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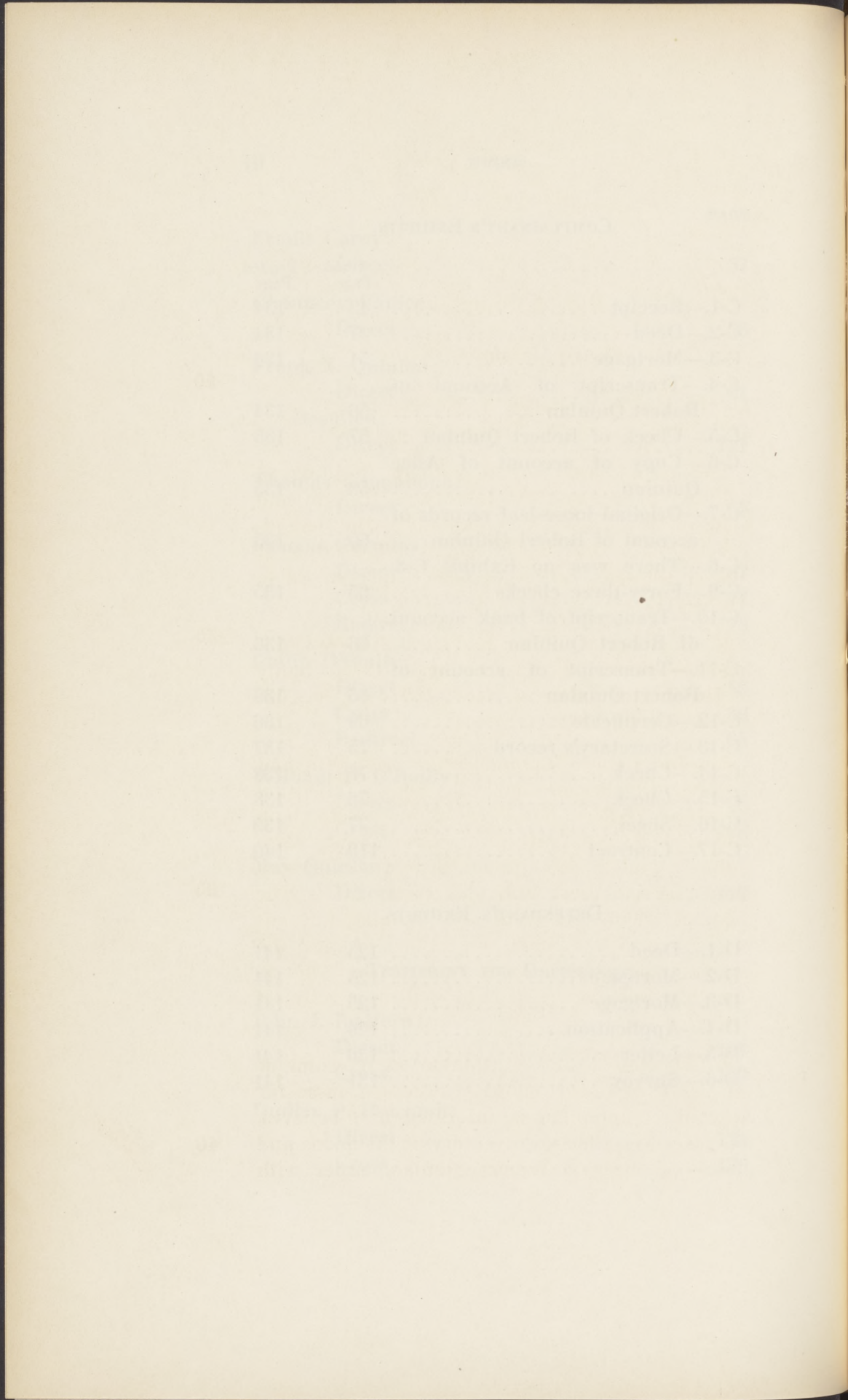
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## Bill of Complaint.

(Filed March 15, 1933.)

TO HIS HONOR: LUTHER A. CAMPBELL,  
Chancellor of the State of New Jersey.

10

The complainant, Alice Quinlan, residing in the City of Jersey City, County of Hudson and State of New Jersey, complaining of the defendant, Frank X. Quinlan, Executor of the Estate of Robert Quinlan, deceased, respectfully shows to the Court:

1. Complainant is the widow of Robert Quinlan who died in the City of Jersey City, County of Hudson and State of New Jersey, on the 20th day of March, 1932.

20

2. Said Robert Quinlan, left a Last Will and Testament, wherein and whereby he allegedly gave and devised one-third of his estate, both real and personal, to your complainant, Alice Quinlan, and the balance thereof to the persons named in said Last Will and Testament, a true copy of which Last Will and Testament is annexed hereto and made a part hereof, and the complainant prays leave to refer to the same as though it were herein at large and more fully set forth.

30

3. The said Frank X. Quinlan, as Executor of the Estate of Robert Quinlan, deceased, in so far as your complainant is informed and believes, has not as yet filed an inventory of the goods and effects of the said Robert Quinlan, either with

40

*Bill of Complaint.*

10 the Surrogate of the County of Hudson, or elsewhere. However, your complainant alleges the fact to be that the said Robert Quinlan, at the time of his death, had in his name, by Deed, premises located at #26 Dwight Street, in Jersey City, Hudson County, New Jersey.

20 4. Your complainant alleges that the title to the said premises No. 26 Dwight Street, Jersey City, New Jersey, was held by said Robert Quinlan, during his lifetime, in trust for your complainant, Alice Quinlan; that she, and she alone, advanced the moneys for the purchase of the said premises, and at all times was led to believe, by the representations of the said Robert Quinlan, now deceased, that the Deed to said premises was taken in the name of Alice Quinlan, your complainant, who did not learn to the contrary until after the death of the said Robert Quinlan.

30 5. During the year 1925, the said Robert Quinlan became ill and it was necessary for him to reside outside of the City of Jersey City. We resided for a time at Rumson, New Jersey, and the said Robert Quinlan, at that time, prevailed upon your complainant to purchase a lot of land at Avenue Two Rivers, in said Rumson, New Jersey. Your complainant advanced the sum of \$550.00 of her funds for the purpose of purchasing a lot of land upon which the said Robert Quinlan was to have erected a dwelling house. Title was taken to said premises and your complainant believed said title was in her name and did not learn to the contrary until some time in the year 1930, when, the said Robert Quinlan procured a purchaser for said lot of land. Said lot  
40 of land was sold to a William Meares & Son for

*Bill of Complaint.*

the sum of \$1,200. Two hundred (\$200.00) Dollars of which was paid to the said Robert Quinlan in cash, and a mortgage in the sum of \$1,000. was taken by the said Robert Quinlan for the balance of said purchase price. Your complainant thereupon demanded that the said Robert Quinlan transfer to her the said mortgage and the said Robert Quinlan promised and continued, during his lifetime, to promise so to do, but, never in fact consummated his said promises. 10

6. During the year 1910, and prior to the marriage of your complainant to the decedent, Robert Quinlan, the said complainant, then Alice McKenna, purchased fifteen shares of stock in the West Side Building & Loan Association of Jersey City, and contracted with said Association to make payment therefore at the rate of \$15.00 each and every month, for a period of approximately eleven years thereafter. Your complainant, prior to and after her marriage to the said Robert Quinlan, now deceased, continued to make payment in the sum of \$15.00 per month to the West Side Building & Loan Association either directly, or through her husband, Robert Quinlan, but with her own funds. Unknown to your complainant the said Robert Quinlan, by trick and device, on or about the 8th day of August, 1911, procured an assignment of the shares of your complainant to himself, and from thence to the Building & Loan Association as collateral security for a mortgage in the sum of \$5,000.00. The said Robert Quinlan, was, at that time, unmarried. No assignment was ever executed by your complainant either as Alice McKenna, or as Alice Quinlan to the said Robert Quinlan, or to 20 30 40

*Bill of Complaint.*

10 the West Side Building & Loan Association, of the shares so as aforesaid purchased by her. Subsequently, the said Robert Quinlan caused the said mortgage to be satisfied and a new and other mortgage to be obtained upon the premises No. 26 Dwight Street, Jersey City, New Jersey, in the sum of \$3500.00, which mortgage was procured and obtained from the Provident Institution for Savings. Your complainant continued to pay the aforesaid \$15.00 per month, believing that these said shares were hers.

20 7. Your complainant, at the time of the maturity of the shares in the Building & Loan Association, was advised by said Robert Quinlan that he would apply the matured value of said shares to the payment of the mortgage upon the premises No. 26 Dwight Street, Jersey City, N. J., purchased by your complainant through the said Robert Quinlan, as hereinabove set forth. The said Robert Quinlan failed and neglected to make payment upon the said mortgage and your complainant did not learn that said mortgage was outstanding and unpaid until the death of her husband, the said Robert Quinlan.

30 8. Your complainant further shows that Frank X. Quinlan, is the Executor of the Estate of Robert Quinlan, deceased, and is charged with and responsible for the administration of the assets allegedly the property of the late Robert Quinlan; that May L. Quinlan; Irene J. Quinlan; Clara C. Sweeney, and Mary E. Quinlan, have or claim to have some interest in and to the said estate of the said Robert Quinlan, deceased, either as beneficiaries under and by virtue of his Last Will and Testament, or as heirs

40

*Bill of Complaint.*

at law and next of kin to the said Robert Quinlan, deceased.

9. Your complainant is without adequate remedy at law and therefore prays that a subpoena issue directing and commanding Frank X. Quinlan, Executor of the Estate of Robert Quinlan, deceased, May L. Quinlan, Irene J. Quinlan, Clara C. Sweeney, and Mary E. Quinlan, to make Answer to the allegations and statements herein set forth. 10

Your complainant further prays that a Decree of this Honorable Court be awarded her, decreeing that the said Robert Quinlan, deceased, held title to the premises No. 26 Dwight Street, Jersey City, in trust for your complainant, and that title thereto be decreed and awarded to her, Alice Quinlan. 20

Your complainant further prays that the said Frank X. Quinlan be directed to account for the value of the aforesaid shares of stock in the West Side Building & Loan Association, together with interest thereon from the date of maturity thereof.

Your complainant further prays that the said Frank X. Quinlan, Executor as aforesaid, be directed to account further for the sum of \$200.00, the cash payment received by Robert Quinlan, now deceased, upon the closing and passing of title to premises located at Avenue Two Rivers, Rumson, N. J. 30

Your complainant further prays that the said Frank X. Quinlan be directed to transfer and set over to her, the Bond and Mortgage in the sum of \$1000.00, made and executed by William Meares & Son, to Robert Quinlan, upon premises located At Avenue Two Rivers, Rumson, New Jersey. 40

*Will of Robert Quinlan.*

Your complainant prays for such other relief  
in the premises, as to be just and equitable.

Dated: Mar. 9th, 1933.

10

ARMSTRONG & MULLEN,  
Solicitors for Complainant.

THOMAS J. ARMSTRONG  
Of Counsel.

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**Will of Robert Quinlan, Annexed to Bill of  
Complaint.**

20

IN THE NAME OF GOD, AMEN.

I, ROBERT QUINLAN, of the City of Jersey  
City, County of Hudson, and State of New Jersey,  
being of sound and disposing mind and memory,  
do hereby make, publish and declare my Last  
Will and Testament as follows:—

30

FIRST: I give, devise and bequeath an undi-  
vided one-third part of all my estate both real  
and personal of whatsoever kind or nature and  
wheresoever situate unto my beloved wife, Alice  
Quinlan, to have and to hold the same to her own  
use forever. This provision, however, is made for  
her and to be accepted by her in lieu of her dower  
rights in my estate.

40

SECOND: I give, devise and bequeath the re-  
maining two-thirds of all my estate both real and  
personal, of whatsoever kind and nature and  
wheresoever situate, unto my beloved sister, MAY  
L. QUINLAN, now residing at 322 Fourth Street,  
Jersey City, New Jersey.

*Will of Robert Quinlan.*

In case my said sister, May L. Quinlan, should pre-decease me, then and in that event, I give and devise said remaining undivided two thirds of all my estate unto my beloved sister Irene Quinlan, now residing at the same address.

10

I nominate, constitute and appoint my brothers James B. Quinlan and Frank X. Quinlan, Executors of this my Last Will and Testament and direct that they shall not be required to give bond or other security for the faithful performance of their duties as such. And I hereby give to my said Executors and the survivor of them by virtue of their office full power and authority to sell and convey any and all real estate of which I die seized, either at public or private sale, at such times, for such amounts and on such terms as to them shall seem meet, and to make, execute, and deliver good and sufficient deeds on the law therefor.

20

IN WITNESS WHEREOF, I, the said Robert Quinlan, have hereunto set my hand and seal this twenty-fifth day of August in the year of our Lord One Thousand Nine Hundred and Twenty one.

ROBERT QUINLAN. (Seal)

30

Signed, sealed, published and declared by the said Robert Quinlan as and for his Last Will and Testament in the presence of us, who were all present at the same time, and who at his request, in his presence and in the presence of each other, have hereunto subscribed our names as witnesses.

HOWARD R. CRUSE.

133 Jewett Avenue,  
Jersey City, N. J.

AMY B. OWENS.

256 York Street,  
Jersey City, N. J.

40

**Answer and Counterclaim.**

(Filed April 11, 1933.)

10 The joint answer of the defendants, Frank X. Quinlan, Executor of the Estate of Robert Quinlan, deceased, May L. Quinlan, Irene J. Quinlan, Clara C. Sweeney, and Mary E. Quinlan, to the bill of complaint filed herein by the complainant, Alice Quinlan:

1. Defendants admit paragraph one of the bill of complaint.

20 2. Defendants admit paragraph two of the bill of complaint and further answering the same say that the one-third interest of his estate was given, devised and bequeathed to the complainant with the provision that it be accepted by her in lieu of her dower rights in his estate.

30 3. Answering paragraph three of the bill of complaint defendant, Frank X. Quinlan says that he is about to file in the Office of the Surrogate of Hudson County an inventory of the goods and effects of the said Robert Quinlan, deceased. Defendant, Frank X. Quinlan, Executor of the Estate of Robert Quinlan, deceased did, however, several months ago file with the Inheritance Tax Bureau of the State of New Jersey a complete schedule and report setting forth all the assets of the said estate. Defendants admit that the said Robert Quinlan at the time of his death died seized of property #26 Dwight Street, Jersey City, N. J.

40 4. Defendants deny paragraph four of the bill of complaint and further answering the said paragraph say that Robert Quinlan, was the owner of #26 Dwight Street, Jersey City, N. J.

*Answer and Counterclaim.*

before his marriage to the complainant and that prior to the said marriage he obtained a mortgage in the sum of Five Thousand dollars (\$5,000.) from the West Side Building & Loan Association of Jersey City, the proceeds of which mortgage loan were used by the decedent in building the house now erected at the said address. Defendants deny that the deed to the said premises was put in the name of Alice Quinlan. They deny that she did not know that the title to the said property was at all times in the name of Robert Quinlan. The taxes due the City of Jersey City for twenty years upon the said property were paid exclusively by the said decedent, complainant having never paid any of the taxes upon said property.

5. Defendants deny paragraph five of the bill of complaint. They deny that complainant advanced the sum of Five hundred and fifty dollars (\$550.) of her funds to the purchasing of the lot referred to in paragraph five and they deny that title was to have been taken in complainant's name and they deny that she did not learn to the contrary until the year 1930. Complainant always knew that the said plot was purchased in the name of the decedent, Robert Quinlan. Defendants deny the the said lot was sold to William Meares & Son for twelve hundred dollars (\$1200.) the selling price thereof having been One thousand dollars (\$1000.) which was paid in the form of a purchase money mortgage executed and delivered to the said Robert Quinlan. Complainant knew at all times that the said mortgage was made to Robert Quinlan and defendants deny that there was ever any agreement to trans-

*Answer and Counterclaim.*

fer the said mortgage to her or that she had ever requested the said decedent to make the said transfer.

10 6. Defendants deny paragraph six of the bill of complaint. They deny that the decedent had ever by trick and device, or otherwise, procured an assignment from complainant to himself of the shares referred to in the said paragraph and from thence to the building and loan association as collateral security for a mortgage in the sum of Five Thousand dollars (\$5000.). Any payments that the complainant made upon the said shares or upon any other thing in connection with the said property were made with the  
20 moneys belonging to the decedent.

7. Defendants deny paragraph seven of the bill of complaint. They deny that the complainant did not learn that the said mortgage was outstanding and unpaid until the death of the decedent.

30 8. Answering paragraph eight of the bill of complaint defendants admit that Frank X. Quinlan is executor of the said estate and they say that all of the assets in his hands are absolutely the property of the said estate and that the complainant has not interest therein other than through the Last Will and Testament of the said decedent.

40 Further answering the bill of complaint defendants say that the complainant is not entitled to the relief prayed for by her therein and that her bill of complaint does not disclose a cause of action of which this Honorable Court has jurisdiction; that the transactions referred to in the

*Answer and Counterclaim.*

said bill of complaint were all with one who is now deceased and testimony in reference to any of said transactions is not admissible in evidence because the same is contrary to the evidence act. Defendants therefore reserve the right to apply to this Honorable Court on or before the final hearing of this cause for an order dismissing the bill of complaint herein. 10

The defendants further say they do not because of filing the above answer, waive any rights which they may have to object to the admission of any testimony in reference to the transactions and things contained in the bill of complaint herein.

Defendants therefore pray that the said bill of complaint be dismissed with costs. 20

## COUNTERCLAIM.

Defendant, Frank X. Quinlan, Executor of the Estate of Robert Quinlan, deceased, by way of counterclaim against the complainant says that:

1. The decedent, Robert Quinlan, referred to in the above answer died seized of property #26 Dwight Street, Jersey City, N. J., leaving a Last Will and Testament wherein said Frank X. Quinlan was named as one of the executors thereof. The other executor named in said will, to wit, James B. Quinlan, died prior to the decease of the said Robert Quinlan. Said Frank X. Quinlan has duly qualified as executor of the said estate. 30

2. In the Last Will and Testament said executor was given full power and authority to sell and convey the said real estate. The said real estate 40

*Answer and Counterclaim.*

10 consists of a plot approximately Twenty-five feet in width by One hundred feet in depth upon which is erected a two family brick dwelling house. One of the apartments in the said house is occupied by the complainant and the other apartment is occupied by a monthly tenant to wit, Walter Twele.

3. Complainant by virtue of the said Last Will and Testament was given, devised and bequeathed a one-third interest in the estate of the decedent to be accepted by her in lieu of her dower rights.

20 4. The reasonable value of the apartment being occupied by the complainant in the above house is Forty-five (\$45.) per month, which apartment the complainant has been occupying without paying any rent therefor since the death of decedent on March 20th, 1932, so that there is due and owing from her to the said estate the total sum of Five hundred and forty Dollars (\$540.) for rent.

30 5. The complainant has been receiving from the tenant in the other apartment of the said house a monthly rental of Forty-five dollars (\$45.) per month since the death of decedent and she has thus far received from the said tenant a total sum of Five hundred and forty-five dollars (\$540), which last mentioned sum rightfully belongs to the said estate. The said estate, through the said executor, has demanded that the said tenant pay the said rent to the executor, but complainant has been collecting and has been retain-  
40 ing the said rent.

*Answer and Counterclaim.*

6. Your counterclaimant cannot maintain an action in the court of law because the within counterclaim involves a suit against a wife by the representative of her husband's estate.

10

7. The total amount due to the said estate from complainant is Ten hundred and forty Dollars (\$1040.), together with lawful interest thereon.

The counterclaimant therefore prays:

1. That Alice Quinlan, who is the defendant to the within counterclaim may answer this counterclaim and each statement therein made.

20

2. That a decree may be entered against the said Alice Quinlan in the said sum of Ten hundred and forty dollars (\$1040.).

3. That a writ of Subpoena may issue commanding said Alice Quinlan to answer this counterclaim and to abide by such decree as this Court may make in the premises.

**ZIEGENER & BRENNER**

30

.....  
Solicitors of Defendants.

*Robert H. Brenner*  
*of Counsel.*

40

**Replication and Answer to Counterclaim.**

(Filed April 20, 1933.)

10 The complainant, Alice Quinlan, joins issue upon the Answer of the defendants, Frank X. Quinlan, Executor of the Estate of Robert Quinlan, deceased, May L. Quinlan, Irene J. Quinlan, Clara C. Sweeney, and Mary E. Quinlan.

As to the counter-claim contained and filed in said Answer, complainant says that:

1. Paragraph one of said counter-claim is admitted.

20 2. Paragraph two of said counter-claim is denied, except so much thereof as alleges that the real estate consists of a plot 25 feet by 100 feet, upon which is erected a brick dwelling house. Complainant further answering said paragraph in said counter-claim, says that the real estate described in said paragraph is the property of this complainant, as more particularly described in said Bill.

30 3. Paragraph three of said counter-claim is admitted.

4. So much of paragraph four of said counter-claim as alleges there is due and owing from the complainant to the estate of Robert Quinlan, deceased, the sum of \$540.00 for rent, is denied, and complainant further answering, alleges the fact to be that all rentals and avails whatsoever accruing from said real estate, are her property, as more particularly and specifically set forth in the Bill of Complaint filed herein.

40 5. So much of paragraph five of said counter-claim which alleges the sum of \$540.00 to right-

*Replication and Answer to Counterclaim.*

fully belong to the Estate of Robert Quinlan, deceased, is denied. Complainant further answering said paragraph of said counter-claim, alleges she is entitled to all the rents and profits of said real estate, as more specifically set forth in the Bill of Complaint filed herein. (10

6. Paragraphs six and seven of said counter-claim, are denied.

7. Complainant further Answering the counter-claim of the defendants, says, that the defendants and each of them are not entitled to the relief prayed for in said counter-claim, in that said counter-claim fails to disclose a cause of action over which this Honorable Court has jurisdiction. That the defendants and each of them have an adequate remedy at law. (20

Complainant further says that she waives none of her rights by reason of filing an Answer to the counter-claim of the defendants herein, and specifically reserves the right to move to dismiss the same on or before the final hearing of this cause.

WHEREFORE, complainant prays that the counter-claim filed herein be dismissed, with costs of suit, and that she have judgment in accordance with the prayer in the Bill of Complaint contained. (30

Date: Apr. 17, 1933.

ARMSTRONG & MULLEN,  
Solicitors for Complainant.

(40

### Replication to Answer to Counterclaim.

(Filed April 19, 1933.)

10 Defendants deny the allegations contained in the Answer to the Counterclaim, and join issue with the complainant.

ZIEGENER & BRENNER,  
Solicitors of Defendants.

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### Memorandum of Vice-Chancellor Egan.

(Filed September 7, 1934.)

20 September 6, 1934.

Messrs. ARMSTRONG & MULLEN, for Complainant.

Messrs. ZIEGENER & BRENNER, for Defendants.

#### M E M O R A N D U M .

EGAN, V. C.

30 The complainant, wife of the decedent, Robert Quinlan, seeks: (1) to impress a trust on the premises #26 Dwight Street, Jersey City, New Jersey; (2) to direct the executor of the decedent's estate to deliver to her \$200.00 in cash, and a bond and mortgage for \$1,000. covering certain premises in Rumson, New Jersey, which was given to the decedent as a consideration for the conveyance of the premises; and (3) to direct the executor of the decedent's estate to account to her for the matured value of fifteen  
40 shares of stock of the Westside Building and Loan Association of Jersey City standing in her

*Memorandum of Vice-Chancellor Egan.*

name, and paid by said Association to the decedent.

The complainant and decedent became husband and wife on November 20, 1911. The decedent acquired title to the Dwight Street property before his marriage to the complainant and the record title still bears his name. Sometime in the year 1910, he had the house now standing upon the said premises erected. He obtained a loan, upon mortgage, from the Westside Building and Loan Association to cover the construction cost. This mortgage was cancelled February 20, 1911; the decedent paid this last mentioned mortgage by borrowing \$3500.00 from the Provident Institution for Savings in Jersey City, upon bond and mortgage covering the said property, and by obtaining \$500.00 upon a second mortgage covering the said property from Henry Byrnes. The amount paid to the Building and Loan for the cancellation of the said mortgage was \$4,695.46. It is alleged that of this amount, \$695.46 represents rents received from the tenants of the said house from the time it was completed, to the time the said mortgage was paid.

The complainant was barred from testifying to transactions with the decedent by the provisions of Section 4 of the Evidence Act. There was testimony presented on behalf of the complainant to the effect that she had a bank account in the Emigrant Industrial Savings Bank of New York; that she had withdrawn funds from that account at or about the time of the execution of the contract between the decedent and one Redfern for the erection of the said building on Dwight Street; and that payments due and made under the said building contract

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*Memorandum of Vice-Chancellor Egan.*

10 coincided with the time payments which were required to have been made under the terms of the said contract. Beyond that testimony, there was no evidence to show that those withdrawals went or were paid to the said contractor, or went into the property, or were a gift or a loan to the decedent. In the case of *Joyce v. Haines*, 33 N. J. Eq. 99, it appears: "A bill to establish a result-  
 20 ing trust averred merely that C. (the husband) was married to K. in 1827, and that lands were conveyed to him in 1831, but that the consideration therefor was paid by the wife "out of her own estate."—HELD, insufficient. The court cannot infer, from such averment, that the wife had a separate estate, and that the consideration for such land was paid therefrom, or for its benefit. As the law stood at her marriage, her property, other than her separate estate, vested in her husband, and even if the money was her separate estate, she might have given it to her husband."

30 In *Small v. Pryor*, 69 N. J. Eq. 606, the court said: "The evidence relating to the circumstances of the purchase and the source of the money comes from the widow herself, and is not satisfactorily corroborated in any important particular. \* \* \* Evidence of this character, which has the effect of disinherit the heir, must be clear and satisfactory, and under ordinary circumstances must be corroborated." *Joyce v. Haines*, supra.

40 Philip O'Reilly, produced by the complainant, said he had conversation with the defendant about the Dwight Street property; and that in the course of that conversation the decedent, "told me he wanted to borrow money", and that "he

*Memorandum of Vice-Chancellor Egan.*

had to borrow money for his wife to pay for Dwight Street." O'Reilly further testified that in August, 1915, he again had a conversation with the decedent "about Dwight Street" and the decedent said "that's a nice little house of mine; it belongs to my wife; I didn't put a nickel in it." 10  
O'Reilly further testified that he went to Runsom "at the request of Bob (the decedent) to inspect concrete work; he (the decedent) then said his wife bought a lot in the neighborhood and they were going to build a bungalow." The complainant produced another witness, William O'Reilly, who testified "Bob conversed with me about the Dwight Street house shortly after their marriage—at their home—he said it was Alice's (the complainant's)—her home;" he further said 20  
"he didn't have a dime when he married." The last named witness said that he, again, had a conversation with the decedent at the Elk's Club, and, also, "in a cafe downtown on Montgomery Street and at his home" about the Dwight Street house, which was substantially the same as the alleged conversation which has been recited as having taken place at the decedent's home. The testimony given by William O'Reilly was indefinite, uncertain, unsatisfactory and not convincing. 30  
He alleged that the conversation at the Elk's Club took place some ten or twelve years ago; and that the conversation which took place in "my cafe at Ocean and Bayview Avenues was in 1918 or 1919." The period intervening between the alleged conversations of the two O'Reillys and the day they testified herein was from ten to eighteen years. These two witnesses obviously did not appear to have such perfect memories 40  
as would stamp their testimony as being exact,

*Memorandum of Vice-Chancellor Egan.*

and, therefore, reliable. Their testimony was more hazy than clear.

10 The proof offered is far from sufficient to impress a trust upon the Dwight Street property. It lacks clarity, certainty and strength. In *McKeown v. McKeown*, 33 N. J. Eq. 384, affirmed 34 N. J. Eq. 560, the court said: "When a trust is sought to be raised as a resulting trust from the payment of the purchase money, the proof must be very clear of the payment of the purchase money by the person in whose favor a trust by implication of law is sought to be raised; the fact must be distinctly established by satisfactory evidence. *Parker v. Snyder*, 31 N. J. Eq. 20 164; affirmed 34 N. J. Eq. 827. There is no evidence of any agreement that the title to the Dwight Street premises should be in the name of the complainant, or in anyone else for her benefit. For twenty-two years the title to that property has stood in the decedent's name, and there is no evidence to show during all that time that the complainant made or asserted any claim to the said title. *Phillips v. Vermoule*, 88 N. J. Eq. 500.

30 The title to the Rumson property was never in the complainant's name; it stood in the name of the decedent until he and the complainant executed a conveyance for it. For that conveyance, the decedent received as the consideration therefor, the sum of \$200.00 and a bond and mortgage, in his name, for \$1,000. There was no evidence submitted to indicate that the complainant did have, or was ever to have, an interest in the Rumson title, or any part or interest of or in 40 the consideration received for the said conveyance. The contract for building the bungalow

*Memorandum of Vice-Chancellor Egan.*

erected upon the premises was made and executed by the decedent with Redfern; the payments due under that contract were made by the decedent.

Beyond the above quoted testimony of the two O'Reillys, there is no proof that the Rumson title, or any interest therein, was in, or was to be in, the complainant. There is no evidence that the complainant ever exercised any control over, or about, the said properties. The decedent took title to the Rumson property seven years before his death; after five years of ownership, he conveyed these premises as above stated. 10

In *Phillips v. Phillips*, 81 N. J. Eq. 459, affirmed 83 N. J. 345, V. C. Backes said: "The burden of establishing a resulting trust is on the party asserting it. He must prove not only that the consideration for the conveyance was paid by him, or out of his funds, but also that the money was paid as a purchase price and not as a loan. When there is evidence from which it may be inferred that the moneys were advanced as a loan, the burden is on him to overcome this inference by clear and satisfactory proof." 20

"Nothing short of certain, definite, reliable and convincing proof will justify the court in divesting one man of title to lands evidenced by a regular deed and putting it in another." *Vigne v. Vigne*, 98 N. J. Eq. 274; *Malone v. Romano*, 95 N. J. Eq. 290. 30

I think, however, that the claim of the complainant to the \$3,000. paid by the Westside Building and Loan Association to the decedent for the fifteen shares of stock which were in the name of the complainant, and which matured in December, 1920, belongs to the complainant. The 40

*Final Decree.*

10 certificate of ownership of said shares was in the name of the complainant, and the two checks, each for \$1500., were turned over to the decedent by the Building and loan, and were retained by him. There is no evidence to show that the same were ever given to the complainant by the decedent.

There is no force in the contention of the defendant's counsel that the complainant is barred by the Statute of Limitations. *Ward v. McLellan*, 116 N. J. Eq. 308.

I shall advise a decree in accordance with the above findings.

20

**Final Decree.**

(Filed October 1, 1934.)

30 This cause coming on to be heard before this Court, in the presence of August Ziegner of Messrs. Ziegner & Brenner, solicitors for the defendants, and Thomas J. Armstrong, Esq. of Messrs. Armstrong & Mullen, solicitors for the complainant and Daniel D. Loeb, Esq., solicitor for the defendant May L. Quinlan; and the Court having read the pleadings and having heard and considered the Briefs adduced before it, and having heard the argument of counsel, and having duly read and considered the Briefs submitted by counsel for the parties hereto, and it appearing to the Court that the complainant herein, Alice Quinlan sought by virtue of these proceedings,—

40

(1) To impress a trust upon premises located at #26 Dwight Street, Jersey City, in her favor.

*Final Decree.*

(2) To direct the Executor, Frank X. Quinlan, to deliver to her the sum of \$200.00 in cash and a bond and mortgage in the sum of \$1,000.00 which covered certain lands and premises located in Rumson, New Jersey, which, the said complainant, contended was given to the decedent, Robert Quinlan, as considered for the conveyance by the said decedent of said premises, and 10

(3) To direct the said Executor of the Estate of the said Robert Quinlan, deceased, to account to her for the matured value of fifteen (15) shares of stock of the West Side Building & Loan Association of Jersey City, standing her name and paid by said Association to said decedent, Robert Quinlan. 20

And it further appearing that the defendant, Frank X. Quinlan, executor of the Estate of Robert Quinlan, deceased, by way of counterclaim against the defendant, Alice Quinlan, alleged that the complainant was indebted to the Estate for rent withheld by the complainant from the estate, but that the defendants abandoned the said counterclaim; and it further appearing to the Court that the complainant, Alice Quinlan, is entitled to relief prayed for by her in her bill of complaint as to the fifteen shares of stock in the West Side Building & Loan Association of Jersey City, with interest thereon from the date of maturity and that the value of the said shares is the sum of \$3,000.; and it further appearing that complainant has failed to prove the allegations set forth by her in the Bill of Complaint whereby she sought to impress a trust in her favor against the defendants herein upon the title to premises #26 Dwight Street, Jersey City, 30 40

*Final Decree.*

and to the sum of \$200.00 in cash and the bond and mortgage in the sum of \$1,000.00, the avails of the sale of the premises located at Rumson, New Jersey.

10 IT IS, on this 1st day of October, 1934, by His Honor, Luther A. Campbell, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED, that the fifteen (15) shares of stock in the West Side Building & Loan Association of Jersey City be and the same hereby are declared to have been owned by the complainant herein, and title thereto never to have been transferred from her, and

20 IT IS FURTHER ORDERED, ADJUDGED and DECREED, that Frank X. Quinlan, Executor of the Estate of Robert Quinlan, deceased, and May L. Quinlan, defendants herein, pay to the said complainant, Alice Quinlan, the sum of \$3,000.00, the value of the said fifteen (15) shares of stock in the West Side Building & Loan Association of Jersey City, without interest; and

30 IT IS FURTHER ORDERED, ADJUDGED and DECREED, that the claim of the complainant, Alice Quinlan, whereby it was prayed that the said Robert Quinlan held title to premises #26 Dwight Street, Jersey City, in trust for her, the said Alice Quinlan, complainant as aforesaid, be and the same is hereby dismissed; and

40 IT IS FURTHER ORDERED, ADJUDGED and DECREED, that the claim of the said Alice Quinlan whereby it was prayed that the said Frank X. Quinlan be directed to account for the further sum of \$200.00 in cash and be directed to transfer and set over a bond and mortgage in the sum of \$1,000.00,

*Final Decree.*

being the avails from the passing of title to certain lands and premises located at Avenue Two Rivers in Rumson, be and the same hereby is dismissed, and

IT IS FURTHER ORDERED, ADJUDGED and DECREED, that the counter-claim interposed by the defendants herein be and the same hereby is dismissed, and 10

IT IS FURTHER ORDERED, ADJUDGED and DECREED, that the defendant, Frank X. Quinlan, executor of the Estate of Robert Quinlan, deceased, pay to Messrs. Armstrong & Mullen, solicitors of the complainant, the sum of Two Hundred (\$200.) Dollars as and for a counsel fee which shall be included in the costs of these proceedings to be taxed; and that the said defendant pay to Daniel D. Loeb, Esq., solicitor of defendant, May L. Quinlan, the sum of One hundred (\$100.) Dollars which shall be included in the taxed costs of these proceedings and that the said defendant pay to Messrs. Ziegner & Brenner, solicitors of defendant, the sum of Two hundred (\$200.) Dollars as and for a counsel fee, which shall be included in the costs of these proceedings to be taxed; and that the said defendant pay the said costs to be taxed and that execution issue therefor in accordance with the rules and practice of this court. 20 30

LUTHER A. CAMPBELL,  
C.

Respectfully advised,

CHARLES M. EGAN,  
V. C. 40

**Defendants' Notice of Appeal.**

(Filed November 1, 1934.)

IN CHANCERY OF NEW JERSEY.

10

Between

ALICE QUINLAN,  
*Complainant,*

and

FRANK X. QUINLAN, Executor of  
the Estate of Robert Quinlan,  
deceased, *et als.*,  
*Defendants.*

95-345.

On Bill, &amp;c.

NOTICE OF APPEAL.

Appeal from part  
of decree advised  
by V. C. Egan.

20

The defendants hereby appeal from so much of the final decree made in the above entitled cause on October 1st, 1934, as directs Frank X. Quinlan, executor of the Estate of Robert Quinlan, deceased and May L. Quinlan, to pay to the complainant, Alice Quinlan, the sum of \$3,000.00, the value of the fifteen shares of stock in the West Side Building & Loan Association of Jersey City, referred to in the bill of complaint herein, to the Court of Errors and Appeals in the Last Resort in All Causes.

30

Dated, October 29th, 1934.

ZIEGENER & BRENNER,

Solicitors for Defendants, Frank X.

Quinlan, executor of the Estate  
of Robert Quinlan, deceased,  
and May L. Quinlan,

40

ROBERT H. BRENNER,  
Of Counsel.

*Complainant's Notice of Appeal.*

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

ROBERT H. BRENNER,  
Of Counsel with Defendants, Frank X.  
Quinlan, executor of the Estate of  
Robert Quinlan, deceased, and May  
L. Quinlan.

10

(Acknowledgment of service endorsed hereon.)

**Complainant's Notice of Appeal.**

(Filed November 1, 1934.)

The Complainant, Alice Quinlan, hereby appeals from so much of the Final Decree in the above entitled cause, made and entered October 1st, 1934, as refuses, prohibits and/or neglects to direct the payment to the said Alice Quinlan of interest upon the matured value of the fifteen shares of stock in the West Side Building and Loan Association of Jersey City, to which reference is more particularly made in the Bill of Complaint, and the matured value of which is \$3,000.00, to the Court of Errors and Appeals in the last resort in all causes.

20

30

Dated: October 30th, 1934.

ARMSTRONG & MULLEN,  
Solicitors for Complainant,

THOMAS J. ARMSTRONG,  
Of Counsel.

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

THOMAS J. ARMSTRONG,  
Of Counsel with Complainant.

40

(Acknowledgment of service endorsed hereon.)

**Complainant's Amended Notice of Appeal.**

(Filed November 27, 1934.)

10 The Complainant, Alice Quinlan, hereby ap-  
peals from so much of the Final Decree of the  
Chancellor made upon the advice of the Honor-  
able Charles M. Egan, Vice Chancellor to whom  
the above entitled case was referred, made and  
entered October 1st, 1934, as refuses, prohibits  
and/or neglects to direct the payment to the said  
Alice Quinlan of interest upon the matured value  
of the fifteen shares of stock in the West Side  
Building and Loan Association of Jersey City, to  
20 which reference is more particularly made in the  
Bill of Complaint, and the matured value of which  
is \$3,000.00, to the Court of Errors and Appeals  
in the last resort in all causes.

Dated: Nov. 19th, 1934.

ARMSTRONG & MULLEN,  
Solicitors for Complainant,

THOMAS J. ARMSTRONG,  
Of Counsel.

30

I conceive there is good cause for Appeal in the  
above stated cause.

THOMAS J. ARMSTRONG,  
Of Counsel with Complainant.

(Acknowledgment of service endorsed hereon.)

40

**Defendants-Appellants' Petition of Appeal.**

(Filed November 2, 1934.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

<p style="text-align: center;">ALICE QUINLAN, <i>Complainant-Appellee,</i></p> <p style="text-align: center;"><i>v.</i></p> <p>FRANK X. QUINLAN, Executor of the Estate of Robert Quinlan, deceased, <i>et als.,</i> <i>Defendants-Appellants.</i></p>	}	<p>10</p> <p>On Appeal from the Court of Chancery.</p> <p>PETITION OF APPEAL.</p>
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*To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:* 20

The petition of Frank X. Quinlan, Executor of the Estate of Robert Quinlan, deceased and May L. Quinlan, the appellants in the above entitled cause, respectfully show that:

1. Petitioners find themselves aggrieved by part of a final decree made in the Court of Chancery by his Honor Luther A. Campbell, Chancellor of the State of New Jersey, bearing date the First day of October, 1934, wherein the said Alice Quinlan was complainant and the said Frank X. Quinlan, Executor of the Estate of Robert Quinlan, deceased and May L. Quinlan were defendants in this respect, to wit, that the said decree adjudges that the said Alice Quinlan is entitled to receive from your petitioners the sum of \$3,000.00, the value of the fifteen shares of stock in the West Side Building & Loan Association of Jersey City, referred to in the bill of complaint, the said final decree directs your petitioners to pay the said sum to her. 30 40

*Defendants-Appellants' Petition of Appeal.*

10 2. And petitioners appeal from the said part of the said final decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that the said Alice Quinlan, the complainant, is not entitled to the said sum of \$3,000.00, or any part thereof, and she is not entitled to the said building and loan shares; the decree to the Chancellor should have been in favor of your petitioners and should have adjudged that the said building and loan shares were not the property of the said complainant and that she was therefore not entitled to the value thereof.

20 3. Your petitioners further say that the Court of Chancery erroneously permitted illegal, incompetent and irrelevant evidence to be received in said cause by and on behalf of the said complainant-appellee.

30 4. Your petitioners further say that the said decree is illegal and contrary to equity in respect to the above portion thereof and that the said decree of the Chancellor in respect to the said building and loan shares and the value thereof may be reversed, and pray that the record may be remitted to the Court of Chancery with the direction to enter a decree in favor of your petitioners in respect to the said building and loan shares and the value thereof; and that your petitioners may have such further and other relief as to this Court shall seem meet.

Dated October 29th, 1934.

40 ZIEGENER & BRENNER,  
Solicitors of Defendants-Appellants.  
ROBERT H. BRENNER,  
Of Counsel.

(Acknowledgment of service endorsed hereon.)

**Complainant-Cross-Appellant's Petition of  
Appeal.**

(Filed November 2, 1934.)

*To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:* 10

The Petition of Alice Quinlan, complainant-appellee and cross-appellant in the above entitled cause, respectfully shows that:

1. Your Petitioner finds herself aggrieved by that part of a Final Decree made in the Court of Chancery by His Honor, Luther A. Campbell, Chancellor of the State of New Jersey, dated October 1st, 1934, wherein she, the said Alice Quinlan, was complainant, and the said Frank X. Quinlan, Executor of the Estate of Robert Quinlan, deceased, and May L. Quinlan, were defendants, in this respect, to wit:—That although the said Decree adjudges that she, the said Alice Quinlan, is entitled to receive the sum of \$3,000.00, the value of the fifteen shares of stock in the West Side Building and Loan Association to which reference is more particularly made in the Bill of Complaint in this cause, the said Final Decree does not and fails to and prohibits payment of interest upon said accrued value of the said fifteen shares of Building and Loan stock, or upon the said sum of \$3,000.00, from the date of the maturity thereof. 20 30

2. Your Petitioner in said Appeal urges that that part of the said Final Decree of the Chancellor which prohibits the payment of interest upon the aforesaid sum of \$3,000.00 is erroneous in law and that she is entitled to have interest assessed upon said sum and paid to her. 40

*Complainant—Cross—Appellant's Petition of  
Appeal.*

10 3. Your Petitioner further says that that part of said Decree denying interest to her upon the aforesaid sum is illegal and contrary to equity and prays that said Decree may be revised and/or remitted to the Chancellor for revision to include the payment of interest to the said Alice Quinlan upon the aforesaid matured value of the said Building and Loan shares, and that your Petitioner may have such further and other relief as to this court shall be equitable and just.

Dated: October 30th, 1934.

20 Respectfully,

ARMSTRONG & MULLEN,  
Solicitors for Alice Quinlan, Complainant-Appellee and Cross-Appellant.

Of Counsel

THOMAS J. ARMSTRONG.

(Acknowledgment of service endorsed hereon.)

30 (Notices of Argument on behalf of both parties duly served and acknowledged.)

40

**Testimony.**

IN CHANCERY OF NEW JERSEY.

Between

ALICE QUINLAN,  
*Complainant,*

and

FRANK X. QUINLAN, Executor of  
the Estate of Robert Quinlan,  
deceased, *et als.*,  
*Defendants.*

10

On Bill &c. On  
Final Hearing.  
November 29, 1933.

20

Transcript of stenographic record of final hearing in the above entitled cause before his Honor, John J. Fallon, Vice Chancellor, at the Chancery Chambers, Jersey City, New Jersey, in the presence of Mr. Thomas J. Armstrong, of Armstrong & Mullen, for complainant, Mr. August Ziegener, of Ziegener & Brenner, for defendant Frank X. Quinlan, Executor, and Mr. Daniel Loeb, for defendant May L. Quinlan.

30

CASE FOR THE COMPLAINANT.

ALICE QUINLAN, being sworn:

Mr. Ziegener: May I at this time your honor state an objection to her testifying in view of the fact that she is the complainant, and under the rules the complainant is not entitled to testify as to any transactions with the deceased in a representative capacity?

40

*Alice Quinlan, direct.*

The Court: She may be competent for some purpose.

Mr. Ziegner: Your honor will reserve that right to me?

10 The Court: Yes.

*Direct examination by Mr. Armstrong:*

Q. Mrs. Quinlan, where do you reside? A. Now?

Q. Yes. A. Verona, New Jersey.

Q. You are the widow of the late Robert Quinlan? A. Yes.

Q. What was your maiden name, Mrs. Quinlan? A. Alice McKenna.

20 Q. When were you married? A. November 11, 1920. I mean November 20, 1911.

Q. Prior to your marriage did you own any shares of stock in the West Side Building & Loan Association? A. I did.

Q. In Jersey City? A. Yes.

Q. How many shares? A. Fifteen.

Q. And did you pay a monthly stated sum of money for the purchase of those shares of stock? A. I did.

30 Q. How much? A. Fifteen dollars.

Q. By the way, do you know whether those shares of stock have matured? A. They have.

Q. Do you know when? A. 1921.

Q. Did you continue to pay throughout the period of the life of those shares of stock the sum of fifteen dollars per month? A. I did.

40 Q. Did you at anytime during the time that you owned those shares of stock in the West Side Building & Loan Association give them to any person? A. No.

*Alice Quinlan, direct.*

Mr. Ziegner: I object to it.

The Court: Your objection will be sustained so far as her undertaking to say she had any transactions with the deceased. I will say in passing the fourth section of the Evidence Act will not be applied throughout this case in its entirety because May Quinlan is a defendant here. 10

By Mr. Armstrong:

Q. Did you at anytime sell those shares of stock in the West Side Building & Loan Association? A. No.

Q. Did you at anytime pledge them for a loan? A. No. 20

Q. Did you at anytime give them to any person whomsoever? A. No.

Mr. Ziegner: I make the same objection insofar as—

Mr. Armstrong: I will withdraw that question.

The Court: Do you claim that the testator acquired those shares from this witness? If you do not it can't harm you, Judge Ziegner. I understood from Mr. Armstrong's opening by some means undisclosed to me the avails of these shares were paid over by the building and loan to some one, but it has not been stated to who. 30

Mr. Armstrong: Yes, to Robert Quinlan.

The Court: I understood you to say it went into that property.

Mr. Armstrong: It was paid to him and thence into the real estate. 40

*Alfred R. Becker, direct.*

The Court: I won't let you prove that by this witness.

10 Mr. Armstrong: I haven't asked whether she gave them to Quinlan. I merely asked did she sell, assign, pledge or convey them away.

The Court: All right, I will receive it, subject to Judge Ziegner's objection.

Mr. Armstrong: Your honor, I would like to confine my case at this time through this witness to the building and loan shares. I will offer proof from other persons if I may.

20 The Court: I think that would be better.

Mr. Armstrong: Cross examination.

Mr. Ziegner: No questions on behalf of the executor.

Mr. Loeb: No questions.

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ALFRED R. BECKER, being sworn:

30 The Witness: May I say that I am subpoenaed here as a witness. Mr. Gormley, the secretary, has been subpoenaed to produce the records of the building and loan.

The Court: You brought them here?

The Witness: I am wondering whether we can stipulate these things.

The Court: You can identify the records, I suppose.

*Direct examination by Mr. Armstrong:*

40 Q. Mr. Becker, you are a counsellor at law of the State of New Jersey? A. Yes.

*Alfred R. Becker, cross.*

Q. You are also counsel to the West Side Building & Loan Association? A. I am a member of the firm of Insley, Vreeland & Decker, who are counsel to that association.

Q. You were subpoenaed here to produce the records of the building and loan so far as they apply to the shares of stock of Anna Quinlan, or Robert Quinlan. A. Yes. 10

Q. Have you all of them with you? A. I have some of the records which I could locate.

Q. Will you identify what records you have here?

Mr. Ziegner: Might I ask at this time for permission to examine this witness as to his knowledge of those records? 20

The Court: Yes.

*Cross examination by Mr. Ziegner:*

Q. Mr. Becker, have you any personal knowledge of these records? A. I have no personal knowledge of these.

Mr. Armstrong: I thought it would save time to identify the records first and let the judge examine on them. 30

The Court: Before you offer them in evidence?

Mr. Armstrong: Yes, so we would have the records identified.

The Court: All right.

Mr. Ziegner: Without any reference made to the contents.

Mr. Armstrong: I only want to identify that which is before the court. 40

*Alfred R. Becker, redirect.*

*Redirect examination by Mr. Armstrong:*

Q. What records have you, Mr. Becker? A. I have a certificate of stock #2697. I suppose that is as far as I can go without stating what is in it.

10 Q. A certificate of stock of the West Side Building & Loan? A. Yes.

Mr. Armstrong: May I have that marked for identification?

The Court: Yes.

(Certificate of stock marked C-1 for Identification.)

(Witness continuing). A check of the West Side Building & Loan Association #6375.

20

By Mr. Armstrong:

Q. Dated December 20, 1920? A. Yes.

Mr. Armstrong: May I ask that be marked?

The Court: Yes.

(Check marked C-2 for Identification.)

(Witness continuing). Check #6376 of the West Side Building & Loan Association dated December 20, 1920.

30

Mr. Armstrong: I ask that be marked for identification.

(Check marked C-3 for Identification.)

(Witness continuing). Check #6387 of the West Side Building & Loan Association dated December 20, 1920.

40

Mr. Armstrong: I ask that be marked.

*Alfred R. Becker, redirect.*

(Check marked C-4 for Identification.)

(Witness continuing). A stock certificate book of the West Side Building & Loan Association.

By Mr. Armstrong:

Q. From when to when, Mr. Becker? A. From March 22, 1909 to September 5, 1911. Just a minute. I guess that is about right.

The Court: Let that be marked for identification.

(Stock book marked C-5 for Identification.)

(Witness continuing). I have a dues ledger book of the West Side Building & Loan Association from March, 1910.

By the Court:

Q. You are referring to some particular page?  
A. I am not very familiar with these records.

Q. You are producing the book. A. That's about all I can say, it is a dues ledger book.

The Court: If any part is to be utilized you people will have to pick it out. That book only relates to an account of Mrs. Quinlan's personal transactions.

Mr. Armstrong: Mr. Quinlan's too.

The Court: Offer it for identification.

By Mr. Armstrong:

Q. The book is being offered and I would like you to note the page if you can, Mr. Becker, for a more concrete means of identification wherein there appears any entries concerning Alice

*Alfred R. Becker, redirect.*

McKenna, also known as Anna Quinlan. A. The only way I can make note of that is by the number of the book.

Q. Can you identify the book number of Alice McKenna of an entry made in this loose-leaf ledger? A. 2621 in this ledger.

Mr. Armstrong: I ask that specific page be marked also, if your honor please.

The Court: Is that a page or a date?

Mr. Armstrong: That's the book in the 29th series and it starts from March, 1910.

Q. By book you mean an account number, Mr. Becker. A. Yes.

Mr. Armstrong: We offer the entire ledger and specifically account #2621 for identification.

Q. Any further records or books of the building and loan association? A. No records that I see here that bear on the fifteen shares which you are speaking of.

Mr. Armstrong: I offer the book.

(Ledger marked C-6 for Identification.)

The Witness: I have here a secretary's record of disbursements made by the building and loan association on the night of December 20, 1920.

The Court: Do you want that marked?

Mr. Armstrong: Yes.

(Marked C-7 for Identification.)

Q. Mr. Becker, are you familiar with the records of the West Side Building & Loan Association? A. I am familiar with them, yes.

*Alfred R. Becker, redirect.*

Q. Do you know the handwriting of the secretary, Mr. Francis Gormley? A. I do.

Q. How long have you been familiar with the handwriting of Francis Gormley? A. About ten years.

Q. Is he the officer that did, in the ordinary course of business, make entries in this ledger wherein one page thereof is specifically mentioned and designated as account 2621?

10

Mr. Ziegner: I object to the question as incompetent and immaterial.

The Court: What is the purpose of that to prove the handwriting?

Mr. Armstrong: In the absence of Mr. Gormley that all these entries were made in the regular course of business.

20

The Court: When can Mr. Gormley be here?

Mr. Armstrong: I don't think he can be here today.

The Court: Did he identify the handwriting? He said he could.

Mr. Armstrong: An objection was made.

The Court: I will overrule the objection as to the handwriting.

30

Mr. Anderson: That's what the question is before the court now can he identify the handwriting in the ledger.

The Court: If he is competent to identify the handwriting of Mr. Gormley I will let you ask the question.

By Mr. Armstrong:

Q. Mr. Becker, the ledger before you is marked for identification and known as the ledger of

40

*Alfred R. Becker, redirect.*

accounts of the West Side Building & Loan Association. Can you tell us in whose handwriting that ledger has been kept? A. I can.

10 Q. And in whose handwriting are the entries made in that ledger? A. Referring to this particular page? (indicating).

The Court: What page is that?

Mr. Armstrong: Where account 2621 appears.

(Witness continuing). That's in the handwriting of Mr. Gormley's brother.

Q. Which Mr. Gormley? A. I think William J.

Q. Is he alive or dead? A. He is dead.

20 Mr. Armstrong: It is essential for me to have Mr. Francis Gormley. I am sure I can't go any further with the case.

The Court: Suppose you go and telephone Mr. Gormley.

Mr. Armstrong: May we suspend for five minutes?

The Court: Yes.

30 Mr. Armstrong: I telephoned to Mr. Gormley your honor and he can't be here today.

The Court: All right, proceed with the other aspect of the case.

*William H. Hintelmann, direct.*

WILLIAM H. HINTELMANN, being sworn:

*Direct examination by Mr. Armstrong:*

Q. Mr. Hintelmann, what is your business? A. Real estate and insurance.

Q. Where? A. Rumson, New Jersey.

Q. And on or about the 5th day of June, 1926, did you sell a piece of real estate located in Rumson, New Jersey, to Robert Quinlan? A. Yes.

Q. I show you a receipt dated June 5, 1926 for the sum of \$500.00. Is that in your handwriting?

A. Yes.

Q. Made by you on the day it is dated? A. Yes.

Mr. Armstrong: I offer this receipt in evidence.

The Court: Show it to counsel.

Mr. Ziegner: Except for my objection if your honor please as to the materiality of it.

The Court: Apparently it is material if it relates to one of the properties in question.

Mr. Ziegner: All right, I have no objection.

(Receipt marked Exhibit C-1 in evidence.)

By Mr. Armstrong:

Q. Mr. Hintelmann, what is that receipt marked Exhibit C-1?

Mr. Ziegner: I object. The receipt speaks for itself.

The Court: I will sustain the objection.

Mr. Armstrong: I call upon Judge

*William H. Hintelmann, direct.*

Ziegener now to produce the original of the contract of property dated July 2, 1925, in accordance to the notice to produce heretofore served.

10 By Mr. Armstrong:

Q. Mr. Hintelmann, did you sell to Robert—

The Court: You are not offering the contract.

Mr. Armstrong: No, sir. I notice it is not signed. We will not offer it.

20 Q. Mr. Hintelmann, did you sell to Mr. Quinlan a lot of land in Rumson, New Jersey, on or about the 5th day of June, 1926?

Mr. Ziegener: If your honor please may I have the privilege of examining the witness as to this situation?

The Court: I don't know yet whether you should be privileged to do that.

30 Mr. Ziegener: Merely upon the ground that this witness might attempt to testify to something which culminated in a written instrument, and it is for that reason I desire to object to the question as to any proposed sale if it was reduced to writing.

The Court: I will take the testimony subject to your objection.

Mr. Loeb: I also make the same objection on the same ground.

By Mr. Armstrong:

40 Q. Do you know the question, Mr. Hintelmann?

A. Whether I negotiated the sale to Robert Quinlan in June, 1926.

*William H. Hintelmann, direct.*

Q. Yes, on or thereabout. A. Now, I don't quite understand that question, whether that means a closing of title by delivery of deed, or whether it means the original contract of sale.

Q. Let me reframe the question then. Was there a contract of sale made at or about that time whereby you agreed to sell and Quinlan to purchase a lot of land located in Rumson, New Jersey, on Avenue Two Rivers? A. I do not know the date. 10

The Court: As long as he said he did not know—

Mr. Armstrong: He said he didn't know the date.

The Court: It may be a conclusion of the witness. He might say it was a contract of sale, and it may not be. 20

By Mr. Armstrong:

Q. Do you know whether or not a contract was made at anytime for the purchase by Quinlan from you of the lot to which I just referred? A. There was a contract of sale made, yes.

Q. Do you know when? A. I don't know the exact date. 30

Q. Can you approximate it with reference to Exhibit C-1 dated June 5, 1926? A. Unfortunately I cannot because the original agreement with Mr. Quinlan was under date of June 5th—Now, wait a minute—July 3, 1925.

The Court: That can't be because this receipt of June 5, 1926 indicates you received a balance on that date of the purchase price. Take a look at it. 40

*William H. Hintelmann, direct.*

Mr. Armstrong: Is your honor asking a question?

The Court: I am calling the attention of the witness to the receipt.

10

The Witness: The original sale to Mr. Quinlan was negotiated under date of July 3, 1925, at which time he paid fifty dollars as a deposit on account of the purchase of that lot. The final payment was made under date of June 5, 1926, at which time he paid the sum of five hundred dollars covering the balance due of purchase price and the sum of twenty-seven dollars and fifty cents being accrued interest to date.

20

By Mr. Armstrong:

Q. So that on June 5, 1926 the title to the land to which reference has been made and indicated by the receipt was passed to Mr. Robert Quinlan upon the payment of five hundred dollars plus twenty-seven dollars interest, is that correct? A. Correct.

30

Q. Now, do you know from whence he obtained those funds to make those payments? A. No, I do not.

Mr. Armstrong: Cross examination.

The Court: His statement of title passing is of no materiality.

Mr. Armstrong: We expect to connect it up. We have to produce a lot of documents.

The Court: You want an opportunity then to produce the deed?

40

Mr. Armstrong: I haven't the deed here.

*William H. Hintelmann, direct.*

The Court: If you want to record to show proper sequence it ought to come in here right now.

Mr. Ziegner: We haven't got it.

Mr. Armstrong: Have you the deed for the Rumson property, Mr. Loeb? 10

Mr. Loeb: No.

By Mr. Armstrong:

Q. I show you a warranty deed entitled Rumson Realty Estate Corporation to Robert Quinlan dated the 5th day of July, 1926— A. That is June.

Q. Excuse me, the 5th day of June, 1926, and ask you if that is the deed which you delivered at the closing of title to that lot of land. A. Yes, it is. 20

Q. And signed Rumson Real Estate Corporation by William H. Hintelmann, president, is that you? A. Yes.

Q. Are you the president of the Rumson Real Estate Corporation? A. Yes, sir.

Q. And attested by Mary K. Hintelmann as secretary. Was she the secretary of that corporation in 1926? A. She was the secretary then and ever since. 30

Q. Did you deliver the deed at that time to Mr. Quinlan? A. I did.

Mr. Armstrong: I offer it in evidence.

Mr. Ziegner: No objection.

The Court: I suppose it is acknowledged.

Mr. Armstrong: Yes, sir, the deed is acknowledged by Louis Wilson.

The Court: All right. 40

(Deed marked Exhibit C-2 in evidence.)

*Daniel A. Mears, direct.*

Mr. Armstrong: Any questions?

Mr. Ziegeler: No questions.

Mr. Loeb: No questions.

10

DANIEL A. MEARS, being sworn:

*Direct examination by Mr. Armstrong:*

Q. What is your name please? A. Daniel A. Mears.

Q. Where do you live? A. Rumson.

20

Q. Did you purchase a lot of land on Avenue Two Rivers in Rumson from Robert Quinlan? A. You say did I? We purchased it as a partnership, William Mears, Charles Mears and Daniel Mears, trading as William Mears & Sons.

Q. You are a member of the partnership? A. Yes.

Q. And were you a member of the partnership of Mears & Sons as at the time the lot of land was purchased from Robert Quinlan? A. I was.

Q. Were you present at the closing? A. No, I was not.

Q. Was a deed taken for the property? A. Yes.

30

Q. Do you know how much was paid for that land by Mears & Sons of your own knowledge?

Mr. Ziegeler: Just a moment! I object to that line of testimony on the ground it is immaterial, incompetent and irrelevant.

The Court: What have you to say about that?

40

Mr. Armstrong: It is very material if your honor please if we sustain our case. If we can show he paid five hundred and fifty for a certain piece of property with

*Daniel A. Mears, direct.*

our funds, and subsequently it was sold at a greater price, of course it is quite material, and that is the purpose of producing this witness.

The Court: In view of that what is your objection? 10

Mr. Ziegener: There is no question of increased purchase. It is a transaction between these two people.

The Court: This transaction spoken of now is between Mears & Sons and Robert Quinlan and not between Mrs. Quinlan.

Mr. Ziegener: Yes, an independent transaction.

The Court: With Mears. 20

Mr. Ziegener: Yes.

The Court: How is that objectionable?

Mr. Ziegener: I don't see it has any bearing on the case.

The Court: I will take it subject to your objection and see what comes. Ultimately it might be objectionable, but I am not sure now.

By Mr. Armstrong: 30

Q. What was paid by Mears & Sons, if you know of your own knowledge, for that strip of land to Quinlan? A. Why, Mears agreed to pay twelve hundred.

Mr. Ziegener: I ask that be stricken out.

The Court: Yes.

By Mr. Armstrong:

Q. What was the purchase price of the lot? 40  
A. Twelve hundred.

*Daniel A. Mears, direct.*

Q. Was that purchase price paid in cash? A. No, it was not.

Q. How was it paid? A. It was paid two hundred cash and a one thousand dollar mortgage.

10 Q. Were you one of the parties that executed that mortgage? A. Yes, I was.

Mr. Armstrong: I ask that original mortgage be produced.

By the Court:

Q. Was there a bond also accompanying the mortgage? A. I believe so, your honor.

20 Mr. Armstrong: I ask for the production of the bond and mortgage.

Mr. Ziegner: We can't lay our hands on the bond. For the sake of the record we will say the bond accompanied the mortgage.

By Mr. Armstrong:

30 Q. I show you what purports to be a mortgage dated the 28th day of August, 1930, made by William Mears, Charles Mears and Daniel Mears, partners trading as William Mears & Sons, to Robert Quinlan, and I ask you whether or not you were one of the persons that executed that mortgage. A. I am.

Q. And the names of William Mears and Charles Mears contained thereon are you familiar with those signatures? A. I am.

Q. Were they made in your presence and at the same time? A. They were.

40 Q. And was the acknowledgment on the mortgage taken by a notary public at the same time? A. Yes.

*Harry C. Knoop, direct.*

Mr. Armstrong: I offer it in evidence.

The Court: Let it be marked.

(Mortgage marked Exhibit C-3 in evidence.)

By Mr. Armstrong:

10

Q. Has that mortgage been paid? A. It has not, no.

Mr. Armstrong: That's all.

The Court: Any questions?

Mr. Ziegner: No questions.

---

HARRY C. KNOOP, being sworn:

20

*Direct examination by Mr. Armstrong:*

Q. Mr. Knoop, you are vice-president of the Commercial Trust Company—Mercantile Branch.

A. Yes.

Q. And the Commercial Trust Company is the successor in title to the Mercantile Trust Company. A. Yes.

Q. You have received a subpoena to produce here this morning the records of the bank insofar as they apply to the account of Robert Quinlan from 1910 forward. A. Yes.

30

Q. Have you them with you? A. I have a transcript of that account.

Q. From 1910 forward? A. No, from April 28, 1913 to February 16, 1917. Now, this is a copy of the accounts as they appear in our ledger.

Q. This is an exact copy however of the original books of entry upon which the account of Robert Quinlan was kept from the day of the date to which you have just made reference. A.

40

*Harry C. Knoop, direct.*

It is a transcript of the account of Robert Quinlan from April 28, 1913 to February 16, 1917 as it appears upon the records in our checking account department.

10 Q. Do the records in your bank go back to 1910? A. In this account? No.

Q. Did Robert Quinlan have an account in the Mercantile Trust Company? A. I don't know.

Q. As of 1910? A. I don't know. We have no records which go back that far for this account.

Q. But do the records of the Mercantile Trust Company go back as far as 1910? A. No.

20 Q. Do the Mercantile Trust Company records in the office of the Commercial Trust Company go back as far as 1910 of Robert Quinlan? A. No.

Mr. Armstrong: I ask there be produced now the original checks of Robert Quinlan dated November 23, 1910 through the years 1911, 12 and 13, in accordance with the notice served by me upon the solicitor for the defendant.

30 Mr. Ziegner: I am sorry Mr. Armstrong, we haven't any such checks.

By Mr. Armstrong:

Q. You say there was no account in your bank or in your records— A. So far as the records I couldn't find them.

Q. You made a search, of course. A. Yes, we had a search made.

40 Q. Are you familiar with the checks of the Mercantile Trust Company? A. Yes.

Q. As they appear? A. Yes.

*Harry C. Knoop, direct.*

Q. Were you connected with the trust company prior to its amalgamation with the Commercial? A. Yes.

Q. For how many years? A. April 1, 1908.

By the Court:

10

Q. In what capacity? A. From messenger boy right straight up—

By Mr. Armstrong:

Q. To vice-president. A. Yes.

Q. I show you what purports to be a photostatic copy of a check of the Mercantile Trust Company dated November 23, 1910, and ask you if that is a facsimile of checks issued by the Mercantile Trust Company as of that date. A. It looks like one. I have no records to compare it with.

20

The Court: Where did you get the photostatic copy if you haven't the real checks?

Mr. Armstrong: I had them and turned them over at the request of counsel for the estate.

The Court: Are you conceding that is admissible in evidence?

30

Mr. Ziegner: If Mr. Armstrong says it is a photostatic copy of the check we will admit it.

The Court: In lieu of the original.

Mr. Ziegner: Yes. We gave a receipt for some papers including cancelled checks and we have made a search and we are frank to confess we couldn't find them this morning, but if we do we will substitute them for the photostatic copies.

40

*Harry C. Knoop, direct.*

Mr. Armstrong: Will you concede that I may, if the case gets that far today, use these as secondary evidence?

10 Mr. Ziegner: Yes, if you say they are part of the transaction. We shall not stand upon any technicality.

By Mr. Armstrong:

Q. Did you make a search Mr. Knoop yourself, or have it conducted? A. No, I had it conducted.

The Court: Was that last paper marked?

Mr. Armstrong: I am going to have it marked for identification now if I may. A photostat of a check of the Mercantile Trust Company dated November 23, 1910.

20

(Photostat marked C-8 for Identification.)

Q. Mr. Knoop, referring to C-8 for Identification, examining it, would it indicate to you, assuming that the signature of Robert Quinlan thereon contained is the signature of Robert Quinlan, deceased, there was an account so entitled in the Mercantile Trust Company as of that date in 1910? A. It would, yes.

30

Q. And is it reasonable and probable to assume that the bank has records? A. No.

Mr. Ziegner: Just a minute! I object.

The Court: He said no.

The Witness: The records are not available.

By Mr. Armstrong:

Q. Have they been destroyed? A. I don't know. We can't find them in storage. The subpoena calls for 1910. I can only produce 1913.

40

*Harry C. Knoop, direct.*

The Court: Does that photostat show the cashing of the check by the bank?

Mr. Armstrong: Yes.

The Court: That ought to indicate to you there was an account because they wouldn't cash the check if there wasn't an account. 10

The Witness: May I look at it?

Mr. Armstrong: Yes.

The Court: There is a stamp "paid" on it.

The Witness: Yes.

The Court: That appears to be a check cashed by the bank. It is marked "paid".

The Witness: Yes, it is stamped "paid" and payable to F. P. Schroeder. It shows that Schroeder received a hundred and seventy-five dollars for that check. 20

The Court: And the bank wouldn't pay it out unless there was an account there, would they?

The Witness: Oh, no.

By Mr. Armstrong:

Q. So that, Mr. Knoop, insofar as you have been able to ascertain, there are no records available between the years January 1, 1910 and April 1, 1913, insofar as they apply to an account of Robert Quinlan. A. Yes. 30

Mr. Armstrong: I would like at this time, unless there be an objection, being no original records are here, to offer the transcript in evidence.

Mr. Ziegner: I have no objection to it being offered in evidence as a copy, but I 40

*Harry C. Knoop, direct.*

certainly do object on the ground of its materiality.

10 The Court: All right, let them be marked as a record. It is conceded it is in lieu of the original record if the original record was produced.

Mr. Armstrong: Yes.

(Transcript consisting of five sheets marked Exhibit C-4 in evidence.)

By Mr. Armstrong:

20 Q. Those are the only records you have concerning the account of Mr. Quinlan. A. That's a copy of the records we have.

Q. It is everything you have pursuant to the subpoena that was served upon you. A. Yes.

The Court: That is not so. He said it is the only record they find available from their search. There may be other records he has not been able to discover.

The Witness: This is all we could find.

30 The Court: Where did you search, in storage?

The Witness: Yes, where they should be. I have a check here which is the closing entry on that account. That's the only one we have.

By Mr. Armstrong:

40 Q. This is a check of Robert Quinlan dated February 5, 1917 on the Mercantile Trust Company utilized to close out the account, a transcript of which you just offered. A. Yes.

*Frank Carey, direct.*

Mr. Armstrong: May I offer this in evidence to show the closing entry and for no other purpose?

Mr. Ziegner: No objection.

(Check marked Exhibit C-5 in evidence.) 10

The Court: Suppose you read that into the record.

Mr. Armstrong: Exhibit C-5. "Jersey City, N. J. February 5, 1917 Mercantile Trust Company. Pay to the order of S. P. Meehan Four dollars and fifty cents", and signed Robert Quinlan.

The Court: You didn't give the number of it. 20

Mr. Armstrong: There is no number on it your honor. It is stamped.

The Court: Perforated.

Mr. Armstrong: Perforated February 16, 1917 and endorsed S. P. Meehan. That's all.

The Court: Any questions?

Mr. Ziegner: No questions.

30

FRANK CAREY, being sworn:

*Direct examination by Mr. Armstrong:*

Q. Are you associated with the Trust Company of New Jersey, Claremont Branch? A. Yes.

Q. The Trust Company of New Jersey is the successor in title to the Claremont Trust Company. A. Yes, sir.

Q. Have you in accordance with the subpoena served upon you produced the account of Alice McKenna, or Alice Quinlan? A. Yes, sir. 40

*Chauncey Vanice, direct.*

Q. Is this the original record or a true copy?

A. No, that's a true copy.

10 Q. You are certain this here is an exact copy of account 41611 entitled "Alice Quinlan" in the Claremont Bank in Jersey City.

The Court: Is there any objection to the copy being used?

Mr. Ziegner: Only as to it being a copy.

Mr. Armstrong: It is offered in evidence for the purpose of a record at this time.

The Court: Let it be marked.

20 (Transcript marked Exhibit C-6 in evidence.)

Mr. Armstrong: That's all.

Mr. Ziegner: No questions.

Mr. Loeb: No questions.

CHAUNCEY VANICE, being sworn:

*Direct examination by Mr. Armstrong:*

30 Q. You are from the Hudson County National Bank? A. Yes, sir.

Q. In answer to a subpoena served upon you do you produce a record of an account in the Union Trust Company-Hudson County National Bank? A. Yes.

Q. Have you it with you? A. Yes.

Q. Are these the original records or did you make a transcript? A. They are the originals.

40 Q. Now, will you identify these records and tell us from what date to what date they bear?

*Chauncey Vanice, direct.*

A. The account opened in our bank on February 7, 1917, a hundred and fifty dollars.

Q. Is that the Hudson County National or the Union Trust? A. It is the Union Trust Company.

The Court: The Union Trust Company and the other bank became consolidated. 10

Mr. Armstrong: Yes, they merged. Some of our exhibits will be one and some the other.

Q. Have you told us what bank that was?

The Court: The Union Trust.

By Mr. Armstrong:

Q. And thereafter was that account carried over? A. In the Hudson County National. 20

Q. Do you know whether or not the Union Trust and the Hudson County National merged and operated as one institution? A. Yes.

Q. Do you know when? A. I don't know the exact date.

Mr. Ziegner: We will concede that.

By Mr. Armstrong:

Q. Up to what date did the account of Robert Quinlan go? A. Until May 25, 1932. 30

Q. And these loose leaves which you have in your possession are the original records of the bank. A. Yes.

Mr. Armstrong: I offer them in evidence.

The Court: Will you prepare a transcript and submit it in lieu of the original? 40

The Witness: Yes.

*Colloquy.*

Mr. Armstrong: May we consider them marked in evidence subject to the same objection, judge?

Mr. Ziegner: Yes.

10

Mr. Armstrong: There is offered in evidence at this time the original records of the bank account of Robert Quinlan in the Union Trust Company and subsequently the Hudson County National Bank, the bank account being from what date please?

The Witness: February 7, 1917.

Mr. Armstrong: Until?

The Witness: May 25, 1932.

The Court: Let it be marked.

20

(Transcript marked Exhibit C-7 in evidence.)

Mr. Armstrong: It is stipulated that Exhibit C-7 will be substituted by a true transcript of the account to be furnished at a subsequent date.

Mr. Ziegner: Subject to its admission in evidence.

The Court: Yes.

30

Mr. Armstrong: That's all.

Mr. Loeb: I would like the stenographer to note I make the same objection.

The Court: All right.

40

*Frank X. Quinlan, direct.*

FRANK X. QUINLAN, being sworn:

*Direct examination by Mr. Armstrong:*

Q. Mr. Quinlan, you are the brother of the late Robert Quinlan, deceased?

10

Mr. Ziegener: Just a moment! Now, if your honor please, I object to the examination of this witness on the ground it is improper as he is one of the defendants acting in an administrative capacity.

The Court: He may not be calling him in that capacity. I don't know what the purpose is. I judge from what he said he wants him to identify the signature of his brother.

20

Mr. Ziegener: It may be a transaction with the deceased.

The Court: I will take it subject to your objection and we will find out. All the way through make your objection and I will deal with it later.

Mr. Ziegener: I object to the testimony in any respect.

The Court: All right.

30

Mr. Armstrong: I call upon Judge Ziegener to produce the checks demanded by me in my notice to produce.

Mr. Ziegener: We concede if you have photostatic copies they are true copies of the checks in question. If we find them we will produce them, but our office cannot find them.

Mr. Armstrong: And the signature contained thereon is the signature of Robert Quinlan.

40

*Frank X. Quinlan, direct.*

The Court: It must be if it is the check of Quinlan unless the checks might be signed by some one under a power of attorney.

10

Mr. Ziegner: Your honor can appreciate the representation of ourselves in this matter is such that we must admit nothing and deny all. That's the position we take.

Mr. Armstrong: Do I understand judge you admit the checks are Robert Quinlan's?

Mr. Ziegner: No. I will permit you, if you desire, to use the photostatic copies in such way as if the original checks were presented.

20

The Court: Furthermore, if they produce those checks it is fair to assume they are his checks.

Mr. Armstrong: They didn't produce them.

The Court: He said they will produce them if they can find them.

30

Mr. Ziegner: I would be glad to state that the checks which have been demanded of us were checks and documents delivered by the complainant in this case to us. Originally they were in our office. They were delivered to our office by this lady and were out of her control and in ours.

The Court: All right, proceed.

By Mr. Armstrong:

Q. Mr. Quinlan, you are the brother of the late Robert Quinlan? A. I am.

40

Q. And you are familiar with his handwriting? A. To a certain extent.

*Frank X. Quinlan, direct.*

Q. To what extent? Have you seen his handwriting on numerous occasions? A. Yes.

Q. During his lifetime, of course. And on how many occasions would you say you saw his handwriting? A. Various.

Q. Various. Can you estimate roughly the number of times you have seen it? A. No.

Q. In any event do you feel that you are familiar with his handwriting? Would you recognize it if you saw it? A. I believe I could.

Q. I show you what purports to be a photostatic copy of a check entitled Mercantile Trust Company, November 23, 1910, and ask you if that check is signed by Robert Quinlan, or the photostatic copy of the original of that check. A. It resembles his handwriting. I would say yes.

Mr. Armstrong: The photostat is offered in evidence as a check of Robert Quinlan.

Mr. Ziegner: With the same objection. Would you allow the witness to be confronted with all the checks?

Mr. Loeb: Let him look them all over.

Mr. Ziegner: It is all based on the objection this man is called as a witness first, and as to its materiality.

The Court: You can argue that later.

Mr. Armstrong: Mr. Gormley is certainly familiar with his handwriting.

Mr. Ziegner: If he comes he can say.

By Mr. Armstrong:

Q. Now, Mr. Quinlan, will you examine the photostatic copies of a number of checks shown you here today and allegedly signed by Robert Quinlan?

*Frank X. Quinlan, direct.*

The Court: Say purporting to be.

By Mr. Armstrong:

10 Q. Purporting to be signed by Robert Quinlan.  
Do you recognize the handwriting?

The Court: If the checks were cashed  
by the bank it is fair to assume they were  
his.

The Witness: Your honor, I can only  
testify to my brother's handwriting in late  
years because my dealings were only with  
him within the last eight or ten years.

20 The Court: Just identify what you can.  
They can produce the signature cards.

The Witness: The only difference I see  
is the "n" which is not the same. I say  
these resemble the handwriting of Robert  
Quinlan.

By Mr. Armstrong:

30 Q. Mr. Quinlan, I show you what purports to  
be 43 photostatic copies of checks drawn on the  
Union Trust Company and the Mercantile Trust  
Company, and purportedly signed by Robert  
Quinlan, and ask you, after examining each of  
them, whether you can identify the signature  
contained on the photostats as the signature of  
Robert Quinlan, your brother. A. Yes, I say they  
resemble the signature.

Mr. Armstrong: There is offered in evi-  
dence 43 checks drawn to the order of the  
West Side Building & Loan Association and  
signed Robert Quinlan.

40 Mr. Ziegner: With the same reserva-  
tion.

*Thomas Cappadona, direct.*

The Court: Yes, your objection will go all the way through.

(43 checks marked Exhibit C-9 in evidence.)

Mr. Armstrong: That's all.

10

Mr. Ziegner: No questions.

---

THOMAS CAPPADONA, being sworn:

*Direct examination by Mr. Armstrong:*

Q. Are you associated with the Hudson County National Bank? A. Yes, sir.

Q. And the Hudson County National Bank took over the Journal Square National Bank. A. Yes.

20

Q. Do you know whether or not the Bergen National Bank changed its name and became the Journal Square National Bank? A. I do.

Q. Have you pursuant to a subpoena served upon the bank produced a transcript or record of the account of Robert Quinlan in the Bergen National Bank, the Journal Square National Bank and the Hudson County National Bank? A. I have the original copies.

30

Q. The original records? A. Yes.

Q. And will you tell us the date of the opening of the account of Robert Quinlan? A. We have two accounts here. The commercial account opened up on November 25, 1923.

Q. In what was the Bergen National Bank. A. That's right.

Q. How long did that run? A. Up to the present date. We still have an account—a small balance.

40

*Thomas Cappadona, direct.*

Q. That is particularly the Journal Square National Bank. A. That's right.

Q. And will you cause a transcript of these original records to be made? A. Yes.

10 Mr. Armstrong: Will you, Judge Ziegner, acknowledge the transcript of these original records when made and produced?

Mr. Ziegner: Yes.

Mr. Armstrong: I offer them.

(Original records marked Exhibit C-10 in evidence.)

Q. You say there was still another account of  
20 Quinlan? A. An unsecured loan in our loan department since closed out.

Mr. Armstrong: It is of no materiality, judge.

Mr. Ziegner: I have no desire for it.

Mr. Armstrong: Your honor, that is as far as I can go with my case at the present moment. The transactions of course will have to come in from the bank accounts, and the man who was to come here from  
30 the Emigrant Industrial Savings Bank did not appear although I have a transcript of that account here.

The Court: Show it Judge Ziegner. Is it certified by the bank?

Mr. Armstrong: Yes. He was to come here and identify it.

Mr. Ziegner: As a record we will not object.

The Court: Let it be marked.

40 (Transcript marked Exhibit C-11 in evidence.)

*Francis Gormley, direct.*

The Court: I will formally continue this case to December 11th, which is a motion day, but you may come in any day.

10

December 8, 1933.

FRANCIS GORMLEY, being sworn:

*Direct examination by Mr. Armstrong:*

Q. Mr. Gormley, are you associated with the West Side Building & Loan Association? A. Yes.

Q. In what capacity? A. Secretary.

Q. And how long have you been secretary of the West Side Building & Loan Association? A. Over thirty-seven years. 20

Q. And as such secretary did you keep the books and records of the association, or have them under your supervision? A. Under my supervision.

Q. And particularly on or about the 20th day of February, 1911? A. Yes.

Q. Did you know Robert Quinlan? A. Very well.

Q. Are you familiar with his handwriting? A. Yes, I am. 30

Q. I show you a certificate marked C-1 for Identification in this proceeding, Mr. Gormley, alleged to be a certificate of the West Side Building & Loan Association, and I ask you to explain it please and tell us what it is.

Mr. Ziegner: I object on the ground it is incompetent, immaterial and irrelevant. 40

The Court: I will overrule the objection.

*Francis Gormley, direct.*

A. This certificate indicates that Robert Quinlan came in on March 7, 1910, and subscribed for 25 shares of the capital stock of the West Side Building & Loan Association Series #29.

10 By Mr. Armstrong:

Q. Is the certificate signed by the officers of the association as they then were back in 1910? A. That's right.

Q. And who were those officers? A. William Jackson, president, and Francis Gormley, secretary.

Q. Do you know of your own knowledge that Mr. Jackson was president of the association at that time? A. Yes.

20 Q. And that certificate you say indicates that Robert Quinlan was the owner of 25 shares of stock in the building and loan association of that day. A. Yes, sir.

Q. Now, will you turn the certificate over, Mr. Gormley? Is there anything on that certificate dated subsequent to the certificate itself, Mr. Gormley?

30 Mr. Ziegner: I object on the ground the certificate speaks for itself.

Mr. Armstrong: I haven't offered it yet. I want to identify it first.

The Court: If it is readable he had better not state what it is.

Mr. Armstrong: It is readable.

Q. Mr. Gormley, are there endorsements contained on the back of the certificate? A. There are.

40 Q. And there are how many endorsements, please.

*Francis Gormley, direct.*

The Court: Won't the certificate speak for itself?

Mr. Armstrong: I want to produce later photostatic copies. I want him to identify it on the record.

10

The Court: All right.

By Mr. Armstrong:

Q. There are four endorsements contained on the back of that certificate. A. Yes.

Q. Do you recognize the handwriting of Mr. Quinlan subjoined to three of those endorsements? A. Yes.

Q. And that's your signature as secretary—the fourth endorsement. A. Yes.

20

Mr. Armstrong: I offer the certificate in evidence at this time.

Mr. Ziegner: I object your honor on the ground it is incompetent, immaterial and irrelevant.

The Court: I will overrule your objection and admit it.

(Certificate marked Exhibit C-12 in evidence.)

30

By Mr. Armstrong:

Q. Mr. Gormley, I show you a loose-leaf ledger of the West Side Building & Loan Association, and call your attention particularly to the sheet marked C-6 for Identification for the months of March, April and May, 1910, and containing entries, and I invite your attention particularly to that which allegedly concerns book #2621, and I ask you if you can identify the entries and handwriting made thereon.

40

*Francis Gormley, direct.*

Mr. Ziegner: I make the same objection on the ground it is incompetent, irrelevant and immaterial.

The Court: I will overrule your objection.

10

A. I think I can.

By Mr. Armstrong:

Q. If you know tell us please. A. The one, I think, that wrote that is dead.

Q. And who is that please? A. That is my brother, William J. Gormley. It looks like his handwriting.

20

By the Court:

Q. Had you seen much of his handwriting? A. Oh, yes.

Q. You said it looks like it. A. He was my assistant for years, and he kept the books.

By Mr. Armstrong:

Q. What's your brother's name? A. William J. Gormley.

30

Q. Your best conclusion is from the familiarity you attained during his lifetime of his handwriting you feel that is his handwriting. A. I think it is.

Mr. Ziegner: I object to it.

The Court: It is subject to your objection for what it is worth.

By Mr. Armstrong:

40

Q. Well, do you only think it is, or is it your judgment it is his handwriting, Mr. Gormley? A. Whatever way you put it it is my judgment it is his handwriting.

*Francis Gormley, direct.*

Q. Was your brother's writing. A. Yes.

Q. Is his widow alive? A. No.

Q. Have any children? A. Yes.

Q. Are they alive? A. Yes.

Q. Now, with particular reference to the entry 10  
2621, for the purpose of the record, Mr. Gormley,  
will you please read it? A. This is Book #2621  
indicating 25 shares—

Q. In whose name? A. Robert Quinlan's.

Q. Did they stay in Robert Quinlan's name, the  
entire 25 shares? A. On June 27th—

The Court: What year?

The Witness: I am looking. It isn't  
indicated here the year.

By Mr. Armstrong: 20

Q. It is a book of entries for the year 1910. A.  
Yes.

Q. Go ahead, Mr. Gormley, what happened on  
June 27th? A. On June 27th it appears that  
fifteen shares of the twenty-five were transferred  
to Miss Alice McKenna.

Q. Do you know Miss Alice McKenna? A.  
She is now the widow of Robert Quinlan.

Q. Have you made a search of the records of 30  
the West Side Building & Loan Association to  
determine whether or not there was ever any  
transfer from Miss Alice McKenna, or Mrs. Alice  
McKenna Quinlan, of those shares of stock? A.  
The only thing I discovered was the certificate.

Q. And that's the certificate to which you just  
made reference and which is offered in evidence.  
A. Yes.

Q. Does that indicate that Mr. Robert Quinlan 40  
transferred fifteen shares of stock to Alice Mc-  
Kenna by endorsement thereon?

*Francis Gormley, direct.*

Mr. Ziegner: I object on the ground the certificate speaks for itself.

The Court: I guess that is so. I will sustain the objection.

10 By Mr. Armstrong:

Q. Now, I ask you, Mr. Gormley, whether or not from the time of that transfer by Robert Quinlan, as indicated by the records, to Alice McKenna, whether any further transfer from Alice McKenna to any other person is indicated on the records of your association. A. Not on the record here.

20 Q. Do any of the records of the association indicate there was ever a transfer back to anybody from Alice McKenna of those fifteen shares of stock? A. No, sir.

30 Q. Now, I show you Exhibit C-9, which is a series of checks drawn to the order of the West Side Building & Loan Association, and specifically designating those checks which contain thereon on their face a notation "Book 2621 fifteen shares A. McKenna", and ask you whether or not they applied to the fifteen shares of stock transferred by Robert Quinlan by endorsement on the certificate. A. You are referring to one of these? (indicating).

Q. I am referring specifically to a photostatic copy of a check containing on its face the notation "Book 2621". Is that the Quinlan account? A. Yes.

Q. Is that the account by endorsement transferred to Alice McKenna? A. Yes.

40 Q. And the further notation "Fifteen shares A. McKenna", and I ask you whether or not the avails of that check were applied to the account

*Francis Gormley, direct.*

which you have just identified as that of Alice McKenna.

Mr. Ziegner: Do I understand this is during the time that this witness had personal knowledge, or at the time his brother is alleged to have kept the records? 10

Mr. Armstrong: During the time he was secretary and had personal knowledge.

A. This was a check drawn by Robert Quinlan.

Q. Can you identify that as his signature? A. Yes, drawn on March 20, 1911. March 20th, is it?

Q. Yes. A. March 20, 1911. The amount of the check is \$7.50. The date of the check is March 20, 1911 drawn by Quinlan on the Mercantile Trust. 20

Q. Does it indicate it was applied to the account 2621 which you have identified as being transferred to Alice McKenna?

Mr. Ziegner: I object. The check speaks for itself.

The Court: Yes, the check is self explanatory. There is no use of asking him that.

Mr. Armstrong: I suppose we have identified all these signatures as Mr. Robert Quinlan's. 30

Mr. Ziegner: They have all been identified.

By Mr. Armstrong:

Q. Do you know whether or not the shares indicated by this account, fifteen shares, came to maturity? A. Yes. 40

Q. Were they paid? A. Yes.

Q. Do you know when? A. No, not now.

*Francis Gormley, direct.*

Q. Have you consulted your records to determine when the payments were made, Mr. Gormley? A. No, I have not.

10 Q. I show you two checks marked C-2 and C-3 for Identification, and ask you by examining them whether or not they refresh your recollection as to the payment of those shares. A. They seem to be all right.

Q. Mr. Gormley, what would be the matured value of the fifteen shares of stock in the West Side Building & Loan Association as indicated by the account 2621, if you know of your own knowledge.

20 Mr. Ziegner: I object as immaterial. It has no bearing on the issue.

The Court: How is it material?

Mr. Armstrong: We are suing for the avails.

The Court: If they matured the books should show the value.

Mr. Armstrong: I am asking him, Vice Chancellor, to identify the two checks.

30 The Court: You are asking him to testify from his own knowledge. If the books show the matured value why not refer to them.

By Mr. Armstrong:

Q. Do the records identify the time of the payment of these shares, Mr. Gormley? A. Yes, they do.

40 Q. And when were the shares paid? A. That series is dated 1910, and this check is dated 1920

*Francis Gormley, direct.*

—December, 1920, which would be about the time necessary to mature that series.

The Court: I can't let you guess at it, Mr. Gormley. If you are not sure don't say so. Counsel is trying to find out when those shares matured and what the amount of the shares were at maturity. 10

By Mr. Armstrong:

Q. The records are here, Mr. Gormley, if you will consult them. I ordered all the records produced. If you will take your time and examine them I think you will find what you want. A. Yes, we have the records right here. 20

Q. What is the record, Mr. Gormley? A. The 29th series matured December 13, 1920. The check is drawn December 20, 1920. 20

Q. Does that record indicate the secretary's notes of the meeting of the West Side Building & Loan Association of December 20, 1920? A. That is the record sheet of that date.

Q. And were you the security on that date? A. Yes.

Q. Are those notes in your handwriting? A. Yes. 30

Mr. Armstrong: I offer them in evidence.

(Secretary's record marked Exhibit C-13 in evidence.)

Mr. Armstrong: I am only offering it to show payment to Robert Quinlan.

Mr. Ziegner: That's all right. I didn't want anything else to be contained in the record except what you referred to. 40

*Francis Gormley, direct.*

By Mr. Armstrong:

10 Q. Now, Mr. Gormley, I show you two checks dated December 20, 1920, signed by you as secretary and other officers of the West Side Building & Loan Association, to the order of Robert Quinlan, and ask you whether or not those checks represent the matured value of the shares in account #2621. A. Can I look at that sheet again? I would like to verify it. The answer is yes, it represents the matured value—these two checks aggregating \$3,000, which is the principal amount for fifteen shares matured. These two checks aggregate \$3,000.

20 Mr. Armstrong: I ask that these two checks heretofore marked C-2 and C-3 for Identification be marked in evidence.

The Court: All right.

(Checks marked Exhibits C-14 and C-15 in evidence.)

By Mr. Armstrong:

30 Q. I show you a sheet entitled "Regular meeting of board of directors of West Side Building & Loan Association dated February 20, 1911," and I ask you whether you can identify that sheet as contained in the minutes of the meeting of the board of directors of your association as of that date. A. I can, yes.

Q. They are the minutes of the meeting. A. Yes. There should be another sheet here. However, that's part of it.

40 Mr. Armstrong: It contains the matter I have a particular interest in, your honor.

*Francis Gormley, cross.*

The Court: All right.

Mr. Armstrong: I offer it in evidence.

(Sheet marked Exhibit C-16 in evidence.)

Mr. Armstrong: That's all.

10

*Cross examination by Mr. Ziegner:*

Q. With reference to Exhibit C-15, Mr. Gormley, I note that this check is made payable to the order of Robert Quinlan or the West Side Building & Loan Association. A. Yes.

Q. And bears on endorsement.

Mr. Armstrong: It bears the endorsement of the West Side Building & Loan Association.

20

By Mr. Ziegner:

Q. The check was received and deposited by the West Side Building & Loan Association. A. Right, and applied to the credit of the mortgage against the shares.

Q. And by reference to C-14 and C-15, they designate, as well as the records designate, the payment of the moneys to Mr. Robert Quinlan as the owner of the shares of stock on the mortgage with the bond. A. Yes.

30

Q. Represented by a certain book number, right? A. Right.

Q. Otherwise your association would not have paid the money, would it?

Mr. Armstrong: I object as leading, your honor.

Mr. Ziegner: I withdraw the question. That's all.

40

*Francis Gormley, redirect.*

*Redirect examination by Mr. Armstrong:*

Q. The records of your association show the shares to be in the name of Alice McKenna.

10 Mr. Ziegener: I object as leading.  
The Court: Yes.

By Mr. Armstrong:

Q. In whose name do the records of your association show these shares to be in?

Mr. Ziegener: I object on the ground the witness has already testified to that.

The Court: Isn't that in already?

20 Mr. Armstrong: Yes, I think it is.

The Court: I think the records will have to speak for themselves, but I understood Mr. Gormley to say that this money was used to pay a mortgage. Who held the mortgage?

The Witness: Mr. Robert Quinlan.

By Mr. Armstrong:

30 Q. Do you know about the mortgage about which you have made reference, Mr. Gormley?

A. Here is a note of it in the minutes.

Q. And the minutes are dated the 20th of February, 1911. A. Yes.

Q. What does the note in the minutes say concerning the mortgage?

The Court: We can read it as well as him.

40 By Mr. Armstrong:

Q. Was there any other mortgage subsequent

*Francis Gormley, redirect.*

to the 1911 mortgage, Mr. Gormley? A. You mean a mortgage on the property?

Q. Yes, sir, for which these fifteen shares were pledged? A. I don't think so. I am not quite sure. I don't believe there was.

Q. Can you from your records determine that?  
A. With reference to this particular book?

Q. Of course with reference to that particular book. A. There is no other mortgage.

Mr. Armstrong: That's all.

(At this point the further hearing was continued to February 28th, 1934.)

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February 28, 1934.

Mr. Armstrong: If your honor please, I find myself in this position. As I wrote to your honor sometime ago my client, Mrs. Quinlan, since the death of her husband, has had to earn her living as a nurse with a doctor who runs a sanitarium in Verona. Today happens to be the golden wedding anniversary of that doctor and his wife, and unless she keeps on the job she may lose it. Now, Judge Ziegner was acquainted with that fact, and he finds himself in the position of opposing my application for an adjournment this morning. As far as the case is concerned it was heard partially by Vice Chancellor Fallon, and I understand a transcript of the testimony was made up and your honor will need it now in order to go on. Judge Ziegner and I went to Vice Chancellor Fallon's

*Colloquy.*

10 office for the purpose of producing a witness who was ill, Mr. Gormley, the secretary of the building and loan association. Now, the evidence I have is practically in. There are three counts in the bill wherein we allege a trust. There were three separate and distinct transactions. Two of our counts, of course, will be shown through bank records. I am in a position where I cannot finish my case and let the other side go on today. I ask your honor for an adjournment to as early a date as possible. I understand your calendar is crowded.

The Court: Yes.

20 Mr. Armstrong: It is entirely our fault and on the facts which I presented to your honor I am asking for an adjournment.

30 Mr. Ziegner: If your honor please, the objection is made by Mr. Quinlan who is the executor. He has just had notice from the city they will take the property away for nonpayment of taxes, and this case was set down sometime ago. It was to be heard before Vice Chancellor Fallon. A re-reference was had to your honor. This lady is occupying the premises and receiving an income from it and the result is she is just stringing us along, in our opinion.

The Court: Let me understand. How far has the case proceeded?

40 Mr. Ziegner: Mr. Armstrong went into certain dealings with the building and loan, having examined Mr. Gormley, who was the secretary, who was given special consideration. And also a day was consumed

*Colloquy.*

in somewhat technical proof. We are in a position of being criticized by our client. At the last continuance Mr. Quinlan communicated with Vice Chancellor Fallon who stated to him the continuance should be taken up with us. Now, we don't want to be in a position of being criticized because of any further delay. We have been ready. Today is the day designated by your honor. 10

The Court: Why can't you go on with what you have this morning, and if there is any further evidence I will let you have an early date.

Mr. Armstrong: One count is all I can be heard on your honor. 20

The Court: I am not familiar with the counts. I just looked at the complaint and the answer.

Mr. Ziegener: I am not satisfied to put in any defense until the complainant has proven her case because we allege there is nothing in the case we have to answer.

Mr. Armstrong: May I say something about the delay in this case, your honor? This case was set down before Vice Chancellor Fallon and we proceeded with our proof. We consumed the greater part of a morning and we would have practically completed our case but for Mr. Gormley's illness at that time. Vice Chancellor Fallon went to the trouble of having me telephone Mr. Gormley to verify what I said he couldn't possibly be in court. Vice Chancellor Fallon thereupon for the conveyance of Mr. Gormley set down a special date in his office, and Judge Ziegener and I went 30 40

*Colloquy.*

10 over there and took his testimony. That has been done. There has been no delay, although Mr. Quinlan might feel by reason of the crowded condition of the Chancery calendar this case has not been heard as speedily as he thought. This is my only request for a postponement. So far as the taxes, Mr. Quinlan is executor of Robert Quinlan's estate. As such executor he hasn't even filed an inventory, although Mr. Quinlan has been dead two years. Also we are entitled to a specific bequest of \$2,000 under the will of Robert Quinlan. He has it. So if, perchance, he feels the taxes should be paid, I might say to him if 20 he has our \$2,000 he can utilize any part that he likes, subject, of course, to our right to redemption thereafter, so there will be no blame placed upon Mr. Quinlan as executor.

30 Mr. Ziegner: At the time this case was before Vice Chancellor Fallon I understood that this lady was occupying the premises and furthermore getting an income of \$45.00 a month. That money is being taken from the estate. She has collected over \$1,000. I have a letter from the Provident Institution For Savings of proposed action by the City Collector, and the mortgagee has threatened to foreclose the mortgage.

40 Mr. Armstrong: We claim title to those premises. We say those premises are ours, and we are asking the impression of a trust upon it. If they were so concerned about the premises a Chancery receiver could have come in and collected the rents

*Colloquy.*

at the institution of this suit. They had their remedy and rights, and we say those premises are ours. She did take the rents and profits from them. There is no doubt about that. But they can't be hurt. As against that they have her \$2,000 which has never been paid over. Insofar as protesting themselves against any action by the City of Jersey City they could have readily had a Chancery receiver. 10

Mr. Ziegener: Application was made in the Orphans' Court and the motion was denied. Our client feels the lady is just stalling this case and receiving the income from it. Mr. Loeb represents one of the infants. 20

Mr. Loeb: The only thing I can say is that we get an early date. They have gone ahead and presented the evidence as it is now. They may feel they have not presented enough. I would like to get a very early date and have the case finished up.

The Court: Can you finish in one day?

Mr. Ziegener: We won't take much of your honor's time. 30

The Court: You appear for who, Mr. Loeb?

Mr. Loeb: May Quinlan, one of the defendants.

Mr. Armstrong: I want to assure your honor the balance of my proofs will not take more than two hours.

The Court: All right, I will continue it to May 2nd. 40

*Colloquy.*

May 2, 1934.

10 Mr. Armstrong: If your honor please, through inadvertence this morning I brought with me a folder which I thought contained all the exhibits heretofore offered in this case. I haven't them here. I have sent for them. They are on their way down. If it is necessary to use them I will use them when they arrive. Now, as I understand the situation, your honor is hearing this case on re-reference from Vice Chancellor Fallon. We took a couple of days' testimony. Your honor has seen fit to have the record typed up and has gone over it unless you want me to again present that testimony.

20 The Court: No. I want to know if it is stipulated that the testimony which has been heretofore given before Vice Chancellor Fallon will be considered in this case by me.

Mr. Ziegner: Yes, sir.

30 Mr. Armstrong: I assume that is part of the record in this case you are now hearing.

Mr. Ziegner: With the same reservations that Vice Chancellor Fallon accorded us in relation to motions to strike out.

The Court: It will be considered by me.

40 Mr. Armstrong: To the same effect in toto as though having been taken before your honor. Now, we have progressed, if your honor remembers in examining that testimony, only up to the point involving the allegations by my client Mrs. Quinlan with reference to the building and loan

*Philip O'Reilly, direct.*

shares. From that point I assume we may have leave to go ahead.

The Court: Yes.

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PHILIP O'REILLY, being sworn:

10

Mr. Armstrong: Before taking Mr. O'Reilly's testimony my notice to produce recalls to my recollection that I served upon Judge Ziegner in the original proceedings a notice to produce certain documentary evidence which I considered material to the cause, and which was in the possession of the other side. I don't recollect whether or not at the hearing the photostatic copies produced by me were accepted in lieu of the original checks.

20

The Court: The record shows by consent he won't stand on any technicality. Is that your recollection Judge?

Mr. Ziegner: Yes. At that time we were under the impression we had no such checks. We have located them since.

Mr. Armstrong: Will it be conceded what I produced represented true copies of the originals, and to the same effect the certified copies of transcripts of bank accounts in lieu of the originals so the original records could be preserved by the banks?

30

Mr. Ziegner: Yes.

*Direct examination by Mr. Armstrong:*

Q. Mr. O'Reilly, did you know Robert Quinlan during his lifetime? A. Yes, I did.

40

*Philip O'Reilly, direct.*

Q. For how many years were you acquainted with him? A. About twenty-four or five years.

Q. Did you consider him as your close personal friend?

10 Mr. Ziegner: I object. It is immaterial.

The Court: Yes, it is immaterial.

By Mr. Armstrong:

Q. When did you first meet with Mr. Quinlan?

A. About twenty-five years ago.

Q. Where? A. At the City Hall.

Q. Jersey City? A. Yes.

20 Q. Did you have business dealings with him there? A. Yes.

Q. What were they?

Mr. Ziegner: I object as immaterial.

The Court: I will sustain the objection.

By Mr. Armstrong:

Q. Did you visit with Mr. Quinlan at his home in Dwight Street? A. Yes, frequently.

30 Q. Did you ever have any conversation with Mr. Quinlan at his home in Dwight Street concerning the ownership of those premises?

Mr. Ziegner: I object to the question. It is indefinite and no time fixed.

Mr. Armstrong: We can only lay a foundation.

40 The Court: Unless it is connected up it will be stricken out. I will take it subject to your objection. If it isn't material or connected up it will be stricken out.

*Philip O'Reilly, direct.*

By Mr. Armstrong:

Q. Will you answer that yes or no? A. Yes.

Q. When? A. At the time he took possession of the house. I visited him right away in the new house.

10

Q. Do you remember when that was that possession was taken by Mr. Quinlan of those premises? A. Well, it was about twenty-two years ago, or thereabouts.

Q. Did Mr. Quinlan have anything to say to you concerning whose property that was? A. Yes.

Q. Where did that conversation take place? A. Well, he had a conversation with me at the City Hall for one.

Q. In Jersey City? A. Yes.

20

Q. What was it please. A. We used to get paid in vouchers by the city. I was in the contracting business with my brother—the O'Reilly Contracting Company, and we used to let Mr. Quinlan have the vouchers and he used to sell them to the brokers. I quit letting him have them and turned them into the bank, and he asked me why. I told him there was too long a delay between the time I turned the voucher over to him and the time we would get the cash for the payrolls. So he told me he wanted to get all the money he could as he was in pretty bad shape for money, and he had to borrow money from his wife to build his house on Dwight Street.

30

Q. Did you have any further or other conversation with Mr. Quinlan respecting the title to the premises at 26 Dwight Street after the conversation just related by you? A. Yes.

Q. Where was that? A. At my home.

40

*Philip O'Reilly, direct.*

Q. Do you remember when? A. Well, Mr. Quinlan and Mrs. Quinlan were Godfather and mother for one of my boys.

Q. When was that? A. In 1915, in August.

10 Q. You say there was a conversation at that time concerning the title to the premises at 26 Dwight Street? A. Yes.

Q. Tell us what that was please. A. He was after building a new house and we went through it, and Mr. Quinlan says, "That's a nice little house of mine", but he says, "It belongs to my wife. I didn't have a nickel in it". That's the words he said.

20 Q. At any other time were there any other statements made by Mr. Quinlan to you concerning the Dwight Street premises you remember, other than the two occasions just related by you? A. I don't know.

Q. Did you ever visit Quinlan, or go at his request for any purpose, down to Rumson? A. Yes.

Q. Do you remember when? A. For years I went on different occasions. I used to drive down with the family.

30 Q. To visit? A. Yes.

Q. Did you ever have occasion to go down to Rumson to inspect the concrete work in Robert Quinlan's foundation on request? A. Yes.

Q. When? A. About five years ago last summer.

Q. What was the condition of Quinlan's health at that time? A. It seemed to be very poor.

40 Mr. Ziegner: I ask that be stricken out.  
The Court: I will strike it out.

*Philip O'Reilly, cross.*

By Mr. Armstrong:

Q. You say you were down there for the purpose of inspecting some concrete work at his request? A. Yes. He told me he was going to have concrete put in the new house that he built, and he wanted me to come down and keep an eye on the concrete to see it was a good job. 10

Q. Did you have a conversation with him at that time, or were there any, concerning a lot of land located at Rumson? A. Yes.

Mr. Ziegner: I object.

The Court: I will allow that. I can't see it is material or evidential yet.

By Mr. Armstrong: 20

Q. What was that conversation, Mr. O'Reilly? A. He told me that his wife bought a lot here in the neighborhood and they were going to build a bungalow. That his wife was a great girl; she wanted everything very comfortable. That she bought the lot and they were going to build a bungalow.

Q. Did he state why they were going to build at Rumson at that time? A. They wanted to have a comfortable place to live in. 30

Mr. Armstrong: Cross examination.

*Cross examination by Mr. Ziegner:*

Q. When did you first meet Mr. Quinlan? A. About twenty-five years ago. Twenty-four or twenty-five years.

Q. How do you place the time? A. Well, because I was in the contracting business at the time and Mr. Quinlan used to get vouchers from 40

*Philip O'Reilly, cross.*

me and my brother and sell them to brokers to get us money on them.

Q. And at the time you met him you say you had these conversations with him? A. Hey?

10 Q. At the time you met him you say you had the conversation with reference to this piece of property. A. Not the first time.

Q. What time of the year was it you first met him? A. That I can't just say.

Q. You haven't any idea of the month? A. I can't say what time of the year it was.

Q. Are you certain about the year? A. About twenty-four or twenty-five years ago.

20 Q. Well, which was it? A. I can't just say. I am not positive as to the exact time or the exact date.

Q. You are not sure of the year either, are you? A. Well, I just can't offhand say.

Q. Well, offhand would you say it was thirty years ago? A. No.

Q. Would you say it was twenty years ago? A. It was more than twenty and less than thirty.

Q. Would you say it was twenty years ago? A. Since I met him first?

30 Q. Yes. A. It was more than that.

Q. How much more? A. About three or four years.

Q. Three or four years. A. Yes, sir.

Q. Now, of course, you don't know the date, do you? A. No, I do not.

Q. That didn't impress itself upon you at all, did it. A. No.

Q. Now, where did you meet him the first time? A. At the City Hall in Jersey City.

40 Q. How long after the first meeting did you come in contact with him again? A. Well, I used to meet him frequently.

*Philip O'Reilly, cross.*

Q. How frequently? A. Well, when we would have any payment down in the City Hall for work which we had done.

Q. How long after the first meeting did he mention the property to you? A. I didn't get that.

10

Q. How long after the first meeting did he mention the property to you? A. I guess a couple of years.

Q. You don't even know that, do you? A. I do not.

Q. Now, at that time you testified to the entire conversation you had with him. A. Hey?

Q. You testified to the entire conversation you had with him at that time. A. We didn't have the conversation concerning the property at that time.

20

Q. Oh, you didn't! A. No, not this first time at the City Hall.

Q. It was sometime after. A. Yes.

Q. And you testified he said he borrowed some money from his wife. A. Yes.

Q. He didn't say whether he paid it back or not. A. No.

Q. You didn't know anything about that. A. No.

30

Q. Now, the second time he said, "This is a nice house of mine". That is the language he used. A. Pardon me!

Q. You testified on that occasion he said, "This is a nice house of mine". A. Yes, sir.

Q. Do you want to tell me you knew he owned it yet he said "It belongs to my wife"?

40

*Philip O'Reilly, cross.*

Mr. Armstrong: I object. It is argument.

The Court: He has told you.

Mr. Ziegner: It is cross examination.

10 The Court: He has told you. You said, "Do you want to tell me?" The form of the question is objectionable.

Mr. Ziegner: I will withdraw it. He has already testified to that.

Q. Now, when was that? A. He told me when he was showing me through the house.

Q. When was that? A. About twenty-two years ago, or so.

20 Q. Well, can't you fix the date? A. I can't fix the exact date because I never thought anything would come out of it.

Q. Do you know the month? A. No.

Q. Do you know the date? A. I don't know the day.

Q. You haven't any recollection at all. A. Not exactly the date or the month that it happened in.

30 Q. You say you never thought anything would come of it. A. Of course, I never thought any more about it. It was just in a casual way.

Q. You didn't give it any consideration since, did you? A. No.

Q. Well, when was it after this occasion that you did give it any consideration? A. Why, now.

Q. Before you came to court were you consulted about this matter, or didn't you tell anybody what you knew? A. Yes.

Q. Were you consulted? A. Yes.

40 Q. Who consulted you?

*Philip O'Reilly, cross.*

Mr. Armstrong: Now, I think at this time if the court please—I don't want to be captious, but it is immaterial whether I did or my client. It is not only immaterial but incompetent.

10

The Court: He is testing his credibility.

Mr. Armstrong: The objection is withdrawn.

By Mr. Ziegener:

Q. Who consulted you? A. Mr. Armstrong.

Q. When? A. A few weeks ago.

Q. Where? A. In his office.

Q. When? A. A few weeks ago.

20

Q. Can you place it any more definitely? A. No, sir, I cannot. I took no notes of it.

Q. So for twenty-five years you gave no attention to this matter at all until two weeks ago, is that right? A. Yes.

Q. You hadn't discussed the matter with anybody and it had gone from your mind as to the dates. A. Yes.

Q. Was it suggested to you as to this property what was said about it? A. No, sir.

30

Q. How did it come back to your mind? A. I was in Mr. Armstrong's office on private business of my own and I knew there was a case coming on.

Q. How did you know it? A. I saw it in the paper sometime ago.

Q. How long ago? A. It might be four months or six months, or more.

Q. And during that time between the time you saw it in the paper and the time you went to Mr.

40

*Philip O'Reilly, cross.*

Armstrong's office you hadn't saw Mr. Armstrong at all. A. I didn't see Mr. Armstrong.

Q. Had you seen Mrs. Quinlan? A. I hadn't seen her for two years.

10 Q. Had you seen her two years ago? A. Yes.

Q. You hadn't seen her for two years at all. A. No, sir, not in two years. I didn't see her once since her husband died.

Q. What paper did you see the case in? A. I saw the name of Quinlan.

Q. In what paper? A. I can't tell you. It might have been the Jersey Journal.

Q. As a matter of fact you didn't see it in any paper. A. I did.

20 Q. Will you say it was the Jersey Journal? A. I wouldn't say what one. I believe it was.

Q. Within what time? A. Hey?

Q. Within what time? A. Probably six months. I am not just exactly sure.

Q. What was in the paper? A. I couldn't just say.

Q. Well, do you know what it was about? A. About Quinlan. Something like that. About a law suit.

30 Q. Something like that. A. Yes.

Q. You haven't the least conception of what was in the paper. A. No.

Q. Don't you know Mr. O'Reilly you never saw it in any paper? A. I did see it.

Q. And will you place it within six months from today? A. I could not.

Q. Will you place it within a year? A. Yes, it was within a year.

40 Q. You are positive of that. A. Yes.

*Philip O'Reilly, redirect.*

Q. Now, is there any other paper you think it was in? A. I don't know.

Q. You want to say for a certainty it was in the Jersey Journal. A. I am not saying. I believe it was, but I saw it in some paper.

10

Q. A local paper? A. I couldn't just say.

Q. You can't even say it was a local paper, can you? A. It must have been.

Q. Why do you say it must have been? A. Well, I suppose other papers could scarcely have it. It would be more likely in the local papers.

Q. What paper would you say you saw it in, a local or foreign paper? A. It wasn't a foreign paper, I don't believe.

Q. Would you say it was a local paper? A. It might have been, yes.

20

Q. But you don't know. A. No.

Q. Where did the conversation in 1915 take place? A. In my house.

Q. In your house? A. Yes, on Neptune Avenue.

Mr. Ziegner: That's all.

*Redirect examination by Mr. Armstrong:*

30

Q. Mr. O'Reilly, I show you a check dated October 16, 1911, ostensibly signed by Robert Quinlan. Are you familiar with the signature of Robert Quinlan? A. Yes, I personally know his signature. I saw a good many of them.

Q. It is drawn to the order of O'Reilly Brothers. By examining that check does that refresh your recollection as to an occasion of dealings had by you with Robert Quinlan? A. Yes.

40

Q. What was that?

*William P. O'Reilly, direct.*

Mr. Ziegner: I object to it as immaterial.

10 Mr. Armstrong: He has been challenged on cross examination as to dealings had with Robert Quinlan at the City Hall.

The Court: It is a self serving declaration.

Mr. Armstrong: It is corroborative of his direct examination.

The Court: Nevertheless it is a self serving declaration.

Mr. Armstrong: Does your honor sustain the objection?

20 The Court: I can't see it is material. This man said he had a transaction. In fact the other side cross examined him on it. It has not been contradicted.

Mr. Armstrong: All right. That's all.

WILLIAM P. O'REILLY, being sworn:

*Direct examination by Mr. Armstrong:*

30 Q. Are you related to the gentleman last on the witness stand? A. No, sir.

Q. No? A. No, sir.

Q. Did you know Mr. Quinlan? A. I did, yes, sir, very well.

Q. Mr. Robert Quinlan? A. Yes.

Q. For how long a period of time? A. For a long period of time—more than twenty. For twenty-five years.

40 Q. Where did you first meet Robert Quinlan, if you remember? A. At the City Hall.

Q. Were you in business in Jersey City for

*William P. O'Reilly, direct.*

yourself during that period of twenty-five years?

A. Yes, I was.

Q. Kept a cafe. A. Yes.

Q. Where? A. Ocean and Bayview Avenue, Jersey City.

Q. From what time until what time? A. From 19— Oh, 16 or 17, I guess. For a period of about five or six years.

10

Q. Did you ever have any conversation with Robert Quinlan concerning the title to premises at 26 Dwight Street? A. Well, we were very friendly and we visited each other's homes. I knew Robert Quinlan for a good many years before he was married, and I called after he was married. We visited his home and Mr. and Mrs. Quinlan visited our home. We kept up social intercourse for all those years until within a year, I guess, of his death.

20

Q. Now, I ask you, Mr. O'Reilly, if during that period of social intercourse and friendship between the two families did you ever have any conversation with Quinlan, or he with you, concerning who owned the premises 26 Dwight Street, where the Quinlans lived? A. Yes, a number of times.

30

Q. Now, will you tell us the first occasion, and place it as near as you can as to time and place? A. After they were married we visited Mr. and Mrs. Quinlan in their home at 26 Dwight Street, and Mr. Quinlan told me then it was Alice's home; it was her house and it was her money that bought it. I would like to make it positive, that he didn't have a dime when he was married—it was her home. This was in the den in their home at that time, and he reiterated that statement to me a number of times thereafter

40

*William P. O'Reilly, direct.*

during their social visits to our home, and other places.

10 Q. May I interrupt you? The first occasion you fix as a time shortly after they were married. A. Yes.

Q. And the place was their home. A. Yes.

Q. Now, if you will and can, will you please tell us when the next occasion involving a conversation relative to that title ensued? A. It might have been in their own home.

Mr. Ziegner: I ask that be stricken.

The Court: Yes.

By Mr. Armstrong:

20 Q. Just tell us if you can, if you remember, the next occasion, if any. A. Why, yes. There was one occasion that happened in the Elks Club House. There was a time in a cafe downtown on Montgomery Street. At least three or four different times that subject was talked of altogether.

30 Q. Now, with reference to the meeting or occasion at the Elks Club, can you fix the time of that conversation? As nearly as you can, of course. A. That was several years ago? What did I say? Oh, ten or twelve years ago.

Q. And what was the conversation as nearly as you can recollect it to be? A. Well, it was just a general conversation. We were talking about different matters, and our property and homes and wives, and so forth, and Mr. Quinlan was a little bit anxious at times to tell me what a fine wife he had, and I told him what a fine wife I had.

40 Q. Do you remember in substance what was

*William P. O'Reilly, direct.*

said by him concerning the title to those premises at that time at the Elks Club? A. There wasn't any change in the situation. He didn't say that to me, but I always felt it was the same thing—the same situation existed.

10

Mr. Ziegner: I ask all that be stricken out.

Mr. Armstrong: Yes.

Q. You were both at the Elks Club. A. Yes.

Q. What did he say at the Elks Club which led you to the conclusion you just stated and which was stricken out of the record? A. "Alice is the owner of the house there at 26 Dwight Street", meaning his wife.

20

Q. You stated something about a further conversation, or another conversation rather, in a cafe downtown. A. Yes, in my own place. Yes, it often happened there.

Q. What was that? A. Along the same lines. I used to have lobsters. I know on several occasions Quinlan would take a lobster home to Mrs. Quinlan, and during our conversation there of several hours—probably lasting until two or three in the morning, the same thing was talked again.

30

The Court: Now, you will have to state the conversation between you and Mr. Quinlan in your cafe on lower Montgomery Street.

The Witness: On Bayview Avenue.

The Court: You said downtown on Montgomery Street.

The Witness: Well, there was a cafe there. I used to take him there.

40

The Court: What was the conversation,

*William P. O'Reilly, direct.*

if any, about 26 Dwight Street in the cafe downtown?

Mr. Armstrong: Your honor and I too were both confused. It was in a cafe, but downtown.

10

By Mr. Armstrong:

Q. Did you own a cafe downtown on Montgomery Street? A. No, Ocean and Bayview.

Q. I am concerned with the taking home of these lobsters. Where was that? A. From my own cafe at Ocean and Bayview Avenue.

20

Q. Let me direct your attention to the cafe downtown. You did say on one occasion a conversation took place between you and Quinlan in a cafe downtown on Montgomery Street, and both the vice-chancellor and myself concluded it was your cafe. Now, did such a thing happen? A. No, that was Wohlman's place.

Q. Did any conversation take place in Wohlman's place concerning the Dwight Street house? A. Well, I don't want to be too positive about that.

30

The Court: You don't remember.

By Mr. Armstrong:

Q. If you don't remember say so. Now, was there a conversation in your own place on Ocean Avenue and Bayview concerning the Dwight Street premises? A. Yes.

40

Q. What was that and when was it, as near as you can remember? A. Well, during the time I had my cafe. Why, Mr. Quinlan, as I said, was very very friendly and he used to come in and visit very often and would stay quite late, and during those conversations—

*William P. O'Reilly, direct.*

By the Court:

Q. What was the conversation? A. Why, of course, it was a social conversation.

Q. What was it? A. Well, it was Alice's home. He repeated that again and again. 10

Q. When was that conversation? A. In my own place.

Q. When? What years? A. Let's see! Why, 1918, I guess, or 19. I can't be positive about that thing.

By Mr. Armstrong:

Q. Any other or further occasions when you had a discussion concerning the Dwight Street premises? A. In my own home. I guess I mentioned that. 20

Q. Well, did you fix the time? A. No, there were so many. We visited often. The Quinlans would come to our house and we would go to their house very often.

Q. I understand, Mr. O'Reilly, you fix the first occasion a short time after their marriage in their home. A. Yes.

Q. In what you call the den. A. That is true because we called on Mr. and Mrs. Quinlan after they were married. 30

By the Court:

Q. About how long after the marriage was your call made? A. Not many months. I would say probably about two or three months. Three months.

By Mr. Armstrong:

Q. After they were married. A. Yes. 40

Q. And you do remember an occasion at the

*William P. O'Reilly, cross.*

Elks Club. That is outstanding in your mind.

A. Yes, it happened there. In my own home too.

Q. And in 1918 or 19 in your cafe on Ocean Avenue. A. Yes.

10 Q. You said that was reiterated on other occasions. A. Yes.

Q. Can you tell us the other occasions? A. I don't recall. It was in our visits and times together.

Q. You don't know anything about the Rumson property, do you? A. Not about the property, although we visited Mr. and Mrs. Quinlan.

Q. Nor about the building and loan shares. You are not familiar with them. A. No.

20 Mr. Armstrong: Cross examination.

*Cross examination by Mr. Ziegner:*

Q. Now, the first time you spoke to him was a couple of months after the marriage. A. In their home.

Q. On Dwight Street. A. Yes.

Q. Are you sure of that? A. Yes.

Q. You can't be mistaken about that? A. No.

30 Q. Don't you know that Quinlan didn't live on Dwight Street until two years after his marriage? A. No.

Q. You don't know that. A. No, sir.

Q. Now, on direct examination you said that it was right after the marriage that you visited these people and allege to have had this conversation. A. Yes.

40 Q. Why do you fix the time as 1918 or 19 in answer to the court's question? A. Why, that has to do with the time in my cafe on Ocean and Bayview.

*William P. O'Reilly, cross.*

- Q. In your cafe. A. Yes.
- Q. And you testified on direct examination that you held this cafe up on Ocean and Bayview Avenue for a period of five years. A. This was after that cafe.
- Q. When did you open that cafe? A. About 10  
1915, I believe.
- Q. 1915. A. I think so.
- Q. Now, you also testified there was a conversation ten or twelve years ago at the Elks Club, is that right? A. I should say yes, it was. Say ten years.
- Q. Downtown? A. No, sir, up on the hill on the Boulevard.
- Q. And about what time was that do you say? 20  
A. Well, I would say ten years ago.
- Q. What about Wohlman's cafe. When was that conversation? A. Well, that was before that time. That would be— Oh, Heaven's sakes. How long would that be? Thirteen or fourteen years ago. It would be before this time here because I met him lots of times since then.
- Q. Will you fix the time as low as you can?  
A. Thirteen or fourteen years ago I would say.
- Q. Within thirteen or fourteen years. A. I 30  
would say that.
- Q. Don't you know that Wohlman's was out of business at the time Prohibition went into effect?  
A. Well, all right, make it a little bit lower than that.
- Q. No, I want you to make it. Don't you know the fact is that Wohlman was not there, and neither was Wilkens? A. No, Wilkens wasn't.
- Q. And neither was Wohlman. A. Well, now, 40  
if you are pinning me down to a positive time, you know, why I might say something.
- Q. I am not pinning you to anything. I want

*William P. O'Reilly, cross.*

you to answer my question. Don't you know that Wilkens or Wohlman were out of business over twelve or thirteen years ago?

Mr. Armstrong: I object.

10 Mr. Ziegener: I will withdraw the question to save time.

Q. Didn't you testify on cross examination you had one of these conversations in Wohlman's place? Yes, or no. A. Did I have one of these conversations in Wohlman's place? Yes.

Q. You did testify to it. A. Yes.

Q. Didn't you testify it was twelve or thirteen years ago? A. Well, offhand I thought about that time. I wasn't very much concerned.

20 Q. I don't care whether you were or not. I am asking you didn't you testify that you were in Wohlman's place twelve or thirteen years ago? A. Thirteen or possibly fourteen years.

Q. Now, you are up to fourteen. Now, do you want to add to that? A. That I wouldn't know.

Q. Don't you know that Wohlman was not in business fourteen years ago?

30 Mr. Armstrong: I object. It is argument.

The Court: He asked him if he knows or does not know.

By Mr. Ziegener:

Q. Don't you know Wohlman wasn't in business fourteen years ago? A. No, I don't.

Q. You say he was? A. I would say I had a drink at that place fourteen years ago.

Q. You do? A. Yes.

40 Q. By the way, you were in the brewery business about that time, weren't you? A. No, sir.

*William P. O'Reilly, cross.*

Q. Can you give us the month of the first conversation? A. The month? That happened in his own home.

Q. Can you tell the month? A. Not just now.

Q. Can you give us the day of the week? A. No, certainly not. 10

Q. Can you give us the year positively? A. Why, it would be between twenty-one and twenty-two years ago.

Q. Can you give us the year? A. All right, twenty-two years ago.

Q. Do you state that as a fact? A. I would say between twenty-one and twenty-two years.

Q. Then you don't know the year. A. Well, it is 19— What's that—12 or 13. 20

Q. Was it 12 or 13? A. 1913. 20

Q. You don't know whether it was 12 or 13, do you? A. Well, I would have to put it down. Can I use a pencil here?

Q. You can with the court's permission.

The Court: Yes.

A. Counsellor, I have been sick for the past couple of years and this kind of disturbs me a bit. This is 1934. Thirteen years ago would be 1921, wouldn't it? Well, twelve years ago, counsellor. 30

Q. Now, are you positive of that? A. I would say so, yes.

Q. Are you positive? A. Yes.

Q. What makes you positive? A. Well, I know that these folks are married about— Oh, I haven't got the time right, I guess. What is that question you are asking me?

Q. Why are you positive it was twelve years ago? A. About what? 40

*William P. O'Reilly, cross.*

Q. About the first conversation? A. Yes, I would say twelve years.

Q. It is a positive fact then. A. Twelve years. If I am wrong a month or two, or a few months. That isn't just so. It probably is longer.

10

Q. What would you say if I told you you were eleven years out of the way? A. Eleven years?

Q. Yes. What would you say if I told you you were eleven years out? A. How would I be eleven years out?

Q. I will show you in a minute. You said the first conversation took place right after these people were married, didn't you? Just answer that. A. I subtracted the thing wrong, that's all.

20

Q. Oh! A. No, 1912.

Q. Well, twelve years from this year as a matter of calculation is 1922, isn't it? A. 1922? Yes, 1922.

Q. Well, then, you don't mean twelve years ago at all, do you?

By the Court:

30

Q. You said twelve years ago you had this first conversation. You said you had it two months after they were married. How long were they married, if you know? A. About twenty-two years.

Q. You said you had the first conversation twenty years ago. If they were married twenty-two years ago then you didn't have the first conversation two months after they were married. A. Yes.

By Mr. Ziegner:

40

Q. Why do you say that? A. I was just mixed up, that's all. It was right after they were

*William P. O'Reilly, cross.*

married, between twenty-one and twenty-two years ago, you see. Shortly after they were married, counsellor.

Q. Well, now, when was the second time you had any conversation? A. Well, I used to meet Mr. Quinlan at the City Hall very often. 10

Q. What year? Do you know the date? A. Oh, no.

Q. The month? A. A few years after that. I met him frequently.

Q. A few years? A. A year or two, or six months or three months, and it continued on for years and years at my home and at the City Hall.

Q. And you can't place any particular time, can you? A. No, it traveled along all during those years. 20

Q. Can you tell us how many times you did meet him in which you had conversations with him?

Mr. Armstrong: Concerning Dwight Street, I suppose.

Mr. Ziegner: As to what he told us.

A. Three or four times. 30

By Mr. Ziegner:

Q. And each time he related the same thing.

A. The conversation came to the same thing. He said it a thousand times and then there wouldn't be any reference to it.

Q. With reference to Quinlan's business standing, did it impress itself upon your mind? A. He didn't have any money when he married, he told me. 40

*William P. O'Reilly, cross.*

Q. Where was he working, do you know? A. Yes, he was working in the City Hall here.

Q. At that time? A. Yes. Now, we were very friendly, and we used to visit—

10 Q. I didn't ask you that. Were you subpoenaed to be here this morning?

Mr. Armstrong: I object. It is immaterial.

The Court: I will sustain the objection.

By Mr. Ziegner:

Q. Who did you consult with before you came here?

20 Mr. Armstrong: I object also as immaterial.

Mr. Ziegner: I think it is proper if the court please to test his credibility. I will withdraw the question.

Q. Did you consult or advise with anybody before coming here this morning as to these matters you have testified to here? A. I didn't advise. The matter has been in my mind for a long long time.

30 Q. How long? A. Oh, for the past few years.

Q. How did it come to your mind? A. Mrs. Quinlan visits our home.

Q. Oh! A. And we visit with her.

Q. When did you last see her? A. Very often.

Q. Where did you last see her before in this court room? A. Why, Mrs. Quinlan has spent nights in our home.

40 Q. When did you last see her before today?  
A. Last week.

Q. When? A. Why, it was Thursday. Mrs.

*Alice Quinlan, recalled, direct.*

Quinlan came in and had dinner with us and supper.

Q. And was it then arranged that you appear here today? A. No.

Q. When was it arranged that you appear here today? 10

Mr. Armstrong: I object. It is immaterial.

The Court: I will sustain the objection.

By Mr. Ziegner:

Q. Did you make arrangements to appear here?

Mr. Armstrong: I object to that also.

The Court: I will sustain the objection. 20

A. No.

Mr. Ziegner: That's all.

ALICE QUINLAN, recalled:

*Direct examination by Mr. Armstrong:*

Q. You are the widow of Robert Quinlan, deceased? A. Yes. 30

Q. How long were you married to Robert before he died? A. Twenty-two years. We were married November 20, 1911.

Q. After you were married where did you go to reside? A. Why, our house wasn't finished. We stopped at 57 Wegman Parkway.

Q. For how long? A. Until May, 1912.

Q. And in May, 1912, where did you go to live? A. 26 Dwight Street.

Q. How long did you live there? A. Until he died. 40

*Alice Quinlan, recalled, direct.*

Q. What was your name before you were married? A. Alice McKenna.

Q. Did you have a bank account in the Emigrant Savings Bank? A. I did.

10 Mr. Ziegner: I object. It is not binding on the executor.

Mr. Armstrong: I will withdraw the question.

The Court: If it isn't connected up I will strike it out. I will receive it at this time subject to your objection.

By Mr. Armstrong:

20 Q. Did you have a bank account? A. I did.

Q. I show you Exhibit C-11 produced in this cause, and ask you by looking at that exhibit it refreshes your recollection as to the bank account maintained by you in the Emigrant Industrial Savings Bank. A. Yes.

Q. From what date to what date was this bank account maintained by you in that bank?

Mr. Ziegner: I make the same objection.

30 The Court: The same ruling.

A. I started in 1906 and closed in July, 1911.

By Mr. Armstrong:

Q. Now, the premises at 26 Dwight Street, Mrs. Quinlan, were they purchased already erected or were they built? A. We started to build in 1910.

40 Q. Do you remember who the general contractor was for the erection of those premises? A. Mr. Redfern.

*Frank X. Quinlan, recalled, direct.*

Q. Are you familiar with Bob's signature? A. Yes.

Q. I show you what purports to be a contract entitled "Agreement for Building", signed Robert Quinlan and Peter F. Redfern & Son, and ask you if you can identify that signature as the signature of the late Robert Quinlan. A. I can. 10

Mr. Ziegner: I object to this line of testimony and particularly to this question, the witness being incompetent to testify in that respect.

Mr. Armstrong: I suppose that is in violation of Section 4 of the Evidence Act. May I withdraw the witness temporarily, your honor, and call Frank Quinlan? 20

The Court: Yes.

FRANK X. QUINLAN, recalled:

*Direct examination by Mr. Armstrong:*

Q. Mr. Quinlan, you are a brother of the late Robert Quinlan? A. I am.

Q. And are you familiar with his handwriting? 30

Mr. Ziegner: I object to it as incompetent, irrelevant and immaterial.

The Court: I will allow it subject to your objection.

By Mr. Armstrong:

Q. Are you familiar with his handwriting? A. In recent years.

Q. Well, you have identified a number of exhibits signed by him in this cause, have you not? 40

A. To the extent they resembled his handwriting.

*May Quinlan, direct.*

10 Q. I show you an agreement signed Robert Quinlan, and directing your attention to the signature contained thereon, I ask you to examine it. Can you identify that as the signature of Robert Quinlan?

Mr. Ziegener: Now, I object to it on the ground that this witness in his representative capacity did not present himself and therefore is not subject to this particular examination.

The Court: All that he can be examined on is in his individual capacity and not any matters in his representative capacity.

20 Mr. Ziegener: Particularly the alleged actions or acts of the decedent.

The Court: What have you to say about that, Mr. Armstrong?

Mr. Armstrong: I will withdraw the witness and call Miss Quinlan.

---

MAY QUINLAN, being sworn:

30 *Direct examination by Mr. Armstrong:*

Q. You, Miss Quinlan, are the sister of the late Robert Quinlan. A. Yes.

Q. Are you familiar with his handwriting? A. I don't think I am.

Q. Never saw him write? A. I saw him write.

Q. Did you ever get any checks from him? A. No.

40 Mr. Ziegener: I make the same objection at this time because this witness is a

*May Quinlan, direct.*

party defendant in this action and is placed in the same position.

The Court: Is she the executrix?

Mr. Ziegner: She is a party to the action.

10

The Court: There can be no objection to him calling her.

Mr. Ziegner: Is your honor so ruling on my objection?

The Court: If you can point out to me it is improper under the law. It is the first time it has come to my attention, except in a criminal case, you cannot call the defendant.

Mr. Ziegner: My objection is it not only applies to a defendant in an administrative capacity, but the complainant is barred from dealing with transactions with a decedent by any party defendant, and this lady is a party defendant.

20

The Court: I will permit the question subject to your objection.

By Mr. Armstrong:

Q. Did you ever receive any checks from Mr. Quinlan?

30

Mr. Ziegner: I object on the ground it is immaterial.

The Court: I will receive it.

A. I don't recall that.

By Mr. Armstrong:

Q. Did you ever have any correspondence from him in his handwriting?

40

*May Quinlan, direct.*

Mr. Ziegner: I object as incompetent. If there was any correspondence the best evidence would be the correspondence itself.

10 The Court: I don't know how far it will go. As the question is asked I will permit it. I don't see the materiality of it. I will receive it for what it is worth.

By Mr. Armstrong:

Q. Have you ever received any letters from your brother Robert in his handwriting? A. Yes.

Q. How many? A. I don't know.

20 Q. Can you estimate? A. No, I couldn't.

Q. One? A. I received more than one.

Q. Then? A. I wouldn't say ten. I don't know how many.

Q. Did he ever give you any checks at all? A. Not that I recall.

Q. Did you ever see him write his name? A. Yes, I saw him write his name.

Q. How frequently? A. On his letter he would have his name.

30 Q. You are familiar with his signature? A. His late signature I was.

Q. How late? A. About 1930.

Q. 1930. None before that? A. What do you mean none before that? No letters before that?

Q. I mean your familiarity with his signature doesn't go back beyond 1930. A. No.

Q. Well, 1929 would you say you had any familiarity with his signature? A. 1930.

40 Q. I show you a check dated December 15th, or a photostatic copy of a check dated December 15th, 1930, signed Robert Quinlan, and ask

*May Quinlan, direct.*

you if you recognize that as your brother's signature. A. It looks like it.

Mr. Armstrong: I ask it be marked for identification at this time.

(Photostatic copy of check marked C-9 for Identification.) 10

Q. Using C-9 for Identification as a guide, Miss Quinlan, I show you a photostatic copy of a check dated November 21, 1929, and directing your attention to the signature contained thereon I ask you if that doesn't resemble your brother's signature.

Mr. Ziegner: I object to the question because the witness has already testified that preceding 1930 she could not identify any such signature, and she is Mr. Armstrong's own witness. 20

The Court: That's true.

Mr. Armstrong: She has stated she had familiarity with his signature as late as 1930. I am now producing before her for her comparison and identification a signature. She may say yes or no, as she desires. 30

The Court: She is your witness.

Mr. Armstrong: Yes.

The Court: Well, I think I will permit the question subject to your objection, Mr. Ziegner. I am not so sure it is competent, but for the time being I will receive it.

The Witness: What's the question?

(Last question read by stenographer.) 40

A. Yes.

*May Quinlan, direct.*

Mr. Armstrong: I ask this be marked for identification.

Mr. Ziegner: I object to it on the ground—

10 The Court: It is only for identification.

(Photostatic copy of check marked C-10 for Identification.)

By Mr. Armstrong:

Q. Now, Miss Quinlan, using Exhibits C-9 and 20 10 for Identification, and comparing the signature of Robert Quinlan contained thereon with a photostatic copy of a check shown to you and dated April 11, 1928, I ask you if that is the same signature as contained on Exhibits C-9 and 10 for Identification. A. It looks the same.

Mr. Armstrong: I ask that be marked for identification.

(Photostatic copy of check marked C-11 for Identification.)

Q. Now, comparing C-9, 10 and 11 for Identifi- 30 cation, or the signature contained thereon, with a check dated May 29, 1926 and signed Robert Quinlan, isn't that the same signature on the check with which you showed a familiarity back in 1930? A. Yes.

Mr. Armstrong: Mark that for identifica- tion please.

(Photostatic copy of check marked C-12 for Identification.)

Q. Now, Miss Quinlan, I show you Exhibit C-9 40 in evidence in this case, and ask you to look at a photostatic copy of a check dated January 5,

*May Quinlan, direct.*

1920, and ask you to compare the signature of Robert Quinlan contained thereon with the signature of Robert Quinlan identified by you on the check of 1930 and known as C-9 for Identification, and ask you if that isn't the same signature.

10

Mr. Ziegner: The same objection.

The Court: The same ruling.

A. It resembles it.

By Mr. Armstrong:

Q. Now, using Exhibit C-9 marked in evidence in this case, and looking at a check dated April 17, 1911, or a photostatic copy of a check dated April 17, 1911 signed Robert Quinlan, I ask you if the signature contained thereon isn't the same signature identified by you on the photostatic copy of check dated December 1930.

20

Mr. Ziegner: Will your honor permit an objection to all this testimony?

The Court: Of course an omnibus objection cannot be made.

Mr. Armstrong: I suppose, if the court please, if I consent to it then the omnibus objection would be binding upon me.

30

The Court: Go ahead.

A. There is a little difference.

By Mr. Armstrong:

Q. What is a little different? A. The "R" is made a little different.

Q. Isn't it the same handwriting, comparing the 1930 signature with the 1911 signature? A. No, there is a little difference.

40

Q. Where is the difference, Miss Quinlan?

*May Quinlan, direct.*

Mr. Ziegner: I object.

The Court: I will sustain the objection.

By Mr. Armstrong:

10 Q. You are not familiar with that signature. A.  
No.

Q. I show you a check dated June 23, 1912 as part of Exhibit C-9 in evidence in this case, and ask you whether or not that is the signature of your brother Robert Quinlan.

Mr. Ziegner: I raise the same objection.

The Court: The same ruling.

20 A. It looks more like it than the other one.

By Mr. Armstrong:

Q. Using the 1930—

Mr. Ziegner: I move that answer be stricken from the record.

The Court: It is the answer. It will stand for what it is worth.

By Mr. Armstrong:

30 Q. Now, comparing the 1930 signature known as C-9 for Identification with the 1912 signature in evidence, aren't they the same signatures—the same handwriting rather? A. There is a little difference there too.

Q. Would you say it is a different handwriting?  
A. I wouldn't say it is a different handwriting, but there is a little difference in the writing.

40 Q. Now, will you examine this paper-writing please and the signature contained thereon of Robert Quinlan with the signature identified by you as his and made in 1930, and tell me if they

*Alice Quinlan, recalled, direct.*

are not the same handwriting? A. There is a little difference there too.

Q. A little difference. A. Yes.

Q. You can't identify that as your brother's handwriting? A. No.

10

Mr. Armstrong: I will withdraw the witness.

Mr. Ziegner: No questions.

---

ALICE QUINLAN, recalled:

Mr. Armstrong: I offer the contract in evidence.

Mr. Ziegner: I have no objection.

20

(Contract marked Exhibit C-17 in evidence.)

*Direct examination by Mr. Armstrong:*

Q. Now, Mrs. Quinlan, this contract known as Exhibit C-17 in evidence between Robert Quinlan and Redfern reads for the erection of a home on Dwight Street, or premises on Dwight Street in the total sum of \$2240.00. At the time of the date of this contract, July 20, 1910, or thereabouts, did you withdraw any funds from your account in the Emigrant Industrial Savings Bank? A. I did.

30

Mr. Ziegner: I object if your honor please. It is absolutely incompetent, immaterial and irrelevant.

The Court: What do you say?

Mr. Armstrong: I assume the objection is again directed to Section 4 of the Evidence Act. This is a transaction made by this woman of her own volition. Now, any

40

*Alice Quinlan, recalled, direct.*

10 reference which can be drawn out and connected up with the contract showing her to have withdrawn a thousand dollars, or thereabouts, as of the date of the contract is permissible, connected with the testimony already given by a transcript that this thousand dollars was applied to the erection of these premises.

The Court: On that ground I will permit it subject to your objection, Mr. Ziegener.

By Mr. Armstrong:

20 Q. How much? A. One thousand dollars.

Mr. Ziegener: The same objection.

The Court: The same ruling.

By Mr. Armstrong:

Q. Using Exhibit C-11 in this case to refresh your recollection, on what date did you withdraw that thousand dollars? A. On June 8th.

Q. What year? A. 1910.

30 Q. What is the date of the Redfern contract?

Mr. Ziegener: I object.

The Court: It is in evidence.

By Mr. Armstrong:

Q. Did you thereafter during the time of the erection or completion of the premises on Dwight Street withdraw funds from this bank account? A. I did.

40 Q. Referring to Exhibit C-11 in evidence in this proceeding, will you tell us whether or not on September 6, 1910 you withdrew funds? A. Yes.

*Alice Quinlan, recalled, direct.*

Mr. Ziegener: I make the same objection on the same ground as the other transactions of this lady in the first place attempting to connect them up with the decedent.

The Court: I haven't seen any attempt to connect it with the decedent outside of the fact she withdrew money. I don't know whether it is material, but at the present time I will admit it for what it is worth.

10

By Mr. Armstrong:

Q. What sum of money did you withdraw on September 6, 1910? A. \$475.00.

Q. On September 10, 1910 did you withdraw any funds from the account in the Emigrant Industrial Savings Bank? A. I did.

20

Q. How much? A. \$490.00.

Q. Now, the contract with Redfern for the building of this home was \$2240.00. Did you have any usage at that time for this thousand for your own personal benefit? A. No.

Mr. Ziegener: I object.

The Court: I will sustain the objection as not being material.

30

By Mr. Armstrong:

Q. Now, Mrs. Quinlan, did you have a separate bank account of your own with the Claremont Bank of Jersey City? A. Yes.

Q. Did you have a bank account there from 1925 to 1934? A. Yes.

Mr. Ziegener: I object as immaterial.

The Court: I will make the same ruling as to that bank account.

40

*Alice Quinlan, recalled, direct.*

By Mr. Armstrong:

Q. I show you a bank book entitled the Claremont Bank account #41611 in the name of Alice Quinlan, and ask you whether or not that is your account. A. Yes, sir.

Mr. Ziegner: I object on the ground as to its materiality and competency.

The Court: I will allow it and if it is not connected up I will strike it out.

Mr. Armstrong: It is offered in evidence.

The Court: I will not allow it.

Mr. Armstrong: Will your honor permit an exception?

The Court: You are not entitled to an exception in Chancery.

Mr. Armstrong: You gave him an exception.

The Court: I said his objection would be noted, the same as yours.

By Mr. Armstrong:

Q. Now, Mrs. Quinlan, did you have any shares in the West Side Building & Loan Association?

Mr. Ziegner: I object on the ground of its incompetency and irrelevancy.

The Court: I will allow it.

A. Yes.

By Mr. Armstrong:

Q. How many? A. Fifteen.

Q. Do you remember how much per month was required on the payment of those shares? A. Fifteen dollars.

Q. Did those shares come to maturity by reason

*Alice Quinlan, recalled, direct.*

of operation of time and payments on them? A. Yes.

Q. Do you remember when? A. I think in 1922.

Q. In whose name was the account in the West Side Building & Loan Association?

10

Mr. Ziegner: I object on the ground of its incompetency, irrelevancy and immateriality, and the fact that the records of the building loan will be the best evidence.

Mr. Armstrong: They are in evidence.

The Court: I will allow it for what it is worth. I looked at the testimony taken before Vice Chancellor Fallon.

A. Alice McKenna.

20

By Mr. Armstrong:

Q. That is your maiden name. A. Yes.

Q. Did those shares mature in that name, if you know? A. Yes.

Q. Did you ever give or assign or transfer those shares to any person whomsoever? A. No.

Q. Did you receive the avails of those shares? A. No.

Q. Do you know who did?

30

Mr. Ziegner: I object to that if your honor please.

The Court: I will allow it. She either knows or she doesn't know.

A. Yes.

Mr. Armstrong: That's all.

Mr. Ziegner: No questions.

Mr. Armstrong: That's the complainant's case.

40

Mr. Ziegner: I move to strike out the

*Colloquy.*

entire testimony of this witness on the ground the transactions haven't been connected up to meet the complaint in this case.

10 The Court: I will take it under advisement and check up with the testimony already submitted.

Mr. Ziegner: I would like to make a motion as to the documentary evidence and testimony incident thereto on the ground of lack of any binding force or effect in this issue.

20 The Court: I will make the same ruling. I will examine it more thoroughly and read it over since it was all taken before Vice Chancellor Fallon, and for the time being I will deny the motion. If I decide after reading it that you are entitled to what you ask you will get it.

## CASE FOR THE DEFENDANT.

30 Mr. Ziegner: I desire at this time to offer in evidence a deed wherein May E. Quinlan, widow, is grantor, and Robert Quinlan grantee, referring to the premises 26 Dwight Street, Jersey City, which deed before date June 29, 1910.

Mr. Armstrong: Is the defendant's case going in now?

Mr. Ziegner: Yes.

Mr. Armstrong: May I see it?

Mr. Ziegner: Yes, Mary E. Quinlan, the widow, to the son.

40 Mr. Armstrong: I have no objection to the deed if it be conceded that the description contained in the deed does not presume

*Colloquy.*

a house on the land as of the time of the conveyance.

Mr. Ziegner: I am offering this deed to show that the land itself came through the mother of the decedent.

10

Mr. Armstrong: And that as of the time of the conveyance there was no building on it.

Mr. Ziegner: No, we are not making any such representation.

Mr. Armstrong: All right.

(Deed marked Exhibit D-1 in evidence.)

Mr. Ziegner: I offer in evidence a mortgage Robert Quinlan, unmarried, to The West Side Building & Loan Association of Jersey City bearing date August 8, 1910 in the sum of \$5,000, and which mortgage was cancelled by said building and loan association of record in the Hudson County Register's Office on February 20, 1911.

20

(Mortgage marked Exhibit D-2 in evidence.)

Mr. Ziegner: Also a mortgage made by Robert Quinlan, as an unmarried man, to Henry Byrne, dated February 17, 1911 in the sum of \$500.00, and cancelled of record in the Hudson County Register's Office on November 20, 1918.

30

(Mortgage marked Exhibit D-3 in evidence.)

Mr. Ziegner: Now, Mr. Armstrong, at the last hearing you had some records. I would like to have it conceded in the record—

40

*Colloquy.*

Mr. Armstrong: I don't know what they are, judge. If you will refresh my recollection.

10 Mr. Ziegner: Can you concede that the records of Hartshorne, Insley & Leake, if produced, would show on February 17, 1911 that the decedent caused to be executed to the Provident Institution for Savings a mortgage in the sum of \$3500.00 covering the lands and premises in question?

Mr. Armstrong: No, I can't make that concession.

The Court: Have you the records?

20 Mr. Ziegner: No, sir. I am going to ask your honor to be accorded permission to get it.

The Court: Produce the records.

Mr. Armstrong: That isn't necessary, vice-chancellor. I assume the original mortgage will show if it is cancelled.

Mr. Ziegner: It isn't cancelled. It is on the property now.

Mr. Armstrong: Mrs. Quinlan says it is so and it is conceded.

30 The Court: It is conceded.

Mr. Armstrong: That there is a mortgage on the property. As to the date he gave it we can't necessarily concede, but we have a photostatic copy of a letter from the law firm which they can use to connect it up.

Mr. Ziegner: Now, do you want to concede that this building on the land in question was constructed in the year 1910?

40 Mr. Armstrong: Well, we have offered the Redfern contract and it speaks for itself. I guess that's true, judge.

*John J. Redfern, direct, cross.*

JOHN J. REDFERN, being sworn:

*Direct examination by Mr. Ziegener:*

Q. Mr. Redfern, you are or were a member of the firm of Redfern Company. A. Peter F. Redfern & Son. 10

Q. And you have been in business in Jersey City for many years. A. Yes, sir.

Q. Have you produced the records incident to some construction at 26 Dwight Street, Jersey City? A. Yes, sir.

Q. Did you engage in that construction? A. Yes, sir.

Q. For whom? A. As a member of the firm who built the building. 20

Q. For whom? A. For Robert Quinlan.

Q. I show you your records referring to ledger page 13, and ask you if you can fix the year in which you make the construction. A. Yes, sir, 1910.

Q. And with whom did you have these business dealings? A. With Mr. Robert Quinlan.

Q. Solely? A. Solely.

Mr. Ziegener: You can take the witness. 30

*Cross examination by Mr. Armstrong:*

Q. You don't know where he got the money. A. No, sir.

Q. Did he ever tell you?

Mr. Ziegener: I object to that.

By Mr. Armstrong:

Q. Insofar as you know the moneys may have come from Mrs. Quinlan. A. So far as I know it may have come from Mrs. Quinlan. 40

*Dudley P. Holcomb, direct.*

Mr. Armstrong: That's all.

Mr. Ziegner: That's all, your honor.

The defendant rests.

The Court: Any rebuttal?

10

Mr. Armstrong: No, sir.

Mr. Ziegner: Your honor will consider my motion to strike out all the testimony as being of no binding effect?

The Court: I will consider it.

Mr. Ziegner: I would like to produce a witness from the Provident Institution for Savings.

20

The Court: All right, you can arrange with Mr. Armstrong for some day that is agreeable to both of you.

June 4, 1934.

DUDLEY P. HOLCOMB, being sworn:

*Direct examination by Mr. Ziegner:*

Q. Mr. Holcomb, you reside in Jersey City? A. Yes, sir.

30

Q. You are connected with what institution? A. Provident Institution for Savings.

Q. And how long have you been connected with that institution, and in what capacity? A. Well, I went there forty-nine years ago.

Q. And you are at the present time employed in what capacity? A. Assistant Secretary and Treasurer.

40

Q. Have you produced any records pertaining to the application for loan made by Robert Quinlan to your institution in or about the year 1911? A. I have got the application for the loan.

*Dudley P. Holcomb, direct.*

Q. And it is part of the original records, is it?  
A. Yes.

Q. Is that the customary application filed by applicants for loans in your institution? A. That's the customary application.

10

Mr. Ziegener: I ask that be marked in evidence.

Mr. Armstrong: No objection.

(Application marked Exhibit D-4 in evidence.)

By Mr. Ziegener:

Q. Have you also produced the original files of your institution showing the granting and the closing of said loan and abstract of title, or otherwise? A. I have the abstract of title, the original certificate of title, survey and insurance.

20

Q. Referring to the abstract of title can you of your own personal knowledge say that the loan was granted by your institution?

Mr. Armstrong: I object to the production of an abstract of title unless he can testify from his own knowledge.

The Court: He is asked of his own knowledge.

30

By Mr. Ziegener:

Q. Can you from your own personal knowledge from the application tell us whether or not the loan was refused or accepted and closed? A. The loan was accepted as appears on the back.

Q. As of what date? A. January 25, 1911.

Q. What property does that application cover, Mr. Holcomb? A. It covers property 26 Dwight Street.

40

*Dudley P. Holcomb, direct.*

Q. Jersey City? A. Yes. Here is the original certificate for the loan.

Mr. Ziegner: Have you any objection to this letter, Mr. Armstrong?

10 Mr. Armstrong: No objection. I will concede that's a letter from Hartshorne, Insley & Leake.

Mr. Ziegner: Will you concede that Mr. Insley had charge as the legal representative of this firm?

Mr. Armstrong: I will consent to it going in evidence.

20 Mr. Ziegner: Will you consent that Exhibit D-2 was paid off through the office of the lawyers of the Provident Institution for Savings?

Mr. Armstrong: No.

Mr. Ziegner: Then I will ask Mr. Insley to come here.

By Mr. Ziegner:

30 Q. The certificate bearing date February 17, 1911 addressed to your institution was received from the firm of Hartshorne, Insley & Leake, your legal representatives. A. Yes.

Q. They were your legal representatives at that time, were they not? A. Yes.

Mr. Ziegner: I ask the letter be marked in evidence.

(Letter marked Exhibit D-5 in evidence.)

40 Q. I show you a survey pertaining to City lot 57, Block 1472, County block 410 designated as R. Quinlan, and ask you if you received this survey in conjunction with the legal papers from your

*Dudley P. Holcomb, direct.*

legal representatives at the time of the closing of said loan. A. We did.

Q. And can you provide the date under which numbered? A. #5021. It was stamped on at the time.

10

Mr. Ziegner: I ask the survey be marked for identification.

Mr. Armstrong: You can mark it in evidence. I have no objection to the production of the survey. I can't see its materiality, but I consent to it being marked.

Mr. Ziegner: I ask it be marked in evidence.

(Survey marked Exhibit D-6 in evidence.)

20

By Mr. Ziegner:

Q. I show you what purports to be an abstract of title issued to Robert Quinlan bearing certificate of Hartshorne, Insley & Leake under date of February 18, 1911, and ask you if you received that in conjunction with the closing of the title in question. A. The abstract was probably received after the closing of the deal.

30

Q. Do you know of your own knowledge that the abstract pertains to the application for loan heretofore referred to by you? A. Yes, sir, it does.

Mr. Ziegner: I ask the abstract be marked for identification.)

(Abstract marked D-1 for Identification.)

By Mr. Ziegner:

40

Q. Mr. Holcomb, a subpoena duces tecum was

*Dudley P. Holcomb, direct.*

served for your appearance this morning. Have you that subpoena with you? A. Yes.

10 Q. And under that subpoena you were directed to produce any and all books, records, cancelled checks or other papers with reference to bond and mortgage now held by your institution on property 26 Dwight Street, Jersey City, and made by Robert Quinlan, setting forth and showing the amount of said mortgage loan, to whom the proceeds of said mortgage loan was paid, the person who made the application for said mortgage loan, including the check for the proceeds of said mortgage loan. Have you made a diligent search for the check issued by your institution in reference to said application, referring to Exhibit D-4? A. 20 Yes. We had a clerk make a search of our records.

Q. And have you been able to locate that check? A. No.

30 Q. I show you what purports to be a cancelled mortgage, Exhibit D-2, made by Robert Quinlan, unmarried, to The West Side Building and Loan Association, and ask you if that became part of the files of your institution after the granting of the application for the loan by your institution, Exhibit D-4. A. No, that wouldn't come to me.

Q. Who would that be received by?

Mr. Armstrong: I object unless he knows of his own knowledge.

A. I would say Hartshorne, Insley & Leake.

By Mr. Ziegner:

40 Q. Your legal representatives. A. They are our legal representatives.

Mr. Ziegner: That's all.

*Dudley P. Holcomb, cross.*

*Cross examination by Mr. Armstrong:*

Q. None of these papers marked for identification or those which have been offered in evidence contain the signature of Mrs. Robert Quinlan or Alice Quinlan, do they? A. No, I haven't noticed it. 10

Mr. Armstrong: That's all.

Mr. Ziegner: I understand that Mr. Insley is not in his office. It is conceded by counsel for the complainant that the moneys received under the application for the loan Exhibit D-4 of the Provident Institution for Savings by Robert Quinlan were expended in the payment of Exhibit D-2, the mortgage of the West Side Building and Loan Association, cancelled on February 20, 1911 under a receipt endorsed thereon February 14, 1911. 20

Mr. Armstrong: That's right.

Mr. Ziegner: That's our case.

Mr. Armstrong: It occurs to me there are some exhibits in the possession of the court. In fact, none of the exhibits were spread on the record. There is a particularly important one with respect to the building and loan shares, also the building and loan records. They are not in possession of the court. Vice Chancellor Fallon directed I keep them. Unless your honor feels you want them I don't know what to do with them. 30

The Court: Are you through with the case now?

Mr. Ziegner: Yes. 40

*Exhibits.*

The Court: You can argue it or submit a memorandum to me. If you submit a memorandum you can call my attention to those exhibits.

10 Mr. Armstrong: All right, I will submit a memorandum. May I have permission on the coming in of their memorandum to supplement mine, if necessary?

The Court: Yes. Call my attention to the exhibits which are not before the court.

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**Exhibit C-1.**

20 Receipt dated June 5, 1926, for \$500 on Rumson real estate sold to Robert Quinlan.

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**Exhibit C-2.**

Deed made by Rumson Real Estate Corporation to Robert Quinlan, dated June 5th, 1926.

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**Exhibit C-3.**

30 Mortgage dated August 28th, 1930, made by William Mears, Charles Mears and Daniel Mears, trading as William Mears & Sons, to Robert Quinlan, covering the Rumson property.

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**Exhibit C-4.**

40 Transcript of the account of Robert Quinlan in the Commercial Trust Co. successor to Mercantile Trust Co., from April 28, 1913, to February 16th, 1917, consisting of copy of the accounts as they appear in bank's ledger.

*Exhibits.***Exhibit C-5.**

Check of Robert Quinlan, dated February 5, 1917, on the Mercantile Trust Co. utilized to close out the account, a transcript of which is Exhibit C-4.

10

**Exhibit C-6.**

True copy of account of Alice Quinlan in the Claremont Bank in Jersey City known as Account #41611.

**Exhibit C-7.**

Original loose leaf records of the account of Robert Quinlan of the Union Trust Co. and subsequently the Hudson County National Bank from February 7, 1917 to May 25, 1932.

20

(There was no Exhibit C-8.)

**Exhibit C-9.**

30

Forty-three checks drawn to the order of the West Side Building & Loan Association by Robert Quinlan in various amounts, beginning October 3, 1910 and ending June 14th, 1920, all of which checks are endorsed by the West Side Building & Loan Association, most of which checks have a notation thereon that the payments which they represent are to be credited to Book or Account #2621 in said building and loan association.

40

Of these checks the following checks have notations thereon, to wit:

*Exhibits.*

Check of Feb. 27, 1911 for \$15.00 "Book 2621,  
Series #29, A. McKenna".

Check of Mar. 20, 1911 for \$7.50 "Book 2621,  
15 shares, A. McKenna".

10 Check of Apr. 17, 1911 for \$15.00 "Book 2621,  
A. McKenna".

Check of June 1, 1911 for \$15.00 "McK Book  
2621".

**Exhibit C-10.**

Transcript of bank account of Robert Quinlan  
in the Bergen National Bank.

20

**Exhibit C-11.**

Transcript of account of Robert Quinlan in the  
Emigrant Industrial Savings Bank.

**Exhibit C-12.**

No. 2697 Book No. 2621. Series 29.

30

Jersey City, N. J. Mar. 7th, 1910.

This is to certify that ROBERT QUINLAN has pur-  
chased and owns Twenty-five shares of stock of  
the West Side Building and Loan Association  
which stock is transferable only by the Secre-  
tary upon surrender of this certificate.

Transferred to Association Feb. 20, 1911.

WISCONSIN JACKSON.  
President.

40

FRANCIS GORMLEY,  
Secretary.

*Exhibits.*

## ENDORSEMENT:

Feb. 20, 1911 mortgage of \$5000. paid off in full.  
This certificate is therefore released as collateral  
security.

F. GORMLEY, 10  
Secretary.

The within shares pledged to the West Side  
Building and Loan Assn. of Jersey City as col-  
lateral security for mortgage loan.

ROBERT QUINLAN.

Feb. 20, 1911.

Ten of the within mentioned shares are hereby  
transferred to the West Side B & L Assn. 20

ROBERT QUINLAN.

Feb. 20, 1911.

The remaining 15 shares transferred to Miss  
Alice McKenna.

ROBERT QUINLAN.

---

**Exhibit C-13.** 30

29th Series Matured 12/13/20 Checks drawn Dec. 20th, 1920  
from March 1910. Wks 563 Dues \$140.75, Profits 59.25 \$200.00.

SECRETARY'S NOTES, MEETING OF DEC. 20, 1920.

THE WEST SIDE BUILDING & LOAN ASSOCIATION OF JERSEY CITY.

a/c Mat'd.	Book	Shares	29th Series Matured.	Name.	Profits	Dues	Total
T.L.	2621	15	OK	ROBERT QUINLAN.	888.75	2111.25	3000.

The foregoing is an extract from record of Secretary indicat-  
ing that 29th Series had matured. 40

*Exhibits.***Exhibit C-14.**

WEST SIDE BUILDING AND LOAN ASSOCIATION  
 No. 6375 Jersey City, N. J., Dec. 20, 1920.

10 HUDSON COUNTY NATIONAL BANK.

PAY TO THE ORDER OF ROBT. QUINLAN.  
 TWENTY-THREE HUNDRED THIRTEEN &  
 73/100 .....DOLLARS.

\$2313.73/100

J. FRANCIS GORMLEY, Secretary.  
 GEO. W. KENT. Treasurer.

20 BENJ. F. ELLENBERGER,  
 Vice President.

{ Directors—Benj. F. Ellenberger, }  
 { W. J. Gormley. }

**Exhibit C-15.**

Bk 2621

30 WEST SIDE BUILDING AND LOAN ASSOCIATION  
 No. 6376. Jersey City, N. J., Dec. 20 1920.

HUDSON COUNTY NATIONAL BANK

PAY TO THE ORDER OF ROBT. QUINLAN of West Side  
 B & L. Ass'n. SIX HUNDRED EIGHTY SIX &  
 27/100 .....DOLLARS.

\$686.27/100

FRANCIS GORMLEY, Secretary.  
 GEO. W. KENT Treasurer.

40 BENJ. F. ELLENBERGER,  
 Vice President.

{ Directors—Benj. F. Ellenberger, }  
 { W. J. Gormley }

*Exhibits.***Exhibit C-16.**

554 West Side Avenue,  
Jersey City, N. J.

Feb. 20, 1911.

Regular meeting of the Board of Directors of  
The West Side Building & Loan Association is  
called to order by President Wisconsin Jackson.  
Roll is called and absentees noted. Minutes of  
previous meeting are read and approved.

10

D. W. Mills et ux apply for loan of \$3,000.  
Messrs. Frew, Pickell and Ellenberger are ap-  
pointed appraisers.

Mr. Grant H. Morrision applies for additional  
loan of \$1200. Messrs. Decker, Richards and  
Johnson are appointed appraisers.

20

Committee on Margaret Murphy application  
reports work practically completed with excep-  
tion of a few odds and ends, and recommends  
that \$25.00 be held out of final payment. So  
ordered and check for \$275. on account of final  
payment drawn. Committee on additional loan  
to Margaret Murphy reports progress.

On Application of John A. Schneider, Mr. G. W.  
Decker reports he still holds check for \$200., and  
Mr. C. M. Vreeland, Counsel, reports that he paid  
taxes and assessments.

30

Mr. C. M. Vreeland, Counsel, reports Maria  
Kelly title O. K. except mortgage of \$1000., less  
\$500. paid off, and recommends that check for  
\$500. be drawn and placed in his hands to pay  
off mortgage. So ordered.

Committee on application of Harry U. and  
Clara E. Cooper reports value of property \$3,000.  
Loan of \$2,000 is granted.

40

Counsel reports Buday deed recorded. He also  
reports Quinlan money collected by him and

*Exhibits.*

placed to credit of association in Hudson County National Bank.

Committee on Buday property reports progress.

10 Mr. Wisconsin Jackson reports progress in regard to offer on 60 Myrtle Avenue.

Resolution adopted favoring repeal of Official Advertising Act, Chapter 67, Laws 1909, and a copy forwarded to Horace F. Nixon, Chairman Committee of Camden Bar Association.

On motion following checks are ordered drawn:

\$125.00 in favor of Robert Quinlan, redemption 10 shares Book 2621.

12.00 in favor of Geo. P. Swenarton, Trustee, redemption Book 2627.

20 30.00 in favor of Lillian H. Atterbury, redemption book 2708.

7.50 in favor of Albert Hepp & co., Forms for Secretary's notes.

2.00 in favor of Chas. M. Vreeland, dues 1911 Hud. Co. B & L. League.

275.00 in favor of Margaret J. Murphy & Schneider Bros. M/L. Acct.

500.00 in favor of Maria Kelly, mortgage Loan Account on a/c

30 20,400.00 in favor of Hudson Co. National Bank —Note 591

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\$21,351.50

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**Exhibit C-17.**

40 Contract between Robert Quinlan and Peter Redfern, dated July 20, 1910, for erection of home on Dwight St. for \$2240.00.

*Exhibits.***Exhibit D-1.**

Deed dated June 29, 1910, made by Mary E. Quinlan to Robert Quinlan for 26 Dwight St.

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**Exhibit D-2.**

Mortgage made by Robert Quinlan to West Side Building & Loan Association, dated August 8, 1910, \$5,000. which mortgage was cancelled by the said building and loan association on February 20, 1911.

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**Exhibit D-3.**

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Mortgage of Robert Quinlan to Henry Byrne, dated Feb. 17, 1911, \$500. cancelled November 20, 1918.

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**Exhibit D-4.**

Application for loan made on property 26 Dwight St. by Robert Quinlan to the Provident Institution for Savings in or about 1911.

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**Exhibit D-5.**

Certificate dated Feb. 17, 1920, of Hartshorne, Insley & Leake, legal representatives of Provident Institution for Savings to the said bank.

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**Exhibit D-6.**

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Survey of City Lot 57, Block 1472, County Block 410, known as Street No. 26 Dwight St.

Section 101 of the Act of 1906  
relating to the National Monument  
and the National Park Service  
is hereby amended to read as follows:

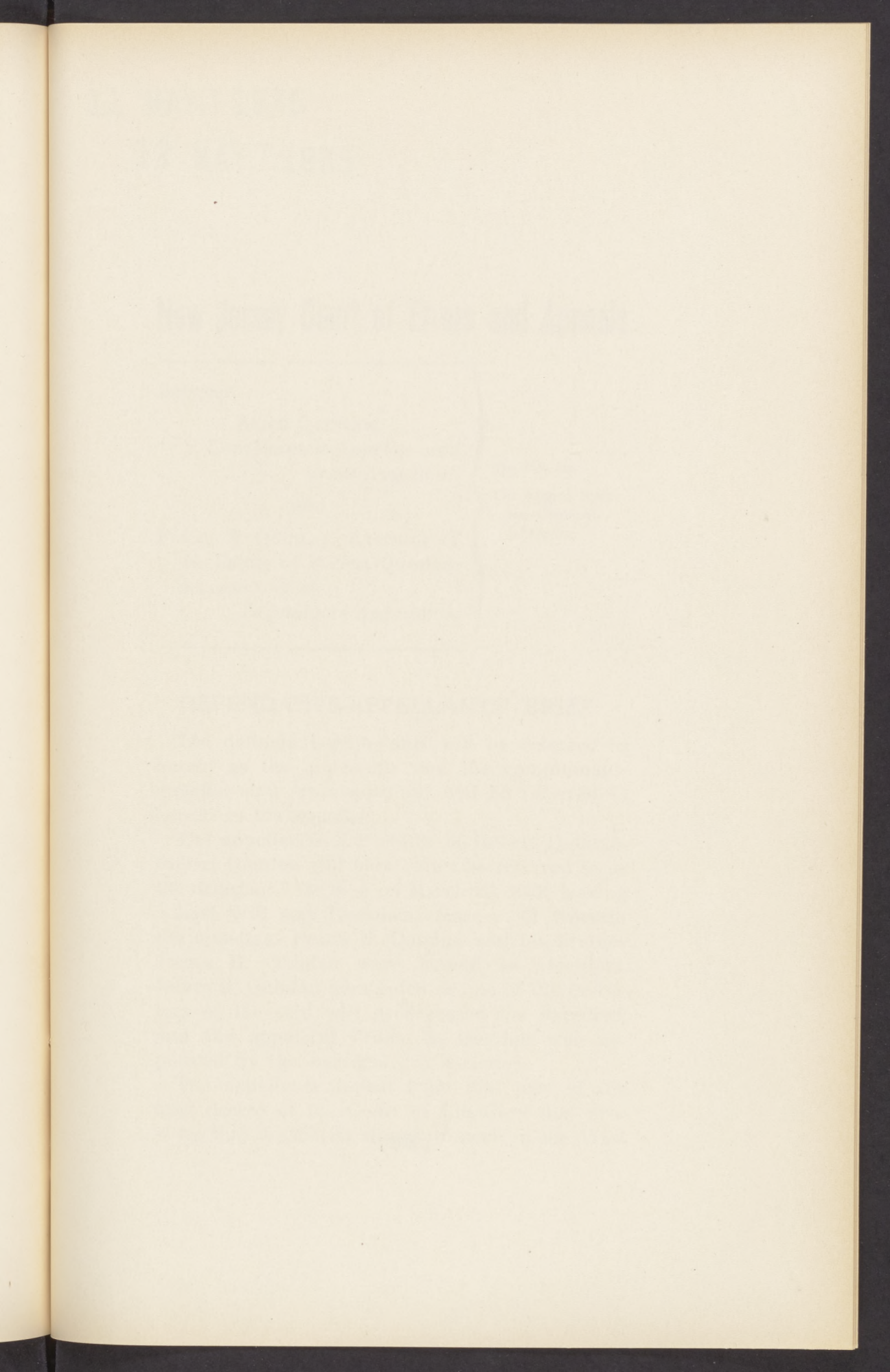
Section 102 of the Act of 1906  
relating to the National Monument  
and the National Park Service  
is hereby amended to read as follows:

Section 103 of the Act of 1906  
relating to the National Monument  
and the National Park Service  
is hereby amended to read as follows:

Section 104 of the Act of 1906  
relating to the National Monument  
and the National Park Service  
is hereby amended to read as follows:

Section 105 of the Act of 1906  
relating to the National Monument  
and the National Park Service  
is hereby amended to read as follows:

Section 106 of the Act of 1906  
relating to the National Monument  
and the National Park Service  
is hereby amended to read as follows:



[ 9035 ]

11 MAY.T.1935

12 MAY.T.1935

## New Jersey Court of Errors and Appeals

Between

ALICE QUINLAN,  
*Complainant-Appellee and*  
*Cross-Appellant,*

and

FRANK X. QUINLAN, Executor of  
the Estate of Robert Quinlan,  
deceased, *et als.*,  
*Defendants-Appellants.*

On Bill, &c.

On Appeal from  
the Court of  
Chancery.

### DEFENDANTS-APPELLANTS' BRIEF.

The defendants-appellants will be referred to herein as the appellants and the complainant-appellee and cross-appellant will be referred to herein as the appellee.

The appellee is the widow of Robert Quinlan. Robert Quinlan will hereinafter be referred to as the decedent, He died on March 20, 1932, leaving a Last Will and Testament (case p. 6) wherein the appellant Frank X. Quinlan and his brother James B. Quinlan were named as executors. James B. Quinlan nominated as one of the executors of the said will predeceased the decedent, and the appellant Frank X. Quinlan was appointed by the Surrogate as executor.

The appellants appeal from that part of the final decree of the Court of Chancery that provides that the fifteen shares of stock in the West

Side Building and Loan Association are owned by the appellee and directs that the appellants pay to the appellee the sum of Three thousand dollars (\$3,000) the value of said shares. The appellee's bill of complaint prays: (1) that property 26 Dwight Street, Jersey City, of which the decedent died seized, be awarded to her; (2) that the appellants be directed to account for the value of the above fifteen shares of the West Side Building and Loan Association; (3) that the appellants be directed to account for the sum of Two hundred dollars (\$200) paid to the decedent Robert Quinlan during his lifetime and (4) that the appellants be directed to transfer to the appellee bond and mortgage in the sum of \$1,000 made by William Mears and Son to the decedent. The Court of Chancery denied the appellee relief on any of the above matters with the exception of the building and loan shares.

The appellee has filed an appeal from that portion of the final decree of the Court of Chancery. She is appealing from that part of the final decree which provides that she is to receive no interest on the sum of Three thousand dollars (\$3,000) the value of the building and loan shares.

### **Evidence.**

The evidence and testimony contained in the State of Case and hereinafter referred to, were objected to by the appellants on the ground that such testimony was in reference to transactions with the decedent.

The testimony in reference to the fifteen shares of the building and loan stock was given by Alice Quinlan, the appellee and by Francis Gormley, the Secretary of the Association. The appellee testified that prior to her marriage she was the

owner of the fifteen shares upon which she paid the sum of \$15.00 per month, and that the shares matured in the year 1921 and that she never gave them to any person (p. 34, ll. 15 to 41). Commencing on page 109, line 28 of the case the appellee again testifies. She stated that she was the widow of the decedent; that she and the decedent were married on November 20, 1911. She stated that her maiden name was Alice McKenna and that she had a bank account in the Emigrant Savings Bank (p. 110, ll. 5 to 25). She was later recalled and repeated her previous testimony that she was the owner of fifteen shares of the West Side Building and Loan Association upon which she paid \$15.00 per month and that the shares matured in 1922 and that the same were in her maiden name "Alice McKenna" and that she never transferred the shares to anyone, and that she never received the avails of the said shares (p. 122, l. 35; p. 123, l. 30).

Francis Gormley, Secretary of the building and loan association said that he knew the decedent very well and was familiar with his handwriting (p. 67, l. 20 to 35); that Exhibit C-12 (p. 136, l. 28) is a certificate that indicated that the decedent did, on March 7th, 1910, subscribe to twenty-five shares of the capital stock of the West Side Building and Loan Association, Series 29 (p. 68, ll. 5 to 10). The appellants objected to the testimony in reference to the certificate and also to the admission of the certificate into evidence. The witness testified that the first three endorsements on the certificate were signed by decedent and that the fourth endorsement was signed by the witness as Secretary (p. 69, l. 12 to 30). The certificate was admitted into evidence as Exhibit C-12 (pp. 136 and 137). Each of the endorsements on the certificate is dated February 20,

1911. The first endorsement states that the mortgage of Five thousand dollars (\$5,000) is paid off in full and that the certificate is released as collateral security. The second endorsement states that the shares referred to therein are pledged to the West Side Building and Loan Association as collateral security for a mortgage loan. The third endorsement provides that the shares are transferred to the West Side Building and Loan Association and the last endorsement provides "the remaining fifteen shares transferred to Miss Alice McKenna. (Signed) Robert Quinlan". The twenty-five shares which were taken out by the decedent were entered as account #2621 which was also the number of the book which the decedent received for the said shares. The book of entries for the association for the year 1910 indicated that on June 27th fifteen shares of the twenty-five were transferred to the appellee (p. 71, ll. 20 to 30). The witness had made a search of his records, but was unable to find any transfer from the appellee to anyone in either her maiden name or marriage name (p. 71, ll. 30 to 40). There was then offered in evidence Exhibit C-9 (p. 135) consisting of forty-three checks drawn to the order of the West Side Building and Loan Association by Robert Quinlan in various amounts dating from October 3, 1910 to June 14, 1920. These checks were all applied to the said fifteen shares of stock (p. 72, ll. 24 to 40). The said shares matured and payment therefor was made by two checks (Exhibits C-14 and C-15, p. 138), totalling Three thousand dollars (\$3,000) made to the order of Robert Quinlan (p. 74, ll. 8 to 19; ll. 35 to 40; p. 76, ll. 5 to 25). Mr. Gormley produced his records in reference to the 29th series of the said association disclosing that the said series matured on December 13, 1920. This record was

offered in evidence as Exhibit C-13 (bottom of p. 137), which exhibit we wish to repeat here because we consider it very important in that it contains the name of the decedent as the owner of the said shares.

EXHIBIT C-13.

29th Series Matured 12/13/20 Checks drawn Dec. 20th, 1920 from March 1910. Wks 563 Dues \$140.75, Profits \$59.25 \$200.00.

SECRETARY'S NOTES, MEETING OF DEC. 20, 1920.

THE WEST SIDE BUILDING & LOAN ASSOCIATION OF  
JERSEY CITY.

a/c Mat'd.	Book	Shares	29th Series Matured.	Name	Profits	Dues	Total
	2621	15	OK	Robert Quinlan	888.75	2111.25	3000

The foregoing is an extract from record of Secretary indicating that 29th Series had matured.

There was then admitted into evidence Exhibit C-16 (pp. 139-140). This exhibit contained the minutes of the meeting of the West Side Building and Loan Association held on February 20, 1911. On cross-examination Mr. Gormley testified that Exhibits C-14 and C-15, which were made payable to the West Side Building and Loan Association or Robert Quinlan, were in payment of moneys due to Robert Quinlan as the owner of the shares of stock on the mortgage with the bond (p. 77, ll. 21 to 34).

Although Mr. Gormley testified that he found no assignment or transfer of the said fifteen shares from the appellee to anyone, yet the records of the building and loan association indicate

that when the shares matured the decedent was the owner thereof. The only record or reference which would indicate that the appellee owned the said shares is the fourth endorsement contained in Exhibit C-12 (p. 137, ll. 25 to 26), which endorsement is dated February 20, 1911, and signed by the decedent. However, Exhibit C-13 on the same page indicates that the Secretary's notes of the meeting on December 20, 1920 of the said association contains the name of the decedent as the owner of the said shares.

Dudley P. Holcomb, Assistant Treasurer of the Provident Institution for Savings testified on behalf of the defendant and produced Exhibit D-4 (p. 141) which was an application for a loan made on the real estate 26 Dwight Street, by Robert Quinlan to the Provident Institution for Savings, which application was accepted on January 25, 1911 (p. 129, ll. 32 to 40). Exhibit D-5 was then offered in evidence (p. 141) which is a certificate dated February 17, 1920 certifying to the Provident Institution for Savings as to the marketability to title of property 26 Dwight Street (p. 130, ll. 25 to 38). The Provident Institution for Savings on or about February 20, 1911 made a mortgage loan to Robert Quinlan on said property 26 Dwight Street, the proceeds of which mortgage loan were used to pay off the then existing mortgage of the West Side Building and Loan Association, which last mentioned mortgage was endorsed for cancellation on February 14, 1911 and cancelled of record on February 20, 1911 (p. 133, ll. 12 to 25). Therefore, at the time the decedent transferred the fifteen shares to the appellee the mortgage held by the West Side Building and Loan Association in the sum of \$5,000 was paid off and none of appellee's money was used to pay off the said mortgage.

## LAW.

### POINT I.

**The Court of Chancery erred in decreeing that the appellee was entitled to the building and loan association shares as the evidence was insufficient to support such a decree.**

As outlined hereinabove, the only evidence in reference to said building and loan shares was that given by the appellee and by Francis Gormley, the Secretary of the West Side Building and Loan Association. We shall argue hereinafter, that the evidence of the appellee should have been excluded under Section Four of the Evidence Act and under the practice followed by the Court of Chancery. However, assuming the appellee's testimony to be true and legal, it is insufficient to support the decree and it conflicts with the testimony given by the witness Francis Gormley who testified in her behalf. Her testimony was that she was the owner of the shares and that she paid \$15.00 per month. The uncontradicted evidence in the case, however, is that all or nearly all of the payments upon the shares were made by the decedent as shown by Exhibit C-9, which consists of forty-three checks, each signed by the decedent, and made to the order of the West Side Building and Loan Association. As set forth in Exhibit C-9, only four of the forty-three checks had any notation thereon as to the same being owned by the appellee, and it is significant that these four checks containing such notations, were all made in the early part of the year 1911 during the four months following the endorsement of the said fifteen shares to the ap-

pellee, so that the last check containing a reference to the appellee which was made on June 1st, 1911 was made more than twenty-one years before this suit was instituted in the Court of Chancery of New Jersey and more than twenty years prior to the death of the decedent. The twenty-four checks referred to in Exhibit C-9, following the check of June 1st, 1911 contained no reference to the appellee. The five checks of Exhibit C-9, prior to the check of February 27th, 1911 were dated October 3rd, 1910, December 2nd, 1910, January 4th, 1911, January 11th, 1911 and February 8th, 1911 and none of these last mentioned five checks contains any reference to the appellee. This is important because the fifteen shares were endorsed over to the appellee on February 20th, 1911 and the checks prior thereto did not contain any notation or reference to her while the checks subsequent to June 1st, 1911 also contained no notation or reference to her, so that it appears quite evident that it was only between the period of February 20th, 1911 and July 14th, 1911 that the appellee had any interest in the said shares. Whatever occurred thereafter is unknown because of the death of Robert Quinlan. Exhibit C-13 (p. 137) produced by the Secretary of the building and loan association on behalf of the complainant clearly sets forth what the records of the building and loan association contain as to the ownership of the said shares and this exhibit contains the name of Robert Quinlan.

The appellee, it is quite apparent, did not pay the dues upon the said shares as the checks (Exhibit C-9) indicate that the decedent paid the same. No other evidence could have been given by her as to the payments upon the said shares because such testimony would have involved her transactions with the decedent and would have

been barred by Section Four of the Evidence Act. Furthermore, we contend that the fact that the building and loan association did pay the proceeds of the said shares to the decedent is a strong indication that the decedent was entitled to such proceeds. Exhibits C-14 and C-15 (p. 138) which are the checks for the said proceeds were signed by the Secretary, Treasurer, Vice-President and two Directors of the building and loan association and these checks are made to the order of the decedent. These checks taken together with Exhibit C-13 which shows Robert Quinlan, the decedent, as the owner of the said shares and the forty-three checks made by the decedent in payment of the dues upon the said shares, should be conclusive proof that the decedent was entitled to these proceeds. More than nine years elapsed between February 20th, 1911 when the decedent transferred fifteen of his twenty-five shares to the appellee, and December 20th, 1920 when the said shares matured, and it must be assumed in view of what took place thereafter that some assignment or transfer must have been filed with the building and loan association before it returned the said shares to the credit of the decedent. Unfortunately he is dead and unable to contradict the complainant's case or explain the situation. More than twelve years elapsed from the time that the said proceeds were paid to the decedent to the filing of the bill of complaint, during all of which time the appellee could have brought her action or made her claim, during the lifetime of the decedent. Her suit was not instituted until March 15th, 1933 which was one year after the decedent's death. During the time that passed (twelve and a half years) after the proceeds of the said shares were paid by the association to the decedent, many things could

have happened to the records of the building and loan association.

There can be no question that the building and loan association did pay the proceeds of the said shares to the decedent, but can there be any doubt that the building and loan association would have paid the moneys to the decedent if he were not entitled to them. Their records must have shown that he was entitled to this money at that time or else the building and loan association, a large financial institution, would not have paid the moneys to a person other than the one that was entitled thereto. The fact that the records of the building and loan association at the present time do not include an assignment or transfer from the decedent to the appellee, is not conclusive that such an assignment or transfer was never made, particularly in view of the long period of years that have elapsed not only since the shares were transferred to the appellee, but also since the series matured on December 13th, 1920, at which time the payment of the proceeds of said shares was made.

The appellee and the decedent were husband and wife, living together up to the time of his death. They lived together at and about the time that the proceeds of these shares were paid. Who is there to say that she did not receive the proceeds of these shares if she were entitled to them, even though the same were paid to the decedent by the building and loan association? If it were not for the fact that he is dead, he might testify or state that he paid the money to her after he received it, assuming, of course, that she were entitled thereto. It might be argued that if she were permitted to testify and if the appellants would waive their objection under Section Four of the Evidence Act, she would tell the Court that

she did not receive it, but the executor of the estate, one of the appellants herein, cannot waive any of his legal rights due to the fact that he does not have the advantage of the presence of the decedent, or his testimony, and the appellant is acting in a representative capacity and it is his duty as such to protect the estate to the full extent that the law permits.

Corroborating our theory that there must have been filed with the building and loan association an assignment of the said shares by the appellee to the decedent is the statement contained in the appellee's bill of complaint (p. 3, ll. 25 to 35) wherein she charges that on or about August 8th, 1911 Robert Quinlan, the decedent, procured an assignment of the shares from her to him. That an assignment must have been obtained and filed about that time and that the appellee knew of it is indicated by the fact that she has placed in her bill of complaint the date, to wit: August 8th, 1911, because the first of the checks referred to in Exhibit C-9 which does not bear a reference to the appellee is dated July 14th, 1911, less than a month before the date specified by her. We admit, however, that she denies that she ever made such an assignment. In paragraph seven of her bill of complaint (p. 4) she admits that she knew that the said shares had matured and that the decedent had advised her that he would apply the same to the payment of the mortgages on 26 Dwight Street. She must have known that at that time which was on December 20th, 1920, when the said shares had matured more than twelve years before her bill of complaint was filed, that the decedent had obtained the proceeds of these shares.

## POINT II.

**The testimony of the appellee should not have been allowed by the Court of Chancery because her testimony was contrary to the provisions of Section Four of the Evidence Act.**

The testimony of the appellee that she was the owner of the building and loan shares and that she made the payments thereon was in reference to a transaction with the decedent. This testimony was objected to but the Court of Chancery permitted the said testimony to be given.

Section Four of the Evidence Act is as follows:

“In all civil actions any party thereto may be sworn and examined as a witness, notwithstanding any party thereto may sue or be sued in a representative capacity; provided, this section shall not extend to permit testimony to be given by any party to the action as to any transaction with or statement by any testator or intestate represented in said action, unless the representative offers himself as a witness on his own behalf, and testifies to any transaction with or statement by his testator or intestate, in which event the other party may be a witness on his own behalf as to all transactions with or statements by such testator or intestate, which are pertinent to the issue” (1 Comp. Stat., p. 2218).

The complainant is not a competent witness where any of the defendants are sued in a representative capacity.

*Force v. Dutcher*, 18 N. J. Eq. 401;  
*Sweet v. Parker*, 22 N. J. Eq. 453;  
*Montgomery v. Simpson*, 31 N. J. Eq. 1;  
*Petty v. Petty*, 31 N. J. Eq. 8.

In *Vigne v. Vigne*, 98 N. J. Eq. 274, at page 285 the Court said:

*"It is settled in this state that 'in establishing her claim against her husband's estate a wife is not more competent to testify to transactions with, or statements by, the testator or intestate, when the executor or administrator of her deceased husband is a necessary party, than any other witness' (Adoue v. Spencer, supra), and the test to be applied to testimony of this character, as I understand it, 'is to inquire whether in case the witness testified falsely the deceased, if living, could contradict it of his own knowledge.' Smith v. Burnet, 35 N. J. Eq. 314; Van Wagenen v. Bonnot, 74 N. J. Eq. 843; Campbell v. Akarman, 83 N. J. Law 567. If so, such testimony is excluded, the cases holding that where the voice of one of the parties is silenced by death, that of the other must be by law."*

The Court went on in the above case to analyze what the situation might have been if the decedent, who was the husband of the complainant, had been present to deny the wife's testimony.

In *Adoue v. Spencer*, 62 N. J. Eq. 782, the Court held that in establishing her claim against her husband's estate, a wife is not more competent to testify to transactions with or statements by the testator or intestate, when the executor or administrator of her deceased husband is a necessary party, than any other witness. At the bottom of page 794 of the said case the Court said:

*"It is apparent that the object of the legislature is to be primarily regarded, and that the object is to close the mouth of a party whose interest is antagonistic to the estate of a deceased person, in regard to those transactions in which the deceased bore a part, and concerning which he, if living, would be the most important, perhaps the*

only, witness beside the opposing party. *Smith v. Burnet*, 8 Stew. Eq. 314, 322.

To adopt the language of Mr. Justice Dixon in the case of *Dickerson v. Payne's Administrator*, in an opinion filed at the present term of the supreme court, 'manifestly, in the transactions to which this plaintiff testified, the deceased bore a part, \* \* \* and, if living, would be the most important, perhaps the only, witness against her. He must have been present when many of her acts, if she testified truly, were performed, and as to those matters, if she testified falsely, he could, as a witness, have directly contradicted her: These are the conditions in which the legislature did not intend to legalize the testimony of a party against an adversary representing a testator or intestate.'"

In conclusion we respectfully submit that that portion of the final decree of the Court of Chancery which awards to the appellee the ownership or the proceeds of the said building and loan shares is erroneous, and that the said decree of the Court of Chancery should have been in favor of the appellants in reference to the said building and loan association. We do not think that we are putting it too strongly when we say that not only was there not sufficient evidence to justify the said portion of the said decree, but there was absolutely no evidence on which the said determination could have been legally predicated. The only witnesses for the appellee were Francis Gormley of the building and loan association and the appellee. Her testimony in respect to the said building and loan shares should have been excluded in its entirety for the reasons above set forth. As to the evidence of the Secretary of the building and loan association it was, if anything, in favor of the appellants, particularly is this true in reference to the most

important piece of evidence in the whole case which is Exhibit C-13, a copy of the minutes of the meeting of December 20th, 1920, and this exhibit discloses that Robert Quinlan, the decedent, was the owner of the said shares and that he was entitled to the proceeds thereof amounting to Three thousand dollars (\$3,000). In addition to the foregoing we have the forty-three checks (Exhibit C-9), totaling the sum of \$1766.55, all of which checks were made by the decedent to the West Side Building and Loan Association. There is not one scintilla of legal evidence that the appellee did not receive the proceeds of the said shares. In making this statement we do not, of course, admit that she was or is entitled thereto. Of course, there is testimony given by her, under objection however, that she never received the avails of the said shares, but as stated above, since this testimony is in reference to a transaction with a decedent, it is barred by Section Four of the Evidence Act. Furthermore, even if it were not barred by Section Four of the Evidence Act, it is not entitled to credence because it is not the practice of the Court of Chancery to consider the evidence of a wife in reference to the ownership of property where the husband is dead and unable to contradict her evidence, particularly where her interest in the subject matter of the case is deep and personal. *Madison Trust Co. v. Allen*, 147 Atl. 547, where the Court said:

“The only witnesses to the alleged act of giving, were Mr. and Mrs. Allen. He, of course, was excluded from the witness stand under the Evidence Act (2 Comp. Stat. 1910, p. 2216, *et seq.*). Mrs. Allen could and did testify, and, though technically entitled to do so, her interest in the case is as deep and personal as that of her husband.”

The decedent died on March 20th, 1932. He received the proceeds of these shares twelve years prior to his death. He was living with the appellee, his wife, at the time and continued to live with her all during the remainder of his life. Now, at this late date, when he is not here to tell the court about his ownership of the said shares, his right to the proceeds thereof, or what disposition he made of the proceeds thereof, this suit is brought against his estate and a decree made against him, and the evidence upon which the said decree was made in respect to the said building and loan shares was very meagre and illegal.

The mortgage of the building and loan association was paid off on February 20th, 1911, and on the same day a new mortgage in favor of the Provident Institution for Savings was placed on the property. On December 20th, 1920, the decedent received the proceeds of the shares. The appellee would have the court believe that she thought that the proceeds of the said shares were used to pay off the Provident Institution for Savings mortgage and that she believed for the more than twelve years that followed that no such mortgage existed on the property. We say that this is unbelievable because the appellee and decedent were husband and wife and lived together during all of this time, during which time the interest was paid on the Provident's mortgage and notices thereof mailed in reference thereto must have been received at the home at frequent periods, from which notices and mail she could have ascertained, if she had not actually known about it, that the said mortgage was a lien on the said property. Taking her story, she was willing that the proceeds of the said shares be applied to the payment of the said mortgage. If this had been done, she would not

have been entitled to a lien upon the said property or to the return of the said proceeds, if they belonged to her, because the Court of Chancery decreed in this very suit that she had no right, title or interest in 26 Dwight Street, the said property (Final Decree, p. 24, ll. 28 to 35).

### POINT III.

Appellee's appeal from that part of the decree which denies to her interest on the proceeds of the building and loan shares should be dismissed because of the rule that between husband and wife, interest is not allowable during the continuance of the marriage relation unless it was especially stipulated for.

This was held in *Riker v. Riker*, 83 N. J. Eq. 198, at page 200:

"In addition to the principal the wife demands the payment of interest. An examination of the testimony will disclose that there was a total omission of evidence tending to show that the husband at any time promised to pay interest. Ordinarily I understand the rule to be that as between husband and wife interest is not allowable during the continuance of the marriage relation unless it was specially stipulated for. This seems to be the idea of Vice-Chancellor Pitney in *Collins v. Babbitt*, 67 N. J. Eq. 165."

Vice-Chancellor Pitney in *Collins v. Babbitt*, *supra*, at page 177 said:

"With regard to the sum of \$3,814.08, it appears that the husband held that money for a particular purpose, viz., to allow it to

accumulate until there was enough to make a solid payment of \$5,000. on the principal of the mortgage. There is no proof to show what benefit he derived from it. He did mingle it with his own funds, but upon the whole case, and considering that they were living together as husband and wife, and the husband was supporting his wife, I do not think it could have been contemplated between them that the husband should pay interest on that sum."

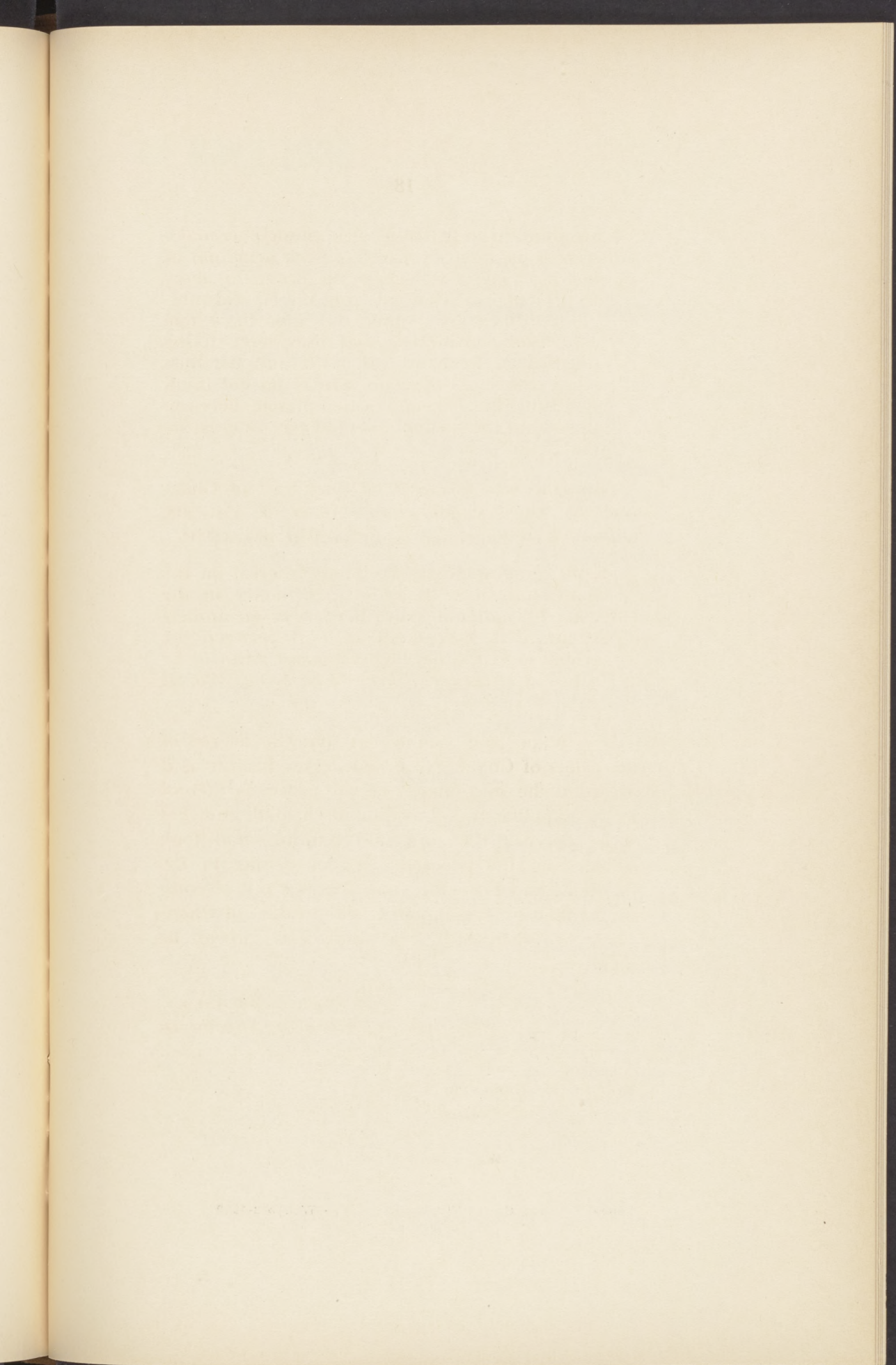
This rule was followed by the Court of Chancery in *Ward v. McLellan*, 116 N. J. Eq. 308, where Vice-Chancellor Egan said at page 590:

"The complainant demands interest on the loan; but since there is no evidence in the case to indicate that there was an understanding or agreement as to it between the widow and the decedent, interest will not be allowed (*Riker v. Riker*, 82 N. J. Eq. 198, 92 Atl. 586)."

It is respectfully submitted that the decree of the Court of Chancery of New Jersey insofar as it awarded the said shares or the proceeds thereof to the appellee, be set aside and vacated, and that it be decreed that the said building and loan shares and the proceeds thereof belong to the decedent and his estate, and that the bill of complaint filed by the appellee in the Court of Chancery, be dismissed; and that her appeal be dismissed.

ZIEGENER & BRENNER,  
*Solicitors of Appellants.*

ROBERT H. BRENNER,  
*Of Counsel.*



RECITIAM I  
RECITIAM SE

11 MAY.T.1935

12 MAY.T.1935

**New Jersey Court of Errors and Appeals**

<p><i>Between</i></p> <p style="text-align: center;">ALICE QUINLAN, Complainant-Appellee, and Cross-Appellant,</p> <p style="text-align: center;"><i>and</i></p> <p>FRANK X. QUINLAN, Executor of the Estate of Robert Quinlan, deceased, <i>et als.</i>, Defendants-Appellants.</p>	}	<p>On Bill, &amp;c. On Appeal From the Court of Chancery.</p>
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**COMPLAINANT-APPELLEE AND CROSS-  
APPELLANT'S BRIEF.**

**Statement.**

These are appeals from a Decree of the Court of Chancery, advised by the Honorable CHARLES M. EGAN, Vice Chancellor.

The defendants-appellants, Frank X. Quinlan, Executor of the Estate of Robert Quinlan, deceased, and May L. Quinlan, hereinafter called the appellants, appeal from that part of the Decree which "Ordered, Adjudged and Decreed that Frank X. Quinlan, Executor of the Estate of Robert Quinlan, deceased, and May L. Quinlan, defendants herein, pay to the said complainant Alice Quinlan, the sum of \$3,000.00, the value of the said fifteen (15) shares of stock in the West Side Building & Loan Association of Jersey City, without interest \* \* \*."

The complainant-appellee, Alice Quinlan, hereinafter called the appellee, also appeals from the

said Decree in so far as it decrees said value, of said shares amounting to the sum of \$3,000.00 be paid to her "*without interest.*" She contends that she is entitled to interest upon said sum of \$3,000.00 at the rate of six (6%) per cent. per annum from December 20th, 1920, the date upon which the matured value of the Building & Loan shares was paid.

### Facts.

#### **Reference to the facts adduced at the trial will be limited to testimony concerning the building and loan shares.**

Alice Quinlan, the appellee, and Robert Quinlan, decedent, were husband and wife (p. 34, l. 15); her maiden name was Alice McKenna (p. 34, l. 18); she was married to Robert Quinlan on November 20th, 1911 (p. 34, l. 20); before her marriage she owned fifteen shares of stock in the West Side Building & Loan Association of Jersey City upon which she paid the sum of \$15.00 per month (p. 34, ll. 20 to 30); she continued to pay said sum monthly throughout the period of the life of those shares (p. 34, l. 35); the shares matured in the year 1921 (p. 34, l. 35); she never sold, pledged or gave those shares of stock to anyone (p. 35, ll. 10 to 20; p. 123, ll. 20 to 30); she did not receive the avails of the shares (p. 123, l. 28).

To support the testimony of Alice Quinlan, that she owned the Building & Loan shares which were transferred to her before her marriage and were carried on the books of the Building & Loan Association in the name of Alice McKenna, her maiden name, the appellee produced Mr. Francis Gormley.

Francis Gormley was the Secretary of the West Side Building & Loan Association from a time

prior to February 20th, 1911 to the date of the giving of his testimony (p. 67, ll. 10 to 25); he knew Robert Quinlan, the decedent, very well and was familiar with his handwriting (p. 67, l. 30); he identified a certificate of the West Side Building & Loan Association for twenty-five shares dated March 7, 1910, issued to Robert Quinlan (p. 68, ll. 1 to 20; Exhibit C-12, p. 130, ll. 30 to 40); that there are endorsements upon the back of the said Certificate (p. 68, ll. 35 to 40); that three of the endorsements are in the handwriting of Robert Quinlan; and the fourth endorsement was in his (Gormley's) handwriting (p. 69, ll. 10 to 20).

For the convenience of the Court, the endorsements are set forth in full (p. 137, ll. 1 to 10).

Endorsement—Exhibit C-12:

“Feb. 20, 1911, mortgage of \$5000. paid in full. This certificate is therefore released as collateral security.

F. GORMLEY,  
Secretary.”

Page 137, lines 10 to 15; Exhibit C-12. Endorsement:

“The within shares pledged to the West Side Building and Loan Association of Jersey City as collateral security for mortgage loan.

ROBERT QUINLAN.”

Page 137, lines 16 to 20; Exhibit C-12. Endorsement:

“Ten of the within mentioned shares are hereby transferred to the West Side B. & L. Ass'n.

ROBERT QUINLAN.”

Page 137, lines 25 to 30; Exhibit C-12. Endorsement:

“The remaining 15 shares transferred to Miss Alice McKenna.

ROBERT QUINLAN.”

The mortgage given by Quinlan to the West Side Building & Loan Association was cancelled of record on *February 20th, 1911* (p. 125, ll. 10 to 25). Exhibit D-2—the mortgage given by Quinlan to the Provident Institution for Savings was dated February 17th, 1911 (p. 126, ll. 1 to 30); it has been conceded that the proceeds of the mortgage given to the Provident Institution for Savings (Exhibit D-4) were used to pay off the mortgage (Exhibit D-2) given by Quinlan to the West Side Building & Loan Association (p. 133, ll. 1 to 25).

Mrs. Quinlan paid for the fifteen shares of stock transferred to her by endorsement (Exhibit C-12; p. 34, ll. 25 to 30) and she continued to pay throughout the period of the life of those shares (p. 34, ll. 30 to 40).

As further evidence that the shares of stock in the Building & Loan Association were the property of the complainant-appellee, there was placed in evidence without objection, a series of 43 checks, admittedly drawn by Robert Quinlan, to the order of the West Side Building & Loan Association. Most of those checks have a notation written on them that the payments are to be credited to book or account #2621 (p. 135, ll. 30 to 40; Exhibit C-6).

Some of said checks, in addition to the notation aforementioned, contained additional notations “Series #29—A. McKenna; Book 2621; 15 shares, to McKenna” (p. 136, ll. 1 to 10; Exhibit C-9).

Book 2621; series 29; March 7, 1910; West Side Building and Loan Association is the account which was opened by Robert Quinlan and trans-

ferred in part (15 shares) to Alice Quinlan; by endorsement (p. 68, ll. 1 to 10; pp. 69 and 70; p. 71, ll. 10 to 40).

The shares were never transferred out of Alice McKenna (p. 72, ll. 1 to 20).

The records of the Building & Loan Association further show that the Building & Loan shares matured December 13th, 1920 (p. 75, ll. 15 to 20); that payment of the matured shares was made December 20th, 1920 (p. 75, ll. 15 to 20); as corroborative of proof of maturity and payment, the original notes of the meeting of the Building & Loan Association were produced and marked in evidence (p. 75, ll. 20 to 30; p. 137, Exhibit C-13); and also two checks dated December 20th, 1920, signed by Francis Gormley, Secretary of the Building and Loan Association and totalling the sum of \$3,000.00 (p. 76, ll. 1 to 20; Exhibits C-14 and C-15; p. 138, ll. 1 to 40).

It also appears that Robert Quinlan was paid the sum of \$125.00 for the redemption of the 10 shares of stock surrendered by him by endorsement of the certificate on February 20th, 1911 (p. 139, ll. 1 to 10; p. 140, ll. 15 to 20; Exhibit C-16).

## ARGUMENT.

**The appellants argue that error was committed by the Trial Court in decreeing the appellee to be entitled to the Building & Loan Shares, because the evidence was insufficient to support it.**

Their argument is apparently premised upon two reasons:

- a. That all of the testimony of Alice Quinlan, appellee, should be excluded because of the provisions of Section 4 of Evidence Act.

b. Because the Building & Loan Association paid the matured value of the shares to Robert Quinlan, there must have been some sort of assignment back from Alice Quinlan to him made subsequent to his endorsement of the Certificate (C-12, pp. 136-137).

There is not a scintilla of evidence to show any assignment of the shares of stock by Alice Quinlan. She testified she never assigned them. So also did Francis Gormley, the Secretary of the Building & Loan Association. There can be no presumption to that effect as there is no evidence whereon such presumption could be based.

The appellants had access to the records of the Building & Loan Association and could have used them to aid their cause if anything therein could be found to favor them. They chose to ignore those records.

It also appears affirmatively from the testimony of Francis Gormley that the shares were never assigned and that the records of the Building & Loan Association fail to disclose any assignment (p. 71, ll. 30 to 40).

The testimony of Francis Gormley standing alone suffices to make out a case for the appellee. His evidence warranted an inference that Alice McKenna became the owner of the shares on February 20th, 1911 and continued to be the owner of them until maturity. The appellants did not choose to rebut that testimony. They could have cross-examined Mrs. Quinlan; they could have examined Mr. Gormley; they could have made a thorough and searching examination of the Building & Loan Association and they could have utilized the affirmative evidence, if any could have been adduced of Frank X. Quinlan and/or May L. Quinlan or of any of the friends, relatives or business associates of Robert Quinlan. Their failure to adduce any evidence whatsoever to con-

tradict that given by Francis Gormley and Mrs. Quinlan can lead only to the conclusion that nothing could be adduced which would alter the situation.

By innuendos and inferences the appellants argue that the records of the Building & Loan Association are incomplete and inaccurate. However, at the trial they made no effort to prove the records inaccurate. They did not even cross-examine the witness Francis Gormley, on that point.

It must be assumed, therefore, that the records are accurate and give a history of the ownership of the Building & Loan shares.

Appellants also argue that because only a few of the 43 checks (Exhibit C-9) have notations, A. McKenna, or A. McK. on their face, that something unknown (an inferential assignment) thereafter took place.

They fail to disclose that Alice Quinlan testified that she paid the Building & Loan Association for those shares until maturity (p. 34, ll. 30 to 40). Also, that Alice Quinlan had bank accounts of her own with the Emigrants Industrial Savings Bank (p. 100, l. 20; Exhibit C-11); also the Claremont Bank (p. 121, ll. 30 to 40).

It is urged that the time required for the maturity of the shares of Building & Loan Stock was approximately ten years, or from 1910 to 1920; that the payments were monthly; and that it is obvious that at least 100 monthly payments must have been made upon the shares. Therefore, the checks produced (Exhibit C-9) by Alice Quinlan, were merely corroborative of her contention that the shares were hers and were corroborative evidence on her behalf.

The appellant, on pages seven and eight of his brief, makes reference to the notations contained upon the face of a series of checks, offered as Exhibit C-9. He makes free to comment concern-

ing what they allegedly contain, although he does not set forth such exhibit in the State of Case prepared by him. In fact, an examination of said exhibit discloses that thirty-four of the forty-three checks which make up the exhibit contain a notation, "Book 2621" or "2621" or "Account 2621" or "A. MK" or "A. McKenna."

Account No. 2621 was opened in 1910 (p. 71, ll. 20 to 30); it was originally the account of Robert Quinlan for twenty-five shares (p. 71, ll. 10 to 15). On June 27th, 1910, fifteen (the number of shares for which this suit is brought) of the twenty-five shares were transferred to Miss Alice McKenna (p. 71, ll. 20 to 30).

It is urged by the appellee that the payments made by checks as shown by Exhibit C-9 were all to the account of "Alice McKenna"; that they were applied to that account; that it was never transferred from her to any other person; that such payments were but part of the total payments made; that the exhibit (C-9) was corroborative of appellee's contention and not conclusive; that all of the evidence adduced leads to the irresistible conclusion that Mrs. Alice McKenna Quinlan became the owner of the shares before her marriage and continued so to be until they matured; that she never assigned or transferred them; that she was never paid the matured value of them; that Robert Quinlan took the matured value of the shares; that he applied the money to his own use and that by so doing became the trustee of Alice Quinlan.

**POINT ONE.****The testimony of the appellee did not conflict with Section Four (4) of the Evidence Act.**

That portion of Section Four of the Evidence Act upon which the appellants rely, is that which provides

“this section shall not extend to permit testimony to be given by any party to the action as to any transaction with or statement by any testator, or intestate represented in said action, unless the representative offers himself as a witness on his own behalf, and testifies to any transaction with or statement by his testator or intestate, in which event the other party may be a witness on his own behalf as to all transactions with or statements by such testator, or intestate which are pertinent to the issue” (1 Comp. Stat. 1910, p. 2218).

The appellee has searched the record of the case most minutely to discover any testimony given by her concerning “any transaction had by her with, or statement made by, the decedent.” No such testimony was offered nor was any such attempt made.

The only testimony given by the complainant concerning the Building & Loan Shares was to the effect that she became the owner of them about 1921 (p. 34, l. 35); that she continued to pay for them at the rate of \$15.00 per month (p. 34, l. 38); that she did not sell, assign or transfer them (p. 34, l. 40; p. 35, ll. 1 to 20); she also testified to the same effect (p. 122, l. 40); that the shares came to maturity (p. 123, ll. 1 to 10); that the account was in the name of Alice McKenna, her maiden name (p. 123, ll. 10 to 20); that she never

assigned or transferred those shares to any person whomsoever and that she was not paid (p. 123, ll. 20 to 30).

Surely there can be no complication that Mrs. Quinlan's testimony was directed to any transaction with or statement by the decedent.

It was addressed entirely to her property in her shares in the Building & Loan Association.

It is urged also, that even if the testimony by Mrs. Quinlan was such that it could be construed to be within the meaning of Section Four of the Evidence Act, which is, of course, denied, yet her evidence was permitted by the appellant without objection until she had completed her testimony.

The objection made by counsel for the appellant (p. 33, ll. 30 to 40) is without force as it was made before any evidence was taken or attempted to be taken. Thereafter the witness (Mrs. Quinlan) was interrogated and permitted, without objection, to testify as follows (p. 34, ll. 10-40):

- “Q. Mrs. Quinlan, where do you reside?  
 A. Now?  
 Q. Yes. A. Verona, New Jersey.  
 Q. You are the widow of the late Robert Quinlan? A. Yes.  
 Q. What was your maiden name, Mrs. Quinlan? A. Alice McKenna.  
 Q. When were you married? A. November 11, 1920. I mean November 20, 1911.  
 Q. Prior to your marriage did you own any shares of stock in the West Side Building & Loan Association? A. I did.  
 Q. In Jersey City? A. Yes.  
 Q. How many shares? A. Fifteen.  
 Q. And did you pay a monthly stated sum of money for the purchase of those shares of stock? A. I did.  
 Q. How much? A. Fifteen dollars.  
 Q. By the way, do you know whether those shares of stock have matured? A. They have.  
 Q. Do you know when? A. 1921.

Q. Did you continue to pay throughout the period of the life of those shares of stock the sum of fifteen dollars per month? A. I did.

Q. Did you at any time during the time that you owned those shares of stock in the West Side Building & Loan Association give them to any person? A. No.”

(Page 35, ll. 10 to 20):

“Mr. Ziegner: I object to it.

The Court: Your objection will be sustained so far as her undertaking to say she had any transactions with the deceased. I will say in passing the fourth section of the Evidence Act will not be applied throughout this case in its entirety because May Quinlan is a defendant here.

By Mr. Armstrong:

Q. Did you at any time sell those shares of stock in the West Side Building & Loan Association? A. No.

Q. Did you at any time pledge them to any person whomsoever? A. No.”

The only objection raised was to the question:

“Q. Did you at any time during the time that you owned those shares of stock in the West Side Building & Loan Association give them to any person? A. No.”

The appellant was sustained upon his objection to that question.

Again, Mrs. Quinlan was permitted to testify to the same effect (p. 122, ll. 35 to 40; p. 123, ll. 20 to 30).

The appellant then moved to strike the testimony of Mrs. Quinlan (p. 123, l. 10; p. 124, ll. 1 to 10). That motion was denied.

The objection, if any, and the motion to strike out the testimony of Mrs. Quinlan came too late.

*Missinger vs. Paterson Savings Inst.*, 91  
N. J. L. 652, 103 Atl. Rep. 178 (Court  
of Errors and Appeals).

“Two questions were asked of the plaintiff upon his direct examination and answered by him without objection having been interposed to their admissibility. After the plaintiff had answered the second question counsel for appellant said: ‘I object to that and move to strike it out.’ The objection came too late. The motion to strike out not only fails to indicate whether it was directed to question or answer but is also lacking in an essential requisite in that it fails to apprise the trial judge of a legal basis for the motion. The motion was therefore properly denied.”

It is submitted that this case presents the identical question passed upon in the *Missinger* case.

See also:

*Carlisle vs. Winant*, 194 Atl. Rep. 297.

## POINT TWO.

**The decree should have allowed interest from December 20th, 1920, upon the sum of \$3,000.00, the value of the Building & Loan Shares.**

The facts in this case differ from those of the decided cases wherein interest was denied upon funds had by a husband or wife from the other, in that the testimony here clearly indicates a conversion by Quinlan of the value of the Building & Loan Shares to his own use on December 20th, 1920, without the knowledge of his wife. The testimony clearly and uncontradictedly shows that the Building & Loan Shares were the property of the appellee (Mrs. Quinlan, nee Alice Mc-

Kenna) prior to her marriage; that they remained so thereafter and until maturity and that the decedent, Quinlan, seized the money, the matured value of the shares upon maturity, and converted it to his own use.

In all of the cases examined by the appellee where interest was refused as between husband and wife, the facts clearly indicated that the original possession of the money by either the husband or wife was voluntary.

*Riker vs. Riker*, 83 N. J. E. 198; 92 Atl. Rep. 586.

The suit was based upon a demand for an accounting by a wife against her husband for *moneys loaned*.

So also was *Collins vs. Babbitt*, 67 N. J. Eq. 165, 58 Atl. Rep. 481, where the original debt accrued by reason of the wife allowing her husband to have her money to continue as a deposit to aid him in carrying on his business.

*Ward vs. McLellan*, 173 Atl. Rep. 589, was also based upon a demand for repayment of money which had been voluntarily loaned. To the same effect was the decision in the case of *Fike vs. Fike* (128 Atl. 849).

BUT equity will not excuse the payment of interest upon funds, embezzled or converted as in the case *sub judice*. *Coddington vs. Stone*, 36 N. J. Eq. 361, wherein a husband acting as executor and trustee of an estate of his wife, converted the funds of that trust (eight hundred dollars) and upon an accounting, interest was allowed upon that sum.

Interest may be recovered on the proceeds of money wrongfully converted by the husband to his own use, 30 Corpus Juris 862; *In re Jaeger*, 1 Del. Co. (Pa.) 525.

An executor whose wife is residuary legatee may be held liable to account for interest on securities converted to his own use, even with her consent. 30 Corpus Juris 862; *Coddington vs. Stone, supra*.

Surely the Courts will not penalize an innocent spouse to the advantage of a husband who has embezzled her separate estate and who enjoyed the advantage the moneys converted by him from the time of the maturity of the Building & Loan shares to the date of his death.

That such penalty will not be imposed upon an innocent spouse whose money or property has been converted through the fraudulent act of the other. It is best illustrated by the decision of the Court of Chancery in the case of *Middaugh vs. Trimmer, administrator of Middaugh, deceased*, 34 N. J. Eq. page 82, affirmed by the Court of Errors and Appeals, 37 Equity 315.

The facts in that case are almost identical with the *Quinlan* case.

In the *Middaugh* case, the husband obtained the wife's separate estate which consisted of \$1,700.00 in money and was to have invested the same for her use and benefit. He never accounted for nor paid to her the income therefrom, nor the rents or profits of the real estate, all of which he had received. It was held in that case "that the estate of the husband be forced to account and that *interest* which is to be calculated with yearly rests and the defendant will be decreed to pay the amount in the due course of administration."

The Court held likewise in the case of *Trenton Banking Company vs. Woodruff*, 2 N. J. Eq. page 117, at page 125, using the following strenuous language:

"It is one of the plainest and most common grounds of equity jurisdiction to guard innocent parties from frauds and impositions,

and particularly *married women and infants.*”

There can be no doubt that it was the duty of the defendants here to show that Mrs. Quinlan had divested herself of title to her property. She denied it and the witnesses from the Building & Loan Association likewise denied that there had been any change of title on their records. The Court of Chancery in the case of *Black vs. Black*, 30 N. J. Equity, 211 at page 219, clearly enunciates that rule in the following language:

“When a husband receives money belonging to his wife the law presumes he receives it for her use and if he denies that he is liable the mere fact that he received it casts upon him the burden of showing that he has appropriated it according to her directions, or that she gave it to him.”

It is submitted, therefore, that the Estate of Robert Quinlan should be charged with interest in accordance with the prayer of the appellee herein.

### POINT THREE.

**There is ample evidence to sustain the decree of the Court of Chancery awarding the matured value of the Building & Loan Shares to the appellee.**

Without deeming it necessary to reiterate the facts set forth by the testimony in this case, the appellee urges that the evidence clearly supports the finding of the Trial Court that the matured value of the Building & Loan Shares is the property of Mrs. Quinlan. Even without her testimony the evidence is clear and convincing that

the decedent took the money from the Building & Loan Association; that there never was any assignment to him by Mrs. Quinlan; and that Account No. 2621, the account shown by the records of the Building & Loan Association to have been the one assigned by Robert Quinlan, the decedent, to Alice McKenna, later Alice Quinlan, his wife, continued in the same status until paid.

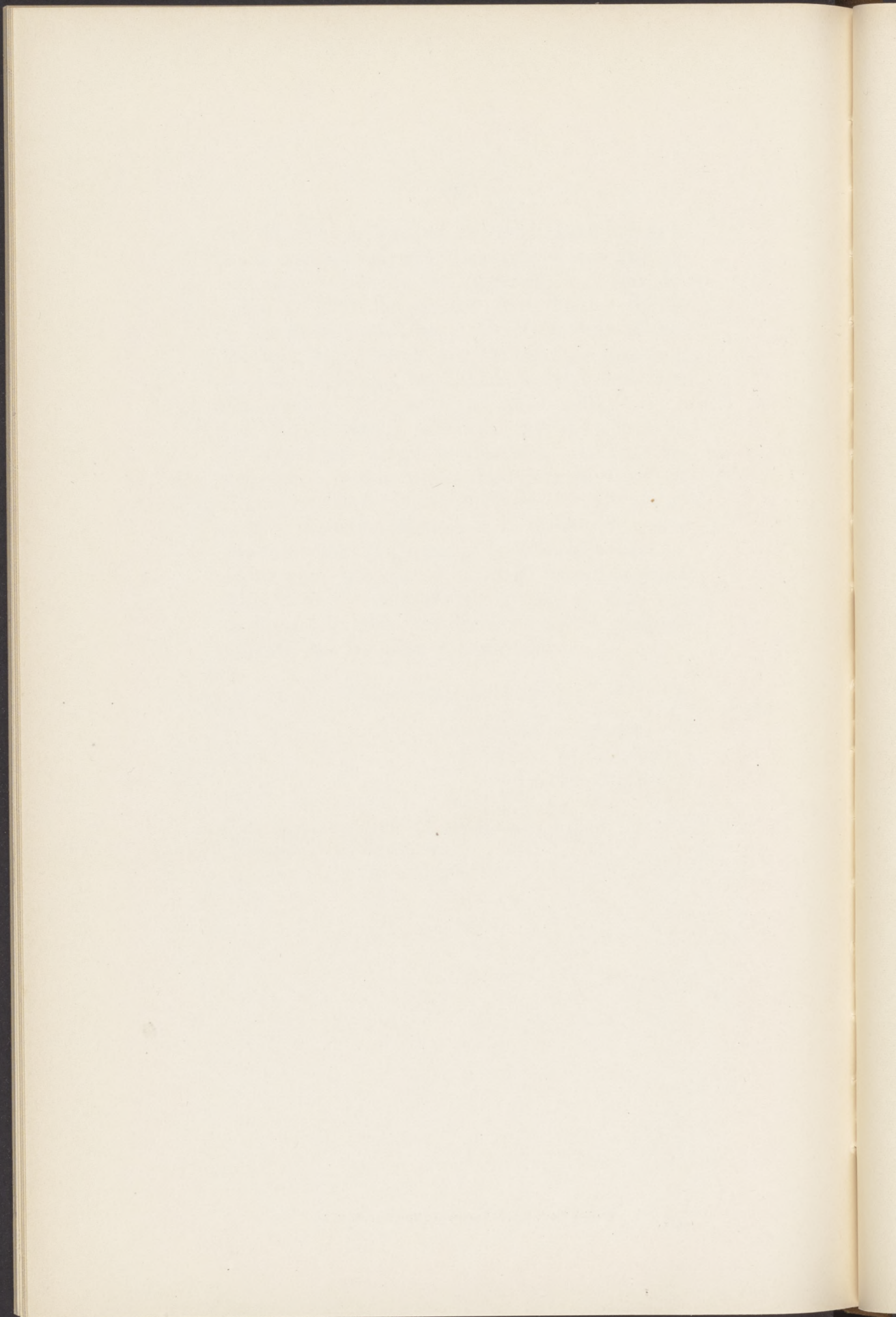
It is respectfully submitted that the appeal of the appellants herein be dismissed and that the appellee have this cause remitted to the Court of Chancery, there to have the Decree of that Court in this cause, modified so as to include therein a provision that the appellee be allowed lawful interest upon the sum of \$3,000.00 from December 20th, 1920, the date of the payment of that sum to Robert Quinlan, the decedent, as the matured value of the Building & Loan Shares.

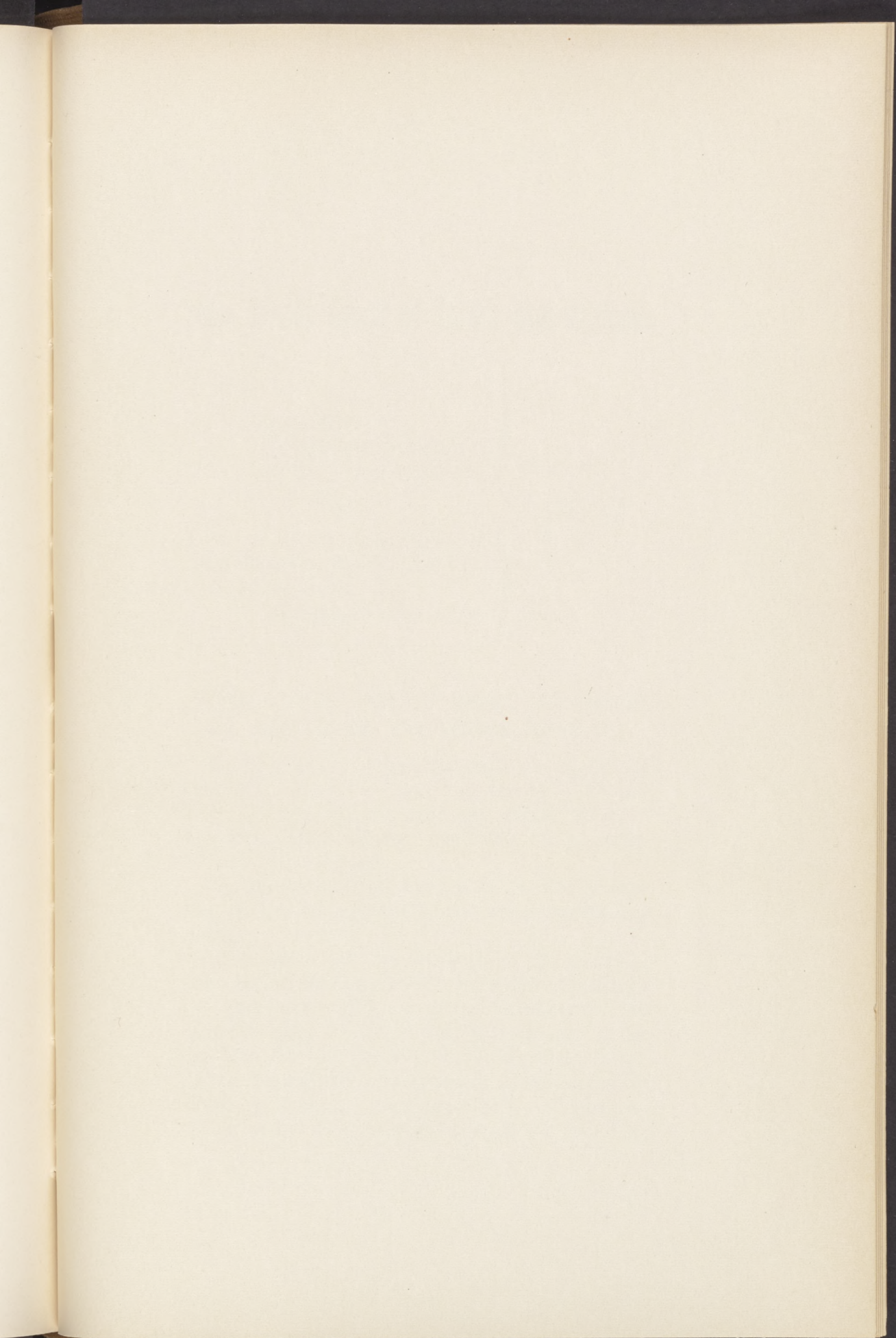
Respectfully submitted,

*Armstrong & Muller*  
 ARMSTRONG & MULLEN,  
 Solicitors of Appellee  
 and Cross-Appellant.

*Thomas J. Armstrong*  
 THOMAS J. ARMSTRONG,  
 Of Counsel.







Case No. 11 - May 1902

THE COURT OF COMMON PLEAS

IN AND FOR THE COUNTY OF [illegible]

DOES hereby certify that [illegible]

has been duly appointed [illegible]

and that he has taken the oaths of office and qualification

and is now acting as [illegible]

of the County of [illegible]

and that he is now acting as [illegible]

of the County of [illegible]

and that he is now acting as [illegible]

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of the County of [illegible]

and that he is now acting as [illegible]

of the County of [illegible]

## New Jersey Court of Errors and Appeals

Between

ALICE QUINLAN,  
*Complainant-Appellee*  
*and Cross-Appellant,*

and

FRANK X. QUINLAN, Executor of  
the Estate of ROBERT QUINLAN,  
deceased, *et als.*,  
*Defendants-Appellants.*

On Bill, &c.

On Appeal from  
the Court of  
Chancery.

### APPELLANTS' REPLY BRIEF TO BRIEF OF APPELLEE, ON CROSS APPEAL.

The appellants, in anticipation of the appellee's contention that the Court of Chancery should have allowed interest upon the decree of three thousand dollars (\$3,000) dealt with this question in their original brief.

The purpose of this brief is to further answer that part of the appellee's brief which covers this point.

We wish to call the attention of the Court to that part of the appellee's brief which states that the appellants' objection to the testimony of the appellee came too late. This is contained in the last two lines of page 11 of the appellee's brief. When the appellee was sworn as a witness in the Court of Chancery, the appellants' solicitor objected to her testimony in view of the fact that

she was a party to the suit and as such was not entitled to testify as to any transactions with the deceased (Case p. 33, ll. 30 to 40). The Court permitted the appellee to testify but reserved to the appellant his objection (p. 34, ll. 1 to 10).

### Law.

Appellee states in her brief that in all of the cases examined, interest was refused as between husband and wife only where the facts clearly indicated that the original possession of the money was voluntary. We submit that there is no lawful and proper testimony in the case at bar to the effect that the possession of the money in question by the decedent, if he ever received the said money, was not with the consent of the appellee. Of course, her testimony in that respect is contrary to Section 4 of the Evidence Act and is not entitled to consideration. It must, therefore, be assumed that if the decedent did receive this money, and if he were not entitled to it, he received it with the consent of the appellee.

We have argued in our original brief that the law of this State provides that as between husband and wife interest is not allowable during the continuance of the marriage relation unless it was especially stipulated for. *Collins v. Babbitt*, 67 N. J. Eq. 165. The appellee's brief disagrees as to this being the rule, and cites the cases cited by the appellants and points out to the Court that in all of these cases the possession of the money was voluntary while in the case at bar it was involuntary. In all of these cases, however, the rule is repeated that unless specifically stipulated, there shall be no interest allowed between husband and wife. Nothing is said in any of these cases as to the rule applying only when the

possession of the money in question is lawfully obtained. In the case at bar the only testimony that the decedent obtained possession of the building and loan shares or the proceeds thereof without the consent of the appellee, is the appellee's own testimony, which was duly objected to. This testimony, even were it permissible, would be entitled to little credence, certainly not sufficient credence to satisfy the Court that the decedent converted the property of the appellee. We contend that in order to establish such charge, which is tantamount to a crime, the evidence should be clear, strong and corroborated and as strong as evidence would have to be to sustain a criminal charge, as the appellee's claim is founded upon fraud and she must establish her case by strong proof such as is required in a fraud case. This she has failed to do and as we have said above there is no evidence, except her own testimony, that the decedent did convert her moneys or property to his own use.

In *Fike v. Fike*, 128 Atl. 850, the husband certainly did not come into possession of the wife's property voluntarily, particularly was its possession involuntarily obtained when he failed to keep his promise to give her certain shares of stock and an automobile in consideration of her releasing her dower right. The wife fully performed her part of the agreement, but he refused to perform his part. It cannot be argued that from the time he refused to perform his part of the contract that he was in possession of the wife's property voluntarily or through her consent. It was exactly the opposite. He refused to return to her her property or the equivalent thereof, and she was compelled to sue for specific performance and she succeeded in her

suit, but the Court refused to allow her interest, citing the rule that interest will not be allowed between husband and wife unless specifically stipulated for.

The case of *Coddington v. Stone*, 36 N. J. Eq. 361, is cited by the appellee. This case presents a different situation from the one in the case at bar, because in the cited case the husband was acting in a representative capacity and not individually, and the Court held that he would have to pay interest on the part of the estate which his wife was entitled to, which he had converted to his own use. At the conclusion of the Court's opinion in that case (p. 364), the Court refused to allow her interest on the sum which her husband had converted, saying that she seemed to have acquiesced in the conversion and in his nonpayment of interest to her. Assuming for the sake of argument that the decedent in the case at bar had converted the appellee's money, the same rule would apply because she became entitled to the proceeds of the building and loan shares, if they belonged to her, and if she had not given them to the decedent, back in 1920, or about fourteen years before this suit was started, and not until after the death of the decedent so that she must be deemed to have acquiesced in not only the possession of the property, but in the nonpayment of interest.

The appellee also relies upon *Middaugh v. Trimmer*, 34 N. J. Eq. 82. That case supports our contention and follows the rule in this State because it was specifically charged by the wife in that case and she was corroborated by many witnesses, and the agreement was in writing, that the husband should invest the wife's separate estate and account to her for the income and the rents thereof. The witness in the cited case testified that he had stated in their presence

that the money belonged to her and that he would keep it for her, and put it out at interest so that the rule was fully followed and the Court held that she was entitled to interest because it was stipulated for.

The case of *Trenton Banking Company v. Woodruff*, 2 N. J. Eq., page 117, at page 125, is cited. We do not find any reference in the said case to the requirement that a husband is obliged to pay interest to his wife.

The case of *Black v. Black*, 30 N. J. Eq. 211, at page 319, is also cited by the appellee, but we have been unable to find therein anything in reference to interest, but this case does go on to say on page 219 immediately after what the appellee has quoted on page 15 of his brief:

“This is the rule in respect to the corpus or principal; a different rule prevails as to interest or income. If he receives interest or income and spends it with her knowledge and without objection, a gift will be presumed from her acquiescence.”

It is respectfully submitted, for the reasons hereinabove contained and for the reasons contained in our original brief, heretofore filed in this cause, that the appellants should not be charged with interest; and that the decree of the Court of Chancery in respect to the ownership of the building and loan shares and the proceeds thereof, be set aside and vacated, and that it be decreed that the same belonged to the decedent and to his estate, and that the appellee's bill of complaint be dismissed.

ZIEGENER & BRENNER,  
*Solicitors of Defendants-Appellants.*

ROBERT H. BRENNER,  
*Of Counsel.*