

INDEX.

	Page
Amended Notice of Appeal	1
Assignment of Appeal	2
Answer to Petition of Appeal	3
Grounds for Appeal	4
Order of Reference	6
Bill of Complaint	7
Power	12
Complainants' Testimony	13
Clark S. Barrett, direct	14
cross	20
Allison H. Fleming, direct	25
cross	28
redirect	41
Mrs. Rose Le Beck, direct	42
cross	80
Mrs. Anna Blum, direct	95
cross	108
Defendants' Testimony	115
William S. Gluck, direct	115
cross	118
Sol C. Harris, direct	126
cross	128
Richard B. Morrell, direct	130
Reasons	132
Final Decree	138

INDEX.

	PAGE
Amended Notice of Appeal	1
Petition of Appeal	2
Answer to Petition of Appeal	3
Grounds for Appeal	4
Order of Reference	6
Bill of Complaint	7
Answer	12
Complainants' Testimony	13
Clark S. Barrett, direct	14
cross	20
Allison H. Fleming, direct	25
cross	28
redirect	41
Mrs. Rose Le Beck, direct	42
cross	80
Mrs. Anna Blum, direct	95
cross	108
Defendants' Testimony	115
William S. Gluck, direct	115
cross	118
Sol C. Harris, direct	126
cross	128
Richard B. Morrell, direct	130
Conclusions	132
Final Decree	138

NEW JERSEY Court of Errors and Appeals.

IN CHANCERY OF NEW JERSEY.

BETWEEN

HENRY J. TRAINOR ET AL.,

Complainants,

and

ROSE LE BECK ET AL.,

Defendants.

On Bill, etc.

AMENDED NOTICE OF APPEAL.

(Filed October 7, 1926.)

To the Within Named Complainants:

Take notice that the defendants appeal to the Court of Errors and Appeals of the State of New Jersey, from the whole and every part of the decree in this cause entered in the Court of Chancery on the 17th day of September, 1926.

Said order was made by the Chancellor, Hon. Edwin R. Walker, and on the advice of Vice-Chancellor Robert H. Ingersoll.

Dated this 6th day of October, 1926.

EMERSON RICHARDS,
*Solicitor for and of Counsel
with Defendants.*

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

EMERSON RICHARDS,
Of Counsel.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10

BETWEEN		
HENRY J. TRAINOR ET AL.,	}	On Appeal from Chancery.
Complainants.		
and		
ROSE LE BECK ET AL.,		
	Defendants.	

PETITION OF APPEAL.

20

(Filed October 1, 1926.)

*To the Honorable, the Court of Errors and Appeals in
the Last Resort in all Causes:*

The petition of Rose Le Beck and Anna Blum, the appellants in the above stated cause, respectfully show that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the day of, 1926, wherein the said petitioners were defendants and Harry J. Trainor et al. were complainants, and from
30 the whole and every part thereof, to wit: that the said decree convicts the defendants of the violation of the restrictive covenants in the deed mentioned in the bill of complaint when the bill of complaint should have been dismissed. And your petitioners humbly appeal from every part of the said decree of the said Chancellor upon the ground that the same is erroneous. Your petitioners therefore pray that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set

aside and for nothing holden. And that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

EMERSON RICHARDS,
Solicitor and of Counsel with Appellants.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10

BETWEEN		
HENRY J. TRAINOR ET AL.,	}	On Appeal.
Complainants-Respondents,		
and		
ROSE LE BECK ET AL.,		
	Defendants-Appellants.	

ANSWER TO PETITION OF APPEAL.

(Filed October 2, 1926.)

20

The answer of the above named respondents to the petition of appeal of the above named appellants. These respondents, Henry J. Trainor, Richard B. Morrell, Margaret Fleming and Edwin A. Murrow, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, say and admit that a decree was on the 17th day of September, 1926, made and entered in the Court of Chancery in the cause for the purpose mentioned in the said petition, as is therein stated; but
30 as to the substance and form thereof these respondents pray to refer thereto when the same shall be produced, and these respondents are advised and believe that the said decree is agreeable to equity and they pray that the same may be affirmed with costs to be adjudged to these respondents.

THOMPSON & HANSTEIN,
Solicitors for and of Counsel with
Complainants-Respondents.

NEW JERSEY COURT OF ERRORS AND APPEALS.

HENRY J. TRAINOR ET AL.,	}	On Appeal from the Court of Chancery.
Complainants-Appellees,		
v.		
ROSE LE BECK ET AL.,		
Defendants-Appellants.		

10

GROUNDS FOR APPEAL.

(Filed November 15, 1926.)

1. Because the learned Vice-Chancellor erred in advising a final decree restraining the defendants, as follows:

"That the defendants be and they are hereby enjoined and restrained from the use of the premises described in the bill of complaint, except exclusively for dwelling house purposes."
- 20 2. Because the decree determined as a matter of fact and because the learned Vice-Chancellor found as a matter of fact:

"That the use made by the defendants of the premises referred to in the bill of complaint, is a violation of the restrictive covenants upon the said premises."
3. Because the decree awarded the complainants costs of the suit and a counsel fee of one hundred and fifty dollars.
4. Because the learned Vice-Chancellor erred in advising a decree against complainants, contrary to the relief sought by complainant's bill of complaint.
- 30 5. Because the learned Vice-Chancellor erred in advising a decree upon a theory at variance with that upon which issue was joined by the bill and answer.
6. Because the decree appealed from restrains defendants from using the premises upon a theory different from that upon which the bill of complaint was founded and different from the specific prayer of the complaint.

7. Because the decree restrains the defendants from entertaining guests who contribute to the expense of the household.

8. Because the decree restrains defendants from entertaining relatives or guests, although they are not maintaining a boarding-house.

9. Because the learned Vice-Chancellor erred in advising a decree, restraining the defendants from entertaining relatives or guests in their home.

10. Because the learned Vice-Chancellor erred in advising a decree on the ground that the use to which the defendants were putting the property was not that of a private dwelling-house. 10

11. Because the learned Vice-Chancellor erred in advising a decree and in finding as a matter of law, from the facts, that the occupation of the premises as a residence for two or more families constituted a violation of the covenants in the deed.

EMERSON L. RICHARDS,
Solicitor for and of Counsel with Appellants. 20

Due and legal service of the within Grounds of Appeal is hereby acknowledged this 13th day of November, 1926.

THOMPSON & HANSTEIN,
Solicitors for and of Counsel with Appellee.

IN CHANCERY OF NEW JERSEY.

BETWEEN
HENRY J. TRAINOR ET AL.,
Complainants,
and
ROSE LE BECK ET AL.,
Defendants.

On Bill, etc.

ORDER OF REFERENCE.

(Filed August 10, 1925.)

It is, on this 31st day of July, 1925, on motion of Thompson & Hanstein, of counsel with the complainants, ordered, that the above stated cause be referred to the Honorable Robert H. Ingersoll, one of the Vice-Chancellors of this court, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein.

E. R. WALKER, C.

On motion of
THOMPSON & HANSTEIN,
Solicitors of Complainants.

IN CHANCERY OF NEW JERSEY.

HENRY J. TRAINOR ET AL.,
Complainants,
v.
ROSE LE BECK ET AL.,
Defendants.

BILL OF COMPLAINT.

(Filed June 25, 1925.)

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

Complainants, Henry J. Trainor, Margaret Fleming, Edwin A. Murrow and Richard B. Morrell, all of the city and county of Atlantic, State of New Jersey, respectfully show that:

1. They file this bill on behalf of themselves and 20 others similarly interested, who may see fit to join therein.

2. For a number of years before January 1st, 1920, the Atlantic City and Chelsea Improvement Company was the owner of a large tract of land in Atlantic City lying between Atlantic Avenue and a point 106 feet east of Elberon Avenue between Atlantic Avenue and the Atlantic Ocean, and being such owner it mapped said premises and caused the same to be filed in the Clerk's Office of Atlantic County, on which appears Atlantic Avenue, Atlantic Ocean, Dover Avenue, Elberon Avenue, Ridgway Avenue and Annapolis Avenue.

3. From time to time thereafter it granted and conveyed a portion of said tract or land and in each and every deed there were inserted the following restrictive covenants, to wit:

1. That no building or buildings shall be erected upon the above described premises except a single dwelling house to be devoted exclusively to private dwelling-

house purposes. A brick or stone private garage excepted.

2. That no building or buildings shall be erected upon the above described premises anywhere nearer to the front property line than twenty feet, nor within five feet of the side or rear lines; that no bay window or other similar structure shall extend more than two and one-half feet beyond the main building or part thereof of which it forms a part, and that no porch veranda
10 shall have an elevation of more than six feet above the curb line of the avenue upon which the land herein described fronts, and shall not be more than twelve feet in width, or within six feet of said property lines, except on the ocean side of dwellings erected on the beach front lots.

4. That no buildings shall be erected upon a lot having a frontage less than fifty feet on said streets between and including Elberon and Annapolis Avenues, and as said avenues are at present plotted, except a thirty foot
20 lot on the west side of Ridgway Avenue fifty feet south of Atlantic Avenue as now plotted.

3. That no buildings shall be erected upon the land herein described costing less than sixty-five hundred dollars (\$6,500.00).

5. That no overhead telephone, telegraph or electric light or other electric wires or poles or supports for the same shall be erected or maintained on the land herein described, except such as may be erected thereon through legal proceedings.

6. That no undertaker shall be permitted to conduct
30 business on any part of the herein described property.

7. That no signs of any kind excepting house numbers or physicians' signs of the usual size, shall be placed or erected upon or within any part of the herein described property.

4. Said restrictions have been observed in said tract and said tract is now devoted to high class private residential purposes.

5. Complainants, Henry J. Trainor is the owner of premises No. 127 South Dover Avenue; Margaret Fleming is the owner of premises No. 112 South Dover Avenue; Edwin A. Murrow is the owner of premises No. 105 South Dover Avenue and Richard B. Morrell is the owner of premises No. 116 South Elberon Avenue, all of which premises are within the tract above referred to.

6. Defendants, Rose Le Beck and Anna Blum, are the owners of that part of the above described tract
10 known as No. 109 South Dover Avenue. Said defendants, either one or both of them, is conducting and maintaining upon said premises a boarding or lodging house, wherein boarders and lodgers are accepted by them at stipulated prices, and are using the premises so owned by them for boarding or lodging house purposes.

7. That complainants are unable to ascertain whether said boarding or lodging house is actually conducted by both of said defendants, but the same is being conducted by one or the other of them or both; that said boarding
20 or lodging house is conducted with the knowledge, consent and agreement of both of them; all of which is in violation of the restrictive covenants above set forth.

Complainants are without adequate remedy in the courts of law and therefore pray:

1. That Rose Le Beck and Anna Blum, who are the defendants to this suit, may answer this bill of complaint, without oath, and each statement therein made;

2. That an injunction may issue to restrain the said Rose Le Beck and Anna Blum, or either of them, from conducting upon their premises a boarding or lodging
30 house, and to restrain them from violation of the above restrictions, and for such other and further relief as may be just and equitable;

3. That a writ of subpoena may issue, commanding said defendants to answer this bill of complaint and to abide by such decree as this court may make in the premises.

THOMPSON & HANSTEIN,

Solicitors for and of Counsel with Complainants.

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

Isaac Cooper, of full age, being duly sworn according to law upon his oath deposes and says that on or about the day of, he wrote a letter to defendant Rose Le Beck requesting accommodations for himself and family for the week-end at her house at No. 109 South Dover Avenue, Atlantic City, New Jersey; that in answer to his letter deponent received a letter, a copy of which is attached to this affidavit; that subsequently, to wit, on June 12th, 1925, deponent, together with his wife and children, went to said No. 109 South Dover Avenue about three o'clock in the afternoon, and there interviewed Rose Le Beck, and requested from her accommodations for himself and family for the week-end of June 12th, 1925; that the said Rose Le Beck advised this deponent that she was conducting a boarding house at that address; that had deponent advised her that he was coming down for the week-end she would have arranged accommodations for him at the rate of \$10 a day per person, but not having heard from him she had promised her only remaining unrented rooms to another party; that if deponent would be willing to wait to find out whether or not the other party was coming, and if it developed that said other party was not coming, she would be glad to let him have that room at the above rate.

That deponent accordingly waited until 10 o'clock that evening at which time the party referred to by defendant Rose Le Beck arrived, and the said Rose Le Beck then advised deponent that she would not be able to accommodate him but would be able to accommodate his wife and children; that accordingly deponent's wife and said children did stay at said premises No. 109 South Dover Avenue over that night and had breakfast there, for which deponent paid to the said Rose Le Beck the sum of \$16.75 for their board and lodging.

Defendant Rose Le Beck further told this deponent that she had to be very careful in the renting of rooms, inasmuch as the property in which she was conducting her said boarding house was restricted and she understood that the neighbors were endeavoring to secure evidence to restrain her from operating her said property as a boarding house, and that she had to be very careful what persons she took into her house as guests, as the neighbors had caused her all kinds of trouble.

Deponent further says that said Rose Le Beck promised to reserve a room for him and his family over the Fourth of July, 1925, and that the price would be \$10.00 per day per person.

ISAAC COOPER.

Sworn and subscribed before me this 24th day of June, 1924.

CHARLES J. TALK,
Np. No. 311 Queen Co.

Atlantic City, N. J. 20

Mr. Isaac Cooper.

Dear Sir:

As my house is a small one, I cannot afford to accept any but seasonal bookings for the two summer months. That is for all week. I am indeed sorry.

Hoping to hear from you at some other time, I remain,

Yours Truly,
ROSE LE BECK.

IN CHANCERY OF NEW JERSEY.

HENRY J. TRAINOR ET AL.,	}	On Bill.
Complainants,		
v.		
ROSE LE BECK AND ANNA BLUM,		
Defendants.		

10

ANSWER.

(Filed July 16, 1925.)

Defendants, answering the bill of complaint heretofore filed in the above stated cause by Henry J. Trainor, Margaret Fleming, Edwin A. Murrow and Richard B. Morrell, say:

1. Defendants are not advised on whose behalf the bill is filed and leave complainants to their proof thereof.
- 20 2. Defendants have no knowledge of the matters of things alleged in paragraph two and leave complainants to their proof thereof.
3. Defendants have no knowledge of the matters of things alleged in paragraph three and leave complainants to their proof thereof.
4. Defendants deny paragraph four.
5. Defendants have no knowledge of the facts alleged in paragraph five and leave complainants to their proof thereof.
6. Defendants admit that they are the owners of the premises known as 109 South Dover Avenue; they deny
- 80 all of the other allegations contained in paragraph six.
7. Defendants deny the allegations contained in paragraph seven.
8. Defendants say that complainants have no cause of action against them and that they are not entitled to an injunction to restrain said defendants from conducting upon their premises a boarding house or lodging house, or to restrain them from violating any of the restrictions

recited in complainants' bill of complaint, but say that complainants and others in said tract have violated the said restrictions and that the said locality has changed and is no longer a residential section and that the said complainants have acquiesced in the use of said premises for a long period of time and of other premises in the said tract in violation of the restrictions, whereupon defendants pray that the said bill of complaint be dismissed with their costs in his cause most wrongfully sustained.

10

EMERSON RICHARDS,
Solicitor for and of Counsel with Defendants.

IN CHANCERY OF NEW JERSEY.

BETWEEN	}	On Bill, etc. Final Hearing.
HENRY J. TRAINOR ET AL.,		
Complainants,		
and		
ROSE LE BECK AND ANNA		
BLUM,		
Defendants.		

20

ATLANTIC CITY, N. J., January 7th, 1926.

TESTIMONY.

Before Hon. R. H. Ingersoll, Vice-Chancellor
Appearances—For the Complainants, Messrs. Thompson & Hanstein; for the Defendants, Emerson L. Richards, Esq.

30

Mr. Hanstein—I may state, with Senator Richards' consent I am going to use Mr. Barrett to testify from the title company records as to the placing of restrictions on the entire area.

The Court—I take it there is no objection?

Mr. Richards—There is no objection to the use of the title company records for that purpose.

Clark S. Barrett, sworn.

Direct examination, by Mr. Hanstein.

Q. Mr. Barrett, you are connected with the South Jersey Title and Finance Company?

A. I am.

10 Q. What is your position there?

A. Secretary of that company.

Q. You have the records of the conveyances from the Atlantic City and Chelsea Improvement Company covering land on Elberon, Dover, Ridgeway and Annapolis Avenues, between Atlantic Avenue and the beach?

A. I have.

Q. Will you please read into the record, please, the conveyances in that neighborhood and state whether or not they were subject to restrictions.

20 A. That entire tract between Annapolis Avenue and a point one hundred and six feet east from the east line of Elberon Avenue was owned by the Atlantic City and Chelsea Improvement Company and they made various deeds as follows: Southeast corner Elberon and Atlantic, 50 by 106, to one Eisenberg, deed recorded in book 651, page 58; east line of Elberon, fifty feet south of Atlantic, 50 by 106, to one Bowen, book 650, page 455; east line of Elberon, one hundred feet south of Atlantic, east 106 by south 150, to Lewis B. Glenn, book 471, page 383; east line of Elberon, 250 feet south of Atlantic, 50 by 106, to one Ransley, book 413, page 216; 30 east line Elberon, 300 feet south of Atlantic Avenue, east 106 and south to the Boardwalk to the Finance Company of New Jersey, book 675, page 473.

On the west side of Elberon Avenue, southwest corner of Atlantic and Elberon, 50 by 106, to J. J. McNerney, book 458, page 67; west side of Elberon, fifty feet south of Atlantic, 50 by 106, to John J. McClellan, book 458, page 64; west side of Elberon, 100 feet south of

Atlantic, 50 by 106, to Florence M. Riddle, book 620, page 26; west line of Elberon, 150 feet south of Atlantic, 50 by 106, to H. J. Trainor, book 503, page 48; west line of Elberon, 200 feet south of Atlantic, 50 by 106, to I. J. Horstmann, book 441, page 285; west line of Elberon, 250 feet south of Atlantic, 50 by 106, to I. J. Horstmann, book 455, page 216; west line of Elberon Avenue, 300 feet south of Atlantic, west 106 by south to the Boardwalk, The Finance Company of New Jersey, book 675, page 473.

10

On Dover Avenue, which is the next street below Elberon, southeast corner Atlantic and Dover, 50 by 106, Richard McAllister, book 458, page 90; east line Dover, 50 by 106, to M. J. O'Meara, book 457, page 99; east line of Dover, 100 feet south of Atlantic, 100 by 106, to James Kater, book 453, page 240; east line of Dover, 200 feet south of Atlantic, 50 by 106, to S. C. Clark, book 420, page 199; east line of Dover, 250 feet south of Atlantic, 50 by 106, to William Riddle, book 458, page 93; east line of Dover, 300 feet south 20 of Atlantic, east 106 feet by south to the Boardwalk, to William Riddle, book 543, page 141.

On the west side of Dover, southwest corner of Dover and Atlantic, 50 by 85, to George W. Betz, book 416, page 232; west line Dover, 50 feet south of Atlantic, 50 by 85, to C. T. Risley and M. Risley, book 603, page 447; west line Dover, 100 feet south of Atlantic, 50 by 85, to Curtis Frambes, book 632, page 460; west line Dover, 150 feet south Atlantic, 50 by 85, to D. H. Stroud, book 620, page 64; west line Dover, 200 feet south of Atlantic, 50 by 85, to Richard McAllister, book 30 458, page 84; west line Dover, 250 feet south of Atlantic, west 85 by south to the Boardwalk, the last name is McEwen, I think the first name is Taylor, book 418, page 92.

On Ridgeway Avenue, which is the next street below, the southeast corner Atlantic and Ridgeway, 50 by 85, to Richard McAllister, book 458, page 87; east line of Ridgeway, 50 feet south of Atlantic, 50 by 85, M. L.

Evans, book 588, page 27; east line Ridgeway, 100 feet south of Atlantic, 50 by 85, M. L. Evans, book 588, page 29; east line Ridgeway, 150 feet south of Atlantic, 50 by 85, to J. N. Reiber, book 458, page 81; east line of Ridgeway, 200 feet south of Atlantic, 50 by 85, to S. E. Hughes, book 468, page 370; east line Ridgeway, 250 feet south of Atlantic, 50 by 85, to McEwen, book 418, page 92; east line Ridgeway, 300 feet south of Atlantic, east 85 by south to the Boardwalk, to McEwen,
10 book 412, page 356.

Q. You said south to the Boardwalk?

A. Yes, sir.

Q. Is that correct?

A. Really goes to the ocean line.

On the west line of Ridgeway, southwest corner Atlantic and Ridgeway, to Theresa A. Maguire, book 420, page 434, 80 by 70; west line of Ridgeway, 70 feet south of Atlantic, west 80 and south 20, to Charles Seger, book 419, page 63; west line of Ridgeway, 90 feet south
20 of Atlantic, west 80 by south 50, to Charles Seger, book 402, page 10; west line of Ridgeway, 140 feet south of Atlantic, west 80 by south 50, to M. A. Lonsdale, book 445, page 270; west line of Ridgeway, 190 feet south of Atlantic, west 80 by south 50, to John A. Taylor, book 452, page 463; west line of Ridgeway, 240 feet south of Atlantic, west 80 by south to the ocean, to T. N. McSweeney, book 520, page 179.

Q. Mr. Barrett, does that include all the land lying between Annapolis Avenue and point 106 feet east of Elberon Avenue and between Atlantic Avenue and the
30 Atlantic Ocean?

A. It does.

Q. Do you have a copy of the restrictions on that land?

A. Yes.

Q. Will you let me have them, please.

A. I have one of the forms that they used.

Q. Is this a copy of the restrictions on that property?

Mr. Richards—If your Honor please, I object to that question, if he wants to get from this witness that every one of these properties had this same form of restriction in it I have no objection, but that is not the question.

Mr. Hanstein—I will withdraw it. I didn't want him to put his paper in evidence. I will put mine in.

The Court—That wasn't the objection. The objection was to the present order of proof, 10 really.

Mr. Hanstein—I understand that.

A. The copies of the Atlantic City and Chelsea restrictions, yes. I don't have a separate copy for each lot, but I have quite a number of copies here.

Q. You have the restrictions that were inserted in these deeds on this tract?

A. Yes.

Q. Will you produce it, please.

(Paper produced.)

20

Mr. Hanstein—I offer it in evidence.

The Court—Of course it has no probative force until it is shown that it is in these respective deeds.

Q. Is that the restriction imposed in these various deeds?

Mr. Richards—I object. It seems to me the question must be limited to whether or not a restriction similar to this was present in every one of the deeds that were just mentioned.

The Court—No, I will permit the question whether this restriction is in the deeds.

08

A. All of the lots were restricted by a restriction of that wording or very similar thereto, with the exception of the lands to Seger on the west side of Ridgeway Avenue south of Atlantic.

Mr. Hanstein—I might call your Honor's attention to the fact that there is a specific refer-

ence to that in the restriction. I offer that in evidence.

The Court—I will permit it.

(Paper admitted and marked *Exhibit C 1.*)

10 Mr. Richards—If your Honor please, I am pressing my objection to this line on the theory in order to bind us, he must show that a restriction similar to that now offered is present in each one of the deeds from this improvement company to these original owners and that is not question that he has propounded and not the answer that he has received.

The Court—I understand the answer is that it is contained in all the deeds save one tract of land and it may or may not prevent the restrictions becoming a general scheme by the omission of one, but the complainant is entitled to make that proof. I will permit the testimony.

20 Q. Mr. Barrett, will you produce the restrictions in the Seger deed?

A. The Seger deed for the lot on west side of Ridgeway, 90 feet south of Atlantic line, south 50 by west 80, under and subject nevertheless to the following condition and restriction that no building to be erected on said premises to be used for any other purpose than a private dwelling.

Q. That was the Seger conveyance you referred to?

30 A. That was the Seger conveyance I referred to, yes. Then for the twenty feet parcel, I referred to Seger two parcels one fifty feet and one twenty feet. The restriction in the twenty feet parcel is "It being understood and agreed between the parties hereto as a part of the consideration hereof that no building shall at any time hereafter be erected on the lands hereby conveyed nor on the lands adjoining the lands herein described now to the north in width of twenty feet and the same depth as the depth of the land hereby conveyed, without the consent of the parties hereto, or its succes-

sors, heirs and assigns respectively. Then that is followed by the additional restrictions.

Q. What do you mean by the additional restrictions, these restrictions as offered in evidence?

A. Yes.

The Court—You mean the entire restriction that no building shall be erected?

A. Yes, that is followed by the entire restriction and with that addition. That applies, your Honor, only to the twenty-foot strip.

10 Q. Will you state, please, which one of the properties as you have described them is 109 South Dover Avenue, now owned by Rose Le Beck and Anna Blum?

Mr. Richards—I object to the question.

There is no proof it is owned by Rose Le Beck and Anna Blum.

Mr. Hanstein—Admitted in the answer.

A. I find that Rose Le Beck and Anna Blum own the property on the east line of Dover two hundred feet south from the intersection of Atlantic and Dover, running east parallel with Atlantic 106 feet, south parallel with Dover fifty feet, west parallel with Atlantic 106 feet to the east line of Dover, north in the east line of Dover, fifty feet to the place of beginning.

Q. Which one of these tracts is owned by Margaret Wray?

Mr. Richards—I object.

The Court—Margaret Wray is not a party to these proceedings.

Mr. Hanstein—I am going to show that Mrs. Wray subsequently married Mr. Flemming and 30 is now one of the parties to this suit.

Mr. Richards—I object. I permitted the title company records to be used for one purpose, not for the purpose that is now expected.

Mr. Hanstein—All right. I have the deed. I will introduce it. I thought that would save a little time.

(Question withdrawn.)

Cross examination, by Mr. Richards.

Q. Mr. Barrett, lets find out about these exceptions. When was the property that was conveyed to Seger beginning in the west line of Ridgeway Avenue, 70 feet south from the intersection formed by the south line of Atlantic Avenue and the west line of Ridgeway Avenue, conveyed by the Atlantic City and Chelsea Improvement Company to Seger?

A. Deed was dated eleventh day of November, 1909.
10 It was recorded second day of December, 1909, book 419 of deeds, page 63.

Q. Now when was the other Seger property beginning ninety feet south?

A. That was on the fifth day of March, 1909, recorded eighth day of March, 1909, book 402 of deeds, page 10.

Q. Was that the first deed that was given on this tract of land or are there other deeds that antedate it?

A. I can answer that if you will give me about a
20 minute. Mr. Richards, it appears to be the first deed that was given on that tract. That was given in March, 1909. The next deeds were given in October, 1909, October and November they made all of the conveyances. The Le Beck property was conveyed by the Atlantic City and Chelsea Improvement Company to Samuel C. Clark on November 20, 1909, deed recorded January 17, 1910, book 420, page 199.

Q. Now, Mr. Barrett, turning to the two Seger deeds that we have just mentioned, did either of them relate to property described in restriction number four, to wit,
30 except a thirty-foot lot on the west side of Ridgeway Avenue fifty feet south of Atlantic Avenue as now plotted?

A. I don't know how to reconcile that unless that the description—

Q. Then it doesn't in fact relate to either of the descriptions that you have read in the record concerning the Seger deeds?

A. No, the Seger deed begins seventy feet south.

Q. And ninety feet south?

A. And ninety feet south.

Q. And doesn't cover property described in the fourth restriction?

A. Frankly, Mr. Richards, I don't know what they attempted to mean by that.

Q. But it doesn't, as a matter of fact, does it?

A. It doesn't seem to describe it, no.

Q. Now in all of these other deeds the restrictions
10 you refer to are seven in number, are they not?

A. The restrictions are the same in language except I think number one in some of them said a brick or stone garage to accommodate one automobile, that seems to be the only one.

The Court—Added the word “to accommodate one?”

A. In some of the deeds, yes.

Q. So that they are not all alike in so far as number
one is concerned?

20

A. Yes.

Q. The restriction is that no building shall be erected except a single dwelling house devoted exclusively to private dwelling house purposes and you say that some of the—added the following sentence—

A. One item said a brick or stone private garage suited for one automobile.

Q. So that there is a variation in the first restriction to that extent?

A. Yes.

Q. Now the second restriction relates to no building shall be erected upon the premises nearer to the front property line than twenty feet nor within five feet of the side or rear lines, etc., and then relating to the verandas and all that sort of thing. Is that the identical language that is used in all of the deeds?

A. To the best of my knowledge it is.

Q. Now number three, no building costing less than sixty-five hundred dollars; was that restriction in there?

A. Yes, sir.

Q. Number four, no building shall be erected on a lot having a frontage less than fifty feet on such street between, including Elberon and Annapolis Avenues?

A. Yes.

Q. That restriction is in all the deeds?

A. Yes.

Q. No overhead telephone, telegraph lines, etc. shall be erected, that is in the deeds?

10 A. Yes, sir.

Q. Number six, no undertaker shall be permitted to conduct his business on the part of the premises?

A. Yes, sir.

Q. Number seven, no signs of any kind except house numbers, or physician signs shall be erected within any part of the described property?

A. That is right.

Q. That is correct; that is the seven of them?

A. Yes.

20 Q. Were all seven of these restrictions placed in the two properties conveyed to Seger according to the record here?

A. Not of the fifty feet; well, they weren't all placed there.

Q. What was there placed on the fifty-foot lot?

A. On the fifty-foot lot, the restriction reads: Under and subject nevertheless to the following condition and restriction, no building is to be erected on said premises to be used for any purpose other than a private dwelling.

Q. That is all the restriction?

A. That seems to be all the restriction.

By the Court.

Q. That fifty-foot lot is which one?

A. West line of Ridgeway, ninety feet south of Atlantic.

Q. Which date?

A. Bears date March ninth, 1909.

Q. That is the first deed?

A. That is the first deed that they gave.

By Mr. Richards.

Q. Referring to the second conveyance to Seger, were all of the seven restrictions that we have just read or described in that deed?

A. I believe so, yes, sir.

Q. All of them?

A. And with an additional restriction besides, additional ones besides.

By the Court.

10

Q. What was that additional clause besides? I think you read it once.

A. It being understood and agreed by and between the parties hereto, and as a part of the consideration hereof, that no building shall at any time hereafter be erected on the land hereby conveyed nor on the land adjoining the land herein described.

By Mr. Hanstein.

Q. This is seventy feet south of Atlantic that you say 20 had the printed restriction?

A. That had the printed restrictions, yes.

Q. What width was that on Ridgeway?

A. That was the twenty-foot lot.

Q. And this one that began ninety feet south was a fifty-foot lot?

A. Was a fifty-foot lot, yes.

Q. That didn't have the printed restriction?

A. That didn't have the printed restriction.

Q. But it had a prohibition against the use of the property for anything other than a private dwelling? 30

A. Yes.

By the Court.

Q. And that was the first deed?

A. Given by the company.

By Mr. Hanstein.

Q. Will you state for the benefit of the record the order in which these streets are laid out beginning from east to west?

A. From east to west the first street is Elberon, Dover, Ridgeway and Annapolis.

By the Court.

Q. Can you tell me approximately the size of this tract of land?

A. From the east line of Annapolis Avenue running eastwardly along Atlantic Avenue to the most easterly line of the restricted tract was seven hundred and eighteen feet and it is four hundred and twenty-five feet from Atlantic Avenue to the Boardwalk.

By Mr. Richards.

Q. Mr. Barrett, I want to ask you this question, if you know: do you know whether or not buildings costing more than sixty-five hundred were in fact erected on these lots?

A. Mr. Richards, I couldn't answer you whether there have been violations of the restrictions or not. I know there are valuable buildings there but I don't know what they cost.

Q. You don't know anything about any of the other restrictions?

A. No.

Mr. Hanstein—I want to offer in evidence the deed from Atlantic City and Chelsea Improvement Company to Curtis Frambes, which is dated the eleventh of June, 1920, recorded 632, page 460, etc.

(Deed admitted and marked *Exhibit C 2.*)

Deed from Curtis Frambes and wife to Margaret L. Rea, dated eleventh of October, 1920, recorded 639, page 375.

(Deed admitted and marked *Exhibit C 3.*)

Mr. Richards—Objected to on the ground they haven't any probative force here, and secondly that is not the proper method of putting them in.

The Court—What is the objection, to the method of proof?

Mr. Richards—Method of proof, as the mere presence of a deed is not sufficient evidence, have to prove that by either the witnesses to the deed—

The Court—I think that is the exception where the deed has been recorded. I will admit that if that is the objection. Of course the probative force is different.

Mr. Richards—What is the object of that, anybody party to this suit?

Mr. Hanstein—I have previously stated Mrs. Rea is now Mrs. Fleming a party complainant.

Allison H. Fleming, sworn.

20

Direct examination, by Mr. Hanstein.

Q. Where do you live, Mr. Fleming?

A. 112 South Dover, Atlantic City.

Q. Are you the husband of Margaret Rea Fleming?

A. I am.

Q. And is your wife the lady referred to in the deed made to Margaret Rea?

A. That is right.

Q. Her name of course is now Margaret Rea Fleming?

A. Margaret Rea Fleming.

30

Q. You are familiar with the general character of the neighborhood that was originally conveyed from the Atlantic City and Chelsea Improvement Company, are you not?

A. Yes, sir.

Q. What is the general character of that neighborhood?

A. You mean as to the character of buildings?

Q. Yes, sir.

A. The buildings will compare very favorably with any other part of the city. In fact the house on the corner of Dover lately was sold I believe for a hundred—

Mr. Richards—All this is objected to and ask it be stricken out.

The Court—That is not responsive to the question.

10 Q. Just tell the general character, business neighborhood, factory district or residential district? If it is a residential district is it workmen's homes or is it high class houses?

A. They are high class—

Mr. Richards—Objected to on the ground leading.

The Court—I will permit it. Of course it is leading. You may answer.

A. They are high class houses. No business that I
20 know of is conducted there with the exception of what we believe—

Mr. Richards—I object to what he believes.

The Court—Yes.

Q. What about the houses in this neighborhood, are they—do you have some idea as to the value of the houses down there—do you know, with the exception of the property occupied by the defendants, of any property in that neighborhood that is not used for residential purposes?

Mr. Richards—I object to that, if your Honor please.

80

The Court—I will permit that.

A. Shall I answer?

Q. Yes.

A. I don't know of any.

Q. You don't know of any?

A. No.

Mr. Richards—I object to that and ask it be stricken out. The question is whether he knows.

Mr. Hanstein—He says he doesn't know of any.

Mr. Richards—Question is whether he knows, not whether he knows of them but whether he knows.

The Court—That is the question, whether he knows. 10

Mr. Richards—Answer is not responsive. Ask it be stricken out.

Q. Do you know whether or not any property with the exception of the property of the defendant is being used for anything other than residence purposes?

Mr. Richards—That is objected to, if your Honor please.

The Court—Question is if he knows. I will permit him to answer that yes or no, question is do you know, not whether they are or not, but 20 have you the knowledge of the fact?

A. No property is being used—

Mr. Richards—Wait; I object.

The Court—Perhaps you didn't understand me, Mr. Fleming, the question is not what the facts are, but if you have knowledge, not what that knowledge may be, but do you have knowledge whether or not they are used for other purposes. Do you understand the distinction?

A. With the exception of 109.

The Court—Not whether they are or not, but the question is do you know whether they are or not?

A. Well, with the exception of 109—

Q. Mr. Fleming are any—excluding from your consideration 109 South Dover, are any of the properties in this neighborhood being used for anything other than dwelling house purposes?

Mr. Richards—I object to that on the ground calls for a conclusion and doesn't show that he knows.

The Court—I will give you the opportunity of cross-examining upon that question as to how he basis his knowledge if he testifies, but the probative force of it is another proposition entirely.

10 Mr. Richards—Then, if your Honor please, it is open to a more serious objection and that is it is a conclusion, conclusion of law as well as fact.

The Court—If he doesn't know we, of course, will not be bound by any conclusion of law.

Mr. Richards—If he answers it that they are, it involves a conclusion, must necessarily do so.

The Court—I will permit the question.

(Question repeated.)

A. They are not with the exception—

20 Mr. Richards—If your Honor please, do you mean I could examine him now?

The Court—No, I will give you an opportunity.

A. —of a doctor located on the corner of Dover and Atlantic Avenue.

Q. Does he have his office there?

A. He has his office there.

Mr. Hanstein—Did we agree as to the value of these properties being above \$6,500 throughout this neighborhood?

30 Mr. Richards—I don't think we have agreed to that. We don't make any point of that.

Cross-examination, by Mr. Richards.

Q. Are you intimately acquainted with all of the house owners on both Elberon, and I think Ridgeway and Dover Avenues?

A. I have visited all their houses to have them sign a petition petitioning against—

Q. Wait a minute. I asked you if you were familiar or intimately acquainted with the owners of all these properties on these three streets? Can't you answer me that, yes or no?

A. I am.

Q. Now taking the house at the corner of Dover and Atlantic, being the uptown side, is that where the doctor lives?

A. Yes, sir; he lives there.

Q. How often have you visited that house? 10

A. Well, just a few times to see the owner of the property.

Q. You say a few times, once or twice?

A. Well, I will say twice.

Q. You were there twice?

A. Yes.

Q. On those occasions who did you see there?

A. Just the owner of the property.

Q. Did you get any information about his domestic arrangements? 20

A. No, sir.

Q. Did you know who else was living there?

A. No, sir.

Q. Do you know whether or not he had a boarder there or not?

A. No, his father lives with him.

Q. Do you know whether his father pays board or not?

A. I don't know.

Q. Do you know whether he had anybody else there that was living there in the house? 30

A. I don't see anyone else.

Q. Do you know?

A. I don't know.

Q. Now take the house next to that toward the beach, that would be what, 102 or 104?

A. 103.

Q. Who lives there?

A. Well, that property is owned by J. E. Locke.

- Q. How often have you visited there?
 A. I visited his home a number of times when he is here; he is only here during the summer.
 Q. Is the house locked up during the winter?
 A. No, sir; it is rented to a minister now.
 Q. Have you visited the minister?
 A. Very often.
 Q. His family?
 A. Yes, sir.
- 10 Q. Who lives in the house?
 A. Just he and his wife and servants.
 Q. Are you sure that is all?
 A. Yes, sir, his wife is a cousin of mine; we visit each other.
 Q. Go to 105, who lives at 105?
 A. Mr. Murrow and his wife.
 Q. Who lives with them?
 A. No one but the servants.
 Q. How about 107?
 A. There is no 107.
 Q. There is no 107?
 A. It is a vacant lot, isn't it?
 Q. I don't know.
 A. I think so.
 Q. How about 111, who lives there?
 A. 111? Don't know of any 111.
 Q. There is no 111?
 A. No.
 Q. That is a vacant lot as well?
 A. I don't know about that.
- 30 Q. What?
 A. I don't know that there is 111 on the street.
 Q. Stops at 109?
 A. No, stops at 115, known as the Doyle property.
 Q. Then is there anything beyond 109? You say there is no 111; is there 113?
 A. Don't know of any number of that kind.
 Q. 115?
 A. John Dart on the corner.

- Q. That is on the corner toward the beach?
 A. Yes.
 Q. Barge house?
 A. Yes, sir.
 Q. Who lives there?
 A. It is owned by Mr. Nichols now. He is preparing the property to move in it. It has been rented to a man from New York by the name of Emerick, who died there last week.
 Q. Who lived there with him, do you know, with this 10 Mr. Emerick?
 A. Emerick?
 Q. Yes.
 A. He had two servants, two nurses and a chauffeur.
 Q. Anybody else?
 A. No.
 Q. Have any relatives come there?
 A. I don't know.
 Q. Friends?
 A. I don't know about that. 20
 Q. Did you visit him?
 A. At one time I called to see the chauffeur there, but didn't see Mr. Emerick.
 Q. And you have never visited his house during the time that he lived there?
 A. No. He was a sick man.
 Q. You don't know anything about his internal arrangements, do you?
 A. No, sir.
 Q. Now going to Elberon Avenue, taking the house at the corner there, 101 Elberon, have you visited there? 30
 A. Mr. Weeks?
 Q. Yes.
 A. Yes, sir; several times.
 Q. Do you know anything about his internal arrangements of his house?
 A. Well, his wife, and I believe he had two sons and servant.

Q. Do you know whether he has any friends coming there visiting?

A. Don't know of it.

Q. Relatives?

A. What say?

Q. Relatives?

A. Don't know any.

Q. Do you know whether he does or not?

A. I don't know.

10 Q. How often have you visited there?

A. Well, I visited there I should say three or four times.

Q. In what period of time?

A. Difference in time.

Q. How long have you lived in this tract, Mr. Fleming?

A. Three years ninth day of December.

Q. Three years?

A. Yes, sir.

20 Q. And these three or four visits you made to 101 Elberon did they cover this period of three years or were they all within a very short time?

A. No, the property has only been improved in the last year.

Q. And have all been within this last year?

A. Yes.

Q. Do you mean there was no house on the lot before that?

A. No, there was a vacant lot before.

Q. How about 103 Elberon, who lives there?

30 A. Yes, I have visited there.

Q. How often?

A. Two or three times. Mrs. Ambler.

Q. Two or three times?

A. Yes.

Q. Do you know who she had in the house?

A. What say?

Q. Do you know who she had in the house?

A. She had a servant, two sons and her mother and she only stays there during the summer.

Q. Nobody lived there during the winter time?

A. They didn't.

Q. During the summer did they have friends or relatives visit them, do you know?

A. Never seen anyone.

Q. Never saw anybody?

A. No.

Q. Have you been in the house to see?

10

A. In Mrs. Ambler's house?

Q. Yes.

A. Yes.

Q. On what occasions were you there?

A. Well, I called there to see her on restrictions, she called me over again to see about some word she had heard, I suppose as much as three times.

Q. You only went there to see her about these restrictions, didn't you?

A. Yes.

20

Q. And you never saw anybody but her, did you?

A. Yes.

Q. Who did you see?

A. Saw her son there and her servants.

Q. You saw the whole household on the occasion you visited there?

A. No, I didn't see the mother. She was a sick lady upstairs.

Q. And you really don't know who was in the house except those you saw, do you?

A. Well, of course I would have an idea.

08

Q. But you don't know, do you?

A. Positively, no.

Q. Now how about 105 Elberon, who lives there?

A. That is Mr.—Philadelphia man—I don't get his name just for the minute.

Q. You don't remember his name?

A. No.

Q. Ever visited that house?

A. Never did but once when he signed the restrictions.

Q. That was when you were working up this case about restrictions, is that right?

A. It wasn't this particular case. It was another one.

Q. Another one?

A. Yes.

Q. You don't really know anything about the internal custom of that house, do you?

10 A. No, sir.

Q. How about 107 South Elberon?

A. I don't know anything about that except it is rented.

Q. You don't know who lives there, do you?

A. No.

Q. Nor what they do there?

A. No. It is closed in the winter.

Q. How about 109 South Elberon?

A. 109?

20 Q. Yes.

A. South Elberon?

Q. Yes.

A. That would be—would that be McSweeney's, 109?

Q. I don't know. You told us about those, I didn't, Mr. Fleming. Don't you know who lives 109?

A. Not by number, no.

Q. Who lives in the house next to 107 South Elberon going toward the, counting toward the beach? Have you ever been in the house?

30 A. In the beach front house?

Q. No, the house next to 107? You say you are not sure it is 109 and I want to be fair with you whatever the house number is.

A. Well, I don't know it by the numbers.

Q. It is the fifth house from the beach—from Atlantic Avenue, who lives there?

A. Well, the fifth—let me see, that is McSweeney's property.

Q. All right then, does McSweeney live there?

A. I have visited Mr. McSweeney's house.

Q. How often did you visit Mr. McSweeney?

A. Just once.

Q. At that time did you see his household?

A. No, sir.

Q. And you don't know who lives there outside of Mr. McSweeney, do you?

A. No, sir.

Q. You are not clear about this being McSweeney's 10 house, are you, but fifth house toward the beach?

A. I am stating to you that I did visit Mr. McSweeney's house.

Q. Yes, but I am asking you whether or not—I am trying to get all of these houses in this tract—isn't it true that a man by the name of Donovan lives at 109?

A. No, Mr. Donovan lives over on Elberon.

Q. Elberon?

A. Sure he does.

Q. That is what we are asking you about.

20

A. I am over on Ridgeway.

Q. I thought you were over on Ridgeway avenue. Do you want to correct all of your testimony that you have given so far about those houses on this street?

A. I thought you called me off Elberon.

Q. I asked you repeatedly, Mr. Fleming, by number and by description of the houses on Elberon Avenue and you now say you have given me the description of the houses on Ridgeway Avenue?

A. Yes.

Q. Is that right?

30

A. Yes, sir.

Q. Now is there a house on Ridgeway Avenue next to the McSweeney house toward the beach?

A. Yes.

Q. Who lives there?

A. Mr. Belber.

Q. Who?

A. Mr. Belber, he lives there in the summer.

- Q. How often have you visited him?
 A. Just the one time.
 Q. Just when you went there about the restrictions?
 A. Yes.
 Q. And you don't know anything about the inside of the house, do you?
 A. No.
 Q. Going over to Elberon Avenue this time, and try to keep this straight, the first house on the corner, that
 10 is 101 South Elberon Avenue, who lives there?
 A. That is Mr. Miller.
 Q. Have you visited him?
 A. I have been to see him once.
 Q. Just about the restrictions?
 A. Yes, sir.
 Q. Did you see him?
 A. Yes, sir.
 Q. Do you know anything about the interior domestic economy of his house?
 20 A. No, sir.
 Q. Do you know whether he keeps boarders or not?
 A. I do not.
 Q. How about 103 South Elberon; who lives there?
 A. Mr. Bartlett.
 Q. Which Bartlett is that?
 A. No, I beg pardon. I don't know who lives there now. At the time I went to the house Mrs. Smith lived there.
 Q. Mrs. Smith?
 A. Yes.
 30 Q. Did you see her?
 A. Yes.
 Q. And you only went there once?
 A. Yes, sir. No, I visited there frequently; she is a friend of my wife, but she has moved away from there now.
 Q. You don't know who is there now, do you?
 A. No, sir.
 Q. Somebody is living there?

- A. No, the house is vacant at present.
 Q. It is vacant?
 A. Yes, sir.
 Q. Was it vacant all this summer?
 A. Well from indications I think not.
 Q. Somebody live there?
 A. Yes.
 Q. You don't know whether they used this as a boarding house or dwelling house, do you?
 A. I don't know. 10
 Q. 105 South Elberon, who lives there?
 A. Mr. Bartlett.
 Q. Which Bartlett is that?
 A. Well, don't know—
 The Court—William H.
 Q. Is that who it is, Mr. William H. Bartlett?
 A. Well, I know him by Bartlett, I don't know.
 Q. And that is as well as you know him too, is it, you just know a man by the name of Bartlett lives there? 20
 A. Yes.
 Q. Have you ever visited him?
 A. Never have but the one time.
 Q. Do you know anything about the domestic economy of his house?
 A. No, sir.
 Q. You don't know whether he keeps boarders or not do you?
 A. No, sir.
 Q. How about 107 South Elberon, who lives there?
 A. Mr. Buzby, I think possibly is the first house.
 Q. A man by the name of Buzby?
 A. Yes.
 Q. Did you visit there frequently?
 A. Just the one time.
 Q. Do you know whether or not he keeps boarders?
 A. No, sir.
 Q. How about 109 South Elberon, who lives there?

A. That is Mr.—his name I have dropped just at present.

Q. Aren't we back now to the man whose name you tripped over before, Mr. Danenbauer?

A. Mr. Danenbauer lives there, yes.

Q. He lives there?

A. Yes.

Q. Have you visited him?

A. One time.

10 Q. Do you know whether or not he keeps boarders?

A. No, sir.

Q. How about 111 South Elberon?

A. That is Ransley.

Q. Have you visited there?

A. Yes, sir.

Q. How often?

A. Once.

Q. Do you know whether or not they keep boarders?

A. No. They rent their property most of the time.

20 Q. To somebody else?

A. Yes.

Q. Do you know whether the people they rent it to keep boarders?

A. I don't know.

Q. You haven't any knowledge of it, have you?

A. No, sir.

Q. How about 113 South Elberon?

A. I don't know the house by that number.

Q. You don't know the house?

A. No.

Q. Is Ransleys the last house on that side of the street?

A. Yes, sir.

Q. Lets go over at the other side of the street, beginning at Atlantic Avenue, it is probably number 100, who lives there?

A. I don't know the name of the party.

Q. You don't know whether they keep boarders or not, do you?

A. No, sir.

Q. How about 102, who lives there?

A. Well, Mr. Morrell lives there.

Q. He is one of the plaintiffs here?

A. Yes, sir.

Q. I suppose you know a lot more about his domestic affairs, don't you?

A. Well, I have been there frequently.

Q. How about 104, who lives there?

A. Mr. Turner did live there.

10

Q. Mr. Turner did live there?

A. Yes.

Q. What do you mean by that? He is one of the parties in this case, isn't he?

A. Well, he has sold his property.

Q. Have you been in Mr. Turner's house frequently?

A. Yes, sir.

Q. How often?

A. Four or five times, I guess.

Q. That is all, four or five times?

20

A. Yes.

Q. Do you know anything about his internal arrangements, know anything about his family or who he had there?

A. Well—

Q. Of your own knowledge?

A. I don't.

Q. How about 106 South Elberon?

A. Mr. Hartman.

Q. How often did you visit there?

A. Well, I suppose much as two or three times.

30

Q. About these restrictions on those occasions I presume?

A. Yes.

Q. Do you know whether he kept boarders there or not?

A. I don't think he did.

Q. You don't know, do you?

A. I don't know.

Q. How about 108 South Elberon?

A. I think that is the last on that street.

Q. 106 is the last?

A. I think so.

Q. Now, in answer to Mr. Hanstein's question you said—you were asked if any of these properties were used for other than dwelling house purposes and you said they were not. Now, in view of what you have just said to me, do you still stand by that statement?

10 A. Put that again.

(Question repeated.)

A. From my observation, yes, I do.

Q. I didn't ask for your observation, I asked if you knew? You were asked by Mr. Hanstein if you knew.

Mr. Hanstein—I object to this. The witness has answered the question and I don't think he should be argued with.

Mr. Richards—I am not arguing, trying to get a responsive answer.

20 The Court—Cross-examination.

Q. I am asking you whether or not you know whether all these properties that were referred to by Mr. Hanstein were used only for dwelling house purposes? Now do you or don't you know that, Mr. Fleming?

Mr. Hanstein—I object to that, please your Honor. That wasn't the Senator's question. The Senator asked him if that was what he understood by that answer and he answered that.

The Court—Now he asks another question.

30 Mr. Richards—I can ask another question, can't I?

Mr. Hanstein—If you are asking another question.

A. I would answer that, from my observation I would say no.

Mr. Richards—I object. I would like to have a responsive answer.

The Court—You are entitled to a responsive answer. You know you may say no, if you don't

know, you may say so, if you can't answer the question.

A. I can't answer that question. I don't positively know.

Q. You couldn't answer it when it was propounded to you by Mr. Hanstein, could you?

A. What say?

Q. You couldn't answer that question when it was propounded to you by Mr. Hanstein? I want to repeat this question to you again. 10

A. I answered it in this way, as far as I know.

The Court—And now he says he doesn't positively know. I think that covers the question.

Q. Are there any properties—you were asked this question by Mr. Hanstein—are any of the properties being used for other than dwelling house purposes and you answered they are not with the exception of the doctor at Dover and Atlantic Avenues; now do you still want to stand by that answer?

A. I want to stand it in just the way I told you. 20

Q. Do you know whether that is true or not?

A. I don't know whether they are keeping boarders or not.

Q. You don't know, do you?

A. No, I don't.

Mr. Richards—If your Honor please, I ask that that question and answer be stricken out.

The Court—No, it will have to remain, question of the weight of evidence and not of its admissibility.

Mr. Richards—Of course that was why I objected to it: objected on the ground there was no foundation laid for it. 30

The Court—He now says he doesn't know.

Re-direct examination, by Mr. Hanstein.

Q. Mr. Fleming, you are not engaged in any active business, are you?

A. No, sir.

Q. Do you spend a good deal of your time around this neighborhood?

Mr. Richards—I object, if your Honor please.

The Court—Where is there—

Mr. Hanstein—I merely want to show the familiarity with conditions in this neighborhood.

The Court—He has testified to that.

Mr. Richards—Make any difference whether
10 he is a busybody or not?

Q. Is there any way that you can tell whether someone is keeping boarders in that neighborhood?

Mr. Richards—I object to that, if there is any way that he can tell.

The Court—I will permit the question.

Mr. Richards—And I think another very serious objection to it, I think, still calls for a conclusion whether a party is keeping boarders or not, isn't a question that this witness can answer;
20 he can state the facts.

(Question withdrawn.)

Adjourned until 9.00 A. M.

Atlantic City, N. J., January 8, 1926.

Trial of the cause resumed at 9.00 A. M.

Mrs. Rose Le Beck, sworn.

Mr. Richards—If your Honor please, I want at this time to caution the witness and also to insist to your Honor, in calling one of the defendants in this case it will be understood he will be bound by her answers on examination and cross-examination.
80

The Court—There isn't any question about the rule of law.

Mr. Hanstein—That is no novel principle.

Mr. Richards—I want it so understood so that there won't be any question about it.

Direct examination, by Mr. Hanstein.

Q. Mrs. Le Beck, where do you live?

A. 109 South Dover Avenue.

Q. How long have you lived there?

A. About two years.

Q. You are one of the defendants in this suit?

A. Yes, sir.

Q. You are one of the owners of this property, are you not?

A. Yes, sir.

10

Q. You are married?

A. Yes, sir.

Q. Do you have any family?

Mr. Richards—Objected to as incompetent.

The Court—How can that be competent?

Mr. Hanstein—I will not argue the question.

Q. Who lives with you, Mrs. Le Beck?

Mr. Richards—That is objected to as immaterial.

The Court—I will permit that.

20

A. Mr. Le Beck and myself.

Q. I beg pardon?

A. Mr. Le Beck.

Q. Mr. Le Beck?

A. Yes, and some maid.

Q. Do you have any children living with you?

A. No, sir.

Mr. Richards—That is objected to. I think it is incompetent.

The Court—Yes, I don't see how you can go into that.

Mr. Hanstein—It seems to me we are entitled to show who of her family lives in her home.
30

The Court—I don't see how that has any relevancy in this case at all.

Mr. Richards—The issue is whether she is running a boarding house or not.

The Court—I sustain the objection.

Q. Does Mrs. Blum live at 109 South Dover?

Mr. Richards—That is objected to.

The Court—I will permit that.

A. No, sir.

Q. So you and your husband live there with some maids, is that correct?

A. Yes, sir.

Q. How large a house, referring now to the number of rooms, is this house?

A. The entire house you mean?

10 Q. Yes, how many rooms do you have in the house?

A. About thirteen.

Q. How many bedrooms do you have?

A. Ten.

Q. And you have a large porch, I believe, on the second floor of your house enclosed, is that fitted as a bedroom?

A. No, sir.

Mr. Richards—That is objected to, if your Honor please.

20 The Court—She answers no.

Q. Are there beds in that room?

A. No, sir.

Mr. Richards—Objected to.

The Court—She says no.

Q. Mrs. Le Beck you have other people staying in this house other than yourself and your husband from time to time, do you not?

Mr. Richards—That is objected, to, if your Honor please.

The Court—What is the objection to that?

30 Mr. Richards—It is immaterial who she has there. The issue is whether or not she is running a boarding house there and whether or not she has people there is, as I conceive it, entirely incompetent. If your Honor please, you have people occasionally living in your house. We have in our house. What has that got to do with it?

The Court—I take it this is only a preliminary question for the purpose of showing whether or not she is conducting a boarding house. I will permit the preliminary question.

(Question repeated.)

A. Well, frequently we have relatives and intimate friends.

Q. Mrs. Le Beck you also have people staying with you who are not intimate friends, do you not?

Mr. Richards—That is objected to, if your Honor please, whether they are intimate friends or not. 10

The Court—I will permit that because of her answer before. You may answer that.

A. On one occasion, while I was out, a party came in—I don't know who they were—I was out and represented himself to be a friend of mine and told the maid that he was an invited guest. When I came home I told him this was a private residence and he pleaded with me, he said his children were ill and wouldn't I permit him to stay. I told him that I would permit him to stay for the night only. 20

Q. And you did permit him to stay for the night?

A. For that night.

Q. Did he pay you board for that?

Mr. Richards—That is objected to.

The Court—I will permit that.

Mr. Richards—Not the board, it is a conclusion, did he pay her?

A. He paid me to go to some trouble.

The Court—I will sustain the objection. Did he pay board, permit that. 30

Q. Did he pay you for the privilege of staying over night?

Mr. Richards—That is objected to. That wouldn't prove that she was running a boarding house. The issue is that she was running a boarding house.

The Court—I will permit that.
(Question repeated.)

A. Yes.

Q. Mrs. Le Beck, you have on occasions booked people for the season, have you not?

A. No, sir, I haven't.

Q. Have you booked people for a couple of weeks at a time?

A. I never booked people.

10 Q. You never booked them?

A. No.

Q. What do you mean by booking people?

Mr. Richards—I object.

The Court—Sustain the objection.

Q. Did you refuse during the summer months to take people in for less than a week?

A. I don't know what you are talking about.

Q. When people desire to stay with you in the summer time do you refuse to take them in for less than
20 a week at a time?

Mr. Richards—That is objected to, if your Honor please.

The Court—Yes, I will sustain the objection.

Q. Do these friends and relatives of yours pay for the privilege of staying with you?

Mr. Richards—I object, if your Honor please, pay for the privilege calls for a conclusion; what they do I think might be competent.

The Court—Yes, I will sustain the objection to the form of the question.

30 Q. Do these people who stay with you pay you?

Mr. Richards—That is objected to for the same reason, what they do, but not the conclusion, "pay" implies a conclusion.

The Court—I think the term pay in that case means give her money, I think that is the meaning of the word "pay" there.

Mr. Richards—I think it means more than that. It implies a contract. It implies some-

thing more than the mere reception of money. Now, in line with the objections I have just been making, the whole object being here to prove contractual relations between these people and the defendant. It seems to me that the conclusion might be drawn from the expression used and my friend here handles the English language with a great deal of precision when he wants to and I think he ought to be required to in this case.

10

The Court—Technically your objection is proper. Sustain the objection.

Q. Did you ever receive any money from these people who have stayed with you?

A. Well, when, you take for instance my brother, when he comes down with a party of his friends, he will share in the expenses.

Q. How about other people other than your brother?

A. Well, they are very intimate friends or relatives and it is the same way.

20

Q. And they do pay?

A. They share in the expense.

Mr. Richards—I object.

The Court—She has answered, the expense.

Q. So that these people contribute part of the expenses of operating the household when they come down, is that correct?

A. Frequently.

Q. And that is frequent, isn't it?

A. During holidays, during the summer season.

Q. How many people were in your house living in
your house between Christmas and New Years last? 30

Mr. Richards—That is objected to as incompetent and immaterial. Bill was filed, if your Honor please, I think June or July and they must stand upon that.

The Court—Sustain the objection. It isn't what she is doing now. It is what she was doing at the time of filing the bill.

Mr. Hanstein—Please, your Honor, we are entitled to show that, whatever the condition is, that it is a continuing condition.

The Court—Your bill is for what occurred prior to the filing of the bill, up to the time of filing the bill. The only way that that would be admissible at all would be as some evidence of what had occurred before and at the present time I overrule that offer.

10 Q. You have frequently had, prior to the filing of this bill, your house fully occupied, have you not?

Mr. Richards—That is objected to, if your Honor please. It is not within the issue. The issue is whether or not she ran a boarding house.

The Court—It is one of the elements. I will permit it.

20 Mr. Richards—If your Honor please, just let me argue that for a minute. This house is a large house. Really for the sake of argument might remind your Honor it was formerly owned by Mr. Lubin, who had an enormous number of guests there at all times and nobody ever pretended that he ran a boarding house. I am talking about the moving picture magnate, and the mere fact that this house was full of people, like any other house that might be of large size and a number of bedrooms, in view of the way that some people in Chelsea and Ventnor entertain, it would mean nothing at all and I think that it does not even tend to prove the plaintiff's case.

30 There is no conclusion that your Honor can draw from the evidence that there were a number of people there, if that was so, any more than you could if there was only two or three people there.

The Court—It is simply one of the elements of proof and a boarding house may be with two people or with five hundred, so that the mere fact of the difference in number has little, if any, weight, but I think it is one of the elements of

proof which the complaint is entitled to present. I will permit it.

(Question repeated.)

A. I wouldn't say fully. I occupy two rooms myself, Mr. Le Beck and myself.

Q. And you have had a number of people living with you prior to that time, isn't that true?

A. I had a very close friend living with me.

Q. And did she stay down all the time, live with you permanently? 10

A. Whenever she was in town.

Q. What was her name?

A. Mrs. Finberg.

Q. Did Mrs. Finberg pay you?

Mr. Richards—Object again.

The Court—Sustain the objection.

Mr. Hanstein—Please your Honor, am I to understand that we are to be prohibited from inquiring if people pay?

The Court—The word "pay" indicates that 20 there is a contract. That is the objection made to the term "pay." If you are using it in the significance of turning over money, it will be permitted, if you so state, but if you are using it in the term "pay" meaning that there had been a contract by reason of which one person became indebted to another and paid them for that indebtedness, I will sustain the objection.

Mr. Hanstein—I am using it in the sense did this lady give you money?

Q. Did this lady give you money, Mrs. Le Beck? 08

A. Well, she shared expenses, certainly.

Q. And what she gave you was money for the sharing of the expenses of operating your house, is that correct?

A. Well, the food and the maid.

Q. The food and the maid?

A. Yes.

Q. Can you tell me how much—did she pay you at regular intervals?

A. Why, yes.

Q. How often did she pay you?

A. I guess about every two or three weeks.

Q. Did she pay you the same amount each time?

A. No, that depended.

Q. What did it depend on?

A. Some times we would have two maids, would de-
10 pend upon the cost of the expenses.

Q. When you had two maids how much did she pay you?

A. I don't remember exactly, some times forty.

Q. Forty dollars a week?

A. About that.

Q. When you had more than two maids how much did she pay you?

A. Probably five or ten dollars more.

Q. Did you on any occasion have less than two
20 maids?

A. Yes, very often.

Q. Then how much did she pay you?

A. Perhaps five or ten dollars less.

Q. So that depending on the number of maids she paid you five or ten dollars more or less?

A. And the expenses of food and everything.

Q. Did she pay you—you say "and the expenses of food?"

A. No, well, we shared all expense, table expense and maid expense.

30 Q. How did you share that, equally?

A. Yes.

Q. That is you paid half of the expenses of the food and she paid half?

A. Yes.

Q. She stayed with you a considerable length of time, did she not?

A. Yes.

Q. And while she was there were there any other people in the house?

A. Yes, at times my brother would come down very often and I have other relatives.

Q. Was there anyone else besides your brother?

A. His friends.

Q. His friends?

A. Yes.

Q. Besides the brother and his friends did any one else stay with you during that time? 10

A. That is a long time; it all depends.

Q. Now you know whether other people stayed with you or not?

Mr. Richards—If your Honor please, I think she is right about that, that they ought to be limited to some time or other.

Mr. Hanstein—Please your Honor, the Senator is very hopeful of keeping the evidence in this case out of it.

Mr. Richards—No, I am very hopeful of 20 keeping illegal evidence out of it.

Mr. Hanstein—Nothing illegal about that last question.

Mr. Richards—If your Honor please, there is no court in the country that would permit a question like that without time when it is a question ten years ago or yesterday.

Mr. Hanstein—The lady has testified to the period of time Mrs. Finberg has stayed with her.

The Court—No testimony, as the court re- 30 calls, of that period of time at all.

Mr. Hanstein—She said for a considerable period of time and I am inquiring about that particular period of time.

The Court—At which this lady Mrs. Finberg was in the house?

Mr. Richards—That wasn't in the question at all.

Mr. Hanstein—Yes, I have referred to it several times.

The Court—If that is the question it is admitted.

(Question repeated.)

The Court—Objected to and objection sustained.

Q. Did other people stay with you besides his brother and his friends during the time Mrs. Finberg was with
10 you?

The Court—I sustain the objection. There is no testimony at all. I think it is a slip of the tongue but you are not referring to anybody that has been testified to in this case. I don't know to whom you refer. I suppose you mean her brother but you didn't ask her brother.

Q. Did any other people stay with you besides your brother and his friends during the time Mrs. Finberg was with you?

20 A. Yes. Why I had my sister-in-law, I had an aunt of mine, I had several relatives other than my brother.

Q. Did your brother give you money while he was staying with you?

A. Well, he would give me money, approximately what it would cost for the entertaining of him and his friends.

Q. And he paid for all of his friends, is that correct?

A. Yes, sir.

Q. How much would he give you for himself and these friends?

30 A. He never gave me any stipulated sum, it was a family affair.

Q. Is your brother interested in this house?

A. He helps me out a great deal.

Q. In what way does he help you out?

A. In helping me to pay interest, sometimes to finish
it.

Q. You mean he gives you money?

A. Yes, sir.

Q. Now this—is there any difference in the amount of money he pays you when he has more people than when he has less people?

A. Yes.

Q. So it is—

A. Yes, because he doesn't want to see me lose.

Q. Of course he doesn't want to see you lose. Now do these other people whom he brings with him pay you money?

A. No, sir.

10

Q. He pays for all of them, is that correct?

A. Yes, sir.

Q. Now who else, Mrs. Le Beck, has paid you money for living in your house other than your brother and Mrs. Finberg?

Mr. Richards—That is objected to.

The Court—Sustain the objection.

Q. Has anyone other than your brother and Mrs. Finberg paid you money while living at your house?

Mr. Richards—That is objected to.

20

The Court—What is the objection?

Mr. Richards—Objection is that that calls for a conclusion, while living at your house paying you money, implies a contract.

The Court—Mr. Hanstein has qualified all his use of the word "pay" in the entire testimony as meaning "giving."

Mr. Richards—Yes, but I think the sentence there again implied that, while living in your house.

The Court—I think it does and would so be
considered except Mr. Hanstein has heretofore
said that is not the meaning of the word "pay"
as used by him, although I notice that he uses
the question afterwards in a contradictory form
to use his phrase.

30

Mr. Richards—Why do we have to have this understanding? Why can't he use the words "contributed money?"

Mr. Hanstein—If it please your Honor, we might as well have an understanding about this. The Senator would be very much delighted to have me produce from the evidence of this witness that the money has been contributed. I think we are entitled to have shown now as a matter of evidence the money has been paid over. Now we are getting a contract, the contribution of money too and let the future course of the case develop whether it has been a contribution or payment under a contract. That is what I am inquiring into. I am not inquiring why it was paid except it was connected up with the residing in the house.

The Court—But you are using a word which has the effect, as being the result of a contract, and, although you have stated that you are using the term in that sense for these questions, but the questions you have just propounded now, you have stated as a premise the testimony given by her and using the word “pay” as the result of a contractual relation. You have just made that as a premise of one of your questions which the court was about to overrule before objection was made because you were using the word “pay” and giving it the result of an entirely different statement of what you had said you meant by it and there is the difficulty of using words in a different sense.

Mr. Hanstein—Contribute is no word that indicates doing anything but helping a poor cause along.

The Court—You said a few minutes ago you used the word “pay” in the sense of handing money to the person, or words of that sort, not contributing, handing to.

Mr. Hanstein—Yes, I am perfectly willing—I must confess that I don’t see anything wrong in the form of my questions even in view of the

meaning of the term “pay.” I think we are entitled to show that they did pay and I think we are entitled to show that it was on the basis of a contractual relationship with the brother.

The Court—Certainly you have that right.

Mr. Hanstein—And I don’t know why that is at all objectionable.

The Court—You certainly have that right, but you haven’t the right to use the term “pay” in the contractual relation without proving the contract. The minute you prove the contract you certainly have the right to but you can’t use “pay” in the sense of the contractual relation and then by having used that word say that there was a contract. That is the objection made by the Senator.

Mr. Richards—And the objection, I thought I had made it clear, if your Honor please, has always been on the basis that the facts of the contract can’t be extracted from this witness by such a manner, but that the conclusion that it was a contract is for the court, for your Honor, and that he can’t put those conclusions in the mouth of the witness. He is on a fishing expedition. He has got the defendant on the stand and he can’t trap her into events the import of which she does not know, legal conclusions.

Mr. Hanstein—That is a conclusion too. I think this lady understands perfectly well just what is going on. She isn’t having any trouble.

Mr. Richards—She isn’t having any trouble and I don’t propose to have any trouble.

The Court—I don’t know what there is before the court now.

(Question repeated.)

Mr. Hanstein—My point in that question is to know whether they gave her money, whether contribution, birthday present or otherwise.

The Court—Sustain the objection. If your question is as you now explain it to be it can be so put.

Mr. Hanstein—I want to know whether money has been paid over to her.

The Court—That is certainly the question I overruled, “paid over to her,” the word “pay” means sort of a contractual relation.

10 Mr. Hanstein—I never heard any such definition of the word “pay” but I am willing to say that the term “pay” as I am using it shall have the meaning that your Honor says is necessary in order for it to be a permissible term.

The Court—Then why not ask the question in that form?

Mr. Hanstein—I don’t know any synonym for the word “pay” that implies other than the giving over of money. Now giving over of money and “pay” are identical and I don’t see—

20 The Court—Not at all.

Mr. Richards—He just supplied two synonyms himself, both give and contribute.

The Court—Yes. Sustain the objection.

Q. Did you receive money from any of the people staying in your house while your brother was there other than your brother?

A. No, sir.

Q. You didn’t receive money from anyone other than your brother while he was staying at your house, is that so?

30 A. While he was entertaining his party, no.

Q. At times when people are there who are not brought by your brother, did you receive money from them?

A. Well, that depended upon, for instance if an aunt of mine would come down for a week-end, no.

Q. You didn’t receive anything from your aunt?

A. No.

Q. Well, now, if it didn’t just happen to be your aunt, if it happened to be a friend of yours, did you receive anything from them?

A. No, sir, not all the guests we entertained.

Q. I beg pardon? What was that?

A. I didn’t say anything.

Q. Yes, you said something about “not all the guests that you entertained,” did you not? Did you receive money from all the guests you entertained?

A. No, sir.

10

Q. Are there some from whom you didn’t receive money?

A. When I invite anybody to my house to spend the week-end they are my guests.

Q. And when people write to you to ask you if they may come down, do you receive money from them?

A. We never receive such communications.

Q. You never receive any communication from anybody asking to come down and stay at your house?

A. No.

20

Q. You never did?

A. No.

Q. Do you recall writing letters to any people in response to letters asking for the privilege of coming down and staying with you?

A. No, sir.

Q. You don’t recall that?

A. No, sir.

Q. Is that your signature, Mrs. Le Beck?

A. No, sir.

Q. You didn’t write that letter?

30

A. No, sir.

Q. Would you mind writing your name?

A. Yes, sir.

Mr. Richards—I can save you a lot of trouble; she didn’t write the letter.

Q. Do you know who wrote that letter?

A. It looks very much like Mrs. Blum’s handwriting.

Q. You say it is Mrs. Blum’s handwriting then?

A. Looks very much like it.

Q. What relation is Mrs. Blum to you?

A. My sister.

Q. Do you recall having inserted an advertisement of this house in a certain newspaper?

A. No, sir.

Q. What?

A. No, sir.

Q. Do you know whether there was such an advertisement in the newspaper?

A. Well, I guess that was a social, way of making a social announcement.

Q. I beg pardon?

A. That was my way of making a social announcement.

Q. You then did have an announcement in the newspaper, did you not? I mean there was one there, wasn't there?

A. I believe there was.

Q. What paper was that in, do you recall?

A. I think a Philadelphia paper.

Q. What was the name of it?

A. The Jewish Exponent.

Q. That was when you first moved down there, was it not?

A. I think so.

Q. That was a paid advertisement, wasn't it?

A. I don't remember.

Q. Do you know how much space it occupied?

A. Just I believe a small announcement, same as any other announcement would be.

Q. Did it refer to your house as a boarding house?

A. No.

Q. It didn't say—

A. I don't think it did.

Q. I beg pardon.

A. I don't think it did.

Q. Is there any doubt in your mind?

A. No, it didn't refer to it.

Q. What did it say?

A. Simply said that I moved to my new home 109 South Dover Avenue.

Q. Did it say where you had moved from?

A. I don't know.

Q. Where had you in fact moved from?

Mr. Richards—That is objected to. I don't think that is competent.

The Court—Sustain the objection.

Mr. Hanstein—I think, please, your Honor, 10

we ought to be able to ask that question as a preliminary question to what is to follow.

The Court—Sustain the objection.

Q. Now you have frequently had, prior to the filing of this bill, all of your rooms occupied, have you not?

A. I wouldn't say all.

Q. Did you ever have all of the rooms occupied?

Mr. Richards—Your Honor, please, I think it is immaterial.

The Court—It may be, but I will admit it. 20

You may answer.

(Question repeated.)

A. I may have had at times.

Q. On the occasion, on any of the occasions when your house was entirely occupied do you recall who was living in the house with you?

A. Just what do you mean.

Q. Do you know who the people were that were staying with you?

Mr. Richards—If your Honor please, I think it ought to be limited at some time.

The Court—Yes, that is too indefinite, any time which the house is entirely occupied, I think that is too indefinite. 30

Q. The last time that the house was entirely occupied, prior to last June, do you recall who was stopping with you?

A. Prior to last June? I don't think the house was full at any time prior to that?

Q. You don't think the house was full at any time prior to that?

A. No.

Q. Was it filled at any time during the summer prior to the last summer?

A. Really I don't remember.

Q. You recall the names of—do you recall an occasion when a Miss Hyman stayed at your house?

A. I do not.

10 Q. Do you know a Miss Hyman?

A. I do not.

Q. You don't know her?

A. No.

Q. Do you know that a Miss Hyman stayed at your house?

A. I don't, no.

Q. Do you know the names of all the people who have stayed at your house?

A. I believe I do.

20 Q. Were they all personal friends of yours before they came?

A. Usually, yes.

Q. Sometimes they were not, is that correct?

A. I don't know at any time anybody being there who was not a friend of mine.

Q. Why did you say "usually" then if they were always friends of yours?

A. Well this one man when Mr. Cooper was down.

Q. Is that the only person who came to your house and stayed over night whom you didn't know before he got there?

80 A. I believe so.

Q. The only one?

A. Yes.

Q. Do you recall having written a letter to any other person relative to accommodations at your house?

A. No, sir.

Q. You don't have any recollection of any other letter that either you wrote or Mrs. Blum wrote?

A. No, sir.

Q. What is your relationship to Mrs. Blum?

A. My sister.

Q. Does she live at the house?

A. No, sir.

Q. She is a half owner in it?

A. Yes, sir.

Q. Does she contribute towards the expense of running it?

A. Yes, sir.

10

Q. And doesn't live there?

A. No, sir.

Q. Do you receive from these moneys that are paid you for the privilege of letting people stay there more money than the operating expense of this house?

A. No, sir.

Q. You do not.

A. No.

Q. Do you get your expenses from the operation of this house?

20

A. No, I wouldn't say I got my expenses. Of course very often my brother helps me out or Mr. Blum.

Q. And Mrs. Blum pays half the expenses of the house?

A. What do you mean by half the expenses?

Q. You said—

A. They contribute what we need, for instance, when there is any payment due or anything else, if we haven't the money Mr. Blum does help and does contribute.

Q. And you pay rent to Blums for living there?

A. No.

30

Q. They are half owner in this house, that is Mrs. Blum is and you stay there and run it and you don't pay them anything?

A. No, sir.

Q. For the privilege of living in that house, is that correct?

A. Yes, sir.

Q. Do they make any profit out of their ownership of this house?

A. No, sir; the only profit there was to be was when the house was sold.

Q. And that is all the profit they are to get out of it?

A. Absolutely.

Q. You stay down there and do the work, is that correct?

A. I attend to my house duties, yes.

10 Q. You attend to the running of the house?

A. Yes.

Q. How many servants do you employ down there?

A. Well, at the present time I have one.

Q. How many people are staying in the house with you at the present time?

A. I have a very intimate friend of mine from Philadelphia right now.

Q. What is her name?

A. Mrs. Lieberman.

20 Q. She has been with you some time, hasn't she?

A. No, I wouldn't say she has been with me some time.

Q. Do you receive anything from her?

A. No, sir.

Q. Doesn't pay anything?

A. No, sir.

Q. Who is the last person who stayed with you who has paid you anything—from whom you have received anything?

A. Pardon me; what was that?

30 Q. Who is the last person who stayed at the house from whom you received any money?

A. My brother.

Q. When was he there?

A. He is still there.

Q. Didn't you a minute ago say the only person there was Mrs. Lieberman?

A. Yes; he came down yesterday.

Q. He is the last one there from whom you received anything and he paid you something?

A. Yes.

Q. Do you keep books?

A. No, sir.

Q. Do you have a bank book?

A. No, I haven't a bank book.

Q. Do you have a bank account?

A. I have, yes.

Q. Do you have your bank book with you?

10

A. I haven't any bank book. When I opened my account I guess about two years ago the bank book was mislaid and I never used a bank book since.

Q. And you don't deposit any money in bank for which you receive a receipt?

A. No, sir.

Q. Do you deposit any money in bank?

A. Occasionally, yes.

Q. Which bank?

A. At the Atlantic County Trust.

20

Q. You don't have a bank book?

A. No, sir.

Q. Do you have a check book?

A. Yes, I have a check book.

Q. Do you have that with you?

A. No.

Q. Do you keep any books of account?

A. None at all. It isn't necessary.

Q. Does Mrs. Blum keep any books of account of this property?

A. No, sir.

Q. When was the last time you made deposit in the Atlantic County Trust?

30

A. I think about December third or fourth.

Q. December third or fourth?

A. Yes.

Q. You haven't made any deposit since then?

A. No, sir.

Q. You have no bank book?

A. No, sir.

Q. Do you have your check book with you?

A. Why, no, when we closed up early in October, after housecleaned and I didn't see the bank book or check book at that time but I paid no attention to it, it didn't bother me at all, but when I was subpoenaed I searched for it high and low and I couldn't find it.

Q. You couldn't find the check book?

A. No, sir.

10 Q. And you couldn't find a bank book?

A. We never had a bank book.

Q. Never have a bank book?

A. No, sir.

Q. How do you pay your bills, by check?

A. Most of the time by cash.

Q. You pay taxes and water bills by cash?

A. No, that I pay by check.

Q. When is the last time you drew a check on this bank account?

20 A. Some time in December.

Q. Where did you get your check from when you drew it?

A. Well, I always, I have a very small slot and it wasn't large enough to hold the check book, and I would tear out a few sheets at a time and just use those.

Q. And you don't have any bound check book at all?

A. Any what?

Q. Any bound check book at all?

A. Well—

Q. Do you have stubs on your checks?

30 A. No, I never kept any; I never bothered with that.

Q. Do you mean to say you have a bank account and you don't have a bank book and you draw checks and don't bother with the stubs?

A. No.

Q. Is that correct?

A. Yes, sir; I would simply check up when I would get a bank statement, which would be about every month

or if I wasn't sure of my balance I would often phone the cashier and ask him.

Q. You never bothered to keep any books at all?

A. No, sir.

Q. You couldn't accommodate these people who stay at your house unless they pay you, could you?

Mr. Richards—I object to that.

The Court—Sustain the objection.

Mr. Hanstein—Please your Honor, I think, in view of the affidavits that have been filed in this 10 case we are entitled to ask that question.

The Court—You are drawing a conclusion. I will sustain the objection.

Mr. Richards—Affidavits are no part of the proof in this case now.

Q. Some time ago you rented the house adjoining yours, did you not?

Mr. Richards—That is objected to,

The Court—How can that be relevant?

Mr. Hanstein—Please, your Honor, I propose 20 to show in that connection that at one time when the business promised to be so much that it couldn't be accommodated in the present quarters they rented the adjoining house for the purpose of accommodating their overflow.

The Court—Do you now intend to show that she had an adjoining house in which she lodged people and boarded those people in her own house?

Mr. Hanstein—Yes, sir.

The Court—For that purpose I will admit it. 08
(Question repeated.)

A. Why I—this was early in March I went to visit a very dear friend of mine who stopped with Mr. Neustadter, a Mrs. Cupine, and Mr. Neustadter told me what a wonderful buy 115 South Dover Avenue was, he thought that it could be bought for a hundred thousand dollars; I wrote my brother and told him—

Mr. Hanstein—I object to all of that. That is not responsive and I ask the question be repeated.

(Question repeated.)

A. I leased it for my brother.

Q. You leased it, and in whose name was the lease?

A. Why I guess it was drawn up in my name.

Q. Lease was in your name?

A. Yes.

10 Q. And you had possession of that house for a week or two weeks, is that correct?

A. My brother had possession of it for I believe a week.

Q. And the lease was in your name?

A. Yes, sir.

Q. And the people who lived in that house were put there by you, were they not?

A. No, sir, it was my brother's property; I had nothing to do with it.

20 Q. And you mean to say you had nothing to do with the people who stopped at that house?

A. No, sir.

Q. You didn't have anything to do with it?

A. No, sir.

Q. Did these people eat at your house?

A. Not always.

Q. Did some of them some times?

A. Yes.

Q. Did you receive money from your brother for those people?

30 A. At that time I didn't receive any money from my brother.

Q. Did you at any time?

Mr. Richards—What does he mean by any time, if your Honor please?

The Court—The court doesn't understand it.

Mr. Hanstein—She says not at that time. I asked her at any time.

The Court—That is not what you asked her. You asked her if she received money from her brother at any time. She has testified she did receive money from her brother.

Q. Did you receive money from your brother for the meals that these people ate at your house?

A. Why he didn't pay me for the meals, the approximate cost of the food.

Q. He gave you the approximate cost of the food?

A. Yes.

10

Q. Who paid the rent of this house?

A. My brother.

Q. Do you know if he paid it by check?

A. Why he returned, I laid out the money and he returned the money to me.

Q. You paid the rent with your check, did you not?

A. Yes.

Q. And you provided food at your home that some of there people ate, isn't that true?

A. Well, very little, yes.

20

Q. Do I understand you to say that the only one who paid you—from whom you received money was your brother in connection with the people who stayed at that house?

A. Yes.

Mr. Richards—At that time you mean?

Mr. Hanstein—At that time.

A. Yes.

Q. No one paid you other than your brother?

A. Not at that house.

Q. Not out of that house?

30

A. No.

Q. You had that house for two weeks?

A. No, sir; a week.

Q. You had it for a week?

A. Yes.

Q. The people stayed on longer than that, did they not?

A. I don't think they did.

Q. You took charge of the care of that house, did you not?

A. Yes, I supplied a maid.

Q. You supplied the maid service for that house?

A. Yes.

Mr. Richards—I object.

The Court—Sustain the objection.

Mr. Hanstein—I don't understand?

The Court—She testified that she furnished
10 a maid or procured a maid, I don't remember the exact word.

Mr. Richards—The word "supply" implies this contract business.

The Court—Now you state as a premise that
20 she furnished maid service, I think an entirely different proposition. We are now, of course, dealing very closely with the use of the English language, employment agency may provide a maid for my house but the usual use of the language, she isn't furnishing maid service to my house.

Q. What is the name of your brother?

A. William S. Gluck.

Q. Where does he live?

A. New York City.

Q. How many people lived in that house during that week?

A. In which house?

Q. The adjoining house?

A. I imagine there were above five couples, about
30 three or four children.

Q. Do you remember the names of those people?

A. Yes.

Q. Will you state them?

A. Yes, Mr. Schechter, a business associate of my brother's, Mr. Lansit, and there was a Mr. Yearlys and a Mr. Grill and my brother.

Q. Do you remember a Feinberg that stayed at that house?

A. No.

Q. Do you remember Feinberg except—do you know whether or not Feinberg stopped at your house during that time?

A. No, I don't. There wasn't any Feinberg.

Q. You don't recall anybody by that name?

A. No, sir.

Q. How much money did your brother pay you for the food that was used for the people in this adjoining house?

A. Oh, it amounted to very little, I should say about
10 thirty dollars or thirty-five dollars.

Q. Only what, thirty or thirty-five dollars for the food that was used by you for these people who were in the adjoining house?

A. Yes.

Q. Did he pay you any other money in connection with the people who stayed in that house?

A. No, sir.

Q. Nothing more?

A. No.

Q. Who paid the other expenses in connection with it?

A. Mr. Gluck assumed all the expenses.

Q. Who?

A. Mr. Gluck assumed all the expenses.

Q. Did he pay for the rent?

A. Yes, sir.

Q. Mr. Gluck paid for the rent?

A. Yes, sir.

Q. That is your brother?

A. Yes, sir.

Q. I am asking you how much money your brother paid you for the people who lived in that house for the expenses in connection with that house?

A. Well, he paid about, as I say, about thirty dollars for the food and he paid me.

Q. How many people were stopping in your house at that time?

A. About fifteen.

Q. About fifteen in your house and these people in the other house?

A. Yes.

Q. Did you receive anything from any of the people stopping in your house during that time?

A. Yes, I received, I don't know how to term it, a contribution.

Q. How is that?

10 A. I did receive a contribution, I should say.

Q. From whom?

A. Well, from—I had, well, my sister-in-law and several other relatives.

Q. Will you state the names of those fifteen people?

A. Yes, there was a Mr. and Mrs. Frankenstein, my sister-in-law.

Q. Did they give you anything?

A. Yes, they shared in the expense.

Q. How much did they give you?

20 A. I don't remember.

Q. Well, you have some idea, don't you?

A. I imagine about forty or forty-five.

Q. Forty or forty-five dollars, all right, now who else stopped there—

80 Mr. Richards—If your Honor please, I don't think that it is competent for Mr. Hanstein to cross-examine this lady about who she had in the house. I can see that if he can prove contracts with all these people that it might tend to show some relationship other than what she has said, but even that wouldn't in law make this a boarding house and, in view of that fact, I think that it is objectionable.

The Court—I will permit it.

Mr. Richards—My objection is now based upon the ground that the testimony is incompetent because, even if it showed contracts between the parties, that that doesn't go to issue in this case.

The Court—I will permit it.

(Question repeated.)

A. My brother, Mr. A. E. Gluck, and his family.

Q. How much did he give you?

A. It really amounted to about the same thing.

Q. All right; who else stopped there?

A. Mr. and Mrs. Rich and family.

Q. How much did they give you?

A. They may have given me about twenty-five.

Q. You are not sure how much they gave you? 10

A. No, so long ago.

Q. Who else stopped there?

A. Mr. and Mrs. Hollander.

Q. How much did they give you?

A. I guess about thirty.

Q. Who else stopped there?

A. I think that is about all.

Q. Why is it that you received different amounts from different people?

A. Well, sometimes they had— 20

Q. Better room than others?

A. No. For instance, my brother had three children and him and his wife.

Q. On what do you base these amounts that they gave you? How do you figure it out?

A. I just figure up the cost and then share expenses.

Q. How do you figure up the cost when you set out to do it?

A. Well, if the butcher bill were a certain amount and the groceries and vegetables, that would be all summed up. 30

Q. You figure up the cost of the food?

A. Yes.

Q. Do you add anything for the cost of the cook?

A. No, I haven't added anything for the cost of the cook.

Q. You didn't add anything for the cost of the cook?

A. No.

Q. Did you add anything for the cost of the maid who takes care of the house?

A. Well, if I have any added up or have an extra maid I do.

Q. When you have fifteen people in your house you have how many maids?

A. Three.

Q. Do you add any part of the cost of those maids to the amount that those people pay?

10 A. No only any extra maid I might have.

Q. You don't call three maids extra maids, is that correct?

A. Well, one would be.

Q. One would be extra maid?

A. Yes.

Q. Well, then do you figure the cost of the one maid in there?

A. Yes, sir.

Q. You do figure the cost of the one maid?

20 A. Yes, sir.

Q. How many cooks do you have?

A. One.

Q. One cook? Do you figure her cost in that?

A. No, sir.

Q. Do you figure anything for taxes?

A. Not in the cost of that, no.

Q. Did you figure anything on the overhead cost of your house?

A. No, sir.

Q. You base the amount they give you on the—

A. Actual expenses.

30 Q. —actual expenses? Do you figure anything in that for your services?

A. No, sir.

Q. But the fact is that these people are down at your house and they give you this money, is that correct?

A. Yes, sir; they share.

Q. And the people who have been stopping with you have operated on that basis ever since you have been down there, is that correct?

A. Yes.

Q. Now the result of that operation is that you don't take in as much money as your expenses, isn't that true?

A. What expenses are you referring to?

Q. The overhead of your house, your taxes and your interest?

A. No, sir.

Q. You don't take in as much as the overhead cost of your house, do you?

A. No, sir.

10

Q. So that from your standpoint this is a losing proposition, isn't it?

A. It isn't a business proposition.

Q. I say it is a losing proposition.

Mr. Richards—I object.

The Court—Sustain the objection.

Q. How is this deficit made up?

A. Well, Mr. Blum would contribute.

Q. He contributes?

A. Yes.

20

Q. Do you contribute?

A. Yes, sir.

Q. Do you contribute equally?

A. Yes.

Q. You each contribute half of the expenses of this house?

A. Yes, sir.

Q. In any week where you get in more money than your expenses do you divide that equally?

A. We have never had that.

Q. You have never had a week in which you took in more than the expenses of actually operating the house?

A. No, because we share the expenses.

Q. Now when these people come down who are not friends of yours, who are friends of your brother's, why is it that you don't ask them to contribute a larger amount so as to cover these overhead expenses so that you don't operate this at a loss?

A. I am not in business.

30

The Court—I don't want to interrupt counsel, but there is no premise that she is operating the property at a loss.

Mr. Richards—I wasn't asleep, but it seemed as though he was only going to get in trouble so I left him alone.

10 The Court—Only thing, I don't see how the court is interested in taking the time, unless there is a premise. I suppose we will all take for granted that there is no monetary profit from the house we are ourselves living in, costs us money, but neither of us will agree we are operating our house at a loss. The woman testified it was not a business proposition, it was not a loss.

Q. Is it a fact that during the summer months you refuse to permit people to come down and stay with you who are not willing to stay for a couple of weeks at a time?

20 Mr. Richards—That is objected to, if your Honor please.

The Court—I would like to hear you how that is admissible of this witness at this time.

Mr. Richards—In the first place he has no right to cross-examine this witness. It is his witness.

The Court—Yes, it is, however, the opposite side and great latitude is permitted.

(Question withdrawn.)

Q. Mrs. Le Beck, this is your signature, is it not, (showing witness affidavit)?

30 A. Yes.

Q. You signed that and you swore to this affidavit?

A. Yes, sir.

Q. And what is set forth in there is true, is it not?

A. Yes, sir.

Q. Mrs. Le Beck, it is true that these friends who visit you at your home have paid you for the trouble and expense incident to their entertainment, is it not?

A. They shared in the expenses.

Q. Well, they have paid you for the trouble and expense incident to their entertainment, is that correct?

A. Yes, sir.

Q. Now you say they paid you for the expense, is that correct?

A. Yes, sir.

Q. They also paid you for the trouble, is that correct?

A. Well, no, I wouldn't say they paid me for the trouble.

Q I asked you a minute ago if this affidavit which 10 you swore to was correct and you stated that it was.

Mr. Richards—If your Honor please, that is objected to. He is trying to cross-examine his own witness and incompetent and he is trying to impeach her and he can't do it.

The Court—But he may contradict her, which he is now doing.

Mr. Richards—He hasn't laid the foundation for that. I didn't want to put it in his mind.

Q. And isn't it correct that these people pay you for 20 he trouble?

Mr. Richards—That is objected to.

The Court—Sustain the objection.

Mr. Hanstein—Please, your Honor, I think that I am entitled to show by this witness that this affidavit is true.

The Court—You have already asked her that and she said yes.

Mr. Hanstein—And she has given a contradictory statement in her oral testimony and I submit that I am entitled to this examination. 30

The Court—Sustain the objection.

Mr. Hanstein—If your Honor is interested in authorities on the subject—

The Court—Very much interested.

Mr. Hanstein—There are several cases if I may get them.

The Court—Be very glad for you to.

Mr. Richards—I think we all would, if your Honor please, because that would be a new one on us.

(Mr. Hanstein produces authorities.)

The Court—Exactly the ruling I have made.

Mr. Hanstein—“He may show that the whole or any part is untrue either by their own examination or by other contradictory evidence.” It seems to me admissible.

10 The Court—I have permitted you to proceed on that line. That is exactly what I have just ruled, you can't impeach your witness but you may contradict her.

Mr. Hanstein—I understand your Honor's ruling is exactly that, but I do not understand you permitted me to ask that last question.

The Court—And I overruled that last question because she has already testified to it. She said the entire affidavit is true.

20 Mr. Richards—To that he is bound by his witness.

The Court—There is no advantage in taking each clause of that affidavit and asking if it is true, she said it is all true.

Q. Referring again to this advertisement or this notice in the newspaper, Mrs. Le Beck, I ask you again did you pay for the notice that was in the newspaper?

A. I may have. I guess I did.

Q. I beg pardon?

A. I did.

30 Q. You caused this notice to be put in the newspaper, did you not?

A. To tell you the truth, I don't remember.

Q. But you do remember paying for it, don't you?

A. I believe I did.

Q. You are familiar with the Jewish Exponent, are you not?

A. Yes.

Q. Is that the notice you paid for?

A. I guess it was.

Mr. Hanstein—I offer this in evidence.

(Paper admitted and marked *Exhibit C 4.*)

Mr. Hanstein—Jewish Exponent of February 22, 1924, this advertisement set up in display type which reads as follows—

Mr. Richards—Advertisement is about an inch and a quarter long by about two and a quarter inches wide.

Mr. Hanstein—It reads: “Mrs. Rose Le 10 Beck, formerly of 171 States Avenue, begs to announce her removal to her Chelsea home, 109 South Dover Avenue, second house from beach winter rates.”

A. No, sir.

Q. I beg pardon?

A. May I see that ad, please.

Q. Yes indeed. Mrs. Le Beck, the phraseology, “winter rates” refers, does it not, to the charges that you would make during the winter? 20

A. I presume it would but I don't remember wording that ad.

Q. But you remember paying for it, don't you?

A. Yes.

Q. And you presume that it refers to the charges that you would make during the winter, isn't that so?

A. Yes.

Q. So that during that winter you did make charges to the people who stopped with you, isn't that so?

A. We didn't have any guests.

Q. But you advertised in your paper that people could 30 come down to stop with you, didn't you?

A. I really don't remember wording that ad.

Q. You don't doubt that the ad was in the paper, do you?

A. No, I see that.

Q. Now do I understand that you didn't have anyone stopping with you that winter?

A. Mrs. Feinberg was here that winter.

Q. Did she get winter rates?

A. There weren't any rates with her.

Q. She didn't pay any rates?

A. No, sir.

Q. When did winter rates go out?

A. We really didn't have any winter rates or any rates.

Q. What did you mean by saying in the advertisement "winter rates?"

10 A. I don't remember wording that ad.

Q. And you have no recollection of what winter rates are?

A. No.

Q. What do you understand the term "winter rates" to mean?

A. Winter rates?

Q. Yes.

A. Lower rates.

Q. Lower rates during the winter, isn't that so?

20 A. Yes.

Q. And you were holding out that during the winter you wouldn't charge as much as you would in summer?

Mr. Richards—I object.

A. I said I don't—

Mr. Richards—Object to that, if your Honor please. She has already said several times that she don't remember wording the ad. Now it is his witness; how can he proceed to press her further?

The Court—I will sustain the objection to that question.

30 Q. Who lived with you during the winter of the year this advertisement was in the newspaper?

A. Mrs. Feinberg and family.

Q. Mrs. Feinberg and family?

A. Yes.

Q. How many in Mrs. Feinberg's family?

A. Two children.

Q. Two children?

A. And Mr. Feinberg.

Q. Did they give you anything?

A. I said before they shared in the expenses.

Q. Did they stay with you over the summer?

A. Whenever they were in town they stayed with me.

Q. Did they stay with you that following summer?

A. I believe they did.

Q. How much did they pay you a week?

A. They didn't pay me any weekly rate.

Q. How often did they pay you?

10

A. Paid me perhaps every two or three weeks.

Q. I beg pardon?

A. About every two or three weeks.

Q. How much did they pay you when they paid you?

A. That varied.

Q. What did it vary according to?

A. Well, according to the cost of food.

Q. Do you mean to say they didn't pay you any definite amount each time they paid you?

A. No, sir.

20

Q. They didn't?

A. No.

Q. Now you mean to say that you kept a record of the cost of the food?

A. Well, I could easily tell the cost of the food.

Q. How could you easily tell it?

A. By the sales slips, my sales slips.

Q. Did you keep your sales slips?

A. I just kept them until I got my weekly bill.

Q. And they just paid part of the sales slips?

A. Yes.

30

Q. Is this lady a relation of yours?

A. Very close friend.

Q. Did she pay anything towards the cost of help?

A. Yes, one maid.

Q. Pay something toward the cost of the help?

A. Yes.

Q. Did she pay anything toward the cost of the taxes?

A. No, sir.

Q. And the interest on the house?

A. No, sir.

Q. She pay anything for your cost of services, the work you did?

A. No, sir.

Q. Do you have any source of income other than this house?

A. Mr. Le Beck.

10 Q. Is he in business outside of this?

A. Yes, sir.

Q. You do all this work around here merely without any compensation?

A. Well, it is my home.

Q. Do you have any children?

A. No, sir.

Mr. Hanstein—I want to offer this affidavit in evidence.

(Affidavit admitted and marked *Exhibit C 5*.)

20

Cross-examination, by Mr. Richards.

Q. Mrs. Le Beck, does your husband give you money to run the house?

A. Yes, sir.

Q. He lives with you?

A. Yes, sir.

Q. And is Mrs. Blum down there with you?

A. She comes down almost every day.

Q. Eats there?

A. Yes.

30 Q. Frequently?

A. Yes.

Q. And Mr. Blum?

A. Occasionally.

Q. He maintains a legal residence in the second ward of Atlantic City, doesn't he?

A. Yes, sir.

Q. He is a member of the Board of Freeholders?

A. Yes.

Q. But spends considerable time at 109 South Dover?

A. Yes, sir.

Q. Do you know whether or not Mr. Blum gives Mrs. Blum money to help run the house?

A. Yes, sir.

Mr. Hanstein—I object to leading this witness.

Mr. Richards—I have a right to on cross-examination.

Mr. Hanstein—I appreciate this is cross-ex- 10
amination but I am entitled to call it to the Court's attention because it is within the discretion of the court and it seems to me that whether it is on cross-examination or direct the testifying by the Senator and the answering yes or no by the witness is not the paramount proof before the court.

The Court—I call attention to the fact that such testimony has little weight in the Court of Chancery.

20

Mr. Richards—That may be, but, if your Honor please, I have a right to do it if I wish to, I believe.

The Court—No, that is entirely a matter of discretion of the court.

Mr. Richards—If your Honor please, it is discretionary with the court whether or not counsel may lead a witness in direct examination but I never understood it was discretionary—

The Court—It is discretionary at any time to control the manner and the conduct of the examination of any witness and, of course, as it is 08
quite evident here, an examination by an opponent, by counsel, always brings the examination close to the line of admissibility and lack of admissibility and the cross-examination by her own counsel is also very close to the line which has to, in some cases, be controlled, but I have admitted everything so far.

Mr. Richards—I have disagreed so frequently on this subject with your Honor I suppose no use trying to convince you.

The Court—Probably not in this case.

Mr. Richards—I have always understood the rule to be on cross-examination counsel had the right to lead the witness in any way that he saw fit and I say it is his legal right so to do.

10 The Court—That is his legal right except that, where it is his own client, no matter if that client has been put upon the stand by the opposite side, the Court still exercises control, but, up to the present time this is merely academic because I have admitted everything so far.

Q. Did Mr. Blum as a matter of fact contribute to the household expenses?

Mr. Hanstein—I object to that, please, your Honor. It is a leading question.

20 Mr. Richards—If your Honor please, he went into this.

The Court—That is not a leading question at all. You have asked innumerable questions as to who contributed or that is the result of eliciting information who contributed to the expenses of his household. Now on cross-examination she is asked the question did John Brown or someone else contribute.

Mr. Richards—He went into it. He suggested it.

The Court—I have permitted it.

30 Q. Will you answer it.

A. Did Mr. Blum contribute to the running expenses?

Q. Yes.

A. No.

Q. He did not?

A. No.

Q. Now did he contribute to any other of the expenses concerning this house?

A. Why, yes, the financing or the mortgages and things of that kind.

Q. Now there were mortgages upon the house?

A. There were.

Q. Were there?

A. Yes, sir.

Q. How much were those, do those mortgages amount to thirty-seven thousand dollars?

A. Thirty-seven thousand dollars.

Q. How much did you pay for the house? 10

A. Forty-five.

Q. Now who bought the house, Mrs. Le Beck?

A. Mrs. Blum and myself.

Q. This was a joint adventure of you two women?

A. Yes, sir.

Q. Your husbands had no financial interest in the property at all, had they?

A. No, sir.

Q. Why did you buy the house?

A. Well, we thought it was a profitable buy, a good 20 speculation.

Q. Did you buy it for speculation purpose?

A. Yes, sir.

Q. With the expectation of making a profit on the selling of it?

A. On the selling of it, yes, sir.

Q. Have you been endeavoring to sell it?

A. Yes, sir.

Q. It is a large house, isn't it?

A. Yes, sir.

Q. Larger than you yourself would require for your 30 own accommodation?

A. Yes, sir.

Q. Do you remember who owned the house before you did?

A. I believe it was Mr. and Mrs. Lubin, so far as I know.

Q. Who was Mr. Lubin, if you know?

A. Why, he was a moving picture magnate.

Q. Did you ever visit the house before you bought it while Mr. Lubin was there or do you only known by general reputation?

A. I just know by general reputation.

Q. Now in addition to Mr. Blum and Mr. Le Beck did anyone else contribute to the general expenses, overhead expenses, we might term them, of this house, I think that was the term used by Mr. Hanstein?

A. Yes, there were some times my brother would
10 help me out.

Q. With relation to the interest on the mortgages or the taxes or anything of that kind?

A. With relation to the interest.

Q. Now did he get anything in return for that, Mrs. Le Beck?

A. No, sir, except the privilege of entertaining his guests at my house.

Q. He did get that, as a matter of fact, didn't he?

A. Yes, sir.

20 Q. In return for the money that he gave you in connection with these mortgage payments he brought his friends down to your house?

Mr. Hanstein—I object to that.

The Court—I will sustain the objection.

Q. What did he get in return for the money he contributed to your house, the overhead expenses?

A. The use of the house.

Q. The use of the house?

A. Yes, sir.

Q. Did he use it?

30 A. He and his friends.

Q. Who were those friends, do you know?

A. Yes, business associates and clients of my brother.

My brother is a lawyer.

Q. Where does he practice?

A. New York City.

Q. Were those clients of his that he brought to Atlantic City?

A. Some of them were.

Q. Some of them were business associates?

A. Business associates.

Q. When he came here with these business associates and clients what money did he give you at that time, if any?

A. Why he would give me a check say for seventy-five, fifty or seventy-five, but that would vary upon the length of his stay.

Q. What would that be for?

A. For food.

10

Q. Did he at any time pay any bills direct for food?

A. No, sir.

Q. Would he get the bills from you or did he see the bills, did he know whether or not this was—how much he was splitting up with you on the cost of the food?

A. No, he would never get the bills, really just a brother and sister affair.

Q. You would figure out about how much you spent and he would give it back to you?

20

A. Yes, sir.

Q. Has he contributed any money recently concerning these mortgages?

A. Well, there is one due January twenty-fourth and he is going to contribute to it.

Q. How much?

Mr. Hanstein—I ask that be stricken as not being responsive.

The Court—I sustain the objection.

Q. Relating to this newspaper which has been offered in evidence can you tell me whether or not you sent
this ad to this newspaper?

30

A. I don't believe I did. I never remember wording it.

Q. Did you insert there the word "winter rates?"

A. I did not.

Q. This ad is on page six of this paper, is it not?

A. I see it is.

Q. There are six other ads on that page, are there not, in addition to this one?

A. Yes, sir.

Q. The six other ads there relate to undertakers, cemeteries or cemetery monuments, don't they?

A. Yes, sir.

Q. Is there any page on their that relates to hotel or boarding house advertisements?

The Court—Any page?

10 Mr. Richards—Any other page in the paper.

The Court—You said any page on there.

(Question repeated.)

Q. —in the paper.

Mr. Hanstein—I object to that as being incompetent, irrelevant and immaterial.

The Court—I will permit that.

A. Yes, sir.

Q. What page?

A. Page sixteen.

20 Q. How many advertisements are there on that page that relate to hotels or boarding houses?

Mr. Hanstein—I object to that for the same reason.

The Court—I will permit it.

A. About twenty-one.

Q. This paper is printed where, do you know?

A. In Philadelphia, I think.

Q. Of those twenty-one advertisements how many relate to hotels or boarding houses in Atlantic City?

A. I think all of them.

Q. All of them?

30 A. I think so.

Q. Let me ask you another question: you are, of course, as the testimony has indicated, Jewish, are you not?

A. Yes.

Q. Look at those ads again and tell me how many of those hotels and boarding houses that are advertised there are represented to be so-called Jewish hotels and

boarding houses of the twenty-one—you are familiar with Atlantic City, of course?

A. Yes, sir. Most all of them are.

Q. Are there any that are not that you can point out?

A. What do you mean?

Q. I am asking if there are any hotels that are not represented to be almost exclusively Jewish hotels?

A. I believe all these are.

Q. Mr. Hanstein inquired from you concerning the leasing of 115, the house next door to yours. Will you 10 explain how it came about that you leased that house?

A. Yes, I was visiting a Mrs. Campner, a mother of a very dear friend of mine, and she was stopping with Mr. Neustadter. I visited there one Sunday afternoon and Mr. Neustadter he asked me where I lived. I told him Dover Avenue and then he told me about a very wonderful buy and it was 115. He said he thought the property could be purchased for about a hundred thousand dollars. I immediately wrote to my brother and told him that we considered it a very wonderful buy 20 and he should look into the matter. He in turn wrote back that he and about four or five others, he would interest about four or five other men to come down to look the property over and suggested if it was vacant it would be a very good opportunity to see it and look it over thoroughly.

Q. What did you do then?

A. I leased the property.

Q. For how long?

A. For a week.

Q. From Mr. Neustadter?

A. Well, I—

Q. From whom did you lease it?

A. Mr. Neustadter.

Q. Was he in the real estate business?

A. Yes.

Q. Did your brother and his associates come down?

A. Yes.

Q. Occupy the house for the week?

A. For the week.

Q. Did he pay you the money you laid out on the lease?

A. Yes, sir.

Q. 115 of course, I suppose, is the beach front house, isn't it?

A. Yes.

Q. About this bank book; you say that you have never had a bank book, is that right?

10 A. I was given a bank book when I opened the account.

Q. But you haven't used it since?

A. Never used it, no, it was mislaid.

Q. Do you know whether Mrs. Blum has a bank book?

A. She has not.

Q. How about Mr. Blum, does Mr. Blum carry a bank book, do you know?

A. No, sir.

20 Q. You know he doesn't?

A. He doesn't.

Q. How about Mr. Le Beck?

A. He doesn't.

Q. What do you depend upon to keep your bank balance straight?

A. Well, the bank issues a monthly statement.

Q. Sort of a yellow cardboard slip, isn't it?

A. Yes, sir.

Q. And that shows the amount of money deposited and the amount of money withdrawn?

A. Yes, sir.

30 Q. Each month?

A. Yes, sir.

Q. That is the system of bookkeeping the Atlantic County uses, isn't it?

A. I believe it is, yes, sir.

Re-direct examination, by Mr. Hanstein.

Q. You and Mrs. Blum, you told the Senator, are partners in this enterprise, is that correct?

A. We are partners in the purchase of the house.

Q. Aren't you partners in the operation of it?

A. I wouldn't say, no.

Q. What is that?

A. No, sir.

Q. Is there any doubt in your mind about whether you are partners in the operation of it?

10

A. No doubt.

Q. Yet you don't pay anything for rent at all, do you?

A. No, sir.

Q. Other people besides your brother pay you for the privilege of being entertained there, don't they?

Mr. Richards—I object to that, if your Honor please, calls for a conclusion.

The Court—Sustain the objection.

Q. Other people besides your brother give you money 20 for the privilege of being entertained there, don't they?

Mr. Richards—I object to that.

The Court—Sustain the objection.

Q. Other people besides your brother give you money when they stay with you, don't they?

A. They share expenses.

Q. And you calculate the expense for each one, is that correct?

A. Yes, sir.

Q. And this man Cooper that stayed with you paid you money, didn't he?

30

A. He did.

Q. Did he just share expenses or did he pay a flat sum?

A. No, he was an absolute stranger to me and put me to a great deal of trouble.

Q. And he paid a flat sum, didn't he?

A. Yes.

Q. And he knew in advance before he stayed over night what it would be, didn't he?

A. No, sir.

Q. You didn't tell him in advance?

A. I didn't see Mr. Cooper.

Q. Who did he pay the money to?

A. Except when he paid me.

Q. Who put him in the room?

A. The maid. I wasn't home at the time when he
10 came.

Q. And were you home at all while he was in your house?

A. Except when he paid me the next morning.

Q. Weren't you in the house that night?

A. I was in the house that night but Mr. Cooper wasn't in my house at all times; he had appointments somewhere.

Q. How much did Mr. Cooper pay you?

A. I believe he paid me about sixteen dollars.

20 Q. About sixteen dollars? Who was with Mr. Cooper?

A. A party of six; I don't know how many were in there.

Q. How many?

A. Party of about five or six.

Q. With Mr. Cooper?

A. Yes, sir.

Q. Do you mean to say that Mr. Cooper had five or six people with him?

A. He was with two women and I think three chil-
30 dren.

Q. Did they stay over night at your house?

A. They stayed over night.

Q. You mean to say that more than Mr. Cooper and his wife and child stayed over night at your house, and two children, his self, wife and two children?

A. Yes.

Q. That is all that stayed there?

A. Yes.

Q. That is all, isn't it?

A. Mr. Cooper—

Q. And his wife and two children?

A. Another woman with Mr. Cooper, I believe the woman who called herself "Mrs. Cooper" said it was her sister-in-law.

Q. So you say there were two ladies with Mr. Cooper?

A. Yes.

Q. How many rooms did they occupy?

A. Two.

Q. Did you know Mrs. Blum had written this letter to Mr. Cooper?

A. I did not.

Q. Did Mrs. Blum write many of the letters down at your house?

A. We didn't receive any correspondence to be answered of that nature.

Q. When people intended to come down to see you didn't any of them ever write you a letter stating that they were going to come down?

A. No, my brother, if he wanted to come down with some of his friends would simply telephone.

Q. Your brother wasn't the only one?

A. My relatives same way.

Q. You had people besides your brother and relatives stopping at your house?

A. Intimate friends.

Q. Didn't they notify you when they were coming?

A. No answering when people write, "I will be down" so and so.

Q. And they would write to you when they were coming?

A. Yes.

Q. Did Mrs. Blum answer letters down at the other place?

A. Not to my knowledge. When that letter arrived I believe I was out of town.

Q. You think she answered it?

A. It looks like her handwriting.

Q. Do you know whether she wrote it?

A. I do not.

Q. You don't remember wording this ad, do you?

A. No, sir.

Q. So that you are not in a position to say that you did not insert these words "winter rates" are you?

A. No, sir.

Q. You are not in a position to say that you did not put that in there, are you? Your answer is no?

A. Repeat that, please.

(Question repeated.)

Q. Is your answer "no?"

A. Am I in position to what? Please repeat that.

(Question repeated.)

A. I am in position don't remember putting it in there.

Q. You don't remember wording the advertisement at all, do you?

20 A. No, sir.

Q. Then how do you know, if you don't remember wording it at all, that you didn't put it in there?

A. I told you that was so, long ago. I don't remember.

(Question repeated.)

A. I don't know I did put it in there.

Q. At any rate you don't say that you didn't put it in, do you?

A. I don't say that I did.

Q. But you don't say that you didn't?

30 A. No.

By Mr. Richards.

Q. You say you never knew of Mr. Cooper before?

A. No, sir.

Q. When he came there were you there?

A. No, sir; I was out.

Q. Were you expecting anybody?

A. No, sir.

Q. Were you expecting any guests?

A. No, sir.

Q. How did he gain admittance to the house, do you know?

A. Yes, he told the maid that he had a letter from me—

Mr. Hanstein—I object to that, purely hearsay.

The Court—Yes.

Q. You can't tell what the maid told you, unfortunately, but when you got back to the house did you find him there?

A. No, I didn't see Mr. Cooper Friday at all.

Q. Who did see him?

A. Nobody that I know of in the house.

Q. Well—

A. The maid.

Q. Outside of the maid?

A. Outside of the maid?

Q. Did Mrs. Blum see him at all?

A. No, sir; Mrs. Blum was out of town, I think.

Q. How did you discover he was there?

A. When I came in the maid told me that—

The Court—That answers the question. The maid.

Q. Then what did you do about it?

A. I told Mr. Cooper mine was a private residence.

Q. Then you saw him then?

A. Mrs. Cooper.

Q. You saw Mrs. Cooper?

A. Some woman said she was Mrs. Cooper.

Q. What did you do with Mrs. Cooper when you found out they were esconced in your house?

A. I told Mrs. Cooper mine was a private house and she told me the children were asleep or ill, I don't know what excuse she made and she asked me as a special favor, since I had the rooms, to let her stay over night.

Q. When was it you saw Mrs. Cooper, what time of day was it?

A. About 7.30 at night.

Q. Of course you only know from the maid when they arrived?

A. That is all.

Q. What did you tell Mrs. Cooper?

Mr. Hanstein—Please your Honor, it seems to me this is hearsay, so far as we are concerned.

The Court—I will permit it, yes.

10 Q. When you saw Mrs. Cooper what did you say to her?

The Court—You have testified what was done by Mr. and Mrs. Cooper. They came there and occupied the house. Now she has testified that she was unable to reach Mr. Cooper because of his absence and talked to Mrs. Cooper. I think it is admissible as much as what was done with Cooper.

20 Q. What did you tell Mrs. Cooper about her staying there?

A. I told Mrs. Cooper that I didn't take any strange people, any strange guests.

Q. Did you invite her to stay or what?

A. I did not. I asked her whether she couldn't find accommodations elsewhere.

Q. Did you invite her to go then?

A. I certainly did.

Q. Did she go?

80 A. No, she pleaded that the children were ill, I don't know whether was ill or tired or something or other, as a matter of fact she had some very small children with her and I guess they were both ill at that time.

Q. What day of the week was this?

A. I believe it was on Friday.

Q. Did she say anything about wanting to stay over the week-end?

A. No, she merely asked couldn't she stay there over night.

Q. And they departed the next morning?

A. Yes.

Q. At their own volition or at your request?

A. At my request.

Q. You charged them for the accommodation?

A. I certainly did.

Mrs. Anna Blum, sworn.

Direct examination, by Mr. Hanstein.

Q. Mrs. Blum, you are one of the defendants?

A. Yes, I am.

10

Q. And you are a half owner in this property?

A. Yes.

Q. Did you have anything to do with the running of this house?

A. I don't live there.

Q. I asked you if you had anything to do with the running of this house?

A. No.

Q. Do you pay anything towards the expense of it?

20

A. Well, I often bring things down, I pay for things and don't get reimbursed for them very often.

Q. You don't live there?

A. I don't live there.

Q. What kind of things are they that you bring down that you don't get paid for?

A. Sometimes something decorative for the house, runs into money, sometimes I lay out money and I don't ask for it, either forget or don't ask for it, I am out money.

Q. Who owns the furniture in the house?

30

A. That furniture belongs to the house.

Q. You are a half owner of the house?

A. Yes.

Q. You sometimes buy decorative things for the house that you don't get paid for?

A. Yes.

Q. Do you get any of the money that is paid by the people who stay in the house?

A. Scarcely; we never seem to be able to meet the expenses, never seem to be able to pay the interest and things like that.

Q. Well, I am asking you if you ever get any of the money that is received by the people—paid by the people?

A. No.

Q. You never get any of that?

A. No.

10 Q. Who gets that?

A. Well, Mrs. Le Beck runs the house.

Q. Don't you have anything to do with the running of the house?

A. Not at all.

Q. Any of your friends stop there?

A. Yes, I entertain my friends there.

Q. Do they pay for staying there?

A. Well, I, on the same basis with the rest of the family, my brother and his family, my personal friends
20 and Mrs. Le Beck's, with the exception of probably one or two.

Q. Who are the one or two that have stayed there?

A. Well, I had a friend who has since died.

Q. She stayed there?

A. She stayed there, she came back from the hospital, ill, and I was very glad to take care of her; she was convalescing.

Q. Did she give anything for this privilege?

A. Her husband would, yes, he would bring in different things into the house, yes, and pay in that way.

30 Q. Give money?

A. I don't know about that, but he would bring in food and things like that.

Q. I am asking you if he gave money?

A. I guess he did, something toward the upkeep, food and things like that.

Q. Just toward the food and things like that?

A. Yes.

Q. What other things did this money go to buy?

A. We would have one or two help and we shared the help, I guess some of the help. I wasn't down to the house very much. I don't know.

Q. Don't you know how much money is taken in down there?

A. All I am interested in is if there is enough money to meet it.

Q. To meet what?

A. To meet the current expenses, taxes and interest and things like that, that is all we have. 10

Q. That is the only thing you are interested in to see if you get enough out of it to pay the taxes and current expenses?

A. So Mrs. Le Beck gets enough out of it. I don't get anything out of it.

Q. You are interested in seeing the taxes and enough money comes in to pay this interest?

A. Yes.

Q. And does enough money come in to pay that?

A. No indeed. 20

Q. Does money enough come in to pay part of that?

A. I don't know, it has been so big that I don't think it has, not even a small part, have to pay for refinancing and things like that, we have to pay considerable.

Q. You have had to lay out a lot of money operating this place, haven't you?

A. On account of the poor financing.

Q. How about the cost of the maids, do you get enough money to pay that?

A. Well, we have one or two maids, I guess so, yes.

Q. You get enough money to pay for the maids? 00.

A. Yes.

Q. And you get enough money to pay for the food, don't you?

A. Well, Mr. Le Beck gives Mrs. Le Beck money I know, I just don't know how much.

Q. I am asking you about the total income?

A. I guess so; I think so.

Q. Now Mrs. Le Beck is your sister?

A. Yes, my sister.

Q. And doesn't she ever give you a record of how much money comes in?

A. I am never really very interested.

Q. You are interested in knowing that you get enough money to pay the mortgage and taxes, aren't you?

A. Yes, just enough to keep the—

Q. Well, don't you ever talk about how much money you are getting in?

10 A. Yes, we do sometimes but I don't know, I don't recall accounts or anything like that.

Q. Is there a bank account for this house?

A. Yes.

Q. Do you have the right to sign checks?

A. Not at all.

Q. You don't have the right to sign checks?

A. No.

Q. Who signs the checks?

A. Mrs. Le Beck.

20 Q. Did you ever see the bank account or statement of the bank account?

A. Yes, sometimes, if I did, I don't remember; I do sometimes see it.

Q. You do sometimes?

A. Yes.

Q. Don't you sometimes in summer when there are a lot of people staying there, don't you get enough money in—

Mr. Richards—I object, if your Honor please.

The Court—Sustain the objection.

30 Q. In summer time isn't there enough money coming in to buy the food?

A. It seems to me there is back expenses and when comes in I don't think it makes up the deficit.

Q. You take in more in summer than you do in winter, don't you?

Mr. Richards—I object to that. Take in, I think, if your Honor please, that he must limit that. It is very evident all through this that we

have been talking at cross purposes, but I am not objecting to it. It seems to me that he has got to limit that question to take in, to define what he means by it.

The Court—I think that question is admissible.

(Question repeated.)

A. I really don't know for sure.

Q. There are more people stopping there in summer as a rule than there are in winter, isn't that true? 10

A. Yes, I guess so.

Q. And the more people that are there the more money you receive, isn't that true?

A. Something I don't know anything about. I presume so, but I don't know because some of them are my guests that I don't get any money for.

Q. Mrs. Le Beck gets all the money anyway, doesn't she?

A. Yes.

Q. Do you know at what rate she is paid? 20

A. I don't know.

Q. What is that?

A. I don't know.

Q. You don't know at what rate she is paid?

A. No.

Q. You don't know how much money various people pay, do you?

A. I don't.

Q. Do you know if they pay her more money when they occupy the better rooms than when they occupy the smaller rooms?

A. I don't know; I don't think so. I don't know. It wouldn't make any difference. 30

Q. You mean to say you don't inquire how much money she takes in?

A. Sometimes I am interested and ask but very rarely.

Q. But the only thing you are certain about is that you are interested in taking in enough money to pay the mortgage and taxes, isn't that so?

A. I would be if it could be done.

Q. What is that?

A. It never has been done.

Q. You have never been able to do that?

A. No.

Q. What share of the money do you put up when
10 you are not able to get in enough money?

A. We don't really keep accounts, it is my sister and I do anything for her and it doesn't make any difference. Mr. Blum often contributes or helps us out when we are short somewhere, he helps us out.

Q. Don't you know what part of it you are paying?

A. There is no proportion, he knows how much he has given us.

Q. Mr. Blum knows?

A. I presume he knows, yes.

20 Q. You don't even know whether he knows or not, do you?

A. No; I am not sure.

Q. You are a half owner of this house, aren't you?

A. Yes.

Q. You paid half of it?

A. Yes.

Q. Mrs. Le Beck handles all the money that comes in?

A. Yes.

Q. Do you know anything about this advertisement in this newspaper?

30 A. I am amazed myself at it. I am confused myself. I can't recall.

Q. You don't recall when the ad was put in?

A. No, I couldn't say. I was surprised myself. I knew there was some petition floated about that some time ago, but I didn't know what it was.

Q. You knew there was something what?

A. Something about the neighbors had protested about it early.

Q. You mean to say this is the first you knew about that advertisement?

A. First I knew.

Q. Did you ever know that this house was advertised?

A. No.

Q. Never knew that?

A. Never knew it.

Q. Did you write this letter to Cooper?

A. I did.

Q. You did?

10

A. I did. May I see it? My writing.

Q. Is that your writing?

A. Yes, sir.

Q. Will you write "Rose Le Beck" on that paper?

(Witness complies.)

Q. How did you come to sign Mrs. Le Beck's name to this?

A. Because the envelope was addressed that way.

Q. Do you recall what you wrote to Mr. Cooper?

A. I don't think I do, altogether, not for words.

20

Q. There isn't any doubt but what that is the letter, is there?

A. That is the letter.

Q. That is the letter?

A. Yes.

Mr. Hanstein—I offer this letter in evidence.

(Letter admitted and marked *Exhibit C 6*.)

Q. Why did you answer this letter that was addressed to Mrs. Le Beck?

A. Well, when I first saw that letter I was rather surprised and perplexed. I didn't know what about it and I ought to have thrown it in the trash basket because we never get letters of that sort and it set me thinking and I wondered whether one of my brother's friends or not at some time or other probably boasted he stopped at a beautiful home and probably boasted that he paid a lot or something like that and I don't know and I thought perhaps, to carry that out,

30

and I wrote it, so I wouldn't, had no intention of ever accepting or anything like that.

Q. Why did you think some of your brother's friends boasted that they paid a lot of money to stop at a beautiful home?

A. I don't know, that is the only conclusion I could think of.

Q. Why would you think that they boasted that they paid a lot of money?

10 A. I don't know; I couldn't imagine.

Q. Why did you imagine?

A. I don't know.

Q. That they boasted about paying money?

A. I don't know. I should have throwed in the trash basket.

Mr. Richards—If your Honor please, I object.

The Court—Sustain the objection.

Q. What did you mean by the term "seasonal bookings" in the sentence "I cannot afford to accept any but seasonal bookings for the two summer months?"

Mr. Richards—Objected to on the ground it is his witness, his exhibit, going in without opposition and it speaks for itself and he is bound by it.

The Court—No, I think that phraseology is subject to explanation. I will permit it.

Q. What did you mean by the term "seasonal bookings?"

80 A. Meant nothing, wrote the letter so as not to have to entertain him, anything like that, just didn't mean anything.

Q. When you said "I cannot afford to accept any but seasonal bookings for the two summer months, that is for all week," didn't you in fact mean that you won't let people come to your house if they are going to stay for a shorter time than one week?

A. I couldn't mean it because it isn't so.

Q. Do you permit people to come and stay for a shorter time?

A. We have, some of our friends come down for a week-end, it doesn't make any difference.

Q. You wrote to this man that you wouldn't take any bookings for less than a week?

A. Yes.

Q. Of course you meant that he couldn't come unless he wanted to come for a week, isn't that true?

A. I really meant to convey by that letter he couldn't 10 come at all and yet I wanted to write a letter in case a friend did say something. I didn't want to embarrass that friend. I just don't know any more than that.

Q. This letter was addressed to Mrs. Le Beck?

A. Yes.

Q. Where was Mrs. Le Beck at the time?

A. I really don't recall. I know she wasn't there. I don't even know.

Q. Did you know this man Cooper?

A. Never met him.

Q. Did you know whether or not Mrs. Le Beck knew 20 him?

A. Neither of us know him.

Q. Did you know at that time that she didn't know him?

A. No, I didn't know anything. Mrs. Le Beck wasn't there.

Q. And what did you mean when you said "I can't afford to accept any"—

A. Well, the entire letter had the one—I had the one idea, I just didn't intend that Mrs. Le Beck should take 30 him and yet I wanted to write in case there was someone who had mentioned something to him. I didn't want to embarrass him. That was my idea.

Q. You didn't want to embarrass whom?

A. If it was a friend of my brother's who said it.

Q. Was there anything in the letter about this man being a friend of your brother?

A. No, I thought he was—I thought that probably a friend of my brother's had spoken to Mr. Cooper. I didn't know Mr. Cooper.

Q. But there was nothing in Mr. Cooper's letter to suggest that he was a friend of your brother's?

A. No, certainly not.

Q. So you say now what you meant by that letter was that you weren't going to take him?

A. Absolutely not. I had no intention.

10 Q. How long a time did Mr. Cooper say he wanted to stay with you?

A. I never saw Mr. Cooper; I don't know.

Q. How long a time did his letter say?

A. Oh, his letter? I don't recall that at all. I don't recall. I know there was a letter. I don't recall.

Q. You don't recall how long he said he wanted to stay?

A. I don't recall what his letter said.

20 Q. Now what is your part in the entertaining of friends and relatives? Do you have any of the expense of the entertaining of these friends and relatives?

A. When I had, when I entertain or have parties I pay for them myself.

Q. What kind of parties?

A. Mah Jong parties, bridge parties, instead of entertaining at my home, which is small, my own home, I entertain down there.

Q. I am talking about these people who stay at 109, Dover Avenue, stay over night?

A. Now Mr. Blum's sisters wouldn't be Mrs. Le Beck's relations. They would be more mine, naturally

80 I would pay for the entertaining of those relatives.

Q. You pay for the entertainment of those people?

A. Mr. Blum's relatives, I pay for it.

Q. You pay for that?

A. Yes.

Q. Do they pay anything for that?

A. No.

Q. They don't pay anything to you?

A. No.

Q. Or to Mrs. Le Beck?

A. Or to Mrs. Le Beck.

Q. Do you ever have any friends stopping there?

A. Yes, I have friends stopping there.

Q. Do they pay?

A. Well, sometimes you know only just share the expenses same as the other friends do, the food and things like that.

Q. Food and things like that?

10

A. Well, food mainly.

Q. Mainly the food?

A. Yes.

Q. Now you ladies have to pay carrying charges on this property, don't you?

A. Yes.

Q. Do you include in the amount that you get from these people any of that?

A. We never figured it up, I don't know. We never figured it up.

20

Q. You mean to say you don't know how much it costs you to carry this place?

A. Yes, but we never figured it up. Mrs. Le Beck knows nothing about business or bookkeeping and I can't be annoyed with it, we never really figured up, I don't know.

Q. So you never undertook to get from them any money other than just the food?

A. No. I am interested in the sale of the house more than anything else.

Q. Don't you think you would be able to sell it just 30 as well if you closed it?

A. That is what we intend. We intend, Mrs. Le Beck is going away and I intend, for a couple of weeks to go on a vacation, on a trip.

Q. Expect to go on a trip?

A. Yes.

Q. And close the house?

A. Well, we don't know what arrangements will be made yet. Mrs. Le Beck has to have a home, as long as that home isn't sold I don't see why Mrs. Le Beck can't use it as a home and I entertain my guests there, it is a nice house, nice house to entertain in.

Q. And your entertainment is able to pay an amount of the expense?

A. Not when I entertain my city friends.

Q. Do you know how many people, different people
10 have stayed in that house during the last summer?

A. Never counted, probably twelve, I don't know, probably twelve.

Q. Twelve different people?

A. In the family, my brother and his three children, my brother and his one child, sister-in-law, Mrs. Le Beck's sister-in-law.

Q. And there are other people other than immediate relatives who stopped there, aren't there?

A. Very close friends.

20 Q. And they pay too?

A. Well, shared, some of them shared in the expenses.

Q. Shared in the expense?

A. Yes.

Q. Do they pay you a fixed amount?

A. No.

Q. They pay more when they stop there in summer than they do when they stop in winter?

A. I guess the expenses were larger in summer; I don't know.

30 Q. They do pay more in summer?

A. I really don't know much about it. You see I haven't been there very much.

Q. At this particular time that Cooper wanted to come down and stay, that was right over the Fourth of July, wasn't it?

A. I don't remember. I can't even recall whether it was in the spring or the summer, I don't recall it at all.

Q. Don't you recall it was a particularly busy time with you?

A. No, I can't recall. The thing just passed out of my mind, never gave it any more thought.

Q. As a matter of fact Fourth of July was a busy time, wasn't it?

A. Fourth of July? I can't just place Fourth of July. Just what occurred then?

Q. Do you remember Christmas week, this last Christmas week? 10

A. You mean this one?

Q. Yes.

A. Yes, sure.

Q. How many people did you have in the house then?

A. You mean this Christmas?

Q. Yes.

A. We had my brother, two brothers, one with the three children and his wife, the other brother and his wife and child, Mr. Lansit, his wife and two children, Mr. Fink, his wife and two children, Mr. Berger and 20 wife, I think that is all.

Q. How much did Berger pay you?

A. Berger hasn't paid anything.

Q. Does he owe you anything?

A. No.

Q. What relation is Berger to you?

A. Friend of my brother's. These guests were my brother's house party, house guests.

Q. You ladies didn't receive anything from them?

A. Not at all; not a cent.

Q. Who paid the expenses during that time? 30

A. My brother.

Q. Did he pay the servants?

A. The servants and everything.

Q. You are a partner in the operation?

A. In the ownership of the house.

Q. Not a partner in the operation?

A. Well, if you call helping pay the expenses a part-

ner, yes. When it comes to interest due or something like that, why Mr. Blum has to help.

Q. You pay half of the interest?

A. Well, if we are short, we pay more than half of it except probably—

Q. Keep any record of what you pay?

A. Yes, the interest, surely, that we have not a record, but we know it, we know by heart that.

Q. You know it by heart?

10 A. Yes.

Q. Just state to us what interest you have paid?

Mr. Richards—I object.

The Court—What relevancy can that have?

Sustain the objection.

Q. This is your signature, is it not, Mrs. Blum?

A. Yes.

Q. You swore to this affidavit?

A. Yes.

Q. Everything stated in there is true?

20 A. Yes.

(Affidavit offered, admitted in evidence and marked *Exhibit C 7.*)

Cross-examination, by Mr. Richards.

Q. Mrs. Blum, what was your object in buying this house for your sister?

A. We thought it was a very good buy and it would be a very good investment.

Q. Did you buy it for speculative purposes?

A. Speculative purposes.

30 Q. Did you buy it to run a boarding house or hotel there?

A. No indeed.

Q. Have you run a boarding house there?

A. No.

Q. If I went down there to your house today could I get accommodations and pay for them?

A. Well, you are a friend of ours, perhaps I would take you in over night.

Q. Here is the stenographer, who, I don't think is a friend of yours, would you take him in there?

A. No, sir.

Q. Would you take these other folks in the courtroom you don't know?

A. No, sir.

Q. Is there any sign on the place that you run a boarding house?

A. No, sir.

Q. Do you entertain the public there?

10

A. No, never.

Q. But if I went down there and wanted to spend a week with you you would let me share the expenses of it?

A. I certainly would.

Q. What expenses would you let me share?

A. Well, the food mainly and possibly the help. Of course the house has one help all the time that Mrs. Le Beck needs, if we have an extra maid.

Q. But if I gave you enough trouble to have another girl why you would expect me to share in that? 20

A. I would expect you to share, yes, sir.

Q. Who principally occupies the house with Mrs. Le Beck when you do have people there outside of your own family?

A. You mean, are my brothers my family, brothers and their families, my family?

Q. I am asking you that.

A. They are there a good bit of the time.

Q. Your brothers? What are their names?

A. William S. Gluck and A. E. Gluck.

Q. Now what is William S. Gluck's business? 30

A. He is a lawyer.

Q. Whereabouts?

A. In New York.

Q. Who are these people that he brings with him when he comes down?

A. His office associates, some of his clients.

Q. They are more his friends than they are yours, are they not, really?

A. Yes.

Q. And when he lands them in on Mrs. Le Beck it is understood that he is going to see that she doesn't lose by it?

A. Absolutely.

Q. Do you know whether or not he gives her money for helping her run the house?

10 A. He gives her money toward the bills, toward paying the bills.

Q. Do you know whether he sees the bills or not?

A. Oh, he isn't interested in the bills.

Q. He takes her word for that?

A. He takes her word for that.

Q. Now has he done anything else toward assisting you and your sister-in-law in relation to the upkeep of the house?

A. Indeed we called upon him quite frequently. We
20 have called upon him several times for assistance. I don't like to bother Mr. Blum all the time.

Q. Has he given you any money recently for that purpose?

A. I don't think so but we expect to make a call on him.

Q. You do?

A. Yes.

Q. In relation to what?

A. Well, we will need more money.

Q. For what purpose?

A. Interest and mortgage coming due.

30 Q. You have a mortgage coming due when?

A. Twenty-fourth of January.

Q. Has it got to be paid, refinanced or something or what?

A. Well, we haven't made an effort to find out yet either way. Of course we may have it, I presume we will have it refinanced.

Q. When you get up to that point you are going to make a touch on your brother?

A. We will have to.

Q. Has your husband and Mr. Le Beck been putting in money to pay the interest on the mortgages?

A. Several times.

Q. How about the taxes?

A. Same thing.

Q. You have no independent means of your own, have you?

10

A. No, only what Mr. Blum furnishes me and pays for all my needs and entertainment, everything else.

Q. So that the way it is Mr. Le Beck and Mr. Blum are having the honor of paying the most of the cost of carrying this speculative enterprise and you expect to get the profits out of it?

A. Yes.

Q. I suppose you expect to pay Mr. Blum and Mr. Le Beck back, don't you, at that time?

A. I don't know about Mr. Blum because what is
20 his is mine.

Q. Mr. Blum, of course, is in business?

A. Oh, yes.

Q. And has independent means of his own?

A. Independent means, yes.

By Mr. Hanstein.

Q. You told the Senator that when your brother comes down he endeavors to see that Mrs. Le Beck doesn't lose by reason of entertaining him, isn't that true?

A. Yes.

30

Q. You say he pays her money towards the food and the servants, if you require extra servants, is that right?

A. He will do that or he will do it in another way, we go to him for money when we need it.

Q. But you expect to pay that money back?

A. I don't know whether we will, not all of it.

Q. But you expect to?

A. If we take a great amount from him we hope to pay some of it back when we sell the house.

Q. So you consider that somewhat of a loan?

A. When the amount is very much excessive.

Q. You expect to pay that back?

A. Some of it.

Q. Now what are the items of expense that go towards the operation of that house?

1. A. Well, there would be the food, under which comes meat and vegetables.

Q. Just food generally?

A. Yes, food.

Q. What else?

A. Maids and a man there that—

Q. What are the items of expense that you ladies must pay for?

A. Well, telephone, electric lights, gas, I guess that is all.

2. Q. How do you heat your house?

A. Oh, yes, coal in the winter. I forgot that.

Q. Now all of these items, telephone, electric light, gas and coal are fairly big items, aren't they?

A. Yes.

Q. Don't you figure those items into the cost of operating when your brother and his friends or your friends pay you their expenses down here?

A. We really never figure closely, we never do.

Q. You have some idea of it, don't you?

3. A. Well, I don't know, perhaps, if the food is a certain amount we may tack on maybe two or three dollars, I don't know; we never have the actual amounts, never.

Q. You may put a little more on the cost of food to cover expenses?

A. The maids, the telephone or something. We may do that. I don't know whether we do or not.

Q. The idea of doing it, is that so that you don't lose money by reason of entertaining these people? You

don't want to entertain these people and pay for their entertainment out of your own pocket, do you?

A. We have certain obligations, when we go to New York we are entertained, and we return those obligations at a cost to myself or to Mrs. Le Beck.

Q. Yes, of course, but certain of the people who do not entertain you in return, who are stopping at your house and who undertake to give you money, you expect to get from them enough to reimburse you for your expenses, don't you? 10

A. Well, I don't know whether we have figured the other expenses. I never counted that. I don't know. I don't know much about it.

Q. You have to pay those expenses, don't you?

A. We manage to get the money when it is due.

Q. Do you have to contribute to this fund too?

A. Indeed I do.

Q. This fund for the operation?

A. When I entertain my friends I certainly do.

Q. When you don't entertain your friends do you 20 contribute to the operation?

A. When there is a shortage I do.

Q. You do?

A. I do.

Q. These items of gas and coal are quite considerable, aren't they, coal particularly now?

A. No, we haven't used so much this year. It is a small item this year.

Q. It is a small item?

A. Yes.

Q. But it is something, isn't it?

A. I don't know much about it. I don't know how 08 much coal they have used.

Q. Aside from the amount they used, there isn't any doubt that the telephone, electric light, gas and coal in that house, like in every other house, is a fairly important item; that is true, isn't it?

A. It isn't such a large item considering the size of the house.

Q. What does considering the size of the house have to do with the amount you have got to spend for those things?

A. You light up your rooms and go from one room to the other and things like that, that burns more electric lights.

Q. So the more you use the more you pay?

A. Yes.

Q. So the larger the house the larger the amount?

10 A. Yes, but we haven't so much.

Q. But there is a certain amount of that expense?

A. Yes.

Q. Particularly when there are a lot of people there, the expense is more, isn't it?

A. Naturally it would be.

Q. When these people are just friends who are paying you something don't you undertake to include in the amount they pay you something to cover that?

20 A. We never figured very closely. I never did. I am not down there very much and whatever Mrs. Le Beck does suits me.

Q. Don't you try to figure a round sum that takes care of that?

Mr. Richards—How long is this cross-examination of his own witness going to continue?

Mr. Hanstein—I never knew the length of cross-examination was a legal objection.

30 The Court—But there is an assumption this is cross-examination. This isn't a cross-examination and if objected to, I sustain the objection, but it has developed into one. Being no objection I haven't raised the question, but I have sustained the objection now.

Mr. Richards—I thought it was time the Court considered I was on the job.

Q. You said if Senator Richards went down there you would permit him to stop at your house?

A. Just as it was as a figurative speech.

Q. You told him you would, didn't you?

A. Yes.

Q. Would you require him to pay anything?

A. No.

Q. He could stop there free of charge?

A. Well, we consider—I guess so, I don't know, I didn't give it serious thought.

Q. So there is a likelihood that he can go there and live there for nothing for a while? 10

A. Well—

Complainants rest.

Mr. Richards—If your Honor please, I ask for a dismissal.

The Court—Have to close your case, Senator.

Mr. Hanstein—May I state the witnesses I have subpoenaed may be excused?

The Court—Yes, but I think we better wait until we find out. It may be the Senator is de- 20 pending on using some of them, if they are in the courtroom. He is entitled to.

DEFENDANTS' TESTIMONY.

William S. Gluck, sworn.

Direct examination, by Mr. Richards.

Q. Mr. Gluck, what is your business?

A. I am a patent attorney, member of the bar of the District of Columbia and State of New York.

Q. You practice in New York?

A. I do, sir. 30

Q. Are you a relative of either of the defendants in this case?

A. Both.

Q. What is the relationship?

A. Brother.

Q. Have you been visiting them more or less frequently at 109 South Dover Avenue?

A. Very frequently.

Q. When you visit them do you bring anybody with you?

A. Generally bring a party along.

Q. How much of a party?

A. All depend, usually, where I come down over the holidays, or for my summer stay, I generally try to bring down four or five couples with me, the husbands of whom are associates or clients of mine.

10 Q. What financial arrangement do you make with your sisters, if any, for the, to cover the expenses incident to bringing the party of five or six people down there?

A. None whatsoever except after my stay I say "Rose, what have we cost you?" And she says "well, we spent so much for groceries, possibly, so much for meat, sixty dollars, eighty dollars," give her eighty or a hundred dollars, one hundred and fifty, just depends what mood I am in, what my finances are and so on.

20 Mr. Hanstein—I ask all that be stricken as not being responsive and being hearsay evidence.

Mr. Richards—How can it be hearsay?

Mr. Hanstein—They are parties in this suit, they are defendants. He is coming and testifying to a conversation with the defendant.

Mr. Richards—Conversation with the defendant is competent, I always thought.

30 The Court—I think I will permit it to remain, however, so far. You have examined upon the relationship, when I say relationship I mean so far as being a guest is concerned, of this particular witness and he is now asked on the defense what business relationship they have. You have already presented it. Of course the conversation is immaterial.

Q. Mr. Gluck, when you were there did you ever pay so much a week to Mrs. —any stated sum, so much a week for your accommodations there?

A. Never.

Q. Did any of your guests?

A. Never.

Q. Did any of your guests ever pay her anything?

A. Nothing at all, not as long as they were my guests.

Q. Whatever expenses she incurred you stood for, is that right?

A. They were my guests, yes, sir.

Q. At other times have you advanced any money to your sister?

A. Oh, yes.

10

Q. For what purpose?

A. Well, they have to meet interest payments, which are heavy, they have to renew their mortgages, pay bonus to renew their mortgages and they haven't the money.

Q. You have advanced money for that purpose, have you?

A. Oh, yes.

Q. Has that had anything to do with the freedom with which you took people down there?

20

A. I felt perfectly free under those circumstances to tell them I would like them to accommodate four or five or six of my friends when I brought them down.

Q. As a matter of fact you kind of declared yourself in on the partnership, haven't you?

A. Apparently I am the house.

Q. You say you have been down there frequently?

A. Yes, very frequently.

Q. You know pretty much about the running of the house then?

A. Probably know as much as they do.

30

Q. Did your sisters take any boarders there?

A. No, sir.

Q. Do they hold the house out as a boarding house?

A. Quite to the contrary.

Q. What is it, as a matter of fact?

A. It is a private dwelling house purely, nothing more.

Q. Where your sisters and some of their relatives and friends and yourself and your friends gather from time to time for various spaces of time?

A. We do.

Q. Know whether Mrs. Blum and Mrs. Le Beck's other relatives come there?

A. Of course. I have met them there. They do.

Q. Do you know whether she charges them by the day or the week?

10 A. As I understand there are no charges.

Mr. Hanstein—I ask that be stricken out.

The Court—Yes.

Mr. Richards—I think that would have to be stricken out.

Q. Do you know whether or not they do?

A. As far as I know there are no charges.

Mr. Hanstein—I ask the latter part of the question be stricken.

20 The Court—Yes, unless this witness has personal knowledge.

Q. You have never seen them pay any money, have you?

A. No, I have never seen them pay any money.

Q. Did you ever hear Mrs. Le Beck or Mrs. Blum demand any money from them?

A. Never saw them or heard them demand any money.

Cross-examination, by Mr. Hanstein.

Q. Mr. Gluck, what is your definition of a boarding house?

80 A. My definition of a boarding house is an institution that holds itself open to receive people generally for money and to make a profit therefrom.

Q. Well, isn't it a boarding house if it doesn't make a profit?

A. A boarding house is a business and all businesses is a profit making institution. If it does not succeed in making a profit then it has failed in its purpose.

Q. Isn't it a boarding house nevertheless?

A. Oh, yes.

Q. It can be a boarding house without making money?

A. Yes.

Q. You think a boarding house then is an institution that holds itself open to receive all comers, is that the idea?

A. One of the essentials of a boarding house.

Q. How do you distinguish then between a boarding 10 house and hotel?

A. In one respect size, in the second respect a hotel is subject to certain statutory regulations, depending upon the statute, as to the accommodations of guests, what they have to provide and as to responsibility to guests and for guests, for their property and for their lives. I don't imagine that a boarding house would be subject to those conditions and regulations. In other words it is a matter of legal, technical distinction.

Q. Yes and I am asking you as a lawyer.

A. I am not qualifying as a lawyer here, qualifying 20 here as a witness, I understand.

Q. So that you do not consider that you have given your definition of a boarding house as a lawyer in any respect, do you?

A. No, as a witness.

Q. As a witness particularly?

A. Particularly as a man off the street.

Q. Therefore, when you stated that this is not a boarding house, you base it on the definition that you have given?

A. I base it on the definition I have given and as 30 generally understood.

Q. Now you are there how much of the time?

A. I am generally—you can depend upon my being there over the Christmas holidays. You can depend upon me being there over the Easter holidays, over all the summer, on election time I generally run down; you can also depend upon me, on my way down to

Washington where I go probably every Monday because my business was mainly, my professional business is mainly in Washington, in court and in the patent office, there, to run over, so you can take it I am in Atlantic City anywhere from five to nine or ten times a year, almost monthly.

Q. And you are here over the holidays, Christmas and Easter?

A. And I may also come there Washington's birthday.
10 day.

Q. Washington's birthday; you also come in when you are going back and forth between New York and Washington on business?

A. Not always, occasionally.

Q. It is on these occasional visits that you bring parties along then?

A. No, sir.

Q. You bring your parties down over the holidays?

A. There may be exceptions to that also, you understand, as a general rule.
20

Q. Not as a general rule?

A. Not when I am traveling to Washington alone and come back alone, necessarily I come here alone. I am not in the habit of picking anybody up by the way-side and bringing them.

Q. So that the occasions when you can always be counted on as being down here with your family—

A. And friends.

Q. —and friends are Christmas, Easter, did you say?

A. Easter.

Q. Washington's birthday?
30

A. Yes, sir. And some other occasion.

Q. Election time you said?

A. Yes, the last two elections I have been here, and the summer time.

Q. You make a point being here election? Now did you stay here all summer?

A. About anywhere from six to ten weeks. I stayed here six weeks last summer, ten weeks the past summer.

Q. You bring parties there and entertain them all summer?

A. Entertain them, yes, sir.

Q. All summer?

A. Six to ten weeks, depend how long I stay, whether they care to come sooner than I do, in other words I accommodate my own arrangements with my sisters to their own convenience, may want to stay at the house ten weeks, they may do so, I stay here long as I find it convenient to stay here. I found it convenient to stay 10 ten weeks summer of 1924, six weeks summer 1925.

Q. You were down here six weeks last summer?

A. Past summer.

Q. During that time did you entertain a party with you?

A. I brought a party with me.

Q. How big a party was that?

A. Probably four or five friends of mine, associates and their families.

Q. You had four or five friends?

20

A. And their families.

Q. And their families?

A. Yes.

Q. In all how many people were here as your guests last summer?

A. I imagine from ten to thirteen.

Q. You had from ten to thirteen people as your guests for the summer, is that correct?

A. Yes, sir.

Q. For which you were not paid?

A. For which I was not paid, no, sir.

30

Q. You entertained them?

A. I entertained them. They were my guests.

Q. They were your guests?

A. Yes, sir.

Q. How much did you pay your sisters last summer?

A. At the end of the summer and at times from time to time we would sit down and I would say "Rose, how much it cost you for the past two weeks?" and

Rose in her usual modest way would say sixty dollars, I would give her eighty or a hundred. When you ask me how much I pay, I must ask you—I must go back far as I can recall, what it cost I gave her and if you asked how much that was then it would be merely a guess, when I tell you what I am giving we try to estimate best we could what it cost and I would reimburse them and make certain that I did cover that sum.

Q. You did undertake to reimburse them for their
10 cost?

A. For their outlay.

Q. What did you include in the items?

A. What that cost them which they would not have had to lay out if we had not been there.

Q. Well, what items were they? Just tell us the items?

A. I will tell you the items with this statement that I am not a housekeeper. The primary items I understood I was paying for was the food on the table, eighty
20 per cent of all the items for extra help that they had to pay and any other items and that was all a matter of guesswork, I may have underpaid them thirty per cent, may have overpaid them thirty per cent, because what difference does it make, I am a brother, she is a sister, when she needed help I give it to her.

Q. You didn't undertake to pay her for her services?

A. I didn't undertake to pay anything for anything.

Q. During the time that you were there were all the people in that house your guests?

A. No, sir.

Q. There were other people?
30

A. May have been occasionally, possibly one or two couples who were friends, relatives or guests of my sisters, there at their request, not at mine.

Q. Did they pay anything?

A. That I don't know.

Q. You don't know anything about your sister's household while you are not here except from what she may tell you, of course?

A. Naturally I know plenty, but I presume it would not be admissible.

Q. So that you are not able to say whether she takes boarders when you are not here, or whether she doesn't are you?

A. I can say pretty definitely.

Q. Whatever you would say would be under the law hearsay?

A. You asked me can I say? I say yes I can.

Q. Did you occupy the house facing the beach? 10

A. Me and my party.

Q. Who was in that party?

A. Mr. J. L. Schechter and his family, 34 Wall Street, my associate, Mr. A. M. Grill, also an associate of mine, Mr. Lansit, my personal associate and virtual partner, Mr. Stephen Hess, my very good friend and one of my good clients.

Q. Who paid the expenses of that?

A. I paid all the expenses of it, which amounted to merely the maid's services and the amount that was ad- 20
vanced by me by, I believe Rose Le Beck, I don't know which one advanced that for me for the lease.

Q. You paid that expense?

A. I paid that, yes, sir.

Q. Was there any reason why, when you wanted to bring your friends to Atlantic City on that occasion you didn't stop at your sister's house?

A. There was a good reason why I did stay at this particular house.

Q. I am asking you a different question which I would like answered. 30

A. I will say there was no particular reason why we couldn't and didn't, couldn't have stayed at my sister's house.

Q. Were there other people staying at the house at the time?

A. There were, I understand, two or three families who were friends and relatives of the Le Becks or of the Blums, I don't know which.

Q. You paid all the expense of renting this house?

A. I did.

Q. How long did you stay down?

A. Possibly, I guess was nine days, seven days, seven days, I guess, yes, about possibly nine days.

Q. Do you know for how long a time that house was rented?

A. Yes, one week.

Q. You stayed nine days you say?

10 A. I stayed nine days.

Q. You stayed longer than the lease?

A. Not at the house. I remember very distinctly when the lease was up, you see, we all moved back, I at least—the others I think left—I moved back to 109 South Dover and spent the other two days with my family there.

Q. This money that you are advancing to your sister from time to time is that to be repaid to you?

A. Never been discussed, only proposition they need
20 it and they get it. If I get it back, if they make money on this house and I get it back, I am in just that much.

Q. There is no agreement this is a loan?

A. No agreement of any character whatsoever about anything.

Q. So this money you are giving, so far as the present understanding goes, is in return for the privilege of you staying at the house?

A. In appreciation and also because of the fact again, and that is the most important fact, that they are sisters and I am a brother.

30 Q. Then the testimony of your sister that you get the privilege of entertaining your guests in return for this money contribution is not entirely accurate, is it?

A. It is entirely accurate.

Q. It is yours?

A. Yes, sir; I may have two motives for giving the money. They may have one for receiving it.

By Mr. Richards.

Q. Mr. Gluck, how did you come to rent this other house? What was your object in it? You were going to tell us and were cut off.

A. I received a letter from Mrs. Le Beck shortly before Easter that she had been given to understand—

Q. I don't think you better testify to what was in that letter.

A. All right.

Q. As the result of that letter what did you do? 10

A. I wrote to Mrs. Le Beck that I was bringing down with me four other gentlemen whom I thought would be interested in the purchase of 115 South Dover Avenue, price then we understood was one hundred thousand dollars. I then wrote her that if the thing was vacant, as it had been a month and a half or two months before when I was here, and she could get that house for a week, it would be a fine stunt to kill two birds with one stone, and at the same time to relieve her of part of the responsibility of having us in her house, 20 lease this house and we can look it over, and I am sure from what we have seen of the outside, those friends of mine would be so well pleased with the house on the inside, I could swing the deal. I couldn't do it myself.

Q. What were you going to do? Was it your purpose to buy the house?

A. Yes, why we stopped there. We had Mr. — he is the agent, not Mr. Keenan, Keenor—he has a German name, florid, stoud gentleman—

Q. Neustadter?

A. Mr. Neustadter, I sent for Mr. Neustadter and 30 I recollect the incident very well because Mr. Neustadter had just come from a sick bed, he had had a hemorrhage and had been sick four or five days, and he discussed certain medical phases of the thing with me, and we discussed at that conference the purchase of the house and he estimated and told us that he thought he could swing the deal for us for a hundred thousand, possibly

a hundred and five thousand, with not too much of a cash outlay.

Q. Did you consummate the deal about it?

A. We did not.

By Mr. Hanstein.

Q. You say you came down with the idea of buying that house?

A. Yes.

10 Q. You were bringing some associates into it because it was a pretty big thing, is that it?

A. Yes.

Q. Do you remember the mortgage encumbrance on that house?

A. I think in the neighborhood of seventy thousand dollars all told, something of that character.

Q. You don't know whether it was more than that, do you?

A. I have no idea.

20 Q. Did you know the mortgage terms before you came down?

A. No, not before I came down at all.

Q. How did you know the deal was too big for you before you came down here then?

A. My dear Mr. Man, I always valued that property one hundred and fifty to two hundred thousand dollars and the thing made it most interesting was my sister told me she thought I could strike it much less, which was confirmed by Mr. Neustadter when I did get to see him that week, it is a pretty large deal for a man of my standing to undertake.

30 Q. You are a wealthy man, aren't you?

A. Not probably as wealthy as you would think.

Q. Your generosity would indicate tremendous wealth.

Sol C. Harris, sworn.

Direct examination, by Mr. Richards.

Q. Mr. Harris, what is your business?

A. I am an associate member of L. Sonneborn and Sons, Incorporated, 114 Fifth Avenue, New York.

Q. Are you a friend of Mr. Gluck's?

A. Very good friend.

Q. Have you ever been entertained down to 109 South Dover?

A. Several times.

Q. How long did you stay there when you were there?

A. Easter time I was down there for the week with 10 Mrs. Harris and I.

Q. Whose guests were you while you were there?

A. Mr. Gluck.

Q. Did you pay any board while you were there?

A. I did not.

Q. Do you know whether there were any other guests of Mr. Gluck's there?

A. Yes.

Q. Do you know whether or not they paid any board?

A. I don't think they did.

Q. Was the house run as a boarding house? 20

A. No, sir.

Q. Any sign on it?

A. No, sir.

Q. Did the public come there and get accommodations?

A. They did not.

Q. What was this house?

A. A private dwelling.

Q. Residence?

A. Residence, yes.

Q. Mrs. Le Beck live there? 30

A. She did.

Q. And Mr. Gluck brought you and your other friends there over Easter?

A. Yes.

Q. And didn't cost you a cent?

A. It did not, no.

Cross-examination, by Mr. Hanstein.

Q. Pay Mr. Gluck anything?

A. I did not.

Q. In no shape or form?

A. No, sir.

Q. Purely a matter of friendship?

A. Positively.

Q. That he brought you down?

A. Yes, sir.

10 Q. How about the other people that he brought down?

A. I don't think it is necessary for me to answer for them, is it?

Q. Beg pardon?

A. I am not answering for them. I am answering for myself. You asked me whether it cost me anything. I say it didn't.

Q. Now I asked you how about the other people that he brought down?

20 A. It would be a supposition, would it not, if I answered you that they did or did not pay? Am I supposed to know?

The Court—There don't seem to be any question concerning that at all.

Q. Did the other people who came down with Mr. Gluck pay anything?

A. I could answer that two ways, but I don't know. How would I know?

Q. What is the other way you can answer?

A. I don't know. You are the attorney and asked me the question I presume in the proper way.

30 Q. What are the two ways in which you can answer that question?

A. How would I know whether they paid Mr. Gluck or not? I have been a guest, or having been a guest of Mr. Gluck I presume they were guests as well.

Q. Then your answer is you don't know whether they paid or not?

A. How would I know?

Q. My question—it may be that you don't know anything at all, so far as I know.

The Court—Answer the question. If you don't you may say so, Mr. Harris.

A. I don't know.

Q. So far as you know they may have paid?

A. I wouldn't answer that. I don't know.

Q. Had you ever been down in Atlantic City at this house before?

A. Yes. 10

Q. Had you been down here on any occasion when you were not with Mr. Gluck?

A. In Atlantic City?

Q. To this house without Mr. Gluck?

A. No, sir.

Q. Never been here without Mr. Gluck?

A. Always there with him.

Q. How many times have you been there with him?

A. Several times.

Q. Did you on any occasion pay anything? 20

A. I did not.

Q. Never to Mr. Gluck?

A. Never to Mr. Gluck or anyone.

Q. And never to Mrs. Le Beck or Mrs. Blum?

A. No, sir.

Q. Did you give them anything?

A. Gave them nothing.

Q. No money, article or otherwise?

A. No money, articles or anything.

Q. Well, you seem to be quite certain about that?

A. I positively am. Positive of every statement I 30 make to you.

Q. All right, sir.

Defendants rest.

Mr. Hanstein—Here is something. I overlooked offering in evidence a certified copy of the deed to Richard B. Morrell for property in this same tract. I don't suppose any objection to it?

Mr. Richards—I don't think, if your Honor please, that that proves the right of the complainant to be a complainant in this case, the mere offering of a certified copy, don't think it is competent, not the proper way to prove the title to the property.

10 The Court—It is prima facie proof of title. If you desire an opportunity—if there is any question about it and you desire an opportunity of showing he is not the owner of that property, I will give you the opportunity. It is prima facie proof, a certified copy of the record.

Mr. Richards—I have no knowledge at all whether they are or not. Our answer indicates that we did not doubt it.

Mr. Hanstein—I offer the deed as evidence and if there is any doubt about it, I can call Mr. Morrell to prove he is still the owner. Not proper proof but I will do it.

20 The Court—You may do so.

Richard B. Morrell, sworn.

Direct examination, by Mr. Hanstein.

Q. Mr. Morrell, are you the owner of property at the West line of Elberon Avenue, 100 feet southwardly from the southerly line of Atlantic Avenue?—

Mr. Richards—That is objected to on the ground it is a conclusion.

The Court—I will permit it.

30 Q. —Extending westerly parallel with Atlantic Avenue 106 feet; (2) southerly parallel with Elberon Avenue fifty feet; (3) easterly parallel with Atlantic, 106 feet to the westerly line of Elberon; (4) northwardly in and along the westerly line of Elberon, 50 feet to the place of beginning?

A. I am. It is known as 116 South Elberon, 100 by 106, there is a lot and house.

(Certified copy of deed offered, admitted in evidence and marked *Exhibit C 8.*)

Testimony closed.

Mr. Richards—If your Honor please, I ask for a dismissal of this suit as to all of the complainants except Mrs. Fleming. There is no testimony here showing ownership in the other complainants outside of Mrs. Fleming and the attempt to show the ownership in Morrell and I think that is not competent, and I call attention of your Honor to the fact that that deed contains no mention whatsoever of the restrictions as between the parties who conveyed to Morrell and there is no evidence here that these restrictions have not been 10 at any time released. There is no recital.

However, the main point on which I wish to rely in this discussion is that there has been absolutely no proof of the issues made by the pleadings. The complainants seek an injunction here to restrain the defendants from operating a boarding house and they allege that they have not in fact been operating a boarding house in this property 109 South Dover Avenue. They have produced no witnesses here who have sworn that a boarding house has in fact been operated there. They 20 have produced all together but three witnesses: Mr. Fleming, whose testimony proved to be of absolutely no value whatsoever but he did not himself undertake to testify that this property was held out as a boarding house, that it was operated as a boarding house or that boarders were received there.

They then called the two defendants and they are in law bound by the evidence that comes out of the mouths of those two witnesses. Mrs. Le Beck denied that they had entertained boarders there. She explains the presence of persons other than their own immediate family 30 as being friends or very near relatives of others who came there in this large house, house very much larger than they needed for themselves, and who stayed various lengths of time and who sort of commonwealthed with them the expenses that they were put to in feeding and sheltering them. The chief guests seem to have been their brother, Mr. Gluck, who brought his friends there and, as he suggested, it was largely a family affair in

which he advanced money from time to time and took care of the added expense, as he puts it, that his sisters were put to in running this house. The complainants have produced no positive evidence whatsoever from which your Honor could possibly issue a restraining order.

Upon this subject I wish to call your Honor's attention to the fact that a boarding house is well defined in the law and is a place for the accommodation of the public and must be held out as such a place.

Arguments of counsel. Decision reserved.

IN CHANCERY OF NEW JERSEY.

BETWEEN

HENRY J. TRAINOR ET AL.,

Complainants,

and

ROSE LE BECK ET AL.,

Defendants.

On Bill for
Injunction on
Final Hearing.

CONCLUSIONS.

(Filed August 31, 1926.)

Messrs. Thompson & Hanstein for the Complainants.
Mr. Emerson Richards for the Defendants.

INGERSOLL, V. C.

30 The bill is filed claiming that the defendants are the owners of the premises known as No. 109 South Dover Avenue, in Atlantic City, New Jersey, are violating the terms and conditions of certain restrictions set forth in their chain of title.

The restrictions read:

"1. That no building or buildings shall be erected upon the above described premises except a single

dwelling house to be devoted exclusively to private dwelling house purposes. A brick or stone private garage excepted.

2. That no building or buildings shall be erected upon the above described premises anywhere nearer to the front property line than twenty feet, nor within five feet of the side or rear lines; that no bay window or other similar structure shall extend more than two and one-half feet beyond the main building or part thereof of which it forms a part, 10 and that no porch veranda shall have an elevation of more than six feet above the curb line of the avenue upon which the land herein described fronts, and shall not be more than twelve feet in width, or within six feet of said property lines, except on the ocean side of dwellings erected on the beach front lots.

3. That no buildings shall be erected upon the land herein described costing less than sixty-five hundred dollars (\$6,500.00).

4. That no building shall be erected upon a lot having a frontage less than fifty feet on said streets between and including Elberon and Annapolis Avenues, and as said avenues are at present plotted, except a thirty-foot lot on the west side of Ridgway Avenue feet fifty south of Atlantic Avenue as now plotted.

5. That no overhead telephone, telegraph or electric light or other electric wires or poles or supports for the same shall be erected or maintained on the land herein described, except such as may be erected thereon through legal proceedings.

6. That no undertaker shall be permitted to conduct business on any part of the herein described property.

7. That no signs of any kind excepting house numbers or physicians' signs of the usual size, shall be placed or erected upon or within any part of the herein described property."

The contention of the complainants is, that the defendants are conducting a boarding house, and not occupying or using the premises for "private dwelling house purposes."

At the conclusion of the final hearing, I expressed myself as follows:

"The situation as I see it—to state the facts as I see them is, that these two sisters have purchased this property as a speculation. One of the sisters resides with
10 her husband in Atlantic City. The other sister resides with her husband in the premises in question. The property is much too large for the use of this sister and her family, and she has from time to time, the testimony would seem to indicate, almost continuously had visitors at this house who were either relatives, close or intimate friends, who, according to her testimony, which is the testimony we are governed by in this case, have paid to her such amount of money as she figured out to be a fair proportion of the cost of operating the
20 house or, as the brother expressed it, such amount of money as it was necessary for her to pay that she would not have been called upon to pay if the guests had not been there. The other sister has likewise entertained friends there, for which entertainment she says she has given her sister the proportion of the cost. Mrs. Blum apparently has little knowledge of the cost of operating the house. I am now speaking of operating it not from the financial end of ownership, but of the occupancy of the house.

80 The carrying charges of the house, such as taxes, interest and items of that nature are borne share and share alike. Mrs. Blum intimates that if there is any money received from those friends, relatives or other persons at the house in excess of the actual cost that that is used in the settlement of the overhead charges. Mrs. Le Beck, as I recall, testified that there never was any excess at all, that she never collected from any of her relatives, friends or other persons any more money than she actually paid out therefor.

As a business I do not see that it is proven that the sisters were partners—if it was a business. As an ownership of the property without doubt they are partners.

Now the question resolves itself to this one issue: Does the use of a house and the permitting of persons to be guests therein, those guests paying a proportionate share of the cost of their living, constitute that a boarding house? That is the issue, as I take it, and it now is before the Court to determine.

The complainants, of course, have admittedly been 10 in a position of having no proof to offer except such proof as they were able to obtain from the defendants—except two items of proof. One is the advertisement. Mrs. Le Beck will neither deny nor affirm that advertisement. The advertisement does speak of "winter rates" which would indicate that a house for convenience of guests or boarding house was being conducted.

The second item is the letter addressed to this man Cooper, which the complainants have proven to have 20 been written by Mrs. Blum, who explains why she wrote it. I am not at all impressed with the character of Cooper as a guest or his being there as indicating that this house was a boarding house. On the contrary—the testimony would seem to indicate to me that, so far as he was concerned, he was assured that it was not a boarding house, that he could not have accommodations there and that he was compelled to leave the very next morning. Of course, I have no knowledge why Mr. Cooper is not here to testify to what he found the facts to be. He was complainants' affiant, but is not here 30 to-day and, of course, the testimony as produced by the complainants concerning his presence does not, in my view, aid them at all.

Therefore, it comes right down to the one point in my mind—does the use of a house in the manner indicated by excerpts from the testimony and understanding of the testimony of Mrs. Le Beck and Mrs. Blum, and of course, qualified and explained by the brother

and Mr. Harris, constitute that house a boarding house?

I will, of course, take the opportunity to examine the cases which have been called to my attention. I am making this statement so it will be unnecessary for me to make another resume of the facts as I find them. I will do that as quickly as possible."

There seems to be no definition of "private dwelling" adopted by the court of this State.

The late Chancellor McGill in *Skillman v. Smatheurst*, 10 57 N. J. Eq. 1, at page 5, said:

"I think, also, that the flat cannot be deemed a *private dwelling*. It is really a community house, designed for the accommodation of more than an individual and his household, which I consider to be the sense in which the word '*private*' is to be taken."

The late Vice-Chancellor Howell in *Koch v. Gorruflo*, 77 N. J. Eq. 172, at page 174, said:

20 "There is a very broad distinction between a private residence and a flat or apartment house. This distinction was very clearly made by Chancellor McGill in the case of *Skillman v. Smatheurst* (1898), 57 N. J. Eq. (12 Dick) 1. There the covenant provided that the premises conveyed should not be used for any other purpose than a private dwelling or private dwellings. The defendants began the erection of a three-story frame flat house with five rooms on a floor, suitable for three families. The chancellor held that the buildings, which were in course of erection, were not private dwellings, and were therefore violative of the covenant which restricted the use of the land to the erection of private dwellings. This was followed by Vice-Chancellor Gar- 30 rison in the case of *Lignot v. Jackle*, 65 Atl. Rep. 221. It has been held in England that an effectual way of prohibiting every kind of business is to stipulate that buildings to be erected on the land shall not be used otherwise than as private dwelling houses. A restriction of this character will prohibit a school (*Johnstone v. Hall* (1856), 2 K. & J. 414); or a charitable institution (*German v. Chapman*, 7 C. D. 271); or a boarding

house for scholars (*Hobson v. Tulloch* (1898), 1 Ch. 424); or a studio (*Patman v. Harland*, 17 C. D. 353). In *Rogers v. Hosegood* (1900), 2 Ch. 388; 69 L. J. Ch. 652, it was held that where the covenant was that every house to be erected should be adapted for and used as and for a private residence only, is broken by the erection of a block of residential flats. In *Gannett v. Albree*, 103 Mass. 372, it was held that where a lease provided that the premises should be used strictly as a private dwelling, the condition is violated by the use of the 10 premises as a public boarding house; and in New York, in *Levy v. Schreyer*, 27 App. Div. 282, it was held that a building constructed so that it can be occupied by three families living separate and apart is not a private dwelling within the provisions of a covenant not to erect any tenement house or any houses except private dwellings, and whether it was intended to be used by more than one family was immaterial.

The distinction between a private dwelling house or a private residence on the one hand and a house built 20 or occupied as a residence for two or more families is quite obvious."

This appears to be in accordance with the opinions as annotated in 18 A. L. R., page 460.

I find that the defendants are not operating an inn or tavern, nor are they conducting a boarding house; but I am convinced that the use of the premises as made by them is a violation of the restrictive covenants.

A decree will be advised in accordance herewith.

IN CHANCERY OF NEW JERSEY.

BETWEEN

HENRY J. TRAINOR ET AL.,
Complainants,

and

ROSE LE BECK ET AL.,
Defendants.

On Bill, Etc.

10

FINAL DECREE.

(Filed September 17, 1926.)

This matter coming on to be heard on bill and answer in open court in the presence of Walter Hanstein of Thompson & Hanstein, solicitors for complainants, and Emerson L. Richards, Esquire, solicitor of defendants;

And the Court having read the pleadings and having heard and considered the testimony and the Court being of the opinion that the use made by the defendants of the premises referred to in the bill of complaint, is a violation of the restrictive covenants upon said premises;

And the Court being of the opinion that the complainants are entitled to an injunction in form and character as hereinafter provided;

It is, on this 17th day of September, 1926, on motion of Thompson & Hanstein, solicitors of complainant, Ordered, Adjudged and Decreed that the defendants be and they hereby are enjoined and restrained from the use of the premises described in the bill of complaint, except exclusively for private dwelling house purposes;

It Is Further Ordered that the defendants pay to the complainant, or their solicitors, the costs of this suit, to be taxed, together with a counsel fee of \$150.00 to be included in said taxed costs, and that execution issue for the collection of the same in accordance with the practice of this Court.

Respectfully advised,
R. H. INGERSOLL,
V. C.

E. R. WALKER,
C.

MacCrellich & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY Court of Errors and Appeals.

HENRY J. TRAINOR ET AL.,
Complainants-Respondents,

v.

ROSE LEBECK ET AL.,
Defendants-Appellants.

On Bill, etc.
On Appeal from
Court of Chancery.

BRIEF FOR DEFENDANTS-APPELLANTS.

Statement of Facts.

The Atlantic City and Chelsea Improvement Company laid out a tract of land in that part of Atlantic City known as "Chelsea," a block wide between Atlantic Avenue and the ocean, and three blocks and one-half long.

Pursuant to a general scheme, the company imposed certain restrictions upon the building lots. The most important of which, so far as this suit is concerned, is:

"1. That no building or buildings shall be erected upon the above described premises, except a single dwelling-house to be devoted exclusively to private dwelling-house purposes."

The complainants and the defendants are all successors in title to the Chelsea Improvement Company.

The complainants filed a bill against the defendants, alleging that the defendants were "conducting and maintaining upon said premises a *boarding or lodging house*, wherein *boarders and lodgers* are accepted by them at *stipulated prices*, and are using the premises so owned by them for boarding or lodging house purposes." (Page 9, State of Case, lines 9 to 18.)

The prayer of the bill was that an injunction issue to restrain defendants:

"*from conducting upon their premises, a boarding or lodging house and to restrain them from violation of the above restrictions*" * * * (Page 9, State of Case, lines 29 to 32.)

The learned Vice-Chancellor held that:

"The defendants are not operating an Inn or Tavern, *nor are they conducting a boarding-house*; but I am convinced that the use of the premises as made by them is a violation of the restrictive covenants." (Page 137, State of Case, lines 25 to 28.)

The pertinent facts upon which the Vice-Chancellor apparently based his conclusions are as follows:

The house in question is located on Dover Avenue. All of the houses are large and expensive dwelling houses. The house of defendants contains ten bedrooms (page 44, State of Case, lines 12 and 13) and had a number of living rooms in addition.

The general testimony was that the defendants, who were sisters, had bought the house as a speculation, and that Mrs. LeBeck and her husband live there, pending an effort to resell it. Her sister, Mrs. Blum, and her husband, lived in another part of Atlantic City, but frequently visited there.

The proof was that relatives of Mrs. LeBeck and one or two intimate friends occasionally visited the LeBecks and on these occasions shared in the cost of the food bought for their entertainment. The principal

guest was Mrs. LeBeck's brother, an attorney-at-law, from New York, who with his family and sometimes intimate client friends came down over the week-end, occupied rooms in the house, and upon leaving reimbursed Mrs. LeBeck for his share of the food consumed and any extra help that Mrs. LeBeck engaged.

There was also testimony that in addition to the brother and sister-in-law of Mrs. LeBeck, an aunt and several other relatives had at various times visited Mrs. LeBeck. In addition to that, a Mrs. Finberg, an intimate friend, had likewise made a lengthy stay at the house. It was admitted that all of these relatives had shared in the expenses of the household, so far as the actual expense of their food was concerned, but that they had paid no stipulated sum and nothing toward the general upkeep of the property.

"Q. Did other people stay with you besides your brother and his friends during the time Mrs. Finberg was with you?

A. Yes; why I had my sister-in-law, I had an aunt of mine, I had several relatives other than my brother." (Page 52, State of Case, line 17.)

"Q. Did your brother give you money while he was staying with you?

A. Well, he would give me money, approximately what it would cost for the entertaining of him and his friends." (Page 52, State of Case, line 26.)

"Q. How much would he give you for himself and these friends?

A. *He never gave me any stipulated sum; it was a family affair.*" (Page 52, State of Case, line 31.)

It was admitted that Mrs. LeBeck's brother had loaned her money to help pay the interest on the mortgage. The friends of the brother paid no money to Mrs. LeBeck for their entertainment.

Page 56, State of Case, line 24:

"Q. Did you receive money from any of the people staying in your house while your brother was there other than your brother?

A. No, sir. * * *

Q. At times when people are there who are not brought by your brother; did you receive money from them?

A. Well, that depended upon, for instance if an aunt of mine would come down for a week-end, no.

Q. You didn't receive anything from your aunt?

A. No."

Page 57, State of Case, line 11:

"Q. Are there some from whom you didn't receive money?

A. When I invite anybody to my house to spend the week-end, they are my guests."

The testimony was undenied that nobody but personal friends visited or stayed at the house, except on one occasion, when a man by the name of Cooper, an agent paid by the complainants and who was not present at the hearing before the Vice-Chancellor, forced his way into the house under a pretext, and stayed all night.

On this occasion, the testimony was that Cooper with his family arrived in the evening when Mrs. LeBeck was absent, told the maid they were friends of Mrs. LeBeck and prepared to stay all night. When Mrs. LeBeck returned, she naturally insisted upon their leaving, whereupon they pleaded that they had no other place to go and asked her not to turn the children out late at night. Being sympathetic for the children, Mrs. LeBeck let them stay over night, charged them for the trouble they had made and insisted on their leaving the next morning. It was upon the affidavit of Cooper that the preliminary injunction was granted, and it is significant that Cooper never was produced by the plaintiffs at the trial.

There was no profit made out of the house or its operations.

Page 62, State of Case, line one:

"Q. Do they make any profit out of their ownership of this house?

A. No, sir; the only profit there was to be was when the house was sold."

On pages 70, 71, 72, 73, the defendant, Mrs. LeBeck, testified to the moneys contributed by these staying in the house.

Page 70:

"Q. Did they give you anything?

A. Yes; they shared in the expense."

Page 71:

"Q. How do you figure up the cost when you set out to do it?

A. Well, if the butcher bill were a certain amount and the groceries and vegetables; that would be all summed up.

Q. You figure up the cost of food?

A. Yes.

Q. You figure up the cost of food?

A. Yes.

Q. Do you add anything for the cost of the cook?

A. No; I haven't added anything for the cost of the cook."

Page 72:

"Q. Do you figure anything for taxes?

A. Not in the cost of that; no.

Q. Did you figure anything on the overhead cost of your house?

A. No, sir. * * *

Q. Do you figure anything for your services?

A. No, sir."

Page 73:

"Q. You don't take in as much as the overhead cost of your house; do you?

A. No, sir.

Q. So that from your standpoint this is a losing proposition; isn't it?

A. It isn't a business proposition. * * *

Q. You have never had a week in which you took in more than the expenses of actually operating the house?

A. No, because we share the expenses.

Q. Now, when these people come down who are not friends of yours and are friends of your brother's, why is it that you don't ask them to contribute a larger amount so as to cover these overhead expenses so that you don't operate this at a loss?

A. I am not in business."

Some point was made by complainants' counsel concerning an advertisement placed in a Jewish newspaper in Philadelphia. This advertisement simply stated:

"That Mrs. Rose LeBeck, formerly of 171 States Avenue, begs to announce her removal to her Chelsea home, 109 South Dover Avenue."

Mrs. LeBeck didn't recall who framed the advertisement, but said it was a social announcement and not an advertisement.

It is evident this advertisement was not regarded by the newspaper as a boarding-house advertisement, since it was placed with other advertisements of cemeteries, etc., while all the boarding-house advertisements were on a different page.

It was also testified that Mr. LeBeck and Mr. and Mrs. Blum contributed to the expenses of running the house and the cost of its overhead, interest and taxes. Mr. Blum assisted in financing the mortgages, amounting to thirty-seven thousand dollars (\$37,000.00), (page 83, State of Case), and Mrs. LeBeck's brother likewise assisted in the same manner, in return for which he was allowed to use the house for himself and his friends.

Page 84:

"The friends that he brought to the house were clients and business associates." (Pages 84, 85.)

Mrs. Blum testified that when she had friends or parties at the house, she paid the expenses. (Page 104, State of Case, line 31.)

"A. Now, Mrs. Blum's sister wouldn't be Mrs. LeBeck's relations. Naturally, I would pay for the entertaining of those relatives." * * *

"Q. Do you pay anything for that?

A. No." (Lines 36, 37.)

Mrs. Blum's attitude toward the house was about as follows:

Page 106, State of Case, lines 3 to 6:

"A. * * * I don't see why Mrs. LeBeck can't use it as a home and I entertain my guests there; it is a nice house, nice house to entertain in."

The number of guests, all told, was very small. (Page 106, State of Case, line 9.)

"Q. Do you know how many people, different people, have stayed in that house, during the last summer?

A. Never counted, probably twelve, I don't know; probably twelve.

Q. Twelve different people?

A. In the family, my brother and his three children, my brother and his one child, sister-in-law, Mrs. LeBeck's sister-in-law." (Page 108, State of Case, lines 28, 29.)

Mrs. Blum denied specifically that the house was run as a boarding-house. She stated that the house was bought for speculative purposes. Mrs. Blum testified that her brothers were at the house a good bit of the time. (Page 109, State of Case, line 29.)

That the lawyer brother sometimes brought down his office associates or clients with him. (Page 110, State of Case, line 4.)

"Q. And when he (the brother) lands them in on Mrs. LeBeck, it is understood that he is going to see that she doesn't lose by it?

A. Absolutely."

It should be noted that all of this testimony was brought out by the complainants' witnesses and that they were bound by the facts they adduced. The brother, William S. Gluck, confirming the financial arrangement with his sister, testified: (Page 116, State of Case, line 2.)

"Q. When you visit them, do you bring anybody with you?

A. Generally bring a party along.

Q. How much of a party?

A. All depends, usually, when I come down over the holidays, or for my summer stay, I generally try to bring down four or five couples with me, the husbands of whom are associates or clients of mine.

Q. What financial arrangement do you make with your sisters, if any, to cover the expenses incident to bringing the party of five or six people down there?

A. None whatever, except after my stay I say, 'Rose, what have we cost you?' And she says, 'well, we spent so much for groceries, possibly, so much for meat, sixty dollars, eighty dollars' and give you eighty or a hundred dollars, one hundred and fifty, just depends what mood I am in." (Page 116, State of Case, lines 2 to 19.)

Gluck testified that he had no weekly or contractual relations with his sister. (page 116, State of Case, lines 35 to 38), and that none of his guests ever paid his sister any money. He also testified that he advanced money to his sisters to meet interest payments upon the mortgages, and for that reason he felt free to bring his friends to the house.

Page 117, State of Case, lines 19 to 24:

"Q. As a matter of fact, you kind of declared yourself in on the partnership?

A. Apparently I am the house."

ARGUMENT.

I.

The first objection is that the learned Vice-Chancellor should have dismissed the Bill and not have entered a decree. The issue made by the pleadings was:

"Whether or not the defendants had violated the restrictive covenants by using the premises for other than private dwelling-house purposes."

The bill alleged that they were maintaining upon the premises a boarding or lodging house, wherein boarders and lodgers are accepted by them at stipulated prices, and are using the premises so owned by them for boarding or lodging-house purposes.

The case is absolutely devoid of any testimony whatever that the house was used as a boarding or lodging house or that boarders or lodgers were ever accepted at stipulated prices. *The learned Vice-Chancellor found as a fact that the premises was not operated as a boarding house.* Since this was the issue, and the cause that was actually tried, and since the bill was both unsupported by the evidence and the facts found against the allegations in the bill, it was improper to enter a decree, even although the decree simply restrained the defendants from using the premises:

"Except exclusively for dwelling-house purposes."

The decree carried with it, costs and counsel fees, whereas the bill should have been dismissed as unwarranted, and the defendants should have been allowed costs.

II.

The second objection is that the decree determines as a matter of fact and the learned Vice-Chancellor found as a matter of fact:

"That the use made by the defendants of the premises referred to in the bill of complaint is a violation of the restrictive covenants upon the said premises."

The restrictive covenant was that the premises should be used for *private dwelling-house purposes* only; it was not pretended that the premises was used for any trade or business except in the allegation of the bill that it was used as a boarding or lodging house.

There seems to be no reported cases which clearly defines what in the law is a *private dwelling* house. A dwelling house generally is a structure where human beings live, particularly at night.

Therefore, a hotel, an apartment house, a boarding house, or a similar structure, is a dwelling house.

There seems to be no cases which undertake to define the word "private" as applied to a dwelling house. All the cases dealing upon this subject fall into the class where an effort is made to distinguish between a dwelling house and a boarding house, or other similar use of the premises.

In *Refferty v. New Brunswick Fire Insurance Co.*, 18 N. J. L. 480, the Supreme Court held:

"There is no specification which makes a boarding house an extra risk, and when so used it is still a dwelling house and a private house as distinguished from a public house or tavern."

In this case, an insurance company sought to evade payment of a policy on the ground that the structure was insured as a private dwelling house and the proof showed that boarders were taken in and that liquor was sold in the house. The Court held, however:

"A tavern is a different house from a boarding house, or one where provisions are prepared and sold to boarders or others calling in for accommodation, and though they may get liquor in the house, yet it is not a tavern under the meaning of the term, as generally used in the

country, or as I apprehend, as used in this policy." (Page 488.)

The language of this case has never been criticized and is authority for the proposition that a private house is any house as distinguished from a public house or tavern, or in the more modern sense, a hotel.

In *Goater v. Ely*, 80 N. J. Eq., page 40, Vice-Chancellor Garrison in interpreting a restriction clause against erecting a dwelling house, decided that:

"A dwelling house is a house intended for human habitation," and continuing, he said:

"A covenant in this language would be clearly violated if a man should erect a house, the first and second floors of which were fitted up for stores or offices and the floors above the second were fitted up for flats; the four walls and the roof as above suggested, would constitute a house and the part of it which was fitted up for dwelling purposes at the time of the erection of the house, would constitute the erection of the house to be dwelt in, or in other words, a dwelling house."

In *State v. Troth*, 36 N. J. L. 422, Chancellor Zabreski held that a statute making it unlawful to lay out a road through a dwelling house, applied to a tavern, "a hotel was a dwelling house."

In *DeGray v. Monmouth Beach Club House*, 50 Eq. 329, a restrictive covenant was:

"against erecting anything that would depreciate the value of neighboring property for dwelling houses."

Vice-Chancellor Green held:

"that the erection of bath houses or even a club house for the use and accommodation of adjoining lot owners, was not a violation of the covenant," but said that:

"a casino or pavilion on the plans presented, which would necessarily attract strangers, so arranged as to provide them with accommoda-

tions and a place for lounging or refreshment, should not be permitted in the face of the covenant."

The New Jersey cases, therefore, may be deemed to be authority for the proposition that all places of human habitation are dwelling houses and that the distinction between *private* and *public* dwelling houses lies in the fact that the public generally may resort to the latter for accommodation.

In *Skillman v. Smatheurst*, 57 Eq. 1, Chancellor McGill trying to interpret a restriction "for the use and the purpose of a private dwelling as opposed to a flat house," said:

"I do not find cases which directly define the meaning of the term 'a private dwelling;' I think that a flat cannot be deemed a private dwelling; it is really a community house designed to the accommodation of more than an individual and his household, which I consider to be the sense in which the word 'private' is to be taken."

In the case at bar there was no allegation in the bill and no attempt to prove that the public were invited to the residence of the defendants, and the fact found by the learned vice-Chancellor was that the residence was not even used as a boarding house.

The distinction between a private house and a boarding house as laid down in the cases throws additional light upon what the courts consider to be a public use of a dwelling house.

In *State v. Ludy*, 95 Mo. 76, where the owner of a dwelling house kept five or six lodgers and gave meals to others, it was held:

"That a boarding house is a dwelling house, but that the acts therein charged did not make the dwelling house a boarding house."

In *Birmingham Company v. Truss*, 135 Ala. 530, it was held that:

"The fact that six or seven boarders live in a house and a few others take meals there does not destroy its character as a dwelling house."

In *Mohammad v. Anchor Insurance Co.*, 48 Can. S. C. 546:

"A dwelling house does not cease to be such simply because one or more lodgers are taken in by the occupant."

Matto v. Veeder, 31 Misc. 569 N. Y., held that:

"The fact that the owner dwelling with his family lets rooms to persons applying therefor does not make it a boarding house, nor deprive it of its character as a dwelling house."

In *Talbot v. Southern Seminary*, Ante 534, it was held:

"That a boarding school where young persons were taken in to be educated and received food and lodging was not a boarding house."

In *Cady v. McDowell*, 1 Lans. N. Y. 484:

"* * * Boarding house is not in common parlance or in legal meaning every private house, where one or more boarders are kept occasionally only and upon special consideration. But it is a *quasi*-public house where boarders are generally and habitually kept and which is held out and known as a place of entertainment of that kind. It is a house where the *business* of keeping boarders is generally carried on."

In *Steward v. McCready*, 24 Howard N. Y. 62, the Court says:

"In modern times and especially in cities, the practice has become very general of furnishing accommodations by the week or by the month, at a fixed rate, or as the parties may agree, and persons who furnish accommodations in this way are distinguished as keepers of boarders."

In *Robbins v. Bangor R. & Electric Co.*, 100 Me. 496, the Court said:

reason has been largely argued above. A reading of the state of the case will disclose that the whole theory of the complainants and the defendants was that complainants were trying to demonstrate that the house was used as a boarding house and the defense was based upon the theory that it was not so used, coupled with an explanation of just how the house was used.

VI.

The sixth reason is that the decree restrains the defendants from using the premises upon a theory different from that upon which the bill of complaint was founded.

We assume that no citation of authority is needed for the proposition that the decree must be in conformity with the relief prayed for in the bill.

VII, VIII, IX.

The next three reasons (7, 8, 9) will be argued together. The decree, if it does anything, undertakes to restrain the defendants from entertaining relatives and guests, who may contribute to the expense of the household, or, even going further, from entertaining relatives or guests, at all.

The only proof in the case at bar was that two brothers of the defendants, several other near relatives and two friends, made one or more visits to the home of the defendants, with the exception that defendants' brother, who was admittedly advancing money to defendants for mortgage interest and other charges, considered that this financial obligation gave him the right to bring parties of friends to the house over the holidays and during vacation time, and that he did so bring his business associates and clients.

Bearing in mind that this house, just as the other houses in the neighborhood, was a large house, having ten bedrooms; that it had formerly belonged to a moving picture magnate, who had entertained exten-

sively and without objection from the neighbors. It will be noted that no new use was made of the premises. What possible use would a house with ten bedrooms be to any reasonable family, unless they expected to entertain friends and relatives?

In Atlantic City, particularly, where the residents frequently invite friends and relatives to visit them to participate in the recreation incident to a seashore resort, it would certainly be a remarkable interpretation of restrictive covenant to determine that a covenant limiting the use of the residence to private dwelling house purposes, thereby depriving the owner of the right to entertain his relatives and friends.

That such an interpretation cannot be reasonably inferred from the restriction is obvious, and if it could be it has certainly been broken, not only by every owner in this tract, but in every other similarly restricted area in Atlantic City.

Hutchinson v. Uhrich, 145 Ill. 336, the Court, in interpreting the phrase "single dwelling," said:

"If they intended that only a building such as is usually built for the private residence of a single family should be erected, why not say so in the deed?"

If it was the intent in this case to limit the use and occupancy of the building to a single family the deed should have said so, in so many words. The words "private dwelling house" cannot be said to comprehend the idea that only one family may dwell within its walls at one time.

In *Muller v. Cavanaugh*, Vice-Chancellor Lewis, *Marsh v. Marsh*, 19 N. J. Eq. 244, says:

"It is a fundamental theory that where a restrictive covenant as relating to the relief sought must be clear. If it is doubtful, to doubt is to deny."

The force of this contention is best illustrated by the form of restriction in *Shoyer v. Mermelstein*, 93 N. J. Eq. 57, there the restriction read:

"The said dwelling house shall only be used as a private house and for one family only, and for no other purpose or use whatsoever."

It therefore follows that if it had been the intention to limit the use of the house to a single family the covenant should have clearly so stated; the covenant not being clear upon this point a court of equity will not interpose by injunction (*Marsh v. Marsh, supra*).

X, XI.

The tenth and eleventh objections are that the learned Vice-Chancellor erred in finding as a matter of law that the occupation of the premises by two or more families constituted a violation of the covenant.

For the reasons discussed above it is clear that the Vice-Chancellor should not have found that the occupancy of the house by more than one family at a time, all being members of the same household, was a violation of the covenant.

CONCLUSION.

It is therefore submitted that the conclusions and the decree was founded upon a theory different from that alleged in the bill, or tried in the cause, that the defendants had no opportunity to present a defense, based upon the theory that the occupancy of a house by more than one family constituted a violation of the covenant. Had that been the theory, undoubtedly they could have shown violations of the covenant upon that theory, by every one of the complainants, who also undoubtedly entertained others in their homes besides their immediate family.

It is further submitted that the decree as drawn does not define the rights of the defendants and that they could never know when they would be violating its provisions, can they entertain guests at dinner? May they give a card party? May they house defendants' brother

over night? Or may both Mr. and Mrs. Blum and Mr. and Mrs. LeBeck occupy the house at the same time, or must one of them remove from the premises? While the questions seem absurd, nevertheless, under the opinion of the learned Vice-Chancellor, and the decree as it now stands, neither defendants nor their counsel can tell what they may or may not do.

The conclusions of the learned Vice-Chancellor was that the use of the premises is a violation of the covenant, and yet the use of the premises as proven at the hearing is substantially comprehended within the questions just advanced.

It is respectfully submitted that the decree should be reversed and the bill dismissed.

EMERSON L. RICHARDS,
Solicitor for and of Counsel with
Defendants-Appellants.

MacCrellich & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY 10
Court of Errors and Appeals

BETWEEN
HENRY J. TRAINOR ET AL.,
 Complainants-Respondents,
 and
ROSE L. BECK ET AL.,
 Defendants-Appellants. } On Bill, etc. 20

Supplementary State of the Case.

EXHIBIT C-4.

(Newspaper advertisement.)

"Mrs. Rose LeBeck, formerly of 171 States Avenue,
begs to announce her removal to her Chelsea home, 109 30
South Dover Avenue, second house from beach, winter
rates."

EXHIBIT C-5.

IN CHANCERY OF NEW JERSEY.

BETWEEN

HENRY J. TRAINOR ET AL.,

Complainants,

and

10 ROSE LeBECK ET AL.,

Defendants.

On Bills &c.

AFFIDAVIT.

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

Rose LeBeck, of full age, being duly sworn according to law upon her oath says that she has read the affidavits of Margaret Fleming, Richard B. Morrell, and Rebecca Murrow and says that the statements contained therein are wholly untrue so far as they relate to the conduct of defendants premises.

Deponent further says that she is not now, nor has she been conducting a boarding house on her premises No. 109 South Dover Avenue; that the property owned by her and her sister is also a very valuable property worth in excess of \$50,000; that it is a large house containing ten bedrooms; that they have had during the summer friends visiting them, but at no time have there been a large number of persons congregating in their house or upon the porches, or in automobiles in front of their house, but that they are using their home as a private dwelling house with no more outward manifestation thereof than would be usual with the use of any large private house where their friends might be visiting, and that they have done nothing that would mar the quiet and exclusive character of the neighborhood.

Deponent says that there is no unusual delivery of supplies to their home; that the butcher and the grocer make an average of but one call a day and that the milkman and the breadman make exactly the same calls as are made upon other neighbors including the plaintiffs who made the aforesaid affidavits.

Deponent further says that there is no unusual accumulation of garbage or rubbish; that they have two cans for the reception of such garbage and that they do not use more than one can in any one day, unless the garbage man fails to make the daily collection.

Deponent denies that there are a large number of automobiles belonging to either deponent or friends visiting her house parked in front of her home or that of the neighbors. Deponent does say that on one occasion an automobile belonging to one of her friends was parked in front of the residence of the complainant Murrow; that on this occasion deponent was giving a Mah Jong party and that the automobiles belonged to various friends residing in Atlantic City and Ventnor who had come to the party and that they did not belong to anyone living in their home.

Deponent says that there are cars parked very frequently in front of her premises and of that of the various other owners of property on South Dover Avenue, but that these cars belong to persons coming down Dover Avenue to bathe and who drive down Dover Avenue and park their cars in front of deponent's residence and other residences on that street, while they go in bathing or promenade the Boardwalk.

Deponent says that this practice is just as objectionable to her as it is to the other neighbors and that it disturbs the peace and quiet of herself and relatives as much as it does that of the complainants, but that she is in no wise responsible for it and knows of no legal method of preventing it.

Deponent also says that large numbers of persons coming back and forth from the beach, particularly

bathers are continuously coming up and down South Dover Avenue, adding much to the detriment of her property and that of the other neighbors and that the peace and quiet of the neighborhood is disturbed by their actions, but says that she is in no wise responsible therefore.

Deponent further says regarding the use of automobiles in connection with her home that she herself has one automobile which is kept in the garage in the rear of the premises and that a relative also has an automobile which is kept in the same garage; that neither of these automobiles are frequently used and are rarely, if ever, permitted in front of the house except when in actual use.

Sworn and subscribed before me this day of July, 1925.

EXHIBIT C-6.

20

Atlantic City, N. J.

Mr. Isaac Cooper

Dear Sir:

As my house is a small one, I cannot afford to accept any but seasonal bookings for the two summer months. That is for all week. I am indeed sorry.

Hoping to hear from you at some other time, I remain

Yours truly

ROSE LEBECK.

30

EXHIBIT C-7.

IN CHANCERY OF NEW JERSEY.

BETWEEN

HENRY J. TRAINOR ET AL.,

Complainants,

On Bills &c.

and

ROSE LEBECK ET AL.,

Defendants.)

10

AFFIDAVIT.

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

Anna Blum, of full age, being duly sworn according to law upon her oath says that she is one of the defendants in the above stated cause; that she has read the affidavits of Margaret Fleming, Richard B. Morrell and Rebecca A. Murrow, and that the statements contained in said affidavits are untrue so far as they relate to the conduct of her home No. 109 South Dover Avenue.

20

Deponent says that she is not running a boarding house, but is maintaining a home for herself and sister and such as their relatives who are visiting them in their residence at No. 109 South Dover Avenue.

Deponent also says that there are no unusual deliveries of supplies at the house not more than one delivery a day, nor are there any accumulations of garbage or rubbish not any more than is common to other houses in the neighborhood.

30

Deponent also says that there are two automobiles belonging to them; that they are not parked in front of their residence; that most of the automobiles parked on the street belong to bathers who park in front of her house and other residences while going in bathing.

Deponent further says that she is also annoyed by an unusual number of persons passing by and going down

to the beach and that the peace and quiet of the neighborhood is disturbed by bathers and particularly women with baby coaches continuously passing and repassing along the street.

Deponent says that there is absolutely no difference between the conduct of her home and that of the other neighbors on South Dover Avenue.

Sworn and subscribed before me this day of July, 1925.

10

20

30

NEW JERSEY COURT OF ERRORS AND APPEALS.

HENRY J. TRAINOR, *et al.*,
Complainants-Respondents,

v.

ROSE LEBECK, *et al.*,
Defendants-Appellants.

ON APPEAL.

BRIEF OF COMPLAINANTS-RESPONDENTS.

The bill of complaint in this matter was filed to restrain the violation by the defendants of the building restrictions covering the premises in question.

The neighborhood restricted is one of the finest sections in the Chelsea district of Atlantic City, and consists of private homes, many of which cost upwards of \$100,000. The restrictions are set out on page 8 of the State of the Case, and, among other things, provide as follows:

"That no building, or buildings, shall be erected upon the above described premises, except a single dwelling house, to be devoted exclusively to private dwelling house purposes. A brick or stone private garage excepted."

The bill alleged that the defendants were conducting a boarding or lodging house upon their premises, and prayed for a restraint against that, and against their violation of the restrictions in general, and also contained a prayer for general relief.

The complainants were seriously handicapped in establishing their case because, naturally the relationship between the defendants and the persons whom they entertained in their house, was, of course, something that lay entirely within the minds of the defendants, and the only proof that the complainants were able to produce in respect to that relationship, other than the improbable story told by the defendants, was a letter written by one of the defendants, and an advertisement inserted by the defendants in a Philadelphia newspaper. The letter read as follows:

“Atlantic City, N. J.

Mr. Isaac Cooper,
Dear Sir:

As my house is a small one, I cannot afford to accept any but seasonal bookings for the two summer months. That is for all week. I am indeed sorry.

Hoping to hear from you at some other time, I remain,

Yours truly,
Rose LeBeck.”

It was marked as Exhibit C6, and is to be presented to the Court in a supplemental state of the case showing exhibits, which the defendants’ counsel has agreed to have printed.

The advertisement of the business of the boarding house, which the complainants allege the defendants were conducting read as follows:

“Mrs. Rose LeBeck, formerly of 171 States Avenue, begs to announce her removal to her Chelsea home, 109 South Dover Avenue, second house from beach, winter rates.”

and was marked Exhibit C4, and is likewise to be printed in the supplemental state of the case. The appellants’ brief refers to this advertisement but omits the most salient part, the words “WINTER RATES.”

These two items should, without more, be absolutely convincing that the defendants were operating a boarding house. Neither the letter nor the advertisement can be explained on any other theory.

The testimony shows that the two defendants were the owners of the house, both being married women. The defendant, Mrs. LeBeck, lived in the premises in question with her husband, while Mrs. Blum lived elsewhere. The house was large, consisting of ten bedrooms (S. C., 44). The women are evidently in modest circumstances, and not able, out of their own assets, to pay the expenses of the house.

“Q. Do you get your expenses from the operation of the house?

A. No, I wouldn’t say I get my expenses. Of course, very often my brother helps me out, or Mr. Blum.” (S. C., 61, l. 21.)

Mrs. Blum, according to the defendants’ testimony does not get any income from the operation of the house, nor any rent from Mrs. LeBeck, for the privilege of Mrs. LeBeck occupying the house, and in fact, has her husband contribute towards the expenses of the house. The testimony is ample that Mrs. LeBeck entertains many people at her house from time to time, who pay for the privilege of staying there,

The amount they pay is characterized by the defendant as merely "a sharing of the expenses" (S. C., p. 70-71 and 72). However, they all pay something. Her testimony also showed that the defendant, Rose LeBeck, leased the adjoining property (p. 66, l. 8) in her own name for a period of a week or two, during which the property was occupied by various people, some of whom ate in the defendant's house. The defendant claimed that she paid the rent and her brother returned the amount she paid to her (S. C., 67, l. 12), and that her brother paid her money for the meals of the persons who ate at her house (p. 67, l. 20-23). Defendant also supplied maid service for the house (p. 68, l. 5). At that time there were about 15 people residing in the house of the defendant (p. 70, line 1).

The brother of the defendant testified that he spent ten weeks of the summer of 1924 with the defendants, and six weeks of the summer of 1925 (p. 121, l. 11), which was the summer preceding the time of the hearing, and that he brought a party of four or five friends with him and their families (p. 121, l. 18), in all ten to thirteen people, which he contended he entertained at his expense, and all of whom were kept at the house of the defendants, and for the expenses of which he paid the defendants.

It was certainly apparent that the defendants entertained large numbers of people in their house, and that these people paid for their entertainment exactly as anyone would pay in a boarding house or hotel, with the only possible exception, that, according to the testimony of the defendants, the payments were made on a proportionate amount of the cost of entertaining rather than at a fixed rate.

There can be no doubt, even from the oral testimony of the defendant, that various persons were

entertained in their house who paid for their entertainment. The learned Vice-Chancellor would have been entirely justified in disbelieving the testimony of the defendants as to the manner in which the amounts of the payments were arrived at. Their story, on its face, was improbable. Here they are, people of modest means living in a very expensive house. Either they could afford to live there, or they could not. If they could have afforded to live there they would undoubtedly have done as other people do who desire to entertain guests, entertain them without any thought of charge; or, if they could not afford to entertain them, either not have them there, at all, or else charge at a fixed rate. We say the Vice-Chancellor would have been justified in disbelieving them, and our reason for so doing is that they clearly demonstrated that their testimony was false.

The defendant, LeBeck, in her answering affidavit used on the preliminary hearing (which affidavit was marked in evidence at the final hearing and is to be printed in the supplemental state of the case), stated in paragraph 14 "She had read the affidavit of Isaac Cooper; that she had received a letter from him, and that, as a matter of courtesy, she replied thereto, but that she construed the reply to be a refusal and meant no accommodations." On her oral examination in court (S. C., 57), Mrs. LeBeck denied writing the letter, and on the oral examination of the other defendants, Mrs. Blum, she testified that she had written the letter to Mr. Cooper (S. C., 101). Obviously someone swore falsely, and for that reason we say that the defendants' testimony was not entitled to credence in other respects.

Whether people paid for their accommodations at a fixed rate, or on the basis alleged by the defendants, does not seem to be very material. The defendants

are conducting a boarding house by their entertaining of people who pay, regardless of the method of calculations used in determining the amount to be paid.

“Boarding House: A house in which boarders are kept, as distinguished from an inn or hotel. See Boarder.

Boarder: One who has food statedly at another's table, or meals and lodgings in his house for pay, *or compensation of any kind*; one that boards.” Webster's New International Dictionary.

“Boarder: One who, being an inhabitant of a place, makes a special contract with another person for board, including food and lodging. 7 Cush. Mass. 424. *To be distinguished from a guest.* Story, Bailm, par. 477; 26 Vt. 343; 20 Ala. ns. 371; 7 Cush. Mass. 417.” Bouvier's Law Dictionary, vol. 1, page 210.

We submit that the Vice-Chancellor would have been entirely justified had he found that the defendants were using the property as a boarding house. However, the Vice-Chancellor, although finding the facts as we alleged, construed the legal effect to be that defendants were not using the property as a boarding house, but he says that the use was, nevertheless, a violation of the restrictions, and that the property is not being devoted exclusively to private dwelling house purposes.

Under any circumstance that was a correct conclusion. The entertaining of various persons, in one's home, as a general practice, who pay for the privilege of being so entertained, is not a user of property for private dwelling house purposes within the general acceptance of the term.

“Not only does the term ‘a private dwelling’ by force of the word ‘dwelling’ restrict the character of building by eliminating all buildings for business purposes, such as stores, livery stables, factories and the like, but it also, by force of the word ‘private’ excludes buildings for residential purposes of public character, such as hotels or *general public boarding* or community houses.”

Skillman v. Smathehurst, 57 Equity, page 1 at page 4.

“Where a lease provides that the demised premises shall be used strictly as a ‘private dwelling’ the condition is violated by the use of the premises as a *public boarding house*. *Gannett v. Albree*, 103 Mass. 372, 374.” Words & Phrases, volume 6, page 5573.

We believe that the decree advised by the Vice-Chancellor could have been stronger than it was, and certainly, under any circumstances, should be sustained.

Respectfully submitted,
THOMPSON & HANSTEIN,
Solicitors for and of Counsel with
Complainants-Respondents.

INDEX

	PAGE
Amended Notice of Appeal	1
Petition of Appeal	2
Answer to Petition of Appeal	3
Bill for Specific Performance	6
Answer of Gustav A. Lehr and Bertha P. C. Lehr	29
Petition	40
Affidavit	42
Order to Substitute	43
Order to Amend	44
Order to File Answer	46
Answer of Rose Schlichting	47
Replication	49
COMPLAINANT'S TESTIMONY:	
George M. Dare—Direct	56
Cross	74
Recalled—Cross	80
Llewellyn Hildreth—Direct	77
Cross	78