,* 104 Ky. 35;
Davis v. *Davis,* 60 Miss. 615;
Quinn v. *Quinn,* 22 Mont. 403;
Traphagen v. *Burt,* 67 N. Y. 30;
Druschke v. *Stefan,* 83 Wis. 373;
Smith v. *Smith,* 5 Ves. Jr. 189.

In *22 Am. & Eng. Encyc. L.* (2nd Ed.), page 91, the rule is stated thus:

> "All property bought with funds belonging to a firm is, *prima facie,* at least, the property of the partnership, though the title to such property be taken in the individual names of one or more of the partners."

The rule is thus stated and applied by *Lindley,* op. cit. *supra,* at page 362:

> "The mere fact that the property in question was purchased by one partner in his own name is immaterial, if it was paid for

out of the partnership moneys; for in such a case he will be deemed to hold the property in trust for the firm unless he can show that he holds it for himself alone."

Citing:

Smith v. *Smith,* 5 Ves. 193 (Lord Elden);
Robley v. *Brooke,* 7 Bl. 90;
Morris v. *Barrett,* 3 Y. & J. 384.

Upon this principle it has been held that land purchased in the name of one partner, but paid for by the firm, is the property of the firm, although there may be no declaration or memorandum in writing disclosing the trust, and signed by the partner to whom the land has been conveyed.

Citing:

Foster v. *Hale,* 5 Ves. 308.

So if shares in a corporation are bought with partnership money they will be partnership property, although they may be standing in the books of the corporation in the name of one partner only, and although it may be contrary to the corporation's deed of settlement for more than one person to hold shares in it.

Citing:

Ex Parte Connell, 3 Deac. 201;
Ex Parte Hinds, 3 Deg. & S. 613.

So it was held that the partnership was the owner in equity of a seat on the stock exchange,

the consideration for which was paid by the partnership.

In re: Hearns, 163 N. Y. App. Div. 397.

So in *Fairfield* v. *Phillips,* 83 Iowa 571 (1891), the same rule was applied to the purchase of stock. The syllabus thus states the holding:

> "Where certain shares of corporate stock were transferred in equal quantities to each of the members of a firm, but payment therefor was made with bonds owned by the firm, the negotiations therefor concurred in by both parties, the expense of acquiring it borne by the parties equally and the purchase was at the time and afterwards recognized as a partnership transaction *HELD:* that the stock must be regarded as partnership property, and that one of the partners having traded the shares transferred in his name for certain real estate, and converted the same to his own use, he was liable to his co-partner for one-half the value thereof, as well as the rents and profits."

So, in *Wolf* v. *Selling,* 25 N. Y. Supp. 963, the partnership was held the owner in equity of a liquor license obtained with funds of the partnership. There was here absolutely no evidence that the partner in whose name the license stood intended or expressed an intent that the license be held for the benefit of the firm. In fact she testified unequivocally that such had not been her intent. While it is true that in this case the license had been used by the firm after it had been obtained, it would seem that this user is immaterial, for it is clear that a resulting trust arises if at all at the moment of the purchase.

Any doubts that might have existed on the law of partnership before the act have been dissipated by the Uniform Partnership Act which applies here clearly and without any qualification or contradictory evidence. And the existence of the partnership and the consequent application of the Partnership Act furnish an additional basis, if one were needed, to support the conclusion that the partnership is the owner in equity of the policy moneys, which conclusion follows on well settled principles of resulting trust which would apply, even in the absence of partnership.

Although the learned Vice-Chancellor in his opinion said that the section of the Partnership Act quoted "is perhaps not controlling, since it is undisputed that these partners were in the habit of indiscriminately paying individual obligations with partnership funds", a search of the record, it is submitted, discloses no such testimony: Considerable testimony was introduced as to payments made by complainant and/or by defendant, Mrs. Leidinger *after* the dissolution of the partnership by death of Mr. Leidinger on July 18, 1928; the only testimony as to payments from partnership funds *before* such dissolution, except for a few references to payments for admitted partnership purposes, was the testimony as to the payment by the partnership from partnership funds of premiums on the aforementioned two policies of complainant partner Quinn and of deceased partner Leidinger. Undoubtedly the learned Vice-Chancellor was misled into the statement quoted at the head of this paragraph by the said testimony concerning expenditures made *after* the dissolution of the partnership through the death of Mr. Leidinger.

POINT IV.

The contention advanced by defendant under Point I of her brief is without merit.

What the argument and conclusion advanced under Point I are intended to mean is not clear; defendant seems to be urging the contention made in her brief to the Vice-Chancellor that: "The policies were not for the general benefit of the partnership but only as security for the anticipated loan by the Franklin National Bank which loan was not made on the insurance policies as collateral, but upon a mortgage security" (Point 2, Summary, p. 9), which contention is repeated on page 6 of defendant's brief herein.

The general contention thus stated is apparently directed to the proposition contained in Point I of this brief that "The proofs establish the creation of an express trust of the proceeds of the insurance policy for the benefit of the partnership *cestui que trust.*"

The contention made is without any merit. In the first place, the record is devoid of any evidence that the Franklin National Bank demanded insurance policies as collateral security for the proposed loan to the partnership, or that the partners determined to get insurance for the purpose of giving policies to the bank as collateral. Defendant could not refer to any such testimony; and the record is clear that the only relation the bank loan had to the insurance procured was that Dr. Friele, the bank president, advised the partners, at the time when they applied for the loan that they should procure such insurance for *their own* protection.

This was the testimony: Complainant testified that he and Leidinger applied to Dr. Friele of the Franklin National Bank for a loan; that Dr. Friele, during the course of their conversation, said to them:

> " 'You fellows are a good risk; how do you stand on your insurance, how are you fixed as far as insurance goes? What would happen to the remaining party if one of you fellows died? And you are signing mortgages like wild men? Have you made arrangements to protect that?' We said, 'No.' He asked me, I didn't have any; he asked Mr. Leidinger, he had $2,000 worth; so we immediately went out to get this life insurance" (pp. 22, 23).

Complainant further testified that the loan was granted in the sum of $7,500; and that the loan was granted by the bank before any insurance was procured (pp. 24, 25). Dr. Friele likewise testified that he suggested that they should get insurance so their assets wouldn't be frozen in the event of either's death (p. 71). And not only did Dr. Friele not testify that he asked for insurance policies as collateral for the loan, but he likewise testified that he accepted a $7,500 mortgage as collateral for the loan, and that he never received any insurance policies (pp. 71, 72).

Not only, therefore, is there no testimony in the record that insurance was required to be procured as security for a bank loan and that such insurance was procured pursuant to such requirement and for the sole purpose of furnishing security for such loan, as now suggested by de-

fendant, but the record is clear that the loan was granted and procured without any such requirement, and indeed *before* any insurance was procured by the partners.

Moreover, the proposition stated by defendant is a *non-sequitur;* for even if it be conceded *arguendo* that *a* purpose of the partners was to furnish the policies as security for the bank loan, the existence of such purpose does not exclude the existence of an intention that the proceeds of the policies should enure to the benefit of the partnership; the loan was only for $7,500; the policies were each for much greater amounts; the partners had to have some intention as to the balance of the proceeds of these policies.

Finally, the positive testimony offered as to the intention of both partners as set out under Point I clearly shows that their intention was that the policies enure to the benefit of the partnership. No attempt was made by defendant to contradict or offset those proofs, and they stand, as made, uncontradicted and unimpeached.

POINT V.

The contention advanced by defendant under Point II of her brief is without merit.

The contention here, while again not altogether clear, appears to be a reiteration of the contention urged in defendant's brief, submitted to the Vice-Chancellor against a finding of the creation of an express trust, that:

> "Quinn's policy was for only $25,000.00 and did not contain a double indemnity clause such as was included in Leidinger's policy.

> There was an entire absence of mutuality. If complainant's contention as to a beneficial interest is of any substance (which I challenge) it must be based upon a mutuality of agreement between the parties. Obviously a $25,000.00 policy without a double indemnity clause can not reap the same benefits for the partnership as the $50,000.00 policy issued on Leidinger's life."

It is true that Quinn's policy was a policy for $25,000; that it did not contain a double indemnity clause in event of sudden death, but was a term policy, bearing a low premium rate. It is also true that Leidinger's policy was a $25,000 policy, providing for double indemnity in event of sudden death. The facts are further that Leidinger applied for a $25,000 term policy without double indemnity clause to the same company that insured Quinn (pp. 68, 69, Stowe), but was rejected because overweight; that thereafter, Leidinger was given a policy by a different company despite the fact that he was overweight, as a rated risk, because that company issued policies to take care of such cases (pp. 54, 55, Valk).

Those are the facts which defendant contends show that there was no mutuality of agreement and consequently no express trust.

The proposition advanced is, however, without basis in fact or in law.

In the first place, the phrase "mutuality of agreement" is without meaning. If defendant is using "agreement" in the technical sense of contract, the requirements therefor are: (1) mutual assent; (2) consideration. "No mutuality" can mean only that either mutual assent or consideration is lacking and consequently that no agreement was made.

If an agreement in the technical sense were necessary for an express trust, however, we have the determination and agreement of both partners for each to get insurance for the benefit of the partnership and the required consideration is present in the mutual promises. And we have further the mutual assent of each to the acts done pursuant to such determination and agreement. Leidinger, it is agreed, consented to Quinn's policy (p. 69, Stowe). Quinn, complainant, assented to Leidinger's policy and signed the check with Leidinger for the premium thereon (Valk, p. 55).

But it is not necessary to establish a contract in the technical sense to establish an express trust. It is elementary that there are only three requisites for an express trust, to wit, (1) proper subject matter (2) object beneficiary (3) intention. An express trust does not rest on contract but on intention. The argument predicated apparently on the non-existence of a binding contract is, therefore, based on an unsound premise.

Finally, lack of mutuality, where the term is correctly used, and it is correctly used only when urged as a reason for denying to a suitor specific performance of a contract, means "lack of mutuality of access", not of quantity of obligation.

POINT VI.

The contention that complainant permitted his policy to lapse and never revived it and therefore is estopped from claiming that the proceeds of the Leidinger policy are partnership assets is without merit.

In support of this proposition, defendant sets forth an excerpt from the testimony to the effect that after Leidinger died, the premium on complainants policy was not paid and said policy was permitted to lapse.

Obviously these facts without more would not create an estoppel. The following requirements for an estoppel must be found, among others: (a) misrepresentation of fact; (b) reliance by another to his injury. No such facts are found here and there is obviously no estoppel in the technical sense.

Defendant stated the contention here made in her brief below, as follows:

> "While the period of grace for the payment of the premium had not expired until after Leidinger's death, the failure to pay deprived the estate of Leidinger of the benefit which might have been derived in the event Quinn should have died."

The contention is clearly without any merit. The Master said, as defendant conceded below, that "it cannot be disputed that the partnership terminated upon the death of Harry C. Leidinger" (p. 81). The policy on complainant's life was in force until after Leidinger's death and the consequent partnership dissolution by death

(U. P. A., Section 31, subsection 4); the policy was allowed to lapse only after the partnership had terminated. The purpose of the partners in getting the insurance as Stowe testified was: "We want this insurance so if anything happens to either one of us the one of us who is left will have the money to wind up the business, or to carry on as he sees fit" (pp. 69, 70). One having died and his insurance having matured, the purpose of continuing and the limitation on continuance of the other's policy ceased. It was obviously not inequitable conduct not to pay a premuium on a policy, the purpose of which was to benefit a non-existent partnership.

As to the contention that allowing the policy on Quinn's life to lapse after the partnership deprived Leidinger's estate of the benefit which might have been derived in the event that Quinn died—a contention which necessarily presupposes an express trust for the benefit of the partnership —the estate of Leidinger has an interest in the partnership only through Leidinger, the deceased partner; but the partnership having been dissolved by Leidinger's death, there was no partnership to benefit by keeping in force Quinn's policy after its dissolution, and hence there was no possible deprivation of benefit to Estate of Leidinger or to the partnership.

Defendant under this point refers to advances made by Mrs. Leidinger to complainant after the dissolution of the partnership which complainant used in paying off partnership obligations and to payments made by complainant for her benefit after the dissolution which the Master, after setting them off, resolved into a claim in the accounting, in Mrs. Leidinger's favor against the partnership in the sum of $10,795.06. Just

what bearing those advances made after the dissolution have on the question herein presented is not apparent.

The Vice-Chancellor in his opinion disposed of defendant's contention under this point in these words:

> "The defendant lays stress upon the fact that complainant paid no further premiums and allowed his policy to lapse after the death of Leidinger. I cannot see that this has any bearing, since if the policy on complainant's life was for the benefit of the partnership and since the partnership terminated on Leidinger's death, there would be no occasion to carry insurance any longer for the benefit of the partnership."

POINT VII.

Defendant's citations of law are not in point on the issues herein raised.

Defendant's citations are herein grouped for convenience of treatment.

Broadway Building Co. v. *Salafia,* 132 Atl. 527, is a Rhode Island case, which justifies no single statement alleged in the brief to be predicated thereon. There, complainant made a voluntary conveyance of real estate to defendant on defendant's oral promise to reconvey; defendant refused; complainant sought to impose a constructive trust. The court denied relief, holding the case one of express trust unenforceable because of the statute of frauds, and devoid of fraud on which to predicate a constructive trust.

The Court said at page 529:

> "Evidence on which to erect *such* trusts is subject to the closest scrutiny and proof must be clear, full and satisfactory."

Regardless of the rule of evidence applicable to the case *sub judice,* we are here not concerned with "such constructive trusts."

Moreover, defendant's citation of that case as authority for her statement regarding "implied trusts" thereunder (Brief, p. 5), is unjustified.

The Court's language at pages 527, 528 clearly shows the impropriety of defendant's user thereof:

> "Trusts are either express or arise by operation of law. The latter are denominated 'implied' and are resulting or constructive. 1 Pom. Eq. Juris. (4th Ed.) Section 155. Confusion has arisen by definition of and reference to another type of trusts as 'implied'. 1 Perry on Trusts (6th Ed.) Section 25, calls an 'implied' trust 'one that the courts imply from the words of an instrument *where no express trust is declared, but such words are used that the court infers or implies that it was the purpose or intention of the parties to create a trust'.* Such a trust might arise where precatory words in the document required interpretation. It could not arise where the express terms are unambiguous. *To such an 'implied' trust* did the court probably refer in Taft v. Dimond, *supra,* approved in Hudson v. White, 23 A. 57, 17 R. I. 519, when it said that a trust by implication was inconsistent with the language of the warranty deed. In reality,

> implied trusts, as classified by Perry, are a form of express trusts, and what has been called implication is merely construction of language (1 Pom. Eq. Juris. (4th Ed.) Section 155, note p. 189). *Taft* v. *Dimond, therefore, is not authority for the proposition that no implied trust inconsistent with the language of a warranty deed can be created by operation of law.*"

Johnson v. *Bee,* 7 A. L. R. 252, is a West Virginia case which is likewise misquoted. There, Blackacre had been conveyed to a married woman, consideration fully paid therefor, and two months later she executed a paper declaring that she would invest in that land a certain sum of money belonging to the heirs of her late husband and in her possession. She never invested the money in the land. The court held that no trust could be imposed on the land for a number of reasons, among others, that:

> "a mere declaration of intention to invest a trust fund in certain property does not create a trust therein."

The pertinency of that case to the case *sub judice* is not easily apparent.

Finally, as to *Rice* v. *Burnett,* 42 Amer. Dec. 336, the report referred to is not available, but the familiar principle it is cited for is inapplicable to the case *sub judice.* As hereinbefore stated under Point IV, the evidence does not "indicate clearly that the two partners did not insure their lives for the general benefit of the partnership but for a specific purpose," that is, "for the sole purpose of discounting a note in the Franklin Trust Company," as contended herein by defendant.

POINT VIII.

The other grounds of appeal of defendant are to be deemed abandoned since they were not argued in brief of defendant-appellant.

This principle is, of course, well-settled.

> *Cropsey* v. *Cropsey,* 104 N. J. Eq. 187;
> *Sargeant Bros., Inc.* v. *Brancati,* 107 N. J. L. 84, 90.

Conclusion.

It is respectfully submitted that the appeal herein should be dismissed, and that the Decree of the Chancellor should be affirmed.

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Solicitor for and of Counsel
with Complainant-Respondent.

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