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Notice of Appeal.
(Filed Aug. 5, 1931)

IN CHANCERY OF NEW JERSEY.

Between CHARLES C. COLGAN and MAX GOREN, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, Defendants.	On Bill, Etc. Notice of Appeal.

The complainants, Charles C. Colgan and Max Goren, hereby appeal from the Final Decree of his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, advised by James F. Fielder, Vice-Chancellor, entered in the above entitled matter on the 28th day of July, 1931 and from each part thereof to the Court of Errors and Appeals in the last resort in all causes.

SAUL NEMSER,
Solicitor for and of Counsel
with Complainants, Charles
C. Colgan and Max Goren.

Dated, July 31, 1931.

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

SAUL NEMSER,
Of Counsel with Complainants,
Charles C. Colgan and Max Goren.

Petition of Appeal.
(Filed August 28, 1931)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between CHARLES C. COLGAN and MAX GOREN, Complainants-Appellants, and ELLEN E. ALLEN, Defendant-Respondent.	On Appeal from the Court of Chancery. Petition of Appeal.

TO THE HONORABLE THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES:

The petition of Charles C. Colgan and Max Goren, the appellants in the above entitled cause, respectfully show that:

1. 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 July 28th, 1931, in a certain cause in said Court of Chancery, wherein the said Charles C. Colgan and Max Goren, were complainants and said Ellen E. Allen was defendant, in this respect, to wit, that the said final decree adjudges "that the complainants' bill of complaint be dismissed, and that the prayer of the counterclaim of the defendant, Ellen E. Allen, be granted and that the said bond and mortgage hereinbefore described be declared and held to be void and of no effect as against the defendant, Ellen

E. Allen and that within thirty days from the service, upon the complainants, of a copy of this decree, which may be certified by the solicitor of the defendant Ellen E. Allen, the complainants, and each of them, deliver up to the defendant Ellen E. Allen or her solicitor, the said mortgage for cancellation."

And petitioners appeal from the said final decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that:

(1) The Chancellor dismissed complainants' bill of complaint and granted the defendant, Ellen E. Allen, the relief prayed for in her counterclaim.

(2) The Chancellor should have granted the complainants the relief prayed for in their bill of complaint and should have ordered the foreclosure and sale of the mortgaged premises.

(3) The Chancellor should have dismissed the counterclaim of the defendant, Ellen E. Allen.

(4) The Chancellor decreed that complainants' bond and mortgage was void and should be delivered up for cancellation.

(5) The complainants are entitled to a final decree in their favor for the foreclosure and sale of the mortgaged premises.

(6) The Chancellor should have found as a fact that the defendant, Ellen E. Allen had the mental capacity to comprehend and that she did comprehend the nature of the bond and mortgage which she executed and delivered to complainants.

(7) The Chancellor erroneously held that the rule "independent advice" applied to the facts in the case at bar.

Petitioners therefore pray that the said final decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioners may have such other relief in the premises as to this court shall seem proper.

SAUL NEMSER,
Solicitor for and of Counsel
with Complainants-Appellants.

Final Decree.
(Filed July 28, 1931)

Between CHARLES C. COLGAN and MAX GOREN, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, Defendants.	On Bill &c. Final Decree.

The above entitled suit having been commenced by the filing of the complainants' bill of complaint and process of subpoena duly issued against the defendants, Ellen E. Allen and David J. Allen, which process was duly served on the defendant, David J. Allen, and service thereof duly acknowledged in behalf of the defendant, Ellen E. Allen, and the defendant David J. Allen, having failed to appear and answer the said bill of complaint, while the defendant, Ellen E. Allen, filed an answer thereto together with her counterclaim praying that a certain bond given by her to the complainant, Max Goren, in the penal sum of $14,000.00 bearing date the 22nd day of March, 1929, and a certain mortgage accompanying the same and bearing the same date, and executed by the defendants, Ellen E. Allen and David J. Allen to the complainant, Max Goren, in and whereby the said defendants to secure the payment of the principal sum of $7,000.00 mortgaged to the complainant

ALL that certain tract, piece or parcel of land and premises, situate, lying and being in

the City of Jersey City, County of Hudson and State of New Jersey, which on a certain Map entitled "Map of 44 Choice Building Lots, property of B. Vetterline, Jersey City Heights, N. J." made by A. Onderdonk, Surveyor and filed in the office of the Clerk (now Register) of Hudson County is shown as lot number seventeen (17) and part of lot number sixteen (16) fronting on Belmont Avenue, bounded and described as follows:

BEGINNING at a point in the southwesterly side of Belmont Avenue where the same is intersected by the southeasterly line of lot number seventeen (17) as shown on said Map and distant ninety and nine tenths (90.9) feet northwesterly from the corner formed by the intersection of said southwesterly line of Belmont Avenue with the westerly line of Summit Avenue; and running thence (1) northwesterly along the southwesterly line of Belmont Avenue thirty-four (34) feet; thence (2) southwesterly at right angles to Belmont Avenue one hundred (100) feet; thence (3) southeasterly parallel with Belmont Avenue thirty-four (34) feet to the southeasterly line of lot number seventeen (17); thence (4) northeasterly along said southeasterly line one hundred (100) feet to the point or place of beginning,

and which mortgage is recorded in the office of the Register of Deeds of the County of Hudson in Book 1541 of mortgages, page 579, be both declared to be null and void, and be delivered up to the said Ellen E. Allen for cancellation, upon which issue was

duly joined by replication to said answer, and the complainants' answer to the said counterclaim and the replication of the defendant, Ellen E. Allen, to such answer of the complainants, and the said suit coming on for a hearing in the presence of David Newton, solicitor and of counsel with complainant Charles C. Colgan and Saul Nemser, solicitor and of counsel with complainant Max Goren and Richard Doherty, solicitor and of counsel with defendant Ellen E. Allen, a decree pro confesso having been taken against the defendant David J. Allen and the court having considered the pleadings and the testimony submitted in open court on behalf of the parties and having heard and considered the argument of counsel of the respective parties,

IT IS on this 28th day of July, 1931, ORDERED, ADJUDGED and DECREED that the complainants' bill of complaint be dismissed, and that the prayer of the counterclaim of the defendant, Ellen E. Allen, be granted and that the said bond and mortgage hereinbefore described be declared and held to be void and of no effect as against the defendant, Ellen E. Allen, and that within thirty days from the service, upon the complainants, of a copy of this decree, which may be certified by the solicitor of the defendant, Ellen E. Allen, the complainants and each of them, deliver up to the defendant, Ellen E. Allen, or her solicitor, the said mortgage for cancellation.

IT IS FURTHER ORDERED that the defendant, Ellen E. Allen, have her costs of this suit to be taxed, which said costs shall include a counsel fee of $500.00, which is hereby allowed to Richard

Doherty, her solicitor, and that execution may issue thereon.

Respectfully advised,

JAMES F. FIELDER, V. C.

E. R. WALKER,
C.

RICHARD DOHERTY,
Solicitor of defendant, Ellen E. Ellen.

Bill of Complaint.
(Filed October 19, 1929)

IN CHANCERY OF NEW JERSEY.

Between MAX GOREN and CHARLES C. COLGAN, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, her husband, Defendants.	Bill of Foreclosure.

To the Honorable EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey:

The complainants, Charles C. Colgan, and Max Goren, of the City of Jersey City, New Jersey, respectfully show that:

1. On March 22, 1929, Ellen E. Allen, and David J. Allen, her husband, being indebted to Max Goren, in the sum of $7,000.00, executed to him a bond of that date to secure that sum, payable on March 22, 1930, with interest at the rate of six per centum per annum, payable quarter-annually from the date of the bond.

2. To secure payment of the bond, said Ellen E. Allen, and David J. Allen, her husband, executed to said Max Goren a mortgage of even date with the bond; and thereby conveyed to him, in fee, the land hereinafter described, on the express condition that such conveyance should be void if pay-

ment should be made according to the terms of the bond. Which mortgage, having been first duly acknowledged, and the certificate of acknowledgment duly endorsed thereon was recorded in the Register's Office of Hudson County, in Book 1541 of mortgages, page 579.

3. The mortgaged premises are described as follows:

ALL that certain tract, piece or parcel of land and premises, situate, lying and being in the City of Jersey City, County of Hudson and State of New Jersey, which on a certain map entitled "Map of 44 Choice Building Lots, property of B. Vetterline, Jersey City Heights, N. J." made by A. Onderdonk, Surveyor and filed in the office of the Clerk (now Register) of Hudson County, is shown as lot number seventeen (17) and part of lot number sixteen (16) fronting on Belmont Avenue, bounded and described as follows:

BEGINNING at a point in the southwesterly side of Belmont Avenue, where the same is intersected by the southeasterly line of lot number seventeen (17) as shown on said map and distant ninety and nine-tenths (90.9) feet northwesterly from the corner formed by the intersection of said southwesterly line of Belmont Avenue with the westerly line of Summit Avenue; and running thence (1) northwesterly along the southwesterly line of Belmont Avenue thirty-four (34) feet; thence (2) southwesterly at right angles to Belmont Avenue one hundred (100) feet; thence (3) southeasterly parallel with Belmont Avenue thirty-

four (34) feet to the southeasterly line of lot number seventeen (17); thence (4) northeasterly along said southeasterly line one hundred (100) feet to the point or place of beginning.

4. Both bond and mortgage contained an agreement that if any installment of interest should remain unpaid for 30 days after the same should fall due, then the whole principal sum, with all unpaid interest, should, at the option of the mortgagee, his representative or assigns, become immediately due.

5. On April 8, 1929, the complainant Max Goren, assigned to Charles C. Colgan, a one-half interest of in and to said mortgage, which assignment was recorded in the Hudson County Register's Office in Book 193 of Assignments, on page 193.

6. On June 22, 1929, three months interest fell due on complainants' bond and mortgage, and remained unpaid for more than 30 days thereafter, and no part thereof has yet been paid. Complainants have elected that the whole principal sum with all unpaid interest shall be now due.

7. Said Ellen E. Allen and David J. Allen, or one of them, has always been in possession of the mortgaged premises.

8. The whole amount of principal, with interest thereon from June 22, 1929, is due upon complainants' bond and mortgage.

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

1. That the said Ellen E. Allen and David J. Allen, her husband, who are the defendants to this suit, may answer this bill of complaint and each statement therein made;

2. That an account may be taken of the amount due on complainant's mortgage;

3. That the defendants, or one of them, may be decreed to pay complainants the amount so found due, with interest and costs, by a short day, to be appointed by this Court; and that in default of such payment, they, and each of them, be debarred and foreclosed of all equity of redemption in said lands,; or

4. That a decree may be made for the sale of the mortgaged premises to raise and pay the complainants the amount so found due on the mortgage, with interest and costs;

5. 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.

CHARLES C. COLGAN,
Solicitor and Counsel with Complainant, Max Goren, and Solicitor and Counsel Per Se.

FERD GARRETSON,
Clerk.

Answer and Counterclaim of Defendant, Ellen E. Allen.

(Filed March 31, 1930)

IN CHANCERY OF NEW JERSEY.

Between MAX GOREN and CHARLES C. COLGAN, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, Defendants.	On Bill to Forelcose. Answer and Counter-claim of Ellen E. Allen.

The defendant, Ellen E. Allen, residing in the City of Jersey City, County of Hudson, New Jersey, answering the bill of complaint herein, says:

1. She denies the allegation of paragraph 1 that on March 22nd, 1929, or at any time, she was indebted to Max Goren in the sum of $7,000.00 or any sum. She denies that on that date she executed to him a bond to secure that sum as set forth in said paragraph; explaining said denial with the statement that on the date aforesaid she was mentally incompetent to transact ordinary business or to appreciate and comprehend the nature of the transaction of which said alleged bond formed a part, and that on the receipt of information that her signature had been made to such bond she by notice in writing to the complainants voided the same.

2. She denies so much of paragraph 2 as alleges that she executed a mortgage of even date with said

bond to secure the payment of the same, and refers to and repeats herein the statement of the next preceding paragraph. Further answering, she says that she has not, and never had knowledge or comprehension of the terms, conditions and provisions of said alleged mortgage, but is informed and verily believes that the same was recorded as alleged in paragraph 2 of the bill of complaint.

3. She admits that the premises described in said alleged mortgage are true as set forth in paragraph 3.

4. She has no knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4.

5. She has no knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5.

6. She has no knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6.

7. She admits the allegations of paragraph 7.

8. She denies the allegations of paragraph 8.

The defendant, Ellen E. Allen, answering alternatively by way of separate defenses, says:

FIRST SEPARATE DEFENSE

1. March 22, 1929 the defendant was so physically and mentally enfeebled by reason of epilepsy

that she was unable rationally to comprehend, understand or appreciate the nature and legal consequence of signing a bond and mortgage such as referred to in the bill of complaint. The mental incompetency of the defendant at said time was well known to the complainant, Max Goren, the original mortgagee, and at said time as well as on April 8, 1929, when the supposed assignment of a one-half interest in said mortgage was made to the co-complainant, Charles C. Colgan, her mental infirmity was likewise well known to him. February 26, 1930, by notice in writing, a copy of which is annexed hereto, the defendant avoided the said bond and mortgage.

SECOND SEPARATE DEFENSE

1. March 22, 1929 and prior thereto the complainants prepared and procured the defendant to sign the said bond and mortgage, well knowing that she was then and there induced to sign the same by fraudulent representations made to her by one Eugene F. McGee and his agents, attorneys and representatives; that the signing of the said papers formed a necessary part of a business transaction by which the defendant would secure a lucrative and highly profitable interest in an alleged stock brokerage business then and theretofore conducted by said McGee, and in the prosecution of which he had become indebted to the complainant, Goren, and which the said McGee averred was then and there an honest, profitable, safe and well established business. Said representations and promises by the said McGee were then and there false, and so known to be by the complainants.

2. At the time of the signing of said alleged bond and mortgage Eugene F. McGee was indebted to the complainant, Goren, in the sum of $2,000.00 for money loaned, and the said McGee was threatened with legal proceedings by certain other client, or clients, in order to avert which it was necessary that he raise the sum of approximately $4,300.00. Thereupon McGee negotiated with the complainant, Goren, for the advancement of said latter sum upon the condition, among others, that McGee would procure for Goren mortgage security in the sum of $7,000.00. It was further agreed between McGee and the complainants that upon the procurement of such a mortgage McGee would admit the complainants to a monetary interest in whatever stock brokerage business he thereafter conducted. At the time of the signing of the said alleged bond and mortgage these negotiations and agreements were fraudulently concealed from the defendant by the complainants.

THIRD SEPARATE DEFENSE

1. The transaction wherein the defendant signed said bond and mortgage was conducted by the complainants unfairly, in bad faith and with the purpose of taking advantage for their own benefit of her mental infirmity, lack of information and misinformation as set forth in the preceding defense.

FOURTH SEPARATE DEFENSE

1. The defendant did not receive from the complainants, or from any other person, any benefit or consideration for the signing of the said bond and mortgage directly or indirectly.

Answer and Counterclaim of Defendant, Ellen E. Allen.

FIFTH SEPARATE DEFENSE

1. The defendant being mentally enfeebled and misinformed as to the true nature of the transaction by the complainants, and deprived by them of the information as to the true facts and objects of the transaction, signed the said bond and mortgage without the benefit of independent, impartial and trustworthy advice.

SIXTH SEPARATE DEFENSE

1. The defendant was induced to sign the said bond and mortgage as the result of a fraudulent collusion between the complainants and the said McGee, having for its object the securing by McGee of the repayment of money loaned by complainant, Goren, to said McGee at a time when McGee was to the knowledge of Goren insolvent and unworthy of personal credit.

SEVENTH SEPARATE DEFENSE

1. At the time of the signing of the said mortgage McGee was indebted to Goren in the sum of $5,800.00 and said bond and mortgage was unlawfully and usuriously framed to obligate the defendant to repay to said Goren $7,000.00 in addition to the lawful rate of interest therein stipulated.

EIGHTH SEPARATE DEFENSE

1. At the time of the supposed execution of said bond and mortgage an agreement was entered into between the complainants and said McGee that the amount of said mortgage should be paid and satis-

fied in the first instance by said McGee, and that the liability on said mortgage should not be resorted to except in the event of McGee's default. Thereafter McGee in fulfillment of said agreement gave and delivered to Goren eight hundred shares of stock in the Automotive Standard Company in satisfaction of the mortgage, said stock being then worth $9,600.00 and was to be applied in the first instance to the satisfaction of the mortgage, next to the payment of an additional loan of $2,000.00 and the balance was to be Goren's bonus for the accommodation. In violation of said agreement Goren disposed of the said stock and failed to apply the proceeds to the satisfaction of said mortgage.

NINTH SEPARATE DEFENSE

1. The indebtedness of McGee to the complainants was discharged through the agreed novation entered into by the complainants and said McGee and effected by the delivery by McGee, and the acceptance by the complainants, of eight hundred shares of stock of the Automotive Standard Company.

TENTH SEPARATE DEFENSE

1. The bond and mortgage were void for the reason that the defendant being a married woman, the same were by the agreement and intention of the active parties in the matter to pay the debt and answer for the default and liability of Eugene F. McGee to Max Goren contrary to the statute in such case made and provided.

Answer and Counterclaim of Defendant, Ellen E. Allen.

COUNTERCLAIM

The defendant, Ellen E. Allen, by way of counterclaim against the complainants, Max Goren and Charles C. Colgan, says:

1. March 22, 1929 and theretofore the defendant was the owner in fee simple of the premises described in the bill of complaint herein and the mortgage therein set forth and which is hereby referred to, and the defendant, David J. Allen, was the husband of the defendant, Ellen E. Allen, and both defandants were in possession and occupancy of the said premises.

2. On said date and for about twelve years previous thereto the defendant was an invalid and epileptic, and by reason of her physical and mental infirmity was incompetent to transact any ordinary business; was unable to comprehend or understand any business transaction in the way of furnishing security for the payment of the debts of another; was mentally unable to deal with a business antagonist and mentally incapable of protecting her rights in the transaction and negotiation of business matters.

3. At the time mentioned one Eugene F. McGee, who was formerly engaged in the practice of law, was and for sometime had been conducting a business, under the name of the American Investor & Trader, Inc., for the sale of corporation stocks and particularly the stock of the Arizona Imperiol Mines Extension in which he had, or pretended to have, a controlling interest and which

stock he was then and there ostensibly endeavoring to dispose of for the development of an alleged gold mine.

4. On or about March 11, 1929 the financial condition of McGee and his said company became stringent, and the operation of his business was further hampered by proceedings instituted on that date by the attorney general to restrain its conduct on the ground of fraudulent methods, and which proceedings culminated in an injunction advised March 27, 1929 by V. C. Backes; it was further hampered through the further fact that one or more of his former clients were insisting upon reimbursement for funds which they had invested in stocks sold by the said McGee. At the time mentioned McGee and his company were insolvent notwithstanding that he had previously sought relief from his financial stress by negotiating a worthless check drawn by the American Investor & Trader, Inc., and signed by himself and one or more of its other officers. This check which, was made out for $2,000.00, was cashed by the complainant, Max Goren, for $2,000.00 upon an understanding that its face value would be paid when McGee or the company came into funds.

5. The check not being paid, after a lapse of time, the same was put into the hands of the co-complainant, Charles C. Colgan, an attorney at law, by Goren for collection. At or about this time a client, or clients, of McGee, who had purchased from him, or his company, certain stocks made a demand upon him for reimbursement to the extent of about $4,300.00 and McGee was thereby rendered

apprehensive of either criminal prosecution or the allowance of an injunction at the suit of the attorney general in the event of his failure to so reimburse the claimants. In order to obtain funds to save him from the perils and publicity thus threatened he applied to the complainant, Goren, for an additional loan of $4,300.00 offering not only to repay the same, together with interest and a bonus, but likewise to divide among the complainants, Goren and Colgan, a portion of the subscription price for the stock of the Arizona Mining Company which McGee then represented as having been subscribed.

6. The co-defendant, David J. Allen, was requested by McGee to interest himself in the matter of persuading Goren to accept the proposition as outlined and David J. Allen in turn employed Benjamin Dowden, a practicing lawyer, to act as his legal aid and adviser in the matter. Through the combined solicitations of Eugene McGee, David J. Allen and Benjamin Dowden, Goren eventually agreed to make a loan of $3,800.00, thereby increasing the actual indebtedness of McGee to him to $5,800., but demanded that, in addition to participating in the money to be raised from the sale of the mining stock, both items of indebtedness should be repaid with legal interest and that he should likewise be paid a bonus of $1,200.00, and that the entire sum of $7,000.00 be in the same way absolutely secured to the said Goren.

7. At the time McGee was wholly destitute and without means of furnishing such security, and it was accordingly proposed by McGee to David J.

Allen that if he could induce the defendant, Ellen E. Allen, to execute to Goren a mortgage for $7,000.00 on the premises described in the bill of complaint Allen would likewise have issued to him a block of the stock in the Arizona Mining Company, and that this defendant would likewise be given a participating interest therein which would insure to her substantial weekly or monthly payments of money so as to constitute her signing of the bond and mortgage a valuable investment. It was further proposed and agreed to by McGee that McGee would in the first instance repay the $7,000.00 to Goren in sixty days and that the mortgage should be only secondarily resorted to.

8. Before and at the transactions and the arrangements referred to the defendant's husband, in whom she reposed complete confidence, informed her that the signing of a mortgage on their home would be the means of acquiring a valuable investment; that no risk would attach thereto or obligation incurred, but that on the contrary the defendant would thereafter be in receipt of a substantial income to be paid weekly or monthly. The defendant was not informed of any of the details set forth in the preceding paragraphs of McGee's business, or the relation of the complainants or of her husband thereto, and this for the reason that in her state of mental infirmity she would be unable to appreciate or comprehend the significance of such information.

9. Accompanied by her husband and Mr. Dowden, who was his legal adviser, she went to some office in Jersey City, the location and identity of

which she is unable to recollect, and there in the presence of her husband, Mr. Dowden and two or three other men who were unknown to her and with whom she held no conversation and transacted no business, she signed certain papers the contents and purpose of which she was ignorant, and which she is informed were the bond and the mortgage mentioned in the bill of complaint.

10. At the time of the signing of said papers no disclosure was made to her as to the real nature of the transaction, nor of the fact that she was securing a debt which McGee owed to Goren, nor of the proposals, agreements or arrangements subsisting between her husband, McGee and the complainants. On the contrary she was up to that time supplied with no information except that she was running no risk by signing the same and that she would be lavishly rewarded by the periodical payments herein referred to to be made to her by McGee.

11. She is informed and charges that the persons present at the time of such signing besides her husband and his attorney were Max Goren, a man of great business sagacity and wealth; Charles C. Colgan, a lawyer highly skilled in the law, and Eugene F. McGee, formerly a lawyer and a man of exceptional shrewdness and resourcefulness in business affairs, and that all well knew the physical and mental infirmity of the defendant, the improvidence and absurdity of her conduct in signing said bond and mortgage, and that she was uninformed and deceived as to the true nature and object of the transaction.

12. The defendant at the time acted in the signing of the said bond and mortgage without any independent, impartial and trustworthy advice and was unfairly and fraudulently imposed upon by the complainants who she charges took advantage of her mental incompetency and her inability to understand the nature and consequences of her act and to protect her interests against their collusion.

13. The defendant as not obtained directly or indirectly any money, property or other thing of value for her own use, or for the use, benefit or advantage of her separate estate from the signing of the said alleged bond and mortgage.

14. The defendant is informed and avers that in fulfillment of the agreement between the complaintants and McGee that McGee would satisfy the mortgage, he during the month of July, 1929, turned over to Goren, by way of novatian and in discharge of said mortgage, eight hundred shares of the stock of the Automotive Standard Company which then had a quoted value of about $6.00 a share, but which McGee declared would presently sell for $14.00 per share. Said stock was received by Goren acting for himself and as agent of the co-complainant upon an agreement that Goren would pay McGee $2,000.00 and hold the stock until its value reached $14.00 a share whereupon he would cancel the mortgage signed by the defendant.

15. The $2,000.00 was paid to McGee and the said stock reached a market value of $14.00 during the month of October, 1929. Instead of holding it until its value reached that figure Goren, in viola-

tion of his agreement of novation with McGee, subsequently announced that during the month of September he had sold the stock at $5.50 a share and had obtained thereby approximately $4,200.00. Thereafter in December, 1929, subsequent to the institution of the present proceedings, Goren and the co-complainant credited on account of the mortgage the sum of $1,500.00 and now pretend that there is still due and owing from the defendant the sum of $5,500.00. The defendant has no knowledge or means of knowledge except through discovery made by the complainants as to the amount obtained upon the sale of said stock, if the same in fact has been sold.

16. February 26, 1930, by notice in writing the defendant avoided the said bond and mortgage, and hereby charges that the same is void on the ground of her mental incapacity, the fraud practiced upon her in obtaining the same, the concealment from her of the facts surrounding the execution of the said mortgage, the undue influence exerted to induce the signing of the same, her incompetency as a married woman to make a contract to answer for the debt or default of another, the lack of independent advice, the abuse of trust and confidence, and the absence of any benefit to her from the transaction and that the same is inequitable, unconscienable and fraudulent.

The defendant is without adequate remedy at law or elsewhere than in this honorable court.

The defendant therefore prays that the complainants may answer this counterclaim, that it may be decreed that the said mortgage is void for the cause or causes aforesaid, that she may have an

accounting from the complainants, that the complainants may be decreed to deliver up the said bond and mortgage for cancellation, and that she may have such other and further relief as to the Court may seem just.

And the defendant will forever pray, etc.

RICHARD DOHERTY,
Solicitor for and of counsel with
defendant, Ellen E. Allen.

Answer and Counterclaim of Defendant, Ellen E. Allen.

To MAX GOREN and CHARLES C. COLGAN, his solicitor, and CHARLES C. COLGAN and CHARLES C. COLGAN, solicitor.	Notice of Avoidance and Disaffirmance.

TAKE NOTICE, that I, the undersigned, Ellen E. Allen, hereby avoid a certain bond and mortgage purporting to bear date of March 22, 1929 and recorded in the office of the register of Hudson County in Book 1541 of mortgages, page 579, on the ground that the same was signed by me at a time when by reason of physical and mental infirmity I was unable to comprehend in a reasonable manner the nature of the transaction of which said alleged bond and mortgage formed a part; on the further ground that the same was induced by you through fraudulent representations, concealment of the facts surrounding said transaction and in execution of a fraudulent collusion then existing between Charles C. Colgan, Max Goren and Eugene McGee.

You are further notified that I repudiate and disaffirm an alleged stipulation entered into in a certain cause pending in the Court of Chancery of New Jersey for the foreclosure of the said mortgage, which stipulation purports to have been signed December, 1929, and purports to admit that there is no legal or equitable defense to said mortgage and to consent to the entry of a final decree

March 1, 1930; on the ground that said stipulation is false, was not executed by me nor by any person thereunto authorized by me and on the further ground that it was obtained secretly, collusively and in fraud of my rights.

ELLEN E. ALLEN.

Witness:
MATILDA MAVIS BRAUER.

Replication and Answer to Counterclaim.

(Filed April 11, 1930)

IN CHANCERY OF NEW JERSEY

Between CHARLES C. COLGAN and MAX GOREN, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, Defendants.	On Bill &c. Replication and Answer to Counterclaim.

The complainants, join issue on the answer of the defendant, Ellen E. Allen.

In reply to the defenses stated in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th and 10th separate defenses, complainants say, that:

REPLICATION TO FIRST SEPARATE DEFENSE—

1. They deny paragraph 1 thereof.

REPLICATION TO SECOND SEPARATE DEFENSE—

1. They deny paragraph 1 thereof.

2. They deny paragraph 2 thereof.

REPLICATION TO THIRD SEPARATE DEFENSE—

1. They deny the same.

REPLICATION TO FOURTH SEPARATE DEFENSE—

1. They deny the same, and on the contrary aver that the consideration for said bond and

mortgage was paid by check to the order of said Ellen E. Allen.

REPLICATION TO FIFTH SEPARATE DEFENSE—

1. They deny the same.

REPLICATION TO SIXTH SEPARATE DEFENSE—

1. They deny the same.

REPLICATION TO SEVENTH SEPARATE DEFENSE—

1. They deny the same.

REPLICATION TO EIGHTH SEPARATE DEFENSE—

1. They deny the same.

REPLICATION TO NINTH SEPARATE DEFENSE—

1. They deny the same.

REPLICATION TO TENTH SEPARATE DEFENSE—

1. They deny the same.

OBJECTION IN POINT OF LAW

At the hearing complainants will object to the separate defenses on the ground that all, or some, or one of them present no defense to the bill of complaint, and that the said answer is not drawn in accordance with the rules and practice of the Court of Chancery.

AND for further replication these complainants say, that said defendant, Ellen E. Allen, at law and in equity is estopped by deed and in pais to deny the validity of said bond and mortgage.

ANSWER TO COUNTERCLAIM

As to the counterclaim contained in said answer complainants say that:

1. They admit paragraph 1.

2. They deny paragraph 2.

3. They deny paragraph 3, except that they admit that Eugene McGee was formerly engaged in the practice of law, and they object in point of law to the relevancy or materiality of said paragraph.

4. They have no knowledge as to the statements in paragraph 4.

5. They deny paragraph 5.

6. They have no knowledge as to the allegations of paragraph 6.

7. They have no knowledge as to the allegations of paragraph 7.

8. They deny paragraph 8, except as to statements therein with reference to relations between the said defendant, Ellen E. Allen and her husband, as to which they have no knowledge.

9. They deny paragraph 9, except that they admit that said defendant, Ellen E. Allen, signed the papers mentioned in said paragraph, which are the bond and mortgage in suit, on independent legal advice, and duly acknowledged the same after the contents thereof were made known to her, as by statute required.

10. They deny paragraph 10.

11. They deny paragraph 11, except that they admit that Charles C. Colgan, and Max Goren, complainants, and—Eugene F. McGee, were present at the signing of said bond and mortgage, together with Benjamin F. Dowden, counsellor-at-law of this State, acting in behalf of the said defendant Ellen E. Allen.

12. They deny paragraph 12.

13. They deny paragraph 13.

14. They deny paragraph 14.

15. They deny paragraph 15.

16. They deny paragraph 16, except that they admit service of the notice mentioned in said paragraph sometime after March 1, 1930.

17. AND FOR FURTHER answer these complainants say, that the said counterclaim presents no case entitling said defendant to the relief prayed for in said counterclaim or any relief in this Honorable Court.

18. AND FOR FURHER answer these complainants say, that the said counterclaim, is not drawn in accordance with the rules and practice of the Court of Chancery.

19. AND FOR FURTHER answer these complainants say, that on the facts stated in said counterclaim, said defendant Ellen E. Allen, is estopped by deed and in pais from obtaining the relief prayed for in

said counterclaim, or any relief against these complainants.

20. AND FOR FURTHER ANSWER these complainants say, that the said defendant ought not to have or maintain said counterclaim, for that she did not before filing said counterclaim nor has she in said counterclaim tendered or offered to tender back the consideration received by her or by her solicitor or agent for said bond and mortgage.

CHARLES C. COLGAN,
Solicitor of Complainants.

DAVID A. NEWTON,
Of Counsel.

FERD GARRETSON,
Clerk.

Decree Pro Confesso.

(Filed April 2, 1930)

IN CHANCERY OF NEW JERSEY.

Between MAX GOREN and CHARLES C. COLGAN, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, her husband, Defendants.	On Bill, etc. Decree Pro Confesso.

This matter being opened to the Court by Charles C. Colgan, Solicitor of Complainants; and it appearing that process of subpoena calling upon the defendant, David J. Allen to answer the complainants' Bill of Complaint, as been duly issued and returned served upon the defendant, David J. Allen;

And that the defendant, David J. Allen, has not filed any answer to the said Bill of Complaint within the time required by law, but as wholly failed and neglected so to do.

It is thereupon on this 2nd day of April, 1930, on motion of Charles C. Colgan, solicitor for and of counsel with complainants,

ORDERED, that said complainants' Bill of Complaint be and the same is hereby taken as confessed against the said defendant, David J. Allen, to the end that such decree may be made against him as the Court shall deem equitable and just.

EDWIN ROBERT WALKER,
C.

Affidavits on Behalf of Defendant Ellen E. Allen, on Her Application for Leave to File An Answer.

(Filed March 31, 1931)

Affidavit of Ellen E. Allen.

IN CHANCERY OF NEW JERSEY.

Between MAX GOREN and CHARLES C. COLGAN, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, Defendants.	On Bill to Foreclose.

ELLEN E. ALLEN, being duly sworn, on her oath, according to law, deposes and says:

1. I am one of the defendants in the above entitled cause. No subpoena was served on me, or notice given to me of the pendency of the above entitled proceedings until the time of the making of this affidavit when I am informed by my husband that service of the subpoena that was issued and was acknowledged by Benjamin Dowden undertaking to act as my solicitor. Mr. Dowden was not my solicitor in that behalf, was not authorized to act by me and it is only at the time of the making of this affidavit that I learn for the first time of the existence of any proceedings to foreclose a mortgage on my home at 7 Belmont Avenue, Jersey City, Hudson County, N. J.

Affidavit of Ellen E. Allen.

2. For twelve years past I have been an invalid, my trouble dating from the time when a young daughter was stricken with a serious illness. I do not know precisely what my trouble is except that at the time when I was stricken I went "off", and that various times since then, on an average of a couple of times a month, I have again gone "off". I have been under the care of physicians steadily since my first attack, having been attended by Dr. M. E. Flaherty, and Dr. Raymond Sullivan and Dr. Meagher of New York. I am informed that I was treated for some time in a sanitarium on 57th Street, New York, but I have no recollection of being there. I am sure that I am not now so competent to understand my circumstances as well as I could before my sickness. I cannot remember things well, although I believe I could remember if I loaned one money and if one promised to return it I would look for it.

3. I remember some time ago my husband told me at night that if I would sign a mortgage on the house I would get my money back and more along with it. I also remember my husband and Mr. Dowden on another occasion telling me that if I signed the mortgage I would get interest and additional money every week or every month. I cannot recall where this conversation took place. I do not know whom Mr. Dowden was representing in the transaction, but assumed that if he was a friend of my husband he was all right. I left it entirely to their judgment to guide me as to what I should do, and did not believe that they would ask me to sign anything that was not right. I am informed now by my husband that I signed a mortgage in the office of Charles C. Colgan downtown in

Jersey City; I have no recollection of doing so. I do recollect, however, signing some checks in some place other than where the mortgage was signed, but cannot recall where the place was. At both places there were some men other than my husband and Mr. Dowden, but I do not know who they were. My power of observation is so poor that I do not know the location of the building in which I am signing this affidavit.

4. I did not receive any money or other thing of benefit from the signing of the papers, and I have no information as to what the purpose of the matter was, or the nature of the transaction, except that my husband now tells me that I signed a mortgage in order that $7,000.00 might be raised by a man named McGee, who was in business and who needed that much money in order to keep out of trouble and continue in business. My husband also tells me that for the payment of that money McGee agreed to give Mr. Goren, Mr. Colgan, Mr. Dowden and himself a share of the profits in his business, and that McGee was also to pay back the money due on the mortgage.

5. I do not remember that any of these things were said to me at the time and I was in these two offices, or that any other explanation was given to me at those times as to the nature of the business. At those times I was willing to do anything that my husband believed proper.

6. I am told that in the case to foreclose the mortgage a paper, which is called a stipulation, was signed for me stating that there is no defense to the mortgage and that a judgment might be en-

tered against me March 1st, 1930. I do not understand what that means and gave no one authority to do so for me.

7. At the time when this affidavit was prepared I also signed another paper, of which I am keeping a copy, and which I understand to be a notice to Max Goren and Charles C. Colgan that I refuse to stand by the mortgage and also that I did not give Mr. Dowden any authority to sign the stipulation.

8. I want Richard Doherty, counselor at law, to represent me, and do what may be done to save my home from being taken from me. I do not know what the paper was that was signed, and I do not know yet. I was told by my husband that everything would be fixed up in a year, and that all money due would be paid in that time.

ELLEN E. ALLEN.

Sworn to and subscribed before me
this 26th day of February, 1930.

MATILDA MAVIS BRAUER,
Attorney at Law of New Jersey.

Affidavit of Michael E. Flaherty.

IN CHANCERY OF NEW JERSEY.

Between MAX GOREN and CHARLES C. COLGAN, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, Defendants.	On Bill to Foreclose.

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

MICHAEL E. FLAHERTY, being duly sworn, on his oath, according to law deposes and says:

1. I am a physician practicing in Jersey City, and for upwards of twenty years past I have been attending Mrs. Ellen E. Allen sporadically for epilepsy with which she is afflicted. The disease has affected her mental faculties generally, and her powers of perception, memory and judgment are below normal. There are times during attacks when her mind is not sound, and in the interval between the attacks her mental sanity is variable in its degree.

2. I did not see her on the date of March 22nd, 1929, and such opinion as I have as to her mental condition on that date is based upon my observations of her before and since, and the knowledge obtained in the treatment of her. It is my opinion

that on that date she was not capable of transacting any business, the success of which would call for any special and mental effort, or the comprehension of any great number of factors entering into the same.

MICHAEL E. FLAHERTY, M. D.

Sworn to and subscribed before me
this 28th day of February, 1930.

MATILDA MAVIS BRAUER,
Attorney at Law of New Jersey.

Affidavit of Eugene F. McGee.

(Filed March 31, 1930)

IN CHANCERY OF NEW JERSEY.

Between MAX GOREN and CHARLES C. COLGAN, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, Defendants.	On Bill to Foreclose.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

EUGENE F. McGEE, being duly sworn, on his oath, according to law, says:

1. In February, 1929, the American Investor & Trader, Inc., of which James P. Dolan and myself were officers, was indebted to Max Goren for $2,000.00 on account of a predated check of the company which he had cashed for a third. The affairs of the company at that time were such that about $4,300.00 more was needed to conduct it. I applied to Goren for this additional money, offering him a $700.00 bonus in addition to a $500.00 bonus which he was to receive on the check, and also offering him a share of funds which were presently coming to my hands from the subscriptions to the stock of the Arizona Imperial Mines Extension. Charles C. Colgan was acting as his attorney, and he likewise was offered a participation in the same funds.

2. Goren, and Colgan who was advising him, declined to make such loan except on terms of having absolute security. David J. Allen, one of the defendants in this action, with whom I had recently become acquainted and who was present at the conferences had with Goren and Colgan, and who was represented therein by Benjamin Dowden, as his legal adviser, assented and communicated to Goren and Colgan that he could induce his wife to execute a mortgage on the premises which she owned. The proposition was originally made to Colgan by myself, and was eventually accepted.

3. It was fully agreed among all the parties that I was to pay off the amount of the loan and that the property would be thereupon exonerated. I was present at Colgan's office when the mortgage was signed, having shortly before met Mrs. Allen for the first time. At such execution it was explained to her by Dowden that the money to be advanced by Goren was to be turned over to me and that I would assume the repayment, and that the transaction had for its object the maintenance of my business in the benefits of which her husband would financially participate. The matter was explained to her as being in the nature of a profitable investment only, and the details of the arrangements between Colgan, Goren, Allen and myself were not disclosed to her.

4. The circumstances relating to the satisfaction of the mortgage were as follows: In July or August, 1929, I applied to Goren for an additional loan of $5,000.00 on eight hundred shares of the common stock of the Automotive Standard Company, which stock was then listed on the New York

Produce Exchange and selling around $12.00 per share. The stock which I delivered to Goren was endorsed by one Norman T. Boles, and it was necessary to have his signature guaranteed by a bank. His signature having been guaranteed by a bank the stock was left at the office designated by Goren, and on the next day Goren came to the office of the American Investor & Trader, Inc. and said that all the money he could get that day was $2,000.00, but that he would have the other $3,000.00 on the following Monday. On Monday Goren called at the office and stated that he was not going to loan the $3,000.00, but was going to hold the stock as security for the payment of the mortgage hereinbefore mentioned. About thirty or forty days thereafter Goren, Colgan, Allen and Dowden called at my office. Goren stated at that time that he was going to sell the stock and apply it to the mortgage. I told Goren that I had confidential information that the stock would advance to $14.00 or better within the next thirty days and asked Goren to hold the said stock for thirty days, which he agreed to do.

5. About two weeks thereafter I was informed by Benjamin Dowden that Goren had sold the stock at $5.00 a share. At the time when I received word that the stock had been sold the stock was selling on the New York Produce Exchange at $14.00 per share. I then asked Goren to produce the confirmations showing the dates and prices he had sold it, and up to this time Goren has never produced said confirmations. The said sale of stock, if made by Goren which I do not believe was ever made at said price, was made contrary to Goren's agreement and without any demand upon me to repay

to him the moneys loaned on said stock. I believe that Goren realized from the sale of said stock a sum in excess of the principal and accrued interest due on said mortgage and my indebtedness to him. At the time I delivered the said stock to Goren and made the agreement hereinbefore recited, I had no knowledge of any assignment being made of the said mortgage by Goren. Thereafter I assigned to Benjamin Dowden the claim that I had against Goren for the wrongful conversion of the stock for the purpose of predicating an accounting from Goren and the establishment of the fact that the Allen mortgage was satisfied.

EUGENE F. McGEE.

Sworn to and subscribed before me this 31st day of March, 1930.

MATILDA MAVIS BRAUER,
Attorney at Law of N. J.

Answering Affidavit of David J. Allen.

IN CHANCERY OF NEW JERSEY.

Between MAX GOREN and CHARLES C. COLGAN, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, Defendants.	On Bill to Foreclose.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

DAVID J. ALLEN, being duly sworn, on his oath, according to law, says:

1. I am one of the above named defendants and the husband of Ellen E. Allen. I have not nor do I intend to interpose, any answer in the present proceeding. My wife for fifteen years past has been an epileptic, subject to spells which recur on an average of about three times a month. At such times she is wholly incompetent mentally, and in the interval between attacks her mind is feeble and distinctly below normal. She says very little, poor of memory, is unable to retain in mind for even five minutes statements that are made to her, is unable to grasp the import of the most ordinary information and will a few minutes thereafter repeat the same in a distorted form. Since her first attack she has been incapable of transacting even the ordinary business pertaining to housekeeping

and her success, in making such purchases as she attempts for the household needs, is attained only through dealing with tradesmen who are familiar with her affliction and humor her whims during the course of such transactions.

2. She is the owner of the premises in which we live, having purchased the same with her own funds acquired through the sale of a piece of property which she inherited. The house is occupied by herself, myself, two sons and two daughters and an elderly female servant. In the acquisition of the same, and in the course of all subsequent transactions relating thereto, I was the dominant spirit and she signed such mortgages or other papers as were necessary at my directions with which she has always unhesitatingly complied. Her confidence in me is complete, and in all matters, both of business and otherwise, she relies implicitly upon my suggestions.

3. About February 1st, 1929 I formed the acquaintance of Eugene McGee who, together with James P. Dolan, were conducting a brokerage business under the name of American Investor & Trader, Inc., at 40 Journal Square, Jersey City. McGee impressed me as being a man who was publicly misunderstood and who despite attacks upon his reputation possessed ability and integrity. At the time our acquaintance was formed he told me that being the victim of adverse circumstances and enmities he and Mr. Dolan were threatened with criminal prosecution on account of a check for $2,000.00 which they had issued in the name of the company and which through the solicitations of a man named Loori Goren had cashed. He informed

me that the complainant, Charles C. Colgan, was Goren's attorney, and that he was pressing him hard for payment under threat of causing the arrest of himself and Dolan. He further informed me that the attorney general had, or was about to institute proceedings to restrain the further conduct of his business, and that clients to whom he had sold stock were likewise threatening him with legal proceedings unless they were reimbursed for their investment.

4. He explained that he had a controlling interest in a copper mine of the Arizona Imperial Mines Extension, that the mine was a rich one and that its development was his main project. He stated that he had already subscriptions for 141,000 shares of stock in the mine at $1.25 per share, and that a condition of the subscription was that the stock would be listed on the Salt Lake City Mining Exchange before the subscription price would be callable. He exhibited to me telegrams from some person in Salt Lake City which gave assurance that the listing of the stock was imminent.

5. McGee pleaded with me to do what I could to stave off the threatened prosecution and injunction until such time as he got in the money for the mining subscriptions, whereupon he would be able to liquidate all his obligations out of the $175,000.00 which he would then have on hand. He offered to make a generous division of this amount between myself and the persons who would come to his aid financially in the event of the assistance being rendered, and this offer, together with the strong desire that I had to relieve Mr. Dolan from the threatened disaster, engaged my interest

in the matter. McGee proceeded further to inform me that in order to pay off the check which had been cashed, together with a $500.00 bonus, to satisfy his complaining clients and to obtain what was needed for running expenses, about $6,000.00 would be needed, and calculating that for this loan a bonus would have to be paid, he stated that the amount to be raised would approximate $7,000.00.

6. I considered it advisable to have some legal advice on the matter, and accordingly Benjamin Dowden was asked to, and did, participate in further conferences which I had with McGee. It was determined among us that Goren should be asked to supply the additional money, and the matter of security being broached I announced that I could furnish none except a second mortgage on the house owned by my wife.

7. McGee over the telephone made to Colgan the proposition that the additional money be advanced to be repaid by McGee himself in sixty days, and that as security the second mortgage be given. This was the form in which the application was made, and it is not true that I applied to Colgan for the loan. I did not know Colgan at that time, and McGee over the phone gave Colgan the number of my house. My next information was that Colgan and Goren were not satisfied with the security, considering the house worth only $15,000.00. Thereupon McGee, Dolan, Dowden and myself called upon Colgan and Goren, and McGee exhibiting the stock subscriptions and the telegrams from Salt Lake City explained to Goren and Colgan his immediate prospects of getting money out of the mine. He referred to the same to substantiate his con-

tention that he would be able to pay off the whole indebtedness and discharge the mortgage in sixty days. He likewise offered Colgan, Goren, Dowden and myself a participation, which he called a "cut", in the profits from the collection of the subscription moneys. Goren and Colgan were both agreeable to the proposition, and after the interview both came up with us to McGee's offices to look them over, and Goren suggested that in the conduct of his future business McGee should have larger offices elsewhere.

8. It is not true that I accompanied Colgan, Goren and Dowden to my house to make an inspection, or that I introduced those men to my wife, explaining the purpose of their visit. The first intimation that I got of their visit was when Colgan informed me that he had been to the house, looked over the first floor and that he did not see my wife who was upstairs and whom he did not want to disturb because he was told that she was ill. Several conferences followed between Colgan, Goren, McGee, Dolan, Dowden and myself at which Colgan and Goren were reluctant to lend the money even on McGee's promise to pay it back and with the security of a second mortgage unless in addition Dowden guaranteed the payment of the bond. In the course of these interviews Colgan expressed the opinion that my willingness to furnish the mortgage was foolhardy and Dowden likewise stated that he thought it unwise for me to place so much reliance on McGee's promise to liquidate the debt.

9. It is not true that Dowden distrusted McGee's ability or disposition to pay the money to me or to

New Jersey State Library

my wife as he states in his affidavit; McGee's promise was to make the payment direct to Goren and Colgan. Dowden pressed his objection to the original suggestion that the mortgage be for three or four months, and it was upon his insistence that the mortgage was eventually made for one year. The terms finally agreed upon were that a mortgage, to be signed by my wife and whom they all knew to be an invalid, but whom they took for granted, would be subject to my directions, would be given for $7,000.00; that out of this amount Goren would be paid $2,000.00 to redeem the check and $500.00 bonus; that Colgan would get $700.00 bonus for granting the mortgage and that the balance was to be turned over to McGee to pay off his clients, use the remainder for the prosecution of his business and that when the mining stock was listed and the subscription money came to his hands that he would divide the same among himself, Dolan, Goren, Colgan, Dowden, myself and a man named Conroy, a friend of McGee's, who was sick in New York State. When these terms were agreed Colgan was directed to prepare the mortgage, and it is my understanding that Dowden agreed to sign as guarantor.

10. On the morning of the day when the mortgage was signed I gave my wife the first information respecting the matter and told her that I wanted her to sign a mortgage for a friend of mine, named McGee, with whom I had business relations, and who would pay off the mortgage in sixty days and who, for the accommodation, would let me make a lot of money. I did not consider that she was capable of understanding the import of such information, and I gave it to her merely to induce

her presence at the signing of the mortgage and because I felt under a moral obligation to tell her the truth of the matter.

11. In accordance with her usual disposition she accompanied me to McGee's office where we picked up McGee and Dowden and went from there to Colgan's office. It was the first time that she had met McGee, and upon arriving at Colgan's office she was introduced to Colgan and Goren. On the introduction neither Colgan nor Goren intimated that they had met her before. I recall that she asked Colgan to indulge her because she was sick and Colgan replied that she looked sick. She dropped out of the conversation entirely and her only participation in what followed was the signing of the bond and mortgage at my direction as I stood over the chair in which she was sitting. She had no understanding of the matter beyond the information that I had given her and which I repeated at that time in the hearing of all present, that it, that she was signing in the course of a profitable investment that would be productive of financial gain to herself and me, and that she was incurring no risk because McGee was going to pay the mortgage in sixty days.

12. There was no disclosure to her by myself or by anyone as to the details of the matter, nor any explanation given as to how the money was to be disbursed. She was informed, however, that the money was being raised in order that McGee might stay in the business out which we were all to reap profits.

13. After signing the mortgage she was restless and desired to go home at once, but Mr. Colgan

requested that she accompany us to Dowden's office at the five corners and there sign some papers. Colgan then made out a check for $7,000.00 to her order, keeping possession of the same and bringing it up to Dowden's office where it was placed face down before my wife and she endorsed it. Thereupon Dowden made out four checks respectively for $700.00, $2,000.00, $1,500.00 and $2,800.00, all to her order and which she likewise endorsed. The $700. check was given to Colgan as his bonus on the mortgage, the $2,000. check given to him to pay the $2,000.00 check cashed by Goren, the $1,500. check was cashed by a man named Jobes, the money given to McGee, who paid out to Goren $500. as his bonus for cashing the worthless check and the remaining check I understand was cashed by Dowden and the proceeds turned over to McGee. Neither my wife or I, directly or indirectly, received any part of the money. At no time did I ever receive any money from McGee, but on the contrary he is in my debt for cash which I loaned him.

14. In the summer of 1929 McGee reported to me that he had fulfilled his undertaking in satisfying the mortgage and that he did so by turning over to Goren eight hundred shares of the stock of the Automotive Standard Company which Goren had accepted in full satisfaction of the balance due on the mortgage, as well as for an additional loan made to McGee at the time. The Automotive Standard stock was then worth $9,600. according to quotations, and was to be applied as follows: $7,000. to satisfy the mortgage, $2,000. additional loan and $600 bonus.

Answering Affidavit of David J. Allen.

15. In October, 1929 I was concerned about having the mortgage cancelled of record and asked Dowden to look after the matter. He reported to me that Goren and Colgan both denied that the mortgage was paid, whereupon I had recourse to McGee and he, Dowden and I went to Colgan's office to thresh the matter out. The interview was very stormy, McGee claiming that Goren had misappropriated the stock and Goren contended that he sold the stock and received only $5.50 a share. In the course of the quarrel Goren boasted of his political power, that he controlled the police department of Jersey City, was influential with the judges, that McGee was "through" so far as Jersey City was concerned, and made a gesture to call Police Inspector Underwood on the phone to have McGee arrested on the spot. McGee met all these threats with the insistence that the stock turned over to Goren was worth $12,000.00, that Goren had obtained this approximate amount and that he had wrongfully converted the stock. The interview ended without anything being accomplished, and McGee subsequently assigned to Dowden the claim referred to in Dowden's affidavit against Goren for such conversion.

16. Subsequently Dowden and I again interviewed Colgan to demand that the mortgage be discharged on the strength of the stock transaction, and Colgan's attitude was that he was not interested in the transaction, that Goren did not represent him, that he was interested only in getting $3,500.00 and announced that he had already started foreclosure which he intended to pursue. At this interview Colgan's manner was defiant, overbearing and oppressive, and eventually he of-

fered to give us an extension until March 1st, 1930 in which to pay $5,500.00, on condition that we would agree that there was no legal or equitable defense to the mortgage. At this time my wife had no information that foreclosure had been instituted, the papers were served upon Dowden, who undertook to act as her solicitor without her authority and Dowden, still assuming so to act, signed the stipulation in her behalf. Shortly before March 1st, 1930 I again had Dowden interview Colgan in the hope that he would relax and adjust the matter on the basis of the money that had been received by Goren, but learned that he still repudiated Goren's agency and was resolved to sell the home. It was at this stage that I and others advised my wife to consult Richard Doherty.

17. I aver that my wife never had any rational understanding or comprehension of these transactions referred to; that it was represented to her, to the knowledge of the complainants, that in signing the mortgage she was securing only a valuable investment; that it was represented to her that McGee had both the resources and the disposition to pay off the mortgage in sixty days; that to the knowledge of the complainants the details and perils of the transaction were concealed from her; that the transaction, both as respected her and myself, was improvident; that both Goren and Colgan knew of her mental infirmity, ignorance and self-deception in the signing of the mortgage; that the stock turned over by McGee to Goren was more than ample to discharge what was due on the mortgage; that Goren in accepting the same did so with full knowledge on the part of Colgan that the mortgage was to be thereby satisfied; that Goren was

Colgan's agent therein and that Colgan's repudiation of such agency is fraudulent, unconscionable and inequitable, and that there is nothing now owing to either Goren or Colgan.

DAVID J. ALLEN.

Sworn to and subscribed before me this 27th day of March, 1930.

MATILDA MAVIS BRAUER,
Attorney at Law of New Jersey.

Answering Affidavit of Ellen E. Allen.

(Filed Mar. 31, 1931)

IN CHANCERY OF NEW JERSEY.

Between MAX GOREN and CHARLES C. COLGAN, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, Defendants.	On Bill to Foreclose.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

ELLEN E. ALLEN, being duly sworn, on her oath, according to law deposes and says:

1. I do not understand how I owe anybody money. I did not get anything from anybody. I am told that I owe money to somebody, but if that is so I cannot understand why I do not get interest. I do not know how I could owe money to anybody. I do not know Mr. Goren, nor Mr. Colgan, nor Mr. McGee nor Judge Dolan. I do know Mr. Dowden who was a friend of my husband's, and cannot understand how he would let me sign anything that was not right.

2. Some time ago a woman who works for me told me that her folks at home read in the paper that I had signed something, and she warned me that it was a big thing that I had done and that I had better be careful not to get in trouble. After

that Michael J. Sexton, who lives next door to me and is a friend of mine, called me over and told me that he had read that I signed some papers and that I should not have done so without having a lawyer. I told him that my husband and Mr. Dowden were with me and that they would not let me sign anything that was not right. Mr. Doherty now tells me that I owe someone interest or something, but I cannot figure it out. I don't feel well and I would sign anything that my husband or Mr. Dowden asked me to, if they said it was all right.

ELLEN E. ALLEN.

Sworn to and subscribed before me this 27th day of March, 1930.

MATILDA MAVIS BRAUER,
Attorney at Law of New Jersey.

Affidavits on Behalf of Complainants, in Opposition to Application by Ellen E. Allen, for Leave to File an Answer.
(Filed March 31, 1930)

Affidavit of Charles C. Colgan.

IN CHANCERY OF NEW JERSEY.

Between MAX GOREN and CHARLES C. COLGAN, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, Defendants.	On Bill to Foreclose. Answering Affidavit.

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

CHARLES C. COLGAN, being duly sworn on his oath according to law, deposes and says:

1. I am a Counsellor-at-Law of the State of New Jersey, and am also one of the complainants in the above entitled cause.

2. I have read the affidavit of Ellen E. Allen, in her motion to have foreclosure proceedings re-opened and an opportunity given to her to file an answer. David J. Allen, who is the husband of Ellen E. Allen, came to my office to obtain a second mortgage on premises known as No. 7 Belmont Avenue, Jersey City, N. J., and I submitted his

application to a client of mine by the name of Max Goren, and I, David J. Allen and Benjamin Dowden, who represented both Ellen E. Allen and David J. Allen, went to the premises No. 7 Belmont Avenue, Jersey City, N. J., to look same over, and on arrival there we were introduced to Ellen E. Allen, the wife of David J. Allen; Mr. Allen in my presence and in the presence of Mr. Dowden and Mr. Goren, explained to his wife, what we were looking the property over for, and while I am not a physician or am I holding myself out as being able to distinguish whether a person is off, as expressed in the affidavit of Ellen E. Allen or whether she is subject to epilepsy as set forth in the affidavit of Dr. Michael E. Flaherty, yet I can say, that in this interview, Mrs. Allen appeared to me to be perfectly rational and I recollect distinctly that I commented to Mrs. Allen and her husband, on the condition of their daughter, who to my recollection was unable to walk.

3. We stayed conversing with Mrs. Allen for over a half hour, and at that time my client Mr. Goren, had not made up his mind, whether he would give the mortgage, but informed both Mr. & Mrs. Allen that he would let them know. The loan however, was granted, and as Mr. Goren did not have the entire amount, I supplied the necessary balance to make up the loan of $7,000.00, and made an appointment with Mr. Allen to have his wife, come to my office at No. 15 Exchange Place, to sign the Bond and Mortgage, after I had made a search of the premises.

4. At the time of looking over the premises Mrs. Allen after she was informed that we were there

to see whether a loan would be granted stated to me, that Mr. Dowden was looking out for her interest and was her lawyer, and that I was to get in touch with him when things were ready.

5. On the 22nd day of March, 1930, I made an appointment to have the bond and mortgage signed and Mrs. E. Allen and David J. Allen, her husband, Mr. Benjamin Dowden, and a Mr. McGee, who was a friend of Mr. Allen and whom I understood was associated with Mr. Allen in a brokerage business, at Journal Square, came to my office, present also was Mr. Goren and a Mr. Harold Lightdale, an attorney at law of this State, who was connected with my office and was present at the time, and I asked Mr. Lightdale, to take the acknowledgement on the bond and mortgage by reason of the fact, that I was interested in the mortgage and did not wish to take the acknowledgment, and Mr. Lightdale did take Mrs. Allen and David J. Allen's acknowledgment as shown by the mortgage which has been recorded.

6. I also recollect very distinctly that Mrs. Allen, when she came to my office commented on the view, which I had of the Hudson River, as my office is located on the top floor of the Commercial Trust Building, Room 1118, and overlooks the Hudson River. Mrs. Allen was in my office for over an hour and during this time we conversed and there was nothing in Mrs. Allen's attitude or in her behavior which would seem to indicate that she was not in her right mind, or was undergoing any attack of epilepsy.

7. The $7000. check, the amount of the loan was made out by me, being my check to the order of

Ellen E. Allen, being No. 2500 and dated March 22nd, 1929, was certified by the Commercial Trust Co., at the request of Mr. Dowden, the solicitor for Mr. & Mrs. Allen, this return check shows an endorsement on the back of Ellen E. Allen and under her name the words "for deposit Darling Trust Fund". This trust fund refers to the bank account of the firm of Darling, Barnes & Dowden, which was in existence at that time and of which Mr. Dowden was a member.

8. The mortgage provided for the payment of interest every three months and the last interest day which was on the 22nd day of June, 1929, no interest was paid, nor was there any interest paid for thirty days after the interest fell due, and foreclosure proceedings were instituted. After the institution of the foreclosure Mr. Dowden and Mr. Allen came to my office and asked for an extension in which to pay off the mortgage and they finally did pay off $1500., which was paid to Mr. Max Goren, one of the complainants and I then inquired from Mr. Dowden and his client Mr. Allen, how much further extension of time they wished in order to pay off the balance, and Mr. Allen stated that by March 1st, 1930 they would have the matter cleaned up. I insisted on an agreement being drawn up at this time for the reason that after the giving of this mortgage and when I had taken up the question of the payment of the interest with Mr. Allen he claimed that certain stocks were turned over to Mr. Goren in payment of the interest which Mr. Goren denied he received, and as I had an interest in this mortgage I informed Mr. Allen, that Mr. Goren, was not acting as my agent, and that the matter should have been taken up with me,

and for this reason I insisted on he and his wife signing an agreement that the balance of this mortgage together with interest and costs would be paid by March 1st, 1930, and that they had no defenses either in law or in equity to this mortgage.

9. Mr. Allen informed me, that Mrs. Allen was not feeling very well, and he did not wish to bother her with signing this agreement and he suggested that as Mr. Dowden, was her attorney that he sign as such. We therefore, drew up this agreement which was signed by the complainants to this foreclosure, David J. Allen and Benjamin Dowden, solicitor for the defendant Ellen E. Allen.

10. At this time there was also taken up by me with Mr. Dowden, the question of the interest due to the New Jersey Title Guarantee and Trust Company, due on the first mortgage, and at the bottom of this agreement Mr. Dowden wrote in his own handwriting the following; "I, Benjamin Dowden, agree to pay interest due N. J. Title Guarantee and Trust Company, due December 18th, 1929, taxes to be paid by January 20th, 1929. Signed Benjamin Dowden."

11. A few days before March 1st, Mr. Dowden called me on the telephone and asked me, what further agreement could be made on this mortgage, and I informed him at that time, that no further arrangement could be made, that we would insist on the balance being paid off.

12. Mr. Dowden then informed me that he would let his client know. I was then served by a notice from Mr. Richard Doherty, that they would apply for leave to file an answer in the above entitled

cause. This is the first intimation that I had, that Mrs. Allen was of unsound mind or mentally deficient. Between the time of filing the bill of foreclosure I conferred with Mr. David J. Allen on three or four different occasions and I also talked to him on several occasions after the extension to March 1st, 1930 was granted, and never once during my conversations with him did he say that his wife was of unsound mind and did not know what she was signing. I do not know, whether Mrs. Allen received any of this $7000., or not, but I have been informed by Mr. Dowden, that he did pay some interest on the first mortgage and the taxes for premises #7 Belmont Avenue, and that he was reimbursed out of this money.

13. I was never connected with Mr. McGee or Mr. Allen in an enterprise, or have I received any moneys from any business enterprise in which Mr. Allen or Mr. McGee were interested in. This $7000.00 was given on a mortgage and the moneys went to Mrs. Allen and from the return of my check it shows that she endorsed said check over to her lawyer Mr. Dowden, who in turn deposited said check in the Trust account of the firm, and later disbursed said moneys with the full approval of both of the defendants as shown by the affidavit of Mr. Dowden hereto attached.

CHARLES C. COLGAN.

Sworn and subscribed to before me
this 21st day of March, 1930.

REBE SHANAHAN,
Notary Public of New Jersey.

Affidavit of Philip F. Botzong.

IN CHANCERY OF NEW JERSEY.

Between MAX GOREN and CHARLES C. COLGAN, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, Defendants.	On Bill to Foreclose.

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

PHILIP F. BOTZONG, of full age being duly sworn deposes and says: I am connected with The New Jersey Title Guarantee and Trust Company and for several years have had charge of the closing department relative to titles examined and guaranteed by said Company; that on the 23rd day of October, 1928, this deponent was attended by Ellen E. Allen, David Allen, her husband, and Benjamin Dowden, Esq., Attorney for said Ellen E. Allen, for the purpose of executing bond and mortgage to The New Jersey Title Guarantee and Trust Company in the sum of Eight Thousand Dollars ($8000.) on premises, Lot 17-A, Block 1923, on Belmont Avenue, Jersey City, New Jersey, which property is known by the house number 7 Belmont Avenue; that deponent prepared an affidavit for said Ellen E. Allen and explained to her the contents thereof and said Allen E. Allen subscribed and swore to the same before this deponent. Deponent

also witnessed the signatures of said Ellen E. Allen and her husband David Allen to the bond given to secure the loan of $8000. and also witnessed the signatures of said Ellen E. Allen and husband to the mortgage given as security for said bond and explained the terms of said bond and mortgage to Mrs. Allen and her husband and thereupon they duly acknowledged that they signed sealed and delivered the same as their voluntary act and deed. Deponent has had several years' experience in passing titles and has been particular to observe any peculiarity in persons who appeared before him for the purpose of executing papers; that upon this occasion Mrs. Allen in all respects appeared to be rational and normal and understood perfectly what she was doing and there were no indications that she was different in any respect from any normal person.

PHILIP F. BOTZONG.

Sworn and subscribed before me this 7th day of March, A. D. 1930, at Jersey City, N. J.

ALICE H. FERNEKES,
Notary Public of N. J.

Affidavit of Benjamin Dowden.

IN CHANCERY OF NEW JERSEY.

Between MAX GOREN and CHARLES C. COLGAN, Complainants, and ELLEN E. ALLEN and DAVE J. ALLEN, Defendants.	On Bill to Foreclose.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

BENJAMIN DOWDEN, being duly sworn according to law, on his oath deposes and says:

1. I am a Chancellor-at-law of the State of New Jersey and a Master in Chancery of New Jersey. Service of subpoena in the above entitled cause was acknowledged by me in behalf of the defendants; that both of the defendants authorized me to acknowledge service.

2. I have read copy of affidavit served in the above matter, made by Ellen E. Allen, and am very much surprised at the contents thereof; from the affidavit signed by Mrs. Allen, an inference may be drawn that Mrs. Allen met me for the first time when the mortgage in question was about to be signed, and that she merely knew me as a friend of her husband.

3. I not only represented Mr. and Mrs. Allen in the above matter, but have represented Mrs. Allen on various occasions since the Fall of 1923, at which time I was introduced to Mrs. Ellen E. Allen by Benjamin J. Darling, who was formerly the senior member of the firm of Darling, Barnes & Dowden.

4. In October, 1923, Adolph Koment purchased from Ellen E. Allen premises known as 288 Summit Avenue, Jersey City, N. J. That at the time of the closing of said title, Mark L. Townsend, who represented Adolph Koment, withheld $1552.50 to cover a possible claim of Inheritance Tax Department.

5. That at the time of the closing of title I was informed by both Mr. and Mrs. Allen that no lawyer represented them at the closing.

6. That Mrs. Allen took up with Mr. Benjamin J. Darling the matter of whether or not the purchaser was entitled to withhold said sum of money for the purpose of possible Inheritance Tax claim.

7. The matter was turned over to me with the knowledge and consent of Mrs. Allen, and a memorandum of cases on the question of whether the tax was due or not was submitted to Mark L. Townsend, a Counsellor-at-Law of New Jersey.

8. That after negotiations, extending over a period of several months, Mr. Townsend and Mr. Hansen, who represented a subsequent purchaser, decided that the tax was not due and arranged through me to return the money withheld by Mr.

Townsend as aforesaid to Mrs. Allen, which was done on or about January 31, 1924.

9. That Mrs. Allen at that time received a check for $1612.86, being the amount of Inheritance Tax estimate, and additional money to cover judgment of Charles J. Hansen, vs. Elizabeth Allen, recovered in the Hudson County Circuit Court, which had also been retained.

10. In addition to handling the matter aforesaid with Mr. Townsend, I brought about the settlement of judgment in the matter of Charles J. Hansen, vs. Elizabeth E. Allen, recovered in the Hudson County Circuit Court, and delivered satisfaction to Mr. Mark L. Townsend prior to the delivery of his check to Mrs. Allen.

11. That during the month of November, 17, 1927, I represented Elizabeth E. Allen in a suit which was brought by Saks & Company, of New York City, against David J. Allen and said Elizabeth E. Allen, who was designated by the name of Margaret, her first name being fictitious because the real name of Mrs. Ellen E. Allen was unknown to Saks & Company at that time.

12. That on or about October 6, 1923, Ellen E. Allen and David J. Allen, her husband, executed a mortgage to Benjamin J. Darling in the sum of $8600.00, covering premises #7 Belmont Avenue, Jersey City, New Jersey, which mortgage was executed at the office of Darling, Barnes & Dowden, in which firm I was a partner.

13. That on or about March 3, 1924, Ellen E. Allen and David J. Allen, her husband, executed a

mortgage to the Central Building & Loan Association of Jersey City, in the sum of $7000.00, which mortgage was executed at the office of Darling, Barnes & Dowden and covered premises #7 Belmont Avenue, Jersey City, New Jersey, and at the closing of the mortgage to the Central Building & Loan Association the mortgage to Benjamin J. Darling was satisfied.

14. That during the month of October, 1928, the defendants executed a mortgage for $8000.00 to the New Jersey Title Guarantee & Trust Company of Jersey City, New Jersey, which mortgage affected premises known as #7 Belmont Avenue, Jersey City, New Jersey. That said closing took place at the office of the New Jersey Title Guarantee & Trust Company, and the acknowledgment to the mortgage was taken by Mr. Philip Botsong. That from the money received from the New Jersey Title Guarantee & Trust Company on said mortgage, the mortgage executed previously to the Central Buildinng & Loan Association was duly paid.

15. I set out these transactions to show that over a period of years Mrs. Allen was transacting business relative to said property and other property, and at said times she and her husband executed mortgages and generally transacted business as other people would in reference to property, and that there was no evidence at said times that Mrs. Allen was incompetent, nor was said question raised by either Mrs. Allen or her said husband on any of these occasions.

16. That I represented both Mr. and Mrs. Allen on March 22, 1929, at which time they executed a bond and mortgage to Max Goren in the sum of

$7000.00, covering premises #7 Belmont Avenue, Jersey City, New Jersey. That said bond and mortgage was executed at the office of Charles C. Colgan, at 15 Exchange Place, Jersey City, New Jersey, at which closing there were present, as nearly as I can recall, the following people: Charles C. Colgan, Max Goren, Ellen E. Allen, David J. Allen, Counsellor James A. Dolan, Eugene F. McGee, a female stenographer in the office of Mr. Colgan, whose name I do not know, a lawyer named Lightdale and myself.

17. That at said time Mrs. Allen was apprised of the fact that she was executing a bond and mortgage on her home, No. 7 Belmont Avenue, Jersey City, New Jersey, and that the proceeds of the mortgage were to be turned over to Eugene F. McGee to be used in connection with a business that he was transacting in an office in the Journal Square National Bank Building in Jersey City, New Jersey, under the name of American Trader & Investor Company, at which office Mr. Allen had maintained his headquarters for some time prior to and subsequent to the execution of said mortgage.

18. That prior to execution of said mortgage David J. Allen, Elizabeth E. Allen, Max Goren, Charles C. Colgan and I, visited the Allen home at 7 Belmont Avenue, Jersey City, at which time the proposed mortgage was discussed.

19. That around the time of the execution of said mortgage, I advised against same because of the fact that I was fearful that Mr. McGee might not be able to meet the payments which he promised to make to the Allens, to be applied on said

mortgage. Mr. Allen informed me at that time that he knew what he was doing, that he knew a man when he saw one, and that a man of McGee's type could be trusted unlimitedly. Mrs. Allen stated that she looked to her husband to guide her in said transaction. After Mr. Allen stated his position I no longer opposed said proposition because I figured that he knew what he was doing. Mr. Allen is a man of exceptional ability and has occupied places of prominence in both the business and political world. According to statements he made to me he was formerly associated with the Dupont Company and A. J. Bates & Company, in which concerns he held executive positions. He also served as Special Agent of the Attorney General's Office of the United States of America and was assigned to the President during the Harding term of office, and had served for some time under the Coolidge regime in the same capacity.

20. That at the execution of said bond and mortgage a check for $7,000.00 was drawn to the order of Ellen E. Allen by Charles C. Colgan.

21. That at said time it was decided that instead of having the check cashed for Mrs. Ellen E. Allen and she turning the money directly over to McGee, that there should be some evidence of the transaction, showing that she was turning the money over to said McGee.

22. That from the office of Charles C. Colgan, David J. Allen, Ellen E. Allen, Charles C. Colgan, James A. Dolan, and myself, went to the office of Darling, Barnes and Dowden at the Five Corners. Mrs. Ellen M. Allen, at the office of Darling,

Barnes & Dowden, endorsed said check to the order of Darling Trust Fund, which was the firm Trust Account of Darling, Barnes & Dowden.

23. That said check was made payable to the Darling Trust Fund so that checks in turn could be made out showing that Eugene F. McGee received the entire money.

24. That at the office of Darling, Barnes & Dowden, on said date, four checks were made to the order of Ellen E. Allen, one in the sum of $1,500.00, another in the sum of $2,000.00, another in the sum of $700.00 and the fourth in the sum of $2,800.00.

25. That all of said checks were endorsed by said Ellen E. Allen, payable to the order of Eugene F. McGee.

26. That Eugene F. McGee made payable to Charles C. Colgan, Attorney, one check for $2,000.00 and another check for $700.00. That the check for $1,500.00 was cashed at said time for Eugene F. McGee by John H. Jobes, an Attorney-at-Law of the State of New Jersey, who was associated with the firm of Darling, Barnes & Dowden, and said cash was turned over by Mrs. Ellen E. Allen to Eugene F. McGee. I cashed the check for $2,800.00 for Eugene F. McGee at the Five Corners Branch of the Commercial Trust Company.

27. That subsequent to the institution of the case deponent was successful in securing from Eugene F. McGee an assignment of claim which he had against Max Goren; that said assignment was

made to me; that after numerous conferences a settlement of said claim was made for $2,000.00; $1,500.00 of which was applied on the mortgage in suit and the balance to payment of interest to New Jersey Title Guarantee and Trust Co., on first mortgage on said premises; that at the time of said settlement, March 1, 1930 was set as the time in which balance of mortgage must be paid; David J. Allen was present when said settlement agreement was made; David Allen signed same and I signed as solicitor of Ellen E. Allen; Mr. Allen at the time of signing stated Mrs. Allen was not well and he did not want to bother her and suggested that in view of the fact that I was her solicitor that I sign same, which was done.

28. That during all of the years that I knew Mrs. Allen I never noticed any evidence of incompetency on her part; I knew she was not a strong robust woman and was of a sickly nature, but on all occasions when business was discussed she seemed to understand what was transpiring; she had absolute confidence in her husband's decisions and in view of the fact that he was the head of the home and the family all lived together, there was no reason to suspect that her husband would do anything to her detriment or that she was wrong in placing her confidence in his decisions; I have visited the Allen home on numerous occasions during the past few years and the Allen's visited my home and the one thing that attracted me greatly to David J. Allen was his solicitousness of the welfare of his family and the considerate attention he gave them.

29. That there was no agreement or understanding that Mr. Colgan, Mr. Goren and myself should

share in the profits of McGee's business; Ex-Judge Dolan appeared at the closing with McGee. There were no papers drawn or agreement made at that time or any other time, providing for the participation in the business; what arrangement Mr. Allen had with Mr. McGee I do not know; Mr. Allen has made his headquarters at McGee's office for sometime prior to the execution of the mortgage, and he was in a position to know more about McGee's business than any of us.

30. I remember that while the bond and mortgage were being executed or shortly after the execution McGee made a general statement to the effect that the money would relieve his situation, that the stock of a mine in which he was interested would be forthwith listed on a western exchange and when that happened he would remember all of us.

BENJAMIN DOWDEN.

Sworn and subscribed to before me this 22nd day of March, 1930.

GEORGE MILSTEIN,
Master in Chancery of New Jersey.

Affidavit of Mark Townsend, Jr.

IN CHANCERY OF NEW JERSEY.

Between MAX GOREN and CHARLES C. COLGAN, Complainants, and ELLEN E. ALLEN and DAVE J. ALLEN, Defendants.	On Bill to Foreclose.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

MARK TOWNSEND, JR., being duly sworn according to law upon his oath deposes and says: that I am counsellor at law of the State of New Jersey with office at 921 Bergen Avenue, Jersey City, New Jersey.

That during the month of October, 1923, I represented one Adolph Koment who purchased from Ellen E. Allen premises known as 288 Summit Avenue, Jersey City, New Jersey; that at the time of closing of said title I withheld the sum of $1,552.50, to cover possible claim of Inheritance Tax Department; that at the time of closing title Ellen E. Allen was present but was not represented by counsel; that after said closing of title negotiations were entered into by my office and Benjamin Dowden of Darling, Barnes and Dowden, who represented Mrs. Allen in reference to disposition of money withheld as aforesaid;

Mr. Dowden submitted a memorandum of cases on the question of whether the tax was due or not; from examination of the cases so submitted and conferences with Mr. Dowden and Mr. Hansen who represented a subsequent purchaser, I decided that the tax was not due and arranged through Mr. Dowden to turn money in my hands over to Mrs. Allen which I did on January 31, 1924; the amount of the check was drawn to the order of Ellen E. Allen for $1612.86 being the amount of inheritance tax estimate and additional money to cover judgment of Charles J. Hansen against Elizabeth E. Allen recovered in Hudson County Circuit Court which was also retained; minus adjustments Mr. Dowden turned over to me satisfaction of judgment and brought about said settlement in behalf of Mrs. Allen. My records show that subsequent to the passing of title and before the turning over of the check, being a period of over three months the negotiations for Mrs. Ellen E. Allen were carried on by Benjamin Dowden as attorney for Ellen E. Allen.

MARK TOWNSEND, JR.

Sworn and subscribed to before me
this 7th day of March, 1930.

MOLLIE SWID,
Attorney at Law of N. J.

Affidavit of Harold B. Lightdale.

IN CHANCERY OF NEW JERSEY.

Between MAX GOREN and CHARLES C. COLGAN, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, Defendants.	On Bill to Foreclose.

STATE OF NEW JERSEY, } ss.:
COUNTY OF HUDSON, }

HAROLD B. LIGHTDALE, being duly sworn according to law, on his oath deposes and says:

1. I am an attorney-at-law of the State of New Jersey, that I formerly studied law in the office of Charles C. Colgan, counsellor-at-law, and upon being admitted to the bar, opened offices of my own in the Commercial Trust Co., Building; That on March 22nd, 1929, I was still in the office of Charles C. Colgan, and Mr. Colgan, asked me to take the acknowledgment of David J. Allen and Ellen E. Allen, on a mortgage which they were giving on some property on Belmont Avenue, Jersey City, N. J.

2. I took the acknowledgment of the said David J. Allen and Ellen E. Allen, and explained the contents of the mortgage both to David J. Allen and Ellen E. Allen; that the said Ellen E. Allen

appeared to me to understand the contents of said mortgage, and she acknowledged to me that she signed the same as her voluntary act and deed.

3. Deponent further says, that he would not have taken this acknowledgment if there was anything in the manner of said Mrs. Allen, that would lead him to suspect that she was of unsound mind, and from my recollection I would not say that Mrs. Allen was of unsound mind or was mentally deficient at the time she signed this bond and mortgage.

HAROLD B. LIGHTDALE.

Sworn and subscribed to before me this 21st day of March, 1930.

REBE SHANAHAN,
Notary Public of New Jersey.

Affidavit of John H. Jobes.

IN CHANCERY OF NEW JERSEY.

Between MAX GOREN and CHARLES C. COLGAN, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, Defendants.	On Bill to Foreclose.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

JOHN H. JOBES, being duly sworn according to law, upon his oath deposes and says:

I am an attorney at law in the state of New Jersey; that on March 22, 1929, I remember a transaction which occurred at the office of Darling Barnes and Dowden, 662 Newark Avenue, Jersey City, with which firm I was associated at said time, whereby checks were made out to Ellen E. Allen, in connection with Goren mortgage; that Mrs. Allen, her husband David J. Allen, a number of people, Mr. Dowden and myself were present when the checks were drawn; that there was nothing in the transaction that was different from the usual transaction in connection with disbursement of money; I had met Mrs. Allen several times prior to said date and never noticed any action on the part of Mrs. Allen that indicate that she was a woman who did not know what she was doing; that on March 22, 1929, she gave no evidence of not un-

derstanding what being done, but from actions of Mrs. Allen it could be inferred that she was normal and understood what she was doing.

I cashed one of the checks for $1,500.00, which cash I placed on the desk at which Mrs. Allen was sitting.

That prior to said time, while I was associated with said firm, namely over a period of three or four years, Benjamin Dowden, represented David J. Allen and Ellen E. Allen on several occasions; that on several occasions I went to the home of Ellen E. Allen with Mr. Dowden at which times I met said Ellen E. Allen; I have never seen any action or conduct on the part of said Ellen E. Allen that would lead me to believe that said Ellen E. Allen was of such mentality that she did not understand what she was doing.

JOHN H. JOBES.

Sworn and subscribed to before me this 21st day of March, 1930.

GEORGE R. MILSTEIN,
Master in Chancery of N. J.

Affidavit of Max Morrof.

IN CHANCERY OF NEW JERSEY.

Between
MAX GOREN and CHARLES C. COLGAN,
Complainants,
and
ELLEN E. ALLEN and DAVID J. ALLEN,
Defendants.

On Bill to Foreclose.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

MAX MORROF, of full age being duly sworn according to law upon his oath deposes and says:

I am a law clerk in the office of Benjamin Dowden; that after subpoena was acknowledged I was in Benjamin Dowden's office on several occasions when David J. Allen came to him in reference to the foreclosure; on one occasion when David J. Allen suggested that I be sent to the office of Charles C. Colgan, Solicitor for complainants to get a copy of the bill of complaint; at that time David J. Allen told Benjamin Dowden that he was anxious to get the matter cleared up; on several occasions, I went to the office of Eugene F. Magee but was unable to see him, and I left word at his office to get in touch with Benjamin Dowden in reference to Allen mortgage.

MAX MORROF.

Sworn and subscribed to before me
this 21st day of March, 1930.

GEORGE R. MILSTEIN,
Master in Chancery of N. J.

Affidavit of Charles C. Colgan.

IN CHANCERY OF NEW JERSEY.

Between CHARLES C. COLGAN, *et al.*, Complainants, and ELLEN E. ALLEN, *et al.*, Defendants.	On Bill &c.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

CHARLES C. COLGAN, being duly sworn according to law deposes and says:

1. I am a counsellor-at-law of the State of New Jersey, and also one of the complainants in the above entitled cause;

2. I received two checks from Benjamin Dowden at the closing of the mortgage loan of $7,000., granted to the defendant on premises No. 7 Belmont Avenue, Jersey City, N. J., one check for $2,000.00 to my order as attorney for Max Goren, and another check for $700.00 to my order as attorney.

3. The check for $2,000.00 was given to me to pay off a check for $2,000., issued by the Brokerage Firm known as American Trader & Investors Company, to one Thomas Loori, who in turn had said check cashed by Max Goren, who paid the said Thomas Loori $2,000., and when Mr. Goren de-

posited the check it was returned by the bank as "insufficient funds." Mr. Goren, my client, brought me said check for the purpose of instituting suit, but before doing so, I wrote to the American Trader & Investor Company, stating that I had the check and proceedings would be instituted. Mr. McGee, Mr. Allen, and ex-Judge Dolan, came to my office in reply to this letter and asked me to hold up and they would make the check good. The matter was pending for about two or three weeks when Mr. Allen informed me that he was connected with Mr. McGee in the business and did not want a suit instituted, and suggested that I try to obtain a second mortgage on his property, No. 7 Belmont Avenue, Jersey City, as he stated that this claim of $2,000.00 and other claims were pressing and that he wanted to keep the concern in good standing until certain stocks were listed on the exchange.

4. Mr. Allen, Mr. McGee and Mr. Dolan were at my office on four or five different occasions and spent practically the whole afternoon discussing ways and means of liquidating these different accounts against their concern. I informed Mr. Allen that I had no client who would loan this money at that time, but I told him that I would submit the application to my client, Mr. Max Goren, and told him also at that time that if the mortgage loan was granted that Mr. Goren would insist on having this check for $2,000.00 paid first. Mr. Allen, Mr. McGee and Mr. Dolan all agreed with this, and I accordingly submitted the application to Mr. Goren, with the result as set forth in my previous answering affidavit.

5. The check for $700.00 to my order was for services in obtaining the loan, searching the title,

drawing bond and mortgage, passing mortgage loan, and for fees in reference to the $2,000.00 check and the several conferences which were had at my office. We went to Mr. Dowden's office when he was disbursing the $7,000.00 check which I had made out to the order of Ellen E. Allen. This check for $2,000., and the check for $700. were explained to Mrs. Allen and were accordingly paid over to me. I had no interest whatsoever in the $2,000. check and turned same over to my client, Mr. Max Goren.

6. At the time of the signing of this mortgage I was not acquainted with the fact that this $7,000.00 was to be turned over to Mr. McGee, and the only items that I was aware were to be taken out of the $7,000. was the $2,000.00 in payment of the check issued by the American Trader & Investor Company, the firm which Mr. McGee and Mr. Allen were connected, and the $700., for expenses, and it was only upon reading the affidavit of Mr. Dowden, that I became acquainted with the fact that all of this money with the exception of the $2,000., and $700., checks and the $500. check paid by Mr. Dowden to the N. J. Title Guarantee & Trust Company for interest on the first mortgage covering same premises, was turned over to Mr. McGee.

CHARLES C. COLGAN.

Sworn and subscribed to before me this 24th day of March, 1930.

REBE SHANAHAN,
Notary Public of New Jersey.

Affidavit of Max Goren.

(Filed March 31, 1930)

IN CHANCERY OF NEW JERSEY.

Between CHARLES C. COLGAN, *et al.*, Complainants, and ELLEN E. ALLEN, *et al.*, Defendants.	On Bill &c.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

MAX GOREN, being duly sworn on his oath according to law, deposes and says that he is above the age of twenty-one years and resides at No. 25 Gifford Avenue, Jersey City, N. J.;

1. That he cashed for one Thomas Loori a check for $2,000., given by the American Trader & Investor Company, and that when he presented said check to the bank it was returned to him marked "insufficient funds." Deponent turned said check over to his attorney Charles C. Colgan, for collection, and instructed him to institute suit for the collection of same.

2. Deponent's attorney wrote a letter to the maker of the check and Mr. David Allen, Mr. McGee, ex-Judge Dolan and Benjamin Dowden, solicitor for the Allens, made an appointment to meet deponent at the office of his attorney, Charles C. Colgan, No. 15 Exchange Place, Jersey City, N. J., we met there and they requested further time in

which to pay the check and asked me not to institute suit as it would affect their credit, and that they expected to receive some money in the course of a week or so, I consented to same and did not bother any further with the matter until my attorney Charles C. Colgan, informed me that he had had several conferences with Mr. Allen, Mr. McGee and Mr. Dolan, also Mr. Benjamin Dowden, solicitor for Ellen E. Allen, and that they did not seem to be receiving the money. My attorney informed me further that Mr. Allen had asked him to try and arrange to raise a second mortgage on his property No. 7 Belmont Avenue, Jersey City, N. J., and he submitted this proposition to me and told me that if I could arrange to grant the second mortgage on premises No. 7 Belmont Avenue, Jersey City, that they would pay the check for $2,000. out of this money and also pay whatever expenses were necessary in reference to the granting of the mortgage and my attorney's expenses in reference to the $2,000.00 check.

3. Deponent accordingly went to see this property with his attorney, and Mr. Dowden and Mr. David Allen. When we arrived at the house Mr. Allen introduced me to his wife, and also introduced Mr. Colgan, at which time it was explained to Mrs. Allen that we were looking over the property in order to place a second mortgage, and in my talks with her on this occasion she appeared perfectly rational and did not appear to be suffering from any mental disease and was in full possession of her faculties.

4. Deponent turned over to his attorney, Charles C. Colgan, a check for $7,000., and he in turn made

out a check to the order of Ellen E. Allen for $7,000.00 and we then went to the offices of Mr. Dowden, who represented Mr. and Mrs. Allen, and it was at Mr. Dowden's office that my attorney received check for $2,000.00 which he endorsed over to me and also a check for $700.00, which $700.00 was paid to him for legal services in looking up the title to the property, drawing bond and mortgage, and in the several conferences in reference to the checks.

5. This was the only check that I received that is the $2000., besides a check for $1500., which was paid later, on account of the mortgage. Mr. Allen during these negotiations informed me that he was a partner of McGee's, and that they expected to have certain stocks listed on the Chicago exchange, which would make the stock which they held very valuable, and that they only needed a little cash to tide them over. Mrs. Allen was fully acquainted with the purpose of this mortgage, as they talked about it in her presence at her home when we inspected the property and also at the office of Charles C. Colgan, at the time of signing the mortgage.

MAX GOREN.

Sworn and subscribed to before me this 24th day of March, 1930.

REBE SHANAHAN,
Notary Public of New Jersey.

Affidavit of Charles C. Colgan.

IN CHANCERY OF NEW JERSEY.

Between MAX GOREN, *et al.*, Complainants, and ELLEN E. ALLEN, *et al.*, Defendants.	On Bill &c.

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

CHARLES C. COLGAN, being duly sworn, on his oath deposes and says:

1. I have read the answering affidavit of David J. Allen, one of the defendants in the above stated cause;

2. It is true as stated in the affidavit that I was retained in reference to a $2000. check made by the American Investor & Trader, Inc., at 40 Journal Square, Jersey City, N. J., the facts pertaining to which are explained in my previous affidavits.

3. It is also true that the defendant David J. Allen, McGee, Goren and Dolan had several conferences with me, and it is further true that Mr. Goren was asked to supply the additional money but this request was made by Mr. Allen.

4. I was lead to believe, that Mr. Allen was a partner or had some interest in the brokerage concern with McGee. It is absolutely false that McGee talked to me over the telephone in reference to this mortgage, as the proposition of the mortgage was made in my office at a conference in which McGee,

Dolan, Dowden, Goren and myself were present, and at this conference Mr. Goren absolutely turned down all propositions of Mr. Allen and McGee to invest any moneys in the brokerage concern and even after the offer was made by Mr. Allen for a loan on the premises in question, Mr. Goren raised a question as to the value of the house and Mr. Dowden, the attorney for Mr. & Mrs. Allen stated that if the mortgage was given he was quite sure it would be paid off, and that he was willing to guarantee to Mr. Goren, that he would not have to take over the premises as he (Dowden) would protect the same and give a guarantee in writing that if a foreclosure was instituted and the premises had to be taken over that he would pay the amount of the loan plus foreclosure expenses, which agreement I have in my possession.

5. It is also absolutely false that there was any agreement or any conversation in which it was set forth that Mr. Goren, Dowden or myself, were to participate in a cut in the profits. I was being continually pestered by—telephone calls from Mr. Allen and McGee in reference to this mortgage before Goren finally decided to accept same.

6. It is also untrue that we were to have anything at all to do with McGee, as when the interest became due I took the same up with Dowden and Mr. Allen, and in all my dealings I looked to the Allens for the payment of this money, which is verified by the affidavit of Mr. Dowden and by Mr. Allen himself.

7. It is absolutely false that Mr. Dowden or Mr. Allen ever made a demand on me to cancel the mortgage on the ground that it had been paid by the turning over to Mr. Goren of certain stocks, the

facts being, that on a Saturday afternoon Mr. Dowden and Mr. McGee and Allen came direct to my office for the purpose of getting further time, and it was at this conference that I asked Mr. Allen, what length of time would be required for him to pay off this mortgage, and he replied that if he was given an extension until March 1st, that the money would be paid.

8. I deny that I made the statement to Mrs. Allen, at the time she signed the mortgage that she looked sick, on the contrary, my recollection of Mrs. Allen was that she appeared an ordinary woman in full possession of her faculties and in very good health. And I further deny that it was at my suggestion that we went to Mr. Dowden's office, and say that it was at Mr. Dowden's suggestion that this check be deposited and checks drawn, so as to show where the money went and he had to go to his office in order to drawn these checks.

9. I further deny and say, it is absolutely false, as per statement made in Mr. Allen's affidavit that there was no disclosure to Mrs. Allen as to how the moneys were to be disbursed. At Mr. Dowden's office when he drew the checks he explained to Mrs. Allen before she endorsed the checks just who the checks were going to and for what purpose. The first intimation that I had, that there was any question about this mortgage was, when Richard Doherty served on me a Notice &c., which was after I had informed Mr. Dowden that no further extension was to be granted, that Mrs. Allen disclaimed the mortgage.

10. I further deny, that I ever met or knew Mrs. Allen prior to the going up to her home with Goren, Dowden and Mr. Allen; and I further deny that I

at any time knew of any mental infirmity suffered by Mrs. Allen, and on my first and only visit to the house there was nothing in Mrs. Allen's attitude, appearance or in her actions to indicate any mental infirmity.

11. I further deny the statement by Mr. Allen that he was not at the house with Dowden, Goren and myself, for the purpose of looking over the security, and I say positively that Mr. Allen was there and explained to his wife the purpose of our visit.

12. I further deny that I knew anything of any stock dealings or turning over to Mr. Goren of any stock, until the time when the extension agreement was signed, extending the payment of the mortgage to March 1st, 1930.

13. I further deny that there was any knowledge on my part or on the part of anyone who took part in this transaction, with the exception of that fraud, which now comes to light, by the affidavit of Mr. Allen, that, his knowing the condition of his wife, made an application for this loan and brought her to my office with knowledge of the fact, as stated in his affidavit, that his wife was of such mental infirmity that she did not know what she was doing, and having this knowledge in his possession fraudulently allowed the complainants to pay out $7000., and concealing this defense until this late period.

CHARLES C. COLGAN.

Sworn and subscribed to before me
this 29th day of March, 1930.

REBE SHANAHAN,
Notary Public of New Jersey.

Affidavit of Max Goren.

IN CHANCERY OF NEW JERSEY.

Between MAX GOREN, *et al.*, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, Defendants.	On Bill &c.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

MAX GOREN, of full age, being duly sworn on his oath according to law, deposes and says: I am one of the complainant's in the above stated cause;

1. That I have read the affidavit of David J. Allen; I absolutely deny and say, that it is false that Mrs. Allen was of unsound mind or mental infirmity at the time she signed the bond and mortgage.

2. I further state, that I first met Mrs. Allen, at the time that I went to look over the application for the mortgage loan, which was submitted by David J. Allen, and I went to Mrs. Allen's home with my attorney Charles C. Colgan, Mr. Dowden, who represetned Mr. and Mrs. Allen, and whether Mr. Allen came with us at the time to the house I do not know. I do positively know that when we arrived at the house Mr. Allen was there and he introduced us to Mrs. Allen, and also present at

the time was the daughter who is a cripple. Mr. Allen explained to his wife the reason we were at the house and we were there for about a half-hour, and there was nothing in Mrs. Allen's attitude or her actions which would indicate to my mind any mental infirmity or weakness.

3. After I had inspected the premises I was not so favorably impressed with the security and did not give them an immediate answer, and I was being continually pestered by Mr. Allen and McGee to grant the loan. I did finally consent to the granting of the loan, and not having the full cash available at the time. My attorney Charles C. Colgan took part of it. At the closing of the mortgage loan I was still doubtful as to the security, and I stated this to my attorney Charles C. Colgan, who in turn took same up with Mr. Dowden, and asked Mr. Dowden if he would guarantee the loan; Mr. Dowden refused to do so, but stated that in his opinion there was enough value in the premises to cover the first mortgage held by the N. J. Title Guarantee & Mortgage Co. and the mortgage which we were placing on the premises, and he agreed in writing, that in the event of our having to foreclose on the premises and take title, that he would purchase same within sixty days for the sum of $16,000., which would cover the first mortgage, second mortgage and the foreclosure expenses. Mr. Allen was during all of this conversation present and knew of these arrangements.

4. I was present at the time of the signing of the bond and mortgage, and also present were Mr. Dowden, James Dolan, counsellor-at-law who represented McGee, and Mr. and Mrs. Allen and my

attorney Charles C. Colgan, Mrs. Allen was in the office of my attorney for nearly an hour and while she was in the office there was nothing in her actions or manner to indicate that she was of unsound mind or not capable of signing a bond and mortgage, and I further recollect that Harold Lightdale, an attorney in the office of Charles C. Colgan, took the acknowledgment of Mr. and Mrs. Allen and he explained to Mrs. Allen facts in refcrence to this mortgage and explained the paper which she was signing.

5. We went from Mr. Colgan's office to the office of Darling, Barnes and Dowden, where Mr. Dowden had Mrs. Allen endorse the check for $7,000., drawn by my attorney Charles C. Colgan, and I received a check from my attorney for $2,000., which was in payment of a check given by the American Trader & Investor, Inc., which was in payment of check it had cashed for Thomas Loori, and which was returned by the bank N. G.

6. My attorney also received a check for $700. which was to pay the legal expenses of making search, inspecting the premises and a half dozen conferences which were held at his office pertaining to this mortgage loan and to the payment of check for $2000.

7. I did not receive any further moneys from this transaction. It is absolutely false that I received certain shares of stock from McGee in payment of this mortgage, the fact being, that after the signing of this mortgage Mr. McGee came to me for a loan of additional moneys and for security for the loan of this additional moneys which was

in no wise connected with the mortgage, that I took an assignment of these shares of stock, with the privilege of selling same when I saw fit and if the market went down.

8. I did sell these shares of stock and after the payment of the moneys I had loaned to McGee, I had $2,000. left which I informed McGee that I would pay back to him. Mr. Dowden then suggested to me that in view of the fact, that McGee owed Allen $7,000, that this money be turned over to the Allens, and I told Mr. Dowden, that if he would procure an assignment or some authority from McGee to turn this $2,000., over to Allens I would do so. Mr. Dowden secured the assignment and I turned over the $2,000. to him as attorney for Mr. and Mrs. Allen, and an arrangement was made that $1,500. of this $2,000. was to be paid on account of the principal sum of the mortgage and an extension to March 1st, 1930, be granted for the payment of the balance. The balance of $500. was to be paid to the Title Guarantee for interest on the first mortgage and also for the payment of taxes on premises No. 7 Belmont Avenue, Jersey City.

9. I understand that the interest was paid to the Title Guarantee but that the taxes were not paid.

10. It is absolutely untrue that I ever said to McGee that I had a political pull in Jersey or that I knew the judges.

11. This was purely a direct transaction with Mr. and Mrs. Allen for a mortgage on their premises No. 7 Belmont Avenue, and the first time that I ever heard of this defence, that Mrs. Allen was

incapable or incompetent, was when my attorney Charles C. Colgan, informed me that he had been served with papers by Richard Doherty, as solicitor for Mrs. Allen.

12. I further state, that Mrs. Allen perfectly understood what she was signing as it was explained to her on two different occasions, once at her home and again at the office of my attorney Charles C. Colgan.

MAX GOREN.

Sworn and subscribed to before me this 29th day of March, 1930.

REBE SHANAHAN,
Notary Public of N. J.

Affidavit of Benjamin Dowden.

IN CHANCERY OF NEW JERSEY.

Between MAX GOREN and CHARLES C. COLGAN, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, Defendants.	On Bill &c.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

BENJAMIN DOWDEN, being duly sworn according to law upon his oath says:

1. I have read affidavit of David J. Allen in which he says, that I did not represent Mrs. Allen. Mrs. Allen spoke to me on several occasions prior to extension agreement about the mortgage and after the settlement agreement was made I told her about the amount being reduced by $1,500.

2. Mr. Allen had knowledge of the foreclosure the day service was acknowledged which was previous to the signing of the settlement agreement; that he was constantly in touch with and on a number of occasions stated to me that Mrs. Allen was very much upset over the foreclosure, that he was having trouble with her because she could not sleep nights for fear of losing her home.

3. That within the past few weeks Mr. Allen wanted me to get in touch with Mr. Colgan and arrange a settlement on the basis of $1,830. on or before April 21, 1930; $1,840. on or before May 21st, 1930; $1,830. on or before June 21st, 1930, and I told him that inasmuch as Judge Doherty was handling the matter he had better have him take the matter up with Colgan.

4. That I never guaranteed the payment of the mortgage; Mr. Colgan wanted me to guarantee the mortgage and I refused to do so; a question was raised as to the value of the house; I stated the house was worth more than the mortgage; Mr. Colgan asked me what I would give for the house and I stated $16,000. any time; he then asked me if the house was taken by him whether he would be stuck with a big house, I told him he need never worry about being stuck with the house as it was well located. While the mortgage was being executed an agreement was drawn up that if Colgan became the owner of said house I would purchase same for $16,000; I signed two copies of this agreement and left them at Colgan's office, neither Colgan or Goren executed said agreement at the time. This was all done at the time when all of the parties were present at the closing of mortgage, I never had a copy until I received one this morning (March 28th, 1930);

5. That there was no agreement as to a division of profits or cut; as stated in my previous affidavit McGee made a general statement to the effect that the money would relieve his situation, that the

stock of a mine in which he was interested would be forthwith listed on a western exchange and when that happened he would remember all of us.

6. The mortgage as I understood it was given to secure a direct loan, which money was to be used in McGee's business by Allen.

BENJAMIN DOWDEN.

Sworn and subscribed to before me this 28th day of March, 1930.

GEORGE R. MILSTEIN,
Master in Chancery of N. J.

Affidavit of Louis R. Kagan.

IN CHANCERY OF NEW JERSEY.

Between MAX GOREN and CHARLES C. COLGAN, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, Defendants.	On Bill &c.

LOUIS R. KAGAN, being duly sworn, according to law upon his oath deposes and says:

I am an attorney at law of the State of New Jersey; that prior to April 30th, 1929, I was retained to foreclose a chattel mortgage for Abe L. Samuelsonn against The American Investor and Trader, Inc., 40 Journal Square, Jersey City; that on or about May 11th, 1929, I was at the office of The American Investor & Trader, Inc., prepared to proceed with foreclosure sale which was to be conducted by Louis Schultz, Constable of Hudson County; that Eugene F. McGee, and David J. Allen both asked me to postpone the sale; that at said time David J. Allen stated that he was in said concern for about $7,000. and if the matter were adjourned, settlement would be made; that several postponements were granted before final sale; that on the occasions that I was at the office of The American Investor and Trader, Inc., I talked proposed settlement with both Mr. Allen and Mr. Mc-

Gee; that Mr. Dowden also requested postponements of me, stating that he was anxious to avoid having the business closed down because of loss that would result to Mr. Allen.

LOUIS A. KAGAN.

Sworn and subscribed to before me this 28th day of March, 1930.

CHRISTOPHER DEGHERI,
Attorney at Law of New Jersey.

Affidavit of Mary Virginia Lehman.

IN CHANCERY OF NEW JERSEY.

Between MAX GOREN and CHARLES C. COLGAN, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, Defendants.	On Bill to Foreclose.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

MARY VIRGINIA LEHMAN, being duly sworn, according to law upon her oath, deposes and says:

1. I am over the age of twenty-one years and am Secretary to Mr. Benjamin Dowden, Counsellor-at-Law, with offices at No. 921 Bergen Avenue, Jersey City, N. J.

2. I am familiar with the above matter and know that on innumerable occasions Mr. Allen called to see Mr. Dowden, in reference to the above foreclosure and requested that Mr. Dowden look after same.

3. On at least one occasion I heard Mr. Allen say to Mr. Dowden, that his wife was very much upset over the foreclosure and that he was having trouble with her because she could not sleep nights worrying about same.

Affidavit of Mary Virginia Lehman.

4. That on several other occasions when Mr. Allen came into the office he stated he was very anxious to get the matter straightened out in some way.

MARY VIRGINIA LEHMAN.

Sworn and subscribed to before me this 28th day of March, 1930.

REBE SHANAHAN,
Notary Public of New Jersey.

Order Granting Leave to Ellen E. Allen, to File Answer.

(Filed March 31, 1930)

IN CHANCERY OF NEW JERSEY.

Between MAX GOREN and CHARLES C. COLGAN, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, Defendants.	On Bill to Foreclose. Order Granting Leave to File Answer.

THIS matter coming on to be heard in the presence of Richard Doherty, solicitor of the defendant, Ellen E. Allen, and Charles C. Colgan, solicitor of Max Goren and pro se, on application for leave to file an answer to the bill of complaint, notwithstanding a stipulation heretofore entered into that the defendant has no just or legal defense to the suit, and the matter being heard and considered, it is on this 31st day of March, 1930,

ORDERED that the defendant, Ellen E. Allen, have leave to file an answer in the above entitled cause, setting up the defenses mentioned in the notice given herein and such other defenses as she may be advised, and also a counterclaim praying for the cancellation of the bond and mortgage, mentioned in the bill of complaint, and it is further

ORDERED that said answer and counterclaim be filed within three days from the making hereof, and that the complainants have twenty days in which to reply and answer the same.

EDWIN ROBERT WALKER,
C.

Respectfully advised,
JAMES F. FIELDER,
V. C.

Motion for Examination of Ellen E. Allen.

(Filed December 23, 1930)

IN CHANCERY OF NEW JERSEY.

Between MAX GOREN and CHARLES C. COLGAN, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, Defendants.	On Bill &c. Notice of Motion for Examination of Defendant Ellen E. Allen.

TO RICHARD DOHERTY, SOLICITOR OF DEFENDANT, ELLEN E. ALLEN:

SIR:

Take notice that on Monday, the 29th day of December, 1930, at 10 o'clock in the forenoon, or as soon thereafter as I can be heard in the Chancery Chambers in Jersey City, I shall move before Honorable James F. Fielder, Vice Chancellor, to whom the above stated cause stands referred, for an order permitting an examination of the defendant, Ellen E. Allen, by a physician selected by the complainants at such time as shall be designated by the Court.

Yours, etc.,

CHARLES C. COLGAN,
Solicitor of Complainants.

Dated, December 22nd, 1930.

Order for Examination of Defendant, Ellen E. Allen.

(Filed December 30, 1930)

IN CHANCERY OF NEW JERSEY.

Between MAX GOREN, *et al.*, Complainants, and ELLEN E. ALLEN, *et als.*, Defendants.	On Bill &c. Order for Examination of Defendant Ellen E. Allen.

THIS matter being opened to the Court by David A. Newton, of counsel with complainants, in the presence of Richard Doherty, Esq., of counsel with the defendant Ellen E. Allen, on notice of motion for an order permitting an examination of the defendant Ellen E. Allen, and counsel for the said defendant Ellen E. Allen, suggesting to the Court that an examination be had by a physician, selected or designated by the Court, and counsel for the complainants consenting to same;

IT is on this 29th day of December, 1930, ORDERED that an examination of the defendant Ellen E. Allen, be had, on Friday, the 3rd day of January, 1931, at 3 o'clock in the afternoon, at her residence No. 7 Belmont Avenue, Jersey City, N. J., by Dr. Christopher C. Beling, of No. 111 Clinton Avenue, Newark, N. J., who is hereby designated by the Court to make said examination.

E. R. WALKER,
C.

Respectfully advised,

JAMES F. FIELDER,
V. C.

Order of Reference to Vice Chancellor Fielder.

(Filed June 4th, 1930)

Notice of Motion to Fix Date for Hearing.

(Filed June 21, 1930)

Order Designating September 30, 1930 at the Chancery Chambers, Jersey City, as the Time and Place of Hearing.

(Filed June 2, 1930)

Notice of Hearing to Solicitor of Defendant, Ellen E. Allen.

(Filed June 4th, 1930)

Case.

IN CHANCERY OF NEW JERSEY.

Between CHARLES C. COLGAN and MAX GOREN, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, Defendants.	On Bill &c.

Transcript of shorthand notes of testimony taken on final hearing in above stated cause, September 30, 1930, at Chancery Chambers in Jersey City, before His Honor James F. Fielder, Vice Chancellor.

APPEARANCES:

DAVID A. NEWTON, Esq., for Complainant Charles C. Colgan.

SAUL NEMSER, Esq., for Complainant Max Goren.

RICHARD DOHERTY, Esq., for Defendants.

COMPLAINANTS' CASE.

Mr. Nemser: To save time, I would like to have it noted that any objection made by Mr. Newton on behalf of his client will inure to the benefit of my client.

Mr. Newton: I want to make two motions addressed to the pleadings; the first motion has reference to the plea of usury.

Mr. Doherty: I would like to have my answer amended to set up that there was a corrupt agreement to contravene the statute.

Mr. Newton: We object upon the ground that the plea of usury must be precise. In this case there is a decree pro con against one of the defendants—

The Court: I am going to allow Judge Doherty, particularly under the circumstances of this case, to present any defence on the merits that he has. If an amendment is necessary for that purpose, he will have leave to make it.

Mr. Newton: The second motion is addressed to the entire answer. It is based on the cases which hold that before a mortgage may be rescinded, there must be tender back of the consideration.

The Court: Motion denied.

CHARLES C. COLGAN, one of the complainants, sworn as a witness on the part of the complainants, testifies as follows:

DIRECT EXAMINATION BY MR. NEWTON:

Q. Mr. Colgan, you are one of the complainants in this suit? A. Yes, sir.

Mr. Newton: I offer in evidence mortgage made by Ellen E. Allen and David J. Allen, her husband, to Max Goren, dated March 22, 1929, bearing certificate of acknowledgment dated on the same day—

The Court: Who took that acknowledgment?

Mr. Newton: That acknowledgment was taken before Harold B. Lightdale, attorney at law.

Mr. Doherty: The execution of that mortgage is not specifically admitted in the answer.

The Court: Let it be marked in evidence.

(Marked Exhibit C-1.)

Mr. Newton: I also offer in evidence bond accompanying said mortgage.

(Marked Exhibit C-2.)

Mr. Newton: I also offer in evidence assignment of one-half interest in said mortgage made by Max Goren to Charles C. Colgan, dated April 9, 1929; recorded in book 193 of assignments, page 193 and acknowledged before Harold B. Lightdale, attorney at law of New Jersey.

(Marked Exhibit C-3.)

Q. I show you the mortgage in suit, Exhibit C-1, and I ask you how much is due on that mortgage? A. The sum of $5,500, with interest from March 22, 1929 on $7,000 up to December 14, 1929, and on $5,500 from December 14th to date, the sum of $1,500 having been paid on account of the mortgage.

By the Court:

Q. In one lump sum? A. Yes, sir.

Q. When? A. On December 14, 1929.

Cross Examination by Mr. Doherty:

Q. By whom was that payment made? A. It was made by Mr. Allen—David J. Allen.

Q. In what form? A. To Mr. Benjamin Dowden, who in turn paid it to Mr. Goren.

Q. Were you present when the money was delivered by Allen to Dowden? A. I was not present when the money was delivered, but I drew up a release—

Q. Your answer to the question is that you were not present? A. I was not present.

Q. You do not know where Dowden got the money? A. Yes; because the papers were drawn up in my office with Mr. Allen—

Q. You personally know nothing as to where Dowden got the money, do you? A. I did not see it, but I know.

Q. Was Allen present at the time when the payment was made? A. Yes.

Q. Who else was present? A. Mr. Dowden and Mr. James Dolan.

Q. In what form did Dowden pay you the $1,500? A. Mr. Dowden did not pay me the $1,500. The money was held by Mr. Goren and Mr. Goren had $2,000 in his possession belonging to—

By the Court:

Q. Was the money paid to you or was it paid to Mr. Goren? A. Paid to Mr. Goren.

Q. Were you present when it was paid to Mr. Goren? A. No, sir; I was not.

By Mr. Doherty:

Q. Will you please elucidate your former testimony that Allen gave Dowden $1,500 and Dowden paid it to you? A. The only thing I know about it is that the papers were drawn—

C. C. Colgan. Called by Complainants. Cross.

Q. (Question repeated) Will you please elucidate your former testimony that Allen gave Dowden $1,500 and Dowden paid it to you? A. I cannot elucidate except by the papers I have in my possession.

Q. You told us latterly that the payment was made by some process of Goren retaining money? A. Well, I don't—

Q. Do you know anything at all about the payment of $1,500? A. Nothing except the papers that I drew up.

Q. Where are they? A. Here.

Q. What paper is that? A. This paper purports to be a release given by Benjamin Dowden to Max Goren, general in its character and special as to any claim that he or Eugene F. Magee might have by reason of a claim arising out of the sale or pledge of stock of Automotive Standards, Inc., heretofore made by Eugene F. Magee, or by reason of the assignment of any claim which Magee has against Max Goren; which assignment is here.

Q. Will you call my attention to anything in that paper that is demonstrative of the payment of $1,500 that was made on this mortgage? A. The paper speaks for itself.

The Court: Whether there is difficulty or not, I am going to confine you to cross examination of this witness. Do you say that $1,500 was not paid?

Mr. Doherty: Yes; I do.

The Court: You do not want that credit of $1,500 paid on account?

Mr. Doherty: We claim that this mortgage is satisfied. We deny this testimony that there was only $1,500 paid.

The Court: As to the $1,500, I must restrict you to cross examination. You, of course, can ask if there was anything more paid on account.

Q. Was there any other payment in connection with the payment of $1,500 after that? A. Not to my knowledge.

Q. You gave no receipt, did you?

The Court: He did not get the money. Mr. Goren got the money.

Q. At that time, was foreclosure instituted? A. Yes, sir.

Q. When was the foreclosure commenced?

The Court: I will tell you the date of filing of the bill. October 19, 1929, the bill was filed.

Q. Will you tell us how the transaction, the release referred to, was in any way related to the dealings that you had with the defendants in this case? A. I don't know.

Mr. Newton: I object to that as not cross examination.

The Court: Objection sustained.

Q. What relation did Mr. Dowden have to this mortgage or to the mortgagee?

Mr. Newton: Objected to.

The Court: Objection sustained.

Mr. Doherty: Do I understand that your Honor will not—

The Court: I can say that we can get to the merits of this case by proceeding in a regular manner, which means that I am not going to allow you to put in your defence on cross examination of this witness, if I can help it.

Q. Do I understand the gist of your testimony is that you knew nothing at all about the credit of $1,500? A. No.

Q. You know nothing and you do not know what is due on this mortgage? A. I know there is a balance of $5,500 due and interest.

Q. You know that you later confessed to complete ignorance as to the payments that have been made on account? A. I know we credited the $1,500 on account of the principal.

Q. You got that information from some one, didn't you? A. Well, I—

By the Court:

Q. Somebody told you that $1,500 was paid? A. Yes, sir.

Q. Who told you? A. Mr. Allen.

By Mr. Doherty:

Q. Mr. Allen? A. And Mr. Goren.

By the Court:

Q. Did you say Mr. Allen and Mr. Goren? A. Yes, sir.

By Mr. Doherty:

Q. When did Allen tell you? A. The same time Mr. Goren told me.

Q. When? A. On the execution of this paper.

Q. Was Goren present at the execution of that paper? A. Yes.

Q. How did you come to tell us that he was not? A. I did not tell you he was not present.

The Court: The witness has testified that $1,500 was paid on account of this mortgage. He became the owner of a half interest in April, 1929. Mr. Goren owned the other half interest in December, when the witness says $1,500 was paid on account; it was paid to Mr. Goren; Goren received it. I understand from the testimony that the payment was made to Mr. Goren. Goren told him so and so did Allen and Allen was the mortgagor.

Q. What did Allen tell you about the payment of $1,500? A. What did Allen tell me?

Q. Yes. A. He said there was $1,500 to be applied on this mortgage.

Q. What did Goren say? A. Goren said, yes, he had the money.

Q. What else was said by either of them? A. That is all.

Q. Was that all that either of them said on that occasion? A. That is all about the payment.

Q. Did they talk on any other topic related to this mortgage?

Mr. Newton: I object to that as irrelevant.

The Court: Objection sustained.

Complainants rest.

DEFENDANT'S CASE.

EUGENE F. McGEE, sworn as a witness on the part of the defendants, testifies as follows:

DIRECT EXAMINATION BY MR. DOHERTY:

Q. Do you know the complainants in this case, Charles C. Colgan and Max Goren? A. I do.

Q. Have you any acquaintance with the defendant David Allen and his wife Ellen Allen? A. I do.

Q. Immediately prior to March 22, 1929, what business were you engaged in? A. American Investors and Traders, Inc., Journal Square.

Q. What was the character of that enterprise? A. Investment securities.

Q. What was your relation to it? A. I was secretary.

Q. Do you know James J. Dolan? A. I do.

Q. Was he connected with it? A. He was.

Q. In what degree? A. President.

BY THE COURT:

Q. It was a corporation of this state, was it? A. Yes, sir.

BY MR. DOHERTY:

Q. Where were its offices? A. 40 Journal Square, Jersey City.

Q. How did you become acquainted with the complainant, Max Goren? A. I received a telephone call from Mr. Colgan and I went to Mr. Colgan's office.

Q. You may tell us the nature of the call; what was it? A. It was in reference to a check for $2,000 issued by the American Investors and Traders, Inc.

Q. What was Mr. Colgan's concern with that matter? A. I went to Mr. Colgan's office. He told me—

Q. What did Mr. Colgan have to do with that check? A. He was the attorney for Mr. Goren.

Q. What was Mr. Goren's interest in it? A. Well, the check—I borrowed $2,000.

Q. From whom? A. From a man named Loori. I gave him a pre-dated check for $2,000.

Q. To whom? A. To the order of Thomas Loori.

Q. How far away was it pre-dated, can you tell? A. Well, I think that was the fourth or fifth check that was issued on the $2,000 loan.

BY THE COURT:

Q. What were the circumstances of your corporation at that time? A. What do you mean?

Q. The financial condition? A. We were in need of financial aid.

BY MR. DOHERTY:

Q. Can you recall whether or not at that time there were proceedings instituted by the Attorney General for an injunction on your business? A. No, sir.

BY THE COURT:

Q. Do you mean you do not recall, or that there was none? A. There was none.

BY MR. DOHERTY:

Q. What was the date of that check? A. I do not recall, but it must be in February.

BY THE COURT:

Q. What was the date of the telephone call to Mr. Colgan's office? A. Either the latter part of February or the first part of March, 1929.

BY MR. DOHERTY:

Q. Proceedings were instituted by the Attorney General against your company? A. Afterwards.

Q. How long after? A. It must have been six months afterwards.

Q. Six months after what? A. After this transaction—

BY THE COURT:

Q. After March, 1929? A. After March, 1929.

BY MR. DOHERTY:

Q. You have told us that your acquaintance with Mr. Colgan was introduced by telephone. What followed after that? A. I went to Colgan's office and had a talk with Mr. Colgan and Mr. Goren.

Q. Did you go alone? A. No; I went with Mr. Dolan.

Q. Tell us about the conversation, what occurred when you got there?

Mr. Newton: May we have the time fixed?

The Court: He said around the first of March, 1929.

BY THE COURT:

Q. That is right, isn't it? A. Yes; it was before this mortgage; I should imagine a week or two weeks before the mortgage was executed.

BY MR. DOHERTY:

Q. Will you tell us what occurred? A. Mr. Colgan told me he was attorney for a man named Goren who had received our check from Mr. Loori.

Q. It was a company check? A. It was a company check.

Q. Go ahead. A. And that he was either about to institute suit or had instituted proceedings in court for a receivership of the American Investors and Traders, Inc., and I told him if he did that it would ruin us.

Q. The check was not honored, was it? A. No; the check was not honored.

Q. It was past due? A. Yes.

Q. Was any information given to you as to how Goren became to be the holder of the check? A. Yes, through Mr. Loori. Mr. Goren told me they had cashed the check for Mr. Loori.

Q. Go ahead. Mr. Colgan said that he either had or was about to institute proceedings. A. Either about to apply to Chancery for a receiver or had applied. I told him if he did that it would ruin us and I asked him for an extension of time on the application of the receivership, and then Mr. Dolan and Mr. Goren and Mr. Colgan and myself had a further talk. They wanted us to get somebody to O. K. the $2,000. We tried to get some one satisfactory to them, and then we had a further talk—

Q. Did you submit to them the names of any available sureties for the check? A. We submit-

ted two or three names, but they did not know the people and they were New York people; I didn't know people here in New Jersey; so the names I submitted were not satisfactory to them.

Q. Well, how was it managed then? A. Well, then Mr. Allen came in.

BY THE COURT:

Q. Mr. Allen did what? A. Mr. Allen came to the conference.

Q. How did he get there? A. I believe I told Mr. Colgan and Mr. Goren that the only security we could offer, Mr. Allen would have his wife put a mortgage on her property.

Q. This was not the first day that you went to Mr. Colgan's office. This was something subsequent? A. Three or four days.

Q. Was Allen connected with your company at that time? A. He was not connected with the company, but he had come in there and was taking part in the company and was going to be associated with the company.

Q. In what capacity? A. I would not know what capacity at the start, except that he was trying to assist in the sale of the securities and to raise finances.

BY MR. DOHERTY:

Q. Had there been any issue of company stock to him? A. No; there was no issue of any stock.

Q. Was he a salaried employee? A. No.

BY THE COURT:

Q. Was he on commission? A. It was not even commission. We never agreed upon any stated salary.

Q. He was to get what he could? A. If we succeeded, he was to get a part of the profits.

By Mr. Doherty:

Q. What prospective profits were in view at the time when Allen became interested in the company's affairs? A. We had control of a mine called Arizona Imperial, located in Arizona. At that time, we were attempting to list it on the Salt Lake Stock Exchange. Subject to the listing on the Salt Lake Stock Exchange, we had received orders for 46,000 shares of stock at $1.10 a share. That was subject to the listing of the stock on the Salt Lake Stock Exchange.

Q. Did that mean that the money on the subscription would not be available for the company until it was listed? A. That is correct.

Q. How much of the stock of the company did you control? A. We had an option on 15,000,000 shares.

By the Court:

Q. How much a share? A. 55 cents a share.

By Mr. Doherty:

Q. Was that the main object of the company's business, to dispose of that stock? A. That is all we were doing then and all we hoped to do.

Q. Did you have any conversation with either of these complainants as to the nature of your business and how it was to be conducted? A. I told them just what I have told you here.

Q. When did you communicate that to them? A. I think on the first visit or on the second visit, at

each visit I met them at their office I talked to them about it.

Q. On the first visit when you asked them to delay proceedings on the check, did you tell them what business you were in? A. I told them the business we were in.

Q. Will you tell us how you became acquainted with David J. Allen? A. I think I had met Mr. Allen several years before, but only on one occasion, the first time I talked to him, Tom Gallagher of Jersey City brought him up to the office and introduced him to me. He did not recall the eight or nine years before.

Q. How long after the meeting with Mr. Gallagher, was it that he became associated with your enterprise and undertook to help you dispose of the stock? A. I think the next week he came in there and tried to help raise capital in order to help put—

BY THE COURT:

Q. What time was that with reference to this first call on Mr. Colgan? A. I think it was within thirty days afterwards? A. No; thirty days before.

Q. Allen had come in and become interested in your company before Colgan called you on the telephone? A. Yes, but he was not interested in the company at the time he came there. He came there with a proposition of a shoe deal that he wanted to get financed and wanted to know if we could help him finance the shoe proposition.

Q. Mr. Colgan called you up on the telephone and you went to see Colgan about the first of March, 1929? A. That is correct.

Q. Was Allen interested in your enterprise at that time? A. It is a very peculiar position. He

was not interested because we had done nothing on the financing of this stock, or the sale of this stock.

Q. As I understood you to say, Allen became associated with you to aid you in the sale of your stock; is that right? A. Yes; but we never sold any.

Q. Was that before or after this call on Mr. Colgan? A. That was before the call on Mr. Colgan.

By Mr. Doherty:

Q. Was Allen present at any of the early conferences you had with Mr. Colgan or Mr. Goren relative to the dishonored check? A. I think he came down there once with Mr. Dolan and myself and Mr. Colgan and Mr. Goren, in Mr. Colgan's office.

Q. That was following the interview at which only you and Mr. Dolan was present on your side? A. That is correct.

Q. You have told us that the complainants wanted somebody to stand good for the check? A. They wanted security for the $2,000; otherwise they were going to institute receivership proceedings.

Q. Did you ever give them security for that $2,000? A. Yes; I gave them this mortgage.

Q. Was that for the $2,000 alone or did that include any other transaction? A. That was for the $2,000 and then $4,300 cash was turned over to me in addition.

Q. Will you tell us when the transaction switched from $2,000 merely to the inclusion of other money that was to be advanced to you; how did that come about? A. When Allen came down and talked to Goren and Colgan we needed other money to advance the sale of the stock and to get the listing. Then it was arranged that a mortgage should be

given and they should advance $7,000 including the $2,000 and the expenses for the mortgage.

Q. Will you tell us at about what date that was broached to the complainants? A. I think to the best of my recollection, either a day or two before the mortgage was executed.

Q. Then the situation was that you were enabled to secure the $2,000 and then proposed to them that they advance more money to keep you afloat so that you could sell stock and remain in business; is that true? A. That is correct.

Q. And it was computed that $7,000 would be necessary, out of which the note was to be paid? A. We tried to get as much loan on the property as possible. They agreed to lend $7,000.

Q. What was the first time that the giving of a mortgage by Mrs. Allen was suggested? A. That was, to the best of my recollection, two or three days before the mortgage was executed, when David Allen and Dolan and myself went to their office.

Q. Were both complainants there at the time? A. Yes.

Q. Can you tell us how the offer of the mortgage was made, who made it; can you recall the conversation? A. No; I cannot recall that conversation. I suppose we suggested it because that is the reason we had Allen there.

Q. Was anything said about any part of this money going to Mrs. Allen? A. No.

Q. The money was to go to whom? A. The American Investors and Traders, Inc.

Q. At that time can you tell us where the money did go? A. The American Investors and Traders, Inc.

Q. Did Mrs. Allen get any of it? A. No.

Q. When did you first meet Mrs. Allen? A. I think the day she went to Mr. Colgan's office.

BY THE COURT:

Q. To sign the mortgage? A. To sign the mortgage.

BY MR. DOHERTY:

Q. About how many conferences altogether had preceded the signing of the mortgage? A. Well, if I knew the exact date I got the first telephone call, I think every day I was down there to stop the receivership proceedings.

Q. At none of these conferences was Mrs. Allen present? A. Only the one I think when the mortgage was executed.

Q. Now, what arrangements were made by these complainants as to how this mortgage was to be paid off?

Mr. Newton: I object to that as incompetent, if the purpose is to vary the terms of the mortgage.

The Court: Objection overruled.

Q. What arrangement, if any, was arrived at between the parties there as to the method whereby this mortgage was to be paid off? A. Well, I agreed or promised to pay it off in sixty or ninety days.

Q. When was that promise made? A. During one of these or both of these conferences.

Q. Was any reference made as to the conditions under which you would have recourse to pay off this mortgage? A. Yes. I told them about these shares of stock that had been sold subject to listing.

Q. You were to pay them off out of the proceeds of these sales, is that right? A. Yes; I was to pay the mortgage.

Q. What else were you to pay with the proceeds of these sales when they materialized, if . To what other uses were you to put the proceeds of the sales, if anything was said about that? A. Well, I told everybody there that I would make them a present.

Q. Were you going to allow them to participate in the profits?

Mr. Newton: I object to that.

The Court: Objection sustained.

Q. What did you say about it? Give us your language. A. I told them that I appreciated what they did and it meant to me a great deal; that I expected to make a great deal of money out of it; that they would not regret it; and I would see that each one received a nice present. There was no participation in the profits.

Q. Who were included in that? A. Everybody in the room.

Q. And who were they? A. The strangers were Allen, Dowden, Colgan and Goren.

Q. What was Mr. Dowden's part in these proceedings? A. He was the attorney for Allen.

Q. Attorney for David J. Allen? A. Yes.

Q. Had he participated in the conferences? A. I think he was there in the first conference with Mr. Allen.

Q. And any other conferences after that? A. Yes; he was there each time after that.

Q. On the occasion of your first meeting with Mrs. Allen, when the mortgage was signed, where did that occur? A. I do not recall. I think I met her some place in Journal Square and drove down.

Q. She met you and you brought her down to Colgan's office? A. We drove down in Mr. Dowden's car from Journal Square.

Q. Who drove down? A. Mr. Dowden, Mr. and Mrs. Allen and myself.

Q. Arriving at Mr. Colgan's office for the execution of the mortgage, who was there? A. Mr. Colgan, Mr. Goren, Mr. Dowden, Mr. Allen, Mrs. Allen, the man in Mr. Colgan's office and the girl—I do not recall whether Mr. Dolan was there or not —and myself.

Q. After the arrival of the party, including Mrs. Allen, was there any conversation among those assembled, as to this transaction, in her hearing? A. Yes; she was in the room, I think. I cannot recall the conversation.

Q. Well, did you hear any information given to her that the proceeds of this mortgage were all going to you? A. Yes.

Q. Was that told to her? A. Yes.

Q. What did she say? A. She asked her husband, I believe, if he thought he was doing the right thing, or something to that effect.

Q. Did you hear the assurances that he gave her? A. Yes.

Q. What did he say? A. He assured her we would all make money out of it.

Q. Did you hear any other information given to her as to a reason why she should sign a mortgage? A. I think then he told her it was absolutely safe, that stock was sold subject to the listing, and that I had just received a telegram from Salt Lake City that it would be in a day or two.

BY THE COURT:

Q. Whereabouts was this that you met Mrs. Allen and came down in an automobile—on the street, or did she come to your office, or whereabouts do

you say you met her? A. I think Mr. Dowden and Mr. Allen went down to his house.

Q. Down to Allen's house? A. Down to Allen's house and came up in an automobile and I think I got in the automobile.

Q. And Mrs. Allen was there in the automobile at that time? A. That is what I think.

Q. Did you have any conversation with her on the way down about what you were all going to do? A. I don't think there was anything except a general conversation.

Q. You mean nothing about the mortgage? A. Nothing about the mortgage.

Q. Nothing about the transaction. A. Nothing about the transaction. I do not recall. It is a long time ago.

Q. It is not so long ago. A. I mean—

BY MR. DOHERTY:

Q. Can you recall what Mrs. Allen said when she inquired whether it was a proper thing to do? A. I know she said to Mr. Allen: "Are you sure it is safe?"

Q. Can you recall anything else she said down there? A. I think she also said: "I want to help you".

Q. Are you sure of that? A. I am almost sure of it.

BY THE COURT:

Q. To whom did she address that remark? A. To Mr. Allen.

BY MR. DOHERTY:

Q. Was there any information given to her by either of these complainants as to the transaction? A. When we got to the office?

Q. Yes. A. I think Mr. Dowden explained to her—

By the Court:

Q. Judge Doherty asked you whether Mr. Colgan or Mr. Goren said anything about it? A. I think Mr. Dowden and Mr. Colgan explained that she was executing a mortgage.

By Mr. Doherty:

Q. Was anything said to her about your undertaking to pay this mortgage out of the proceeds of stock? A. Yes; I told her that.

Q. You told her? A. Yes.

By the Court:

Q. What did you say to her on that subject? A. I told her I would be able to pay that back within sixty or ninety days.

Q. Did you tell her that you regarded it as a loan from her to you? A. Those words were not ever used.

Q. What did you say about it? A. I told her there was nothing to worry about, that I would pay the mortgage off, pay the money off within sixty or ninety days.

Q. What was she worrying about? A. She was worrying whether she was doing the right thing by executing the mortgage.

Q. What was the "right thing"? What was the thing not to worry about—did she say? A. No.

Q. She did not say anything about the possibility of her having to discharge the debt some day? A. No.

By Mr. Doherty:

Q. What was her physical condition so far as you observed that day? A. She was nervous.

Q. Would you say she in any way simulated her present physical condition? A. I do not know what her present physical condition is.

Q. Did she look in general the same figure she looks now? A. As far as her physical condition, it appears about the same.

Q. Did she address any comment to anybody except to her husband; when she asked if it was all right, did she speak to any one else? A. I do not recollect.

Q. When you or her husband, or Mr. Dowden explained to her that she was incurring no liability and that you were the one who was going to discharge the mortgage, did she reply? A. I don't recollect.

Q. Can you remember one thing that this woman said on that occasion except to ask her husband: "Is it all right?"

The Court: Of course, that is not all. He has told you another thing she said.

A. (No answer.)

Q. You cannot recall anything else with any ease, can you? A. I think she said right after she asked that question, she said she wanted to help her husband.

Q. Can you tell how that second statement was co-ordinated? Did she say that after her husband said it was all right to sign the mortgage, that he would make money? A. Yes; right after that.

Q. All she did at this conference, with all the parties present, was to turn to her husband and say: "Is it all right to sign?" and he replied: "Yes; I am going to make some money", and she said: "I want to help you". Is that a description of what occurred? A. Well, there was more than that occurred down there.

Q. What I want you to do is to tell us anything that this woman said.

The Court: On any subject?

Mr. Doherty: On any subject.

A. I think she spoke about Mr. Colgan reminding her of some man and asking Mr. Colgan did he meet her before.

Q. Did she say anything else about having seen Mr. Colgan, on an occasion when he went up to look at her property? A. That may have been.

Q. Is your memory distinct about that? A. No.

By the Court:

Q. Do you recall any conversation with her on the way down in the automobile from where you first met her to Mr. Colgan's office? A. I am not very definite whether we went down in the automobile. It seems as though I did. It seems as though I was in a different seat and we drove down to Mr. Colgan's office. I have not distinct recollection of anything she said at that time.

Q. Did you hear any information imparted by David Allen to Mr. Colgan as to his wife's physical condition? A. No.

Q. How did the transaction go along after you got there, after it was explained to her what was

afoot—what happened then? A. Papers were executed and they went from Mr. Colgan's office to Mr. Dowden's office.

Q. The papers, the bond and mortgage? A. Yes.

Q. Were you present at the signing? A. I think I was.

Q. They were all present, were they? A. I think they were all in the room, but there was a good deal of talk going on.

Q. Do you remember the proximity of her husband at the time when she signed the paper, how near he was to her? A. He stood next to her.

Q. Do you know whether he gave her any directions as to the method of execution? A. No, I do not.

Q. Do you recall whether her question as to whether it was all right was asked when the papers were before her for signature? A. I think it was before that. My recollection is that it was before that.

Q. What was it that evoked that inquiry from her? Was it what her husband had told her, or what Dowden had told her, or what somebody else had told her? How did she come to inquire whether it was all right? A. I think it was my remark.

Q. Your remark was that you were the one who was assuming responsibility? A. I did not put it in that way. I told her that I would pay it off.

Q. Well, what do you say was done in the way of passing money? A. Well, the money was handed to Dowden and I think then Dowden gave me—

Q. I am speaking of the transaction in Mr. Colgan's office. A. I think the checks were drawn in Mr. Colgan's office, and then we went up to Mr. Dowden's office and I think the checks were cashed.

By the Court:

Q. Do you recall whether the check that covered the amount of the loan was drawn to Mrs. Allen's order? A. I remember now all the checks—there were two or three checks—they were all drawn to Mrs. Allen's order and she had to endorse them.

Q. Did she endorse them at Mr. Colgan's office? A. No; I think that was done in Mr. Dowden's office.

Q. When Mrs. Allen was called upon to sign the bond and mortgage, did she ask where she should sign? A. I was not paying any attention.

Q. I am asking your best recollection? A. I don't remember that. She sat by a desk and Mr. Dowden, as I recall it—

Q. This is at Colgan's office? A. Yes; Mr. Colgan was seated at his desk. As I recall it, to the best of my recollection, the desk is located in that corner (indicating) and we were all around her in chairs and there was one chair less than there were persons present, and once in a while one person would stand up, for example, Mr. Goren and myself and so on. There was considerable talk there. The talk was mostly what I expected to make out of the mine.

Q. How long were you there? A. Well, I do not recall what time we got there, but we left there about one o'clock. I think we must have been there two hours.

Q. Was Mrs. Allen there all the time? A. All the time.

Mr. Doherty: Is it admitted that this is the check that was given to Mrs. Allen?

Mr. Newton: It is.

Mr. Doherty: I offer in evidence check of Charles C. Colgan, dated March 22, 1929, to the order of Ellen E. Allen for $7,000, drawn on the Commercial Trust Company of New Jersey and certified by the Commercial Trust Company on March 21, 1929. It is endorsed "Ellen E. Allen" and then "For deposit Darling trust fund" and stamped "Paid March 22".

Q. Do you recognize that as the check that was made out to the order of Mrs. Allen? A. I do not think I could recognize it except I see it.

(Marked Exhibit D-2).

Q. Did you have the check delivered to Mrs. Allen at Colgan's office? A. I could not say whether I did or did not.

Q. Then the party, I believe you said, returned to the office of Mr. Dowden. Who went up? A. Mr. Dowden, Mr. Goren, Mr. Colgan, Mr. Allen, Mrs. Allen and myself.

Q. That is, all the parties interested in the matter. Mr. Colgan's office is downtown here, is it? A. I think it is the next building.

Q. And Mr. Dowden's at that time, was where? A. Up on the corner some place.

Q. The Five Corners? A. Up near there some place.

Q. A distance of a couple of miles away from Mr. Colgan's office? A. Yes.

Q. Now, why did the parties go up there to conclude this matter? A. I don't know any reason. It may have had something to do with the check, to get cash for the check. I think that is the reason they went up there.

BY THE COURT:

Q. It was drawn on the Commercial Trust Company and you were in the Commercial Trust Company building at the time the check was delivered? A. Yes. I don't know of any other reason.

Q. It could have been settled at Mr. Colgan's office, as far as you knew? A. Yes.

BY MR. DOHERTY:

Q. Well, up at Dowden's office, what took place? A. I think Dowden drew certain checks—I don't know how many and got the cash for the expenses and for part of it which was turned over either the next day or a couple of days after.

Q. Turned over to whom? A. To me.

Q. Do you recall a series of checks that Dowden drew? Do you know what became of the checks outside of the cash that was given to you? A. I don't know what became of them.

Q. Did you see any money given to Mr. Goren? A. $2000 was paid to Mr. Goren.

Q. In your presence? A. I do not know whether it was in my presence, or whether it was by check, a $2,000 check.

Q. Did you see any other check turned over to any one; did you see Mr. Colgan get any check? A. I do not recall whether he got a check or not.

Q. How much money did you eventually get out of this mortgage? A. $4,300.

Q. And do you know where the balance of the $7,000 went? A. $2,000 went to pay for the check and $700 for the expenses.

Q. Well, now, what did you do, Mr. McGee, in fulfillment of your undertaking to pay off this

mortgage and keep the defendants harmless? A. I think some time in June—meanwhile Allen became dissatisfied—

By the Court:

Q. With what? A. With his connection with the American Investors and Traders. The stock was not listed, and of course these orders were never realized. The money was never realized. It seems that there was another mortgage on the property and the interest on the other mortgage was due and he and Mr. Dowden came to the office—

Q. Whom do you mean by "he"? A. David Allen; and demanded I pay the interest on the first mortgage in order to prevent foreclosure. At that time I had received one thousand shares of Automotive Standards, Inc., listed on the New York Produce Exchange. By reason of a contract with the Automotive Standards, Inc., by the terms of my receipt of the stock, I was not to sell it on the open market at that time, because they were creating a market for it. I met Mr. Goren and I sold 100 shares of that stock, and I met Mr. Goren and I asked him to lend me $5,000 on the other 900 shares.

By Mr. Doherty:

Q. Can you at this point tell us what it was listed at? A. It was selling around twelve or twelve and a half a share.

Q. And worth approximately $10,000? A. I think the day I made the loan, it was selling at 12.24 or 12.50 a share.

Q. Proceed. A. I asked him to loan me $5,000 and he told me he could get it for me. The stock

was in nine certificates. The nine certificates were signed by Norman T. Bowles, who was president of the company, and whose signature was on file in the Registrar's office, but he insisted, that is, Mr. Goren insisted, that I get the signatures guaranteed. So I sent them over to New York and they were guaranteed by Lynch & Company, a credit exchange house. When I brought them back, they said they wanted a bank guarantee. This was about one o'clock or one thirty, so I had to go out about nine miles in Jersey—I do not recall the name of the people, but a bank out there in which Mr. Bowles had an account, to get his signature guaranteed. When I got there, the cashier would not guarantee the signature and then I had to go to Newark to get it guaranteed by a bank out in Newark, New Jersey, in which Mr. Bowles had a deposit. When I got back, Mr. Goren was gone from the place, but he told me to leave the stock in case he was not there, in a real estate office down town, Matthews, or some name like that, so I left the 900 shares for him. The next day be brought me up a thousand dollars and told me that his man had gone to the country and that is all that he could get that day, that was Saturday morning, and he would give me the balance of the $5,000 on Monday morning. On Monday morning he came up and said all he was going to give was $1,000; that he gas going to hold the shares as security for the payment of the mortgage.

Q. The Allen mortgage? A. The Allen mortgage. I asked him not to sell it that time, because I had given my word to Mr. Bowles that I would not dump this stock on the market, because the people behind the pool would buy it in; they would have to buy in the stock which they had given me to pro-

mote the stock. He told me that if it went down a point, he would sell it.

Q. He told you what? A. If it went down a point, he would sell it.

Q. After the time he gave you the second thousand dollars? A. After the time he gave me the second thousand dollars.

Q. When did you get the other $3,000 to make up the $5,000? A. I never got any $3,000.

Q. Why not? A. He told me he would not give it to me.

Q. At the time you delivered the stock to him, you were to get $5,000; is that right? A. Yes.

BY THE COURT:

Q. Did he say he was holding it to secure the payment of the Allen mortgage, or to secure the payment of that $2,000 you owed him? A. To protect him on both, on the loan of $2,000 and the Allen mortgage.

Q. What protection did he need beyond his $2,000? A. He told me the property was not worth what they loaned on it.

BY MR. DOHERTY:

Q. Can you tell us whether or not the market value of the stock at that time was sufficient to discharge the amount you borrowed on it, together with the full amount of the Allen mortgage? A. Yes, it was.

Q. Would it leave something over for Mr. Goren? A. If he had sold it that day, but I asked him not to sell it.

Q. When he announced it was his purpose to keep that stock for the security of the Allen mortgage, did you assent to it, or did you object? A. I consented to it.

Q. Then, the final arrangement was that he would not sell that stock, or rather he would not sell it unless it went down a point and then he would close everything out? A. Yes.

Q. What was the next development? A. The next time I saw any one connected with the transaction was when Mr. Colgan, Mr. Dowden, Mr. Goren and Mr. Allen walked into the office one afternoon.

Q. When was that? A. I cannot remember the date.

Q. About what month? A. I think the first was with Goren the end of June and this was in July, I think it was July when they all walked in one day.

Q. Into your office? A. Yes; the four of them.

Q. What took place? A. They asked me what I was going to do about it.

Q. Who asked you what you were going to do about what? A. I think the four of them, all at once. So meanwhile I asked Goren what he had done with the stock. He said he sold it out. The stock at this time had dropped from twelve and a half to around five or five and a half.

By the Court:

Q. It had gone— A. From twelve and a half to five or five and a half. In the meantime, it had gone up to fourteen, I think.

Q. What makes you think so? A. I know it.

Q. Do you know of any sales at fourteen? A. Yes; and it went up to sixteen.

Q. There was a pool operating behind the stock? A. Yes.

Q. A wash sale, maybe? A. No; it was that bank that controls the Pennsylvania Railroad, that was behind it. I think it is the Pennsylvania—I mean the directors are interested in it.

BY MR. DOHERTY:

Q. When did it go up to sixteen? A. Right after.

BY THE COURT:

Q. After it went down to five, it went up to sixteen? A. Yes.

BY MR. DOHERTY:

Q. When was it up to fourteen? A. I could not tell you, except I think I got the $2,000 some time in June. It was right around that time it went to fourteen.

Q. I thought you told us it dropped to five? A. Around five and a half. I asked him if he still had it. He said he did. So I told him I had information that these interests were salting this stock, buying this stock, and the stock was going to go to fourteen and if he held it until it went to that price, then he could sell it and take his expenses, I mean what I owed him. He said he would and they all left the office.

Q. When was your next meeting? A. I met Goren and Goren told me he only got five and a half for the stock.

Q. For the whole nine hundred shares? A. He got less than $5,000—around $5,000.

Q. Well, what did he say about what he was going to do with the proceeds at that rate? A. When we were down to Colgan's office and Mr. Goren had given a list of dates on which he had sold the stock and the prices at which he had sold it for, Mr. Dowden and I went down to a branch of the Stock Exchange from New York—it was down in that building some place, I think on the second floor, and we got the records of the New York Produce Exchange and the sales on the New York Produce Exchange, and on the days on which he said he had sold the stock for five dollars, there was no sale registered for the stock. I then asked him to get me a confirmation of the sale from the broker. He told me he had sold it through Hardie & Company. I asked him to get a confirmation. He produced two confirmations for one hundred shares each. One was at five and the other was at five and a half. The next time I saw him in connection with the transaction was when Mr. Allen and Mr. Dowden sent for me and told me the mortgage was being foreclosed. I told him, in my opinion, that Mr. Goren had received considerably more money than he was willing to admit from the sale of that stock and asked him whether any defense could be put in on that ground, or whether I had any action on that ground, and they told me I would have an action against Goren—Mr. Dowden did—but that he could not put that in as a defense against the mortgage because he had assigned the mortgage to Mr. Colgan after its execution and the defense was not good against joint mortgagees. I then told him that I was—

Q. Had the Attorney General's proceedings been instituted in the meantime? A. It was not the Attorney General so much because he withdrew his

proceedings. It was the fact of the break in the Stock Market and everything else, and we were absolutely up against it. I said: "This may be my last chance I have to help you out in this thing," and they said to me they would rather have what Goren was offering, $1,500 at that time than have that amount three months afterwards.

Q. What do you mean about an offer by Goren? A. Goren had stated that he had received $5 a share for the nine hundred shares which would make $4,500, and out of that he had taken $2,000 which I owed him and $500 bonus.

BY THE COURT:

Q. That is, $2,000 for the loan on the stock? A. Yes, and $500 for bonus, and from the balance which he had there was $1,500 that was to be applied on the mortgage. They both told me, both Allen and Dowden, they would rather have the assignment then. I told them I was not able to pay off the mortgage at that time. They said they would rather take the assignment. Mr. Dowden suggested an assignment of my right of action against Goren for the sale of that stock. That was the last I heard of it until you asked me to make an affidavit.

Q. Did you ever see Mrs. Allen after the day that the mortgage was signed? A. Once.

Q. Where? A. In our office.

Q. Was she present at any of these activities between you and Dowden and her husband, relative to the discharge of this mortgage? A. No, sir.

BY THE COURT:

Q. How did she get to your office on the occasion that you saw her? A. I think she and Rose Mary—

I think that is the name of the little girl—they walked in one Saturday afternoon.

By Mr. Doherty:

Q. Was there any business conversation between you and her at that time? A. She just said she wanted to see the place.

By the Court:

Q. How long was that after the mortgage was executed? A. I think it was within a very short time.

Q. A week or two weeks? A. To the best of my recollection about—if I knew what day the mortgage was executed—

Q. March 22. A. Do you know what day that fell on? This was on a Saturday. It was either the next Saturday or the following Saturday after that.

Q. How long did she stay there? A. About ten or fifteen or twenty minutes.

Q. Did you have some conversation? A. Just general conversation.

By Mr. Doherty:

Q. Was Mrs. Allen at that time capable of conducting a conversation?

Mr. Newton: Objected to as irrelevant, incompetent and immaterial. The witness is not qualified to give an expert opinion.

The Court: Objection sustained.

CROSS EXAMINATION BY MR. NEWTON:

Q. During all of these transactions that you have detailed with Mr. Goren, Mr. Allen was still connected with your American Traders and Investors Corporation? A. No, sir.

Q. When did he cease his connection with it? A. About thirty or forty days after the mortgage was executed.

Q. Why did he cease his connections? A. He walked out one Saturday. I never heard anything more from him except—there was no money in the place. I was just tied there.

Q. You were tied for lack of funds and he walked out; is that it? A. That is practically correct.

BY THE COURT:

Q. Was he receiving anything in the meantime? A. No, sir.

BY MR. NEWTON:

Q. What had he done in the meantime? A. Well, he had—we were waiting for the listing at that time, and when it was refused it was a kind of a death blow.

Q. You said on your direct examination that you promised to pay the mortgage off in sixty or ninety days from the proceeds of the sale of stock. To whom did you make that statement? A. To Mr. Goren, Mr. Colgan, Mr. Dowden, and Mr. Allen.

Q. Was it made before the mortgage was executed? A. Yes.

Eugene F. McGee. Called by Defendants. Cross.

BY THE COURT:

Q. It was made before you met at Colgan's office to sign the papers? A. It was made a day or two before.

BY MR. NEWTON:

Q. Was anything said at that time as to what was to happen if you were unable to pay off the mortgage in sixty or ninety days? A. I was so full of hope that I never figured anything could happen.

Q. You said that the check for $7,000 was made out at Colgan's office and you then repaired to Dowden's office. Was not the reason that you went to Dowden's office because Dowden did not have his check book in Colgan's office? A. I don't know, I don't know of any reason.

Q. At any rate, when you arrived at Dowden's office, Dowden proceeded to deposit the check for $7,000 and proceeded to draw checks disbursing it; isn't that right? A. Yes.

Q. This transaction whereby you secured a loan of $2,000 from Goren, you turned over to him nine hundred shares of stock—that was a transaction between you and Goren alone, was it not? A. Absolutely.

Q. Colgan did not participate in that? A. I do not think he knew anything about it until two or three days before the four of them walked into the office, when he heard more about it, and that is the reason he came up to the office with the others.

Q. I show you what purports to be an assignment, Mr. McGee, bearing the signatures "Eugene F. McGee" and I ask you if you signed that? A.

Yes, sir. I executed that at the time it says there, the fourth day of December.

Q. It was executed by you on its date and acknowledged on its date? A. Yes, sir.

Mr. Newton: I offer this paper in evidence. (Marked Exhibit C-4.)

(At this point by consent witness is withdrawn for purpose of calling a physician, out of order.)

MICHAEL FLAHERTY, sworn as a witness on the part of the defendants, testifies as follows:

DIRECT EXAMINATION BY MR. DOHERTY:

Q. You are practicing physician in Jersey City? A. Yes.

Q. Practicing for many years? A. Twenty-five years.

Q. Did you ever bestow any professional attention on the defendant Ellen Allen? A. Yes, sir.

Q. How long has she been under your treatment? A. Twenty years.

Q. For what have you been treating her? A. Epilepsy.

Q. She has been an epileptic for that period ? A. Since about 1910.

Q. Do you know what caused the original attack? A. No; I do not.

Q. Will you tell us whether or not she is subject to seizures, paroxysms? A. Sometimes several times a month; sometimes a couple of months. I had her in the hospital in New York for six weeks

one time, trying to find out the cause of it and did not find out any cause.

Q. Can you tell us whether the course of the disease, since your treatments, has been stationary or whether it has been progressive? A. Well, I think it remains about the same. She does not improve a terrible lot. I used to see her every couple of weeks.

BY THE COURT:

Q. When did you see her last? A. I saw her two months ago.

BY MR. DOHERTY:

Q. You have seen her during the seizures? A. A number of times I was called out during the middle of the night. I lived next door in Summit Avenue and I used to be called out sometimes two or three times a week.

Q. What is her mental condition? A. Stupid, confused.

Q. Would you say her mind is sound? A. For a time her mind is not good. Sometimes she would be in a state of confusion. She is confused for a week or ten days after an attack.

Q. Can you give us any opinion what the state of her mind is in the interval between paroxysms? A. I think it is good, fair. She never goes out alone. She always has her daughter with her. She never goes out on the street alone and has not for years.

Q. Do you know of any business that she transacts? A. I don't know of any she transacts.

Q. Do you know of any business she is capable of transacting at any time? A. I don't know.

Q. Would you say that at any time since the commencement of your treatment, she has been in such a mental state as to be capable of transacting or comprehending the facts that enter into an ordinary business transaction? A. I do not think at her best she is able to transact any business.

Q. What have you observed concerning her power of memory? A. At times it is better than others.

Q. Is it ever normal? A. Well, I have seen her pretty often in the last twenty years and she never appears to be normal to me. At her best she is a little bit timid and confused. For example, she would stop in to see me in the house and sit down to make a visit half an hour at a time; she would not be sick,—just drop in to see me—she would do things that another person would not do.

Q. From your observation of this lady's case and from your professional knowledge and experience, taking into consideration that on the 22nd day of March, 1929, she, accompanied by her husband, a lawyer named Mr. Dowden and Mr. Eugene McGee, repaired to the office of one of the complainants in this case, Mr. Colgan, and there it was explained to her that by the signing of a mortgage on her home, in which mortgage she undertook to pay to the complainants the sum of $7,000, that she was there informed that she was engaging only in the pursuit of a profitable business investment and that Mr. McGee, who was present and who was the beneficiary of the money advanced on that mortgage, promised to pay back the amount due on the mortgage, within the course of sixty or ninety days; that the said Mrs. Allen asked her husband whether it was all right, to which her husband replied that it would be a profitable thing for him and she then

replied that she was willing to help him, taking into consideration all of these facts, what is your opinion as to whether or not at that time she was able to comprehend the nature and facts of that transaction and the business in which she was then engaged?

Mr. Newton: I object upon the ground that Mr. Doherty has not recited all the facts, particularly the statement by Mrs. Allen to her husband; "Are you sure it is safe?"

The Court: I will allow the question.

A. In my opinion, she was not—not from what I know of her for the last twenty years.

BY THE COURT:

Q. In answering that question, did you take into consideration all the hypotheses of the question propounded to you? A. Did I—

Q. Did you get Judge Doherty's question? A. I think I did.

Q. (Former question repeated.) From your observations of this lady's case and from your professional knowledge and experience, taking into consideration that on the 22nd day of March, 1929, she, accompanied by her husband, a lawyer named Mr. Dowden and Mr. Eugene McGee, repaired to the office of one of the complainants in this case, Mr. Colgan, and there it was explained to her that by the signing of a mortgage on her home, in which mortgage she undertook to pay to the complainants the sum of $7,000, that she was there informed that she was engaging only in the pursuit of a profitable business investment and that Mr. McGee, who was

present and who was the beneficiary of the money advanced on that mortgage, promised to pay back the amount due on the mortgage, within the course of sixty or ninety days; that the said Mrs. Allen asked her husband whether it was all right, to which her husband replied that it would be a profitable thing for him and she then replied that she was willing to help him,—taking into consideration all of these facts, what is your opinion as to whether or not at that time she was able to comprehend the nature and facts of that transaction and the business in which she was then engaged? A. I do not think she was responsible.

Mr. Newton: I ask that the answer be stricken out.

The Court: I think that that answer ought to be stricken out.

By the Court:

Q. The question calls for a direct answer. Do you think she was capable of taking into consideration all the things recited in the question? Do you think she was capable of understanding the nature and consequence of the act in which she was then engaging? She was engaged in the signing of a mortgage upon her home. Was she capable of understanding the nature and consequence of the act in which she was then engaged? A. I said at the first I ever saw her, she was never capable of signing a paper.

By Mr. Doherty:

Q. Was she capable of understanding in a reasonable way the nature of that transaction and its

effects and its consequences? A. Well, that would depend on her general condition at the time. At times she is quite bad and other times she is much better. I have seen her in bed for two weeks; I have had to call there every two or three days, and those times she was not capable of doing anything at all.

BY THE COURT:

Q. She was not in bed when she went down to Mr. Colgan's office? A. No.

BY MR. DOHERTY:

Q. Is it your opinion that she at that time understood the legal consequences of signing a bond and mortgage? A. She did not.

Q. She did not understand that in your opinion? A. She did not understand.

CROSS EXAMINATION BY MR. NEWTON:

Q. What do you understand to be the legal consequences that flow from the signing of a mortgage? A. What is that?

Q. What do you understand to be the legal consequences that flow from the signing of a mortgage? A. Well, if a person understands what they are doing—

BY THE COURT:

Q. He is asking you what you understand by the legal consequences that flow from the execution of a mortgage? A. I do not get it.

Q. You know what a mortgage is? A. Yes.

Michael Flaherty. Called by Defendants. Cross.

BY MR. NEWTON:

Q. What happens if you don't pay the mortgage? A. Foreclosed.

Q. You think that Mrs. Allen is unable to understand that if she signs a mortgage and the mortgage is not paid, it will be foreclosed? A. Well, I suppose she would understand that ordinarily.

Q. So, Doctor, if somebody said to Mrs. Allen, showing her a paper: "Mrs. Allen, this is a mortgage securing a loan of $7,000 payable in one year, with interest at six per cent, mortgaging your home", would she understand that? A. She would.

Q. Would she understand the effect of an endorsement of a check by her? A. I believe she would at times.

BY THE COURT:

Q. Would she be able to understand what a check drawn to her own order was, and the effect of it? A. I think she would at times; at other times she would not.

Q. At times she would? A. At times she would and at other times she would not.

BY MR. NEWTON:

Q. How is her orientation? A. All right.

Q. I take it by "orientation", you mean the same as I do, an awareness of environment? A. Yes.

Q. I show you what purports to be an affidavit signed in the case by Ellen E. Allen, and I ask you to read that affidavit and tell me whether or not in your opinion Mrs. Allen understood what she did when she signed that affidavit, which is verified February 26, 1930. A. You read it.

Q. (Reading) "I am one of the defendants in the above entitled cause. No subpoena was served on me or notice given to me of the pendency of the above entitled proceedings until the time of the making of this affidavit when I am informed by my husband that service of the subpoena that was issued was acknowledged by Benjamin Dowden, undertaking to act as my solicitor. Mr. Dowden was not my solicitor in that behalf, was not authorized to act by me and it is only at the time of the making of this affidavit, that I learned for the first time of the existence of any proceedings to foreclose a mortgage on my home at 7 Belmont Avenue, Jersey City, Hudson County, N. J."

Did she understand that or was she capable of understanding it?

Mr. Doherty: I object to asking the witness whether in any set of circumstances that he himself might conceive, she would be able to understand.

The Court: If Mr. Newton will change the form of the question and ask the doctor if Mrs. Allen, reading that clause in the affidavit herself or having it read to her, was, in his opinion, capable of understanding that clause, I will allow it.

By the Court:

Q. The question is this: Do you think if this clause in the affidavit was read to Mrs. Allen on the day she swore to it, or she read it herself, whether she was capable of understanding it? A. I think Mrs. Allen would sign almost any kind of a paper—

Q. Do you think she was capable of understanding that clause in the affidavit? A. I don't know.

By Mr. Newton:

Q. What is that? A. I don't know.

Q. Had you in mind this, that her own attorney prepared the affidavit, and read it to her? A. I don't know that, either. I do not know whether she would understand it or not.

Q. (Reading) "For twelve years past I have been an invalid, my trouble dating from the time when a young daughter was stricken with a serious illness. I do not know precisely what my trouble is except that at the time when I was stricken I went "off" and that various times since then, on an average of a couple of times a month, I have again gone 'off'. I have been under the care of physicians steadily since my first attack, having been attended by Dr. M. E. Flaherty and Dr. Raymond Sullivan and Dr. Meagher of New York. I am informed that I was treated for some time in a sanitarium on 57th Street, New York, but I have no recollection of being there. I am sure that I am not now so competent to understand my circumstances as well as I could before my sickness. I cannot remember things well, although I believe I could remember if I loaned one money and if one promised to return it I would look for it."

Do you think she was capable of understanding that clause at the time she signed the affidavit? A. She must have.

Q. (Reading) "I remember some time ago my husband told me at night that if I would sign a mortgage on the house I would get my money back and more along with it. I also remember my husband and Mr. Dowden on another occasion telling me that if I signed the mortgage I would get interest and additional money every week or every

month. I cannot recall where this conversation took place. I do not know whom Mr. Dowden was representing in the transaction, but assumed that if he was a friend of my husband he was alright. I left it entirely to their judgment to guide me as to what I should do, and did not believe that they would ask me to sign anything that was not right. I am informed now by my husband that I signed a mortgage in the office of Charles C. Colgan downtown in Jersey City; I have no recollection of doing so. I do recollect, however, signing some checks in some place other than where the mortgage was signed, but cannot recall where the place was. At both places there were some men other than my husband and Mr. Dowden, but I do not know who they were. My power of observation is so poor that I do not know the location of the building in which I am signing this affidavit."

Was she capable of understanding these words at the time she signed this affidavit? A. She apparently signed the affidavit, but I say she is not responsible for her signature; that I think she would sign anything; if a crowd of people would get together and tell her to sign, she would sign anything.

Q. If her lawyer read that to her— A. She would probably sign it.

Q. Would she understand it? A. That is a different question. I do not know.

Q. (Reading) "I did not receive any money or other thing of benefit from the signing of the papers, and I have no information as to what the purpose of the matter was, or the nature of the transaction, except that my husband now tells me that I signed a mortgage in order that $7000.00 might be raised by a man named McGee who was in business and who needed that much money in order to keep out

of trouble and continue in business. My husband also tells me that for the payment of that money McGee agreed to give Mr. Goren, Mr. Colgan, Mr. Dowden and himself a share of the profits in his business, and that McGee was also to pay back the money due on the mortgage."

I suppose the same answer applies to that? A. The same answer applies.

Q. (Reading) "I do not remember that any of these things were said to me at the time I was in these two offices, or that any other explanation was given to me at those times as to the nature of the business. At those times I was willing to do anything that my husband believed proper."

You do not know whether she would understand that simple language? A. Well, I said she would sign almost any paper, because her mind is like a child's.

Q. That language is absolutely simple. Here is what it says: "I do not remember that any of these things were said to me at the time I was in these two offices, or that any other explanation was given to me at those times as to the nature of the business. At those times I was willing to do anything that my husband believed proper."

You say you do not know, if you read that to her, whether she would understand it? A. Mrs. Allen never worded that language.

BY THE COURT:

Q. That is not the question. The question is: If those words were read to her, or if she read them herself, would she understand them? A. She would just sign it.

Q. Would she be capable of understanding the words? A. She would sign it and not know what was in it. She would sign almost any paper.

Q. The question is not whether she would sign anything that was given to her. The question is, whether in your judgment, she would be capable of understanding those words if she read them herself or if they were read to her. A. She could understand, certainly.

Q. Could she understand the meaning of them? A. Yes.

By Mr. Newton:

Q. (Reading) "I am told that in the case to foreclose the mortgage a paper, which is called a stipulation, was signed for me stating that there is no defense to the mortgage and that a judgment might be entered against me March 1st, 1930. I do not understand what that means and gave no one authority to do so for me." Did she understand that language? A. The same answer.

Q. What do you mean by "The same answer"? The answer you last gave? A. Yes. If you read it to her, she probably understood it at the time.

Q. (Reading) "At the time when this affidavit was prepared I also signed another paper, of which I am keeping a copy, and which I understand to be a notice to Max Goren and Charles C. Colgan that I refuse to stand by the mortgage and also that I did not give Mr. Dowden any authority to sign the stipulation."

What is your opinion as to that? Would she understand those words if they were read to her? A. Yes; she would understand those words if they were read to her.

Q. (Reading) "I want Richard Doherty, counselor at law, to represent me, and do what may be done to save my home from being taken from me.

I did not know what the paper was that was signed, and I do not know yet. I was told by my husband that everything would be fixed up in a year, and that all money due would be paid in that time."

The same answer applies to that? A. I think the whole paper, if they read it to her—

Q. She would understand the whole paper? A. She would sign any kind of paper put in front of her.

Q. Would she understand the whole paper if it was read to her? A. She might while you were reading it to her.

Q. Do you know her socially as well as professionally? A. Yes.

Q. Is she capable of attending church? A. I never saw her at church.

Q. Is she capable of performing her household duties? A. Always somebody has to be there with her.

Q. Is she capable of reading a newspaper? A. Yes; she can read a newspaper.

BY THE COURT:

Q. Has she discussed with you any of the things she has read in the papers? A. No.

Q. I am talking about any topics of the times. A. My business with her has been pertaining to sickness.

Q. When a doctor goes to visit a patient he usually talks about the events of the day? A. Oh, yes.

Q. Was that your custom with Mrs. Allen? A. The same as anybody else.

Q. Did she seem to understand the things you talked about? A. Yes.

Q. By the way, when did you visit her or give her any treatment about March 22, 1929? A It was around—in fact, I saw her almost every night.

Q. You have a call book? A. Yes.

Q. Have you got it with you? A. No. That is a year old.

Q. You kept a book that is a year old; you have it at your office? A. Yes; I have.

Q. Were you not asked to refer to that book? A. No.

Q. Have you referred to it? A. I have not.

Q. Do you know when you attended her, or when she visited you at your office, about March 22, 1929? A. It was around March, 1929.

Q. How near? A. I think about the middle of the month.

Q. Are you guessing, or do you know? A. I say it was along about the middle of the month.

Q. And what makes you say so? A. I have a pretty good memory, but I do not remember the accurate date.

Q. You cannot remember visiting Mrs. Allen at any definite time, without referring to a book, can you? A. No.

Q. What do you think her condition was about the middle of March, 1929? A. Well, that time, two weeks to get over an attack.

Q. Did she have any attack in March? A. Around about the second week in March.

Q. What makes you say that? Have you any definite recollection? A. I have no dates.

Q. How do you know it was in March, and not in February, or April? A. Well, I have a pretty good idea of calls. If I made three calls I might recall that better than if it was only one.

Q. Do you remember what patients you treated a year and a half ago? A. Not all of them.

Michael Flaherty. Called by Defendants. Cross.

By Mr. Newton:

Q. Will you tell us briefly what your medical education has been? A. Is it necessary.

Q. I think so. You come here as an expert. A. I am not qualified as an expert.

Q. You do not care to tell us what your medical education is? A. Jefferson Medical College, Philadelphia, Stroudsburg Normal and Jersey City Hospital for two years.

Q. Are you connected with any institution? A. Not now; no.

Q. Where have you practiced other than Jersey City? A. That is all.

Q. How long have you practiced in Jersey City? A. Since 1906.

Q. You are licensed of course? A. Yes.

Q. When were you licensed? A. 1906.

Q. Are you a general practitioner? You do not specialize. You are not an alienist? A. No.

Q. You never made any study of mental diseases? A. No. Epilepsy comes under our work, general medicine,—epilepsy, chorea and all of those mental cases. They do not call for a specialist.

Q. You did not consider it necessary to call in a specialist? A. Epilepsy comes under general medicine.

By the Court:

Q. Did I understand you to say it is one of the mental diseases? A. No; it does not come under a specialist.

By Mr. Newton:

Q. It does not come under an alienist? A. No.

Michael Flaherty. Called by Defendants. Cross.

Q. To what test did you subject Mrs. Allen in order to ascertain whether or not she was competent to understand the nature of the transaction involving the signing of a mortgage? A. I did not make any test.

Q. Upon what do you base your opinion? A. On her mental condition all the time.

Q. How did you ascertain it? A. At times she is fairly clear, but at no time did I ever see Mrs. Allen that she could be left alone and go around and do business like a normal person.

Q. How did you ascertain her mental condition? A. From conversation with her over twenty years. I have seen her for twenty years.

By the Court:

Q. Do you know whether she ran her household or not—if she cooked meals? A. I do not think she ever did alone.

Q. Does she order food for the house, do you know? A. I don't know.

Q. Or do general housecleaning? A. I know she was always there.

Q. Did she talk to you over the telephone? A. I do not think she ever talked to me over the telephone. One of the girls usually called me up.

By Mr. Newton:

Q. Doctor, why didn't you warn Mr. Allen against permitting his wife to transact any business?

Mr. Doherty: I object to that. There is no proof that he did not warn him.

Q. Did you or did you not warn Mr. Allen against permitting his wife to transact any business? A. No. Mr. Allen had Mrs. Allen in New York for hospital treatment and sent her there for study a number of years ago. I think she was in there—I don't know how many weeks.

Q. You visited their home, I take it, professionally? A. Yes.

Q. Have you seen any books there? A. I never got much more than the bed room and parlor. There was usually somebody in bed.

Q. Is Mrs. Allen capable of holding a telephone conversation? A. I think so.

Q. Have you heard her telephoning; has she ever telephoned to you? A. Not that I can recall. It is usually Mr. Allen or one of the children that calls me up.

Q. Did you know that she had signed other bonds and mortgages for some time prior to the execution of the mortgage in suit? A. I did not; no.

Q. You did not? A. No; I did not.

Q. Did you know that she had signed a mortgage to the New Jersey Title Guarantee & Trust Company some time in October, 1928? A. I did not know that. That is what I said before. She would sign any paper you put in front of her. That is what I am telling you.

By the Court:

Q. If she signed a mortgage in October, 1928, to the New Jersey Title Guarantee & Trust Company, and the terms of that mortgage were explained to her, do you think she was capable of understanding them? A. I said, in my opinion, she was not capable of signing a paper that had any business to it.

Q. Not even if its contents were explained to her? A. I do not think she is capable.

Q. You do not think she is capable of understanding what a mortgage is, if it is explained to her? If a mortgage was explained to her, would she be capable of understanding what the mortgage was? A. I think she would; yes.

Q. If she were asked to sign a promissory note and the note was explained to her, do you think she would understand what the note was and what she was doing? A. She would sign the note whether she did or not.

Q. If the note was explained to her, would she understand that she was borrowing money on the promise to pay? A. I think she would; yes.

Q. Would she understand what borrowing money meant, if it was explained to her? A. Yes; she would.

Q. Would she not understand without any explanation? A. She is not that bad.

Q. She is not that bad? A. At times, no; at times, she is clear.

Q. If she borrowed money, would she be capable of understanding that she had to pay it? A. I think so.

By Mr. Newton:

Q. Doctor, I suppose when you visited her professionally, you talked with her, didn't you? A. Yes.

Q. Suppose you recite to us a typical conversation between you and her when you visited her? A. I cannot do that.

Q. What is that? A. I don't remember those things.

By the Court:

Q. You would say: "Good morning, Mrs. Allen". Do you think she understood that? A. Yes.

Q. Would she reply to it? A. I guess so.

Q. Do you think she would make a lucid reply? A. No; I don't think so.

Q. Not to: "Good morning Mrs. Allen",—she would not make a lucid reply to that? A. Yes.

Q. And if you asked her: "How do you feel this morning, Mrs. Allen?" Do you think she would understand that question? A. Yes.

Q. And if she told you that she felt sick, do you think she understood what she said? A. I think so.

Q. And if she said she did feel well, do you think she would understand that? A. Yes.

Q. What was there about your conversation with her that makes you think that she was not capable of understanding an ordinary transaction? A. I said that in the beginning. I said, in my opinion she was not capable of signing any paper. Although you read it to her, it would not be anything to her—just go ahead and sign it.

Q. And if you told her you were leaving some medicine for her to take, would she understand that? A. Yes; I would say: "Take the tablet or medicine and repeat it without being told".

Q. That is, after you had given her a prescription and she had the prescription filled? A. She would have it refilled.

Q. Without any instructions from you? A. Yes.

By Mr. Newton:

Q. When you prescribed for her, would you leave the prescription with her? A. I don't ever

remember being in conversation alone with her; some of the children or Mr. Allen would be there.

Q. In addition to writing directions on your prescription blank, I take it you repeated them orally, didn't you? A. As a rule.

Q. Did you give them orally to Mrs. Allen? A. Whoever is in the room. If Mrs. Allen is there—if not, to anybody in the room.

Q. You gave them to Mrs. Allen, as well as anybody in the room? A. Yes.

Q. If she was alone, you gave them to her? A. She had not been alone any time I have been going there.

Q. Can you characterize her epilepsy other than by the mere word "epilepsy"? A. I saw the attacks.

Q. There are various forms of epilepsy, are there not? A. Yes.

Q. Can you tell us this particular form? Has it a medical name? A. Why, yes.

Q. What is that medical name? A. Grande mal.

Q. That is French? A. Yes. Major epilepsy.

Q. Do you think she is capable of understanding a talking-moving picture? A. Well, she would go in and look at it. As far as understanding is concerned, I could not tell you, because I do not think she could understand very much about it. She would probably look at it.

Q. Do you know whether or not she goes to moving picture theatres? A. I don't know. She probably does.

REDIRECT EXAMINATION BY MR. DOHERTY:

Q. Was there ever a time, during the course of your treatment, when this lady was wholly bereft

of reason? A. At times, two weeks lying in bed, suffering from some coma.

Q. Wholly irrational? A. Yes.

Q. How long would that last? A. She would be dazed for quite some time.

Q. Would there be a regular established rate of progress, or would it be variable? A. It would be variable. It would depend on the kind of attack. If she had a slight attack, she would make a quick recovery. If she had a fuller attack, it would be ten days or two weeks.

Q. That was the average—two weeks? A. Yes, but she might have a number of attacks during those two weeks.

Q. These attacks that you are referring to, are what are called fits? A. Fits.

BY THE COURT:

Q. Does anything special cause these attacks? A. I had her under observation in New York for two or three weeks to find that out.

Q. You do not know what would bring on an attack? A. There are a number of causes.

Q. In her case? A. Pressure on the pituitary gland, as it is called.

BY MR. DOHERTY:

Q. Grande mal is to distinguish this from petit mal? A. Yes.

Q. Petit mal is some slight— A. It is a slight attack—a passing attack.

Q. There is no paroxysm? A. No twitching or anything.

Q. In her condition, her mentality is involved as a result, is it? A. Yes.

Q. You say she would sign any paper that was put before her. To what mental defect would you attribute that readiness on her part? A. Well, I think she would be easily influenced.

Q. Has she any power of intelectual resistance? A. Not much. I think she would sign any paper if a number of persons got together, she would sign any paper.

Q. Her mind does not put up any fight? A. No.

Q. You say she has never at any time been capable of transacting an ordinary business matter. To what mental defect is that ascribable, that she cannot do business? A. Deterioration of mind due to her condition.

Q. Has she any power of judgment? A. Not much.

Q. Can she follow one idea with another and reach a conclusion, that is, in a normal way? A. To a certain degree.

Q. She is not a gibbering idiot; she hears what you say and she knows your words? A. Yes. She can even go out on the street, but I never see her alone; she always has somebody with her.

Q. In an attempt on her part to do business, about how many factors of that business do you think her mind could grasp and retain to any appreciation; could she realize that a man was a lawyer and that he told her— A. I think she could recognize the difference between a lawyer and a layman.

Q. You say she is always attended by somebody in her home? A. I have never seen her alone in years. She had one woman for years, a woman who

took charge of the house and everything else. I think she did the ordering and everything else.

Q. You don't know whether this woman orders any provisions for her home? A. No.

Q. Is her mental infirmity apparent to any one who talks to her? A. Why, I think so.

Q. At all times? A. Well, at all times. She is better at some times than other times. Some times her mind is pretty fair. Other times it is not.

Q. What is her type as to being garrulous or talkative or sullen? A. She is timid. She does not meet anybody. She keeps in the background all the time.

RECROSS EXAMINATION BY MR. NEWTON:

Q. Is she capable of writing a letter that another person would understand? A. I think so.

Q. You say that her mental infirmity is apparent to any one who looks at her; is that right? A. Not looking at her.

Q. What did you mean? A. Talking with her.

Q. At all times? A. Well, I would not say that —at all times. At times she is pretty fair. A lay person could talk to her,—have conversation with her.

Q. At times she talks incoherently? A. I would not say incoherently.

BY MR. DOHERTY:

Q. What would you say? A. There is something wrong. If you carried on a conversation with her you could tell right off, that there was something not normal.

Q. At any time could a conversation be conducted with her without disclosing that mental weakness? A. No.

By Mr. Newton:

Q. Did you ever have Mrs. Allen examined by an alienist? A. I told you I had her in New York under observation to find out what her condition was.

Q. By alienists? A. Yes.

Q. Who were they? A. I don't know. She was over there. She saw the best.

Eugene F. McGee, heretofore sworn as a witness on the part of the defendants, resumed the stand.

Cross Examination (Resumed) by Mr. Newton:

Q. I show you a paper that has been marked D-1 for identification, which purports to be a release given by Benjamin Dowden to Max Goren, dated December 14, 1929, the same day as the assignment that you have identified. You knew of this release? A. No, sir.

Q. Have you seen it before? A. No, sir.

Q. What became of the claim that you had assigned to Dowden by Exhibit C-4? A. What became of it?

Q. Yes. A. That release shows what became of it. I learned that in this court room today for the first time.

Q. The first time you heard about this release being executed was today? A. Yes.

Q. You are clear about that? A. Absolutely clear.

Q. This Automotive Standards, Inc.—that was listed, was it? A. Yes.

Q. Where? A. New York Produce Exchange.

Q. Is it listed now? A. I think it is.

Q. Was it not ruled off? A. Not the last time I saw it—about five or six weeks ago.

By Mr. Doherty:

Q. Where was the assignment of your claim against Goren executed? A. In Mr. Dowden's office.

Q. You were not present at Colgan's office when this release was given, were you? A. When I executed my assignment to Dowden it was executed at seven o'clock at night in Dowden's office. So, if the other was executed on the same day, it must have been executed at night. I remember distinctly it was seven o'clock when I went over there and Allen and Dowden were there.

Q. Your assignment to Dowden was given how long after you had the conversation with Goren about the amount he received from the sale of Automotive Standards stock; was that the same day? A. Oh, no; it was subsequent to that; I should say a month or so or maybe longer.

By Mr. Newton:

Q. In the affidavit which you swore to in this matter you use this language: "In July or August, 1929, I applied to Goren for an additional loan of $8,000 on eight hundred shares of common stock of Automotive Standards Company, which stock was

then listed on the New York Produce Exchange and selling around twelve dollars per share." On your direct examination you testified that you assigned nine hundred shares to Goren. Which is correct? A. I think eight hundred is correct.

Q. You never told Goren that this stock could not be placed on the market for sale because of this pool, did you? A. I never told Goren what?

Q. That this stock could not be placed on the market for sale because of this pool? A. I told Goren the reason I could not sell it in the open market was because I promised this man not to dispose of it for thirty days.

Q. Who was this man? A. Mr. Bowles, President of the Automotive Standards, Inc. If I could have sold it, I had no need of a loan from Goren; I could have taken it to the New York Produce Exchange and got $9,600 for it.

BY THE COURT:

Q. I thought you testified that you asked Goren not to sell the stock? A. Not to sell the stock.

Q. Did you place any time limit on the sale by him? A. Yes; after thirty days.

Q. You asked him not to sell it for thirty days? A. Yes, and he told me he would sell it if it went down a point; he would not carry it if there was any danger.

BY MR. DOHERTY:

Q. Did you say that you applied to Goren for an additional $8,000? A. $5,000.

Q. Do you know what the fluctuation of that stock was during the thirty days Goren was to hold

it? A. It went down to five. Then it went up again.

By the Court:

Q. What Mr. Doherty is asking you is: In the thirty days that elapsed between the time of your delivering the stock to Goren, did the stock go down? A. The stock stayed around twelve dollars a share.

By Mr. Doherty:

Q. For the whole thirty days? A. Yes.

By Mr. Newton:

Q. When you made delivery of these eight hundred shares to Goren, did you take any writing from him in which he agreed not to sell for thirty days? A. I did not take anything from him because he was not there. I left the certificates at a place down in lower Jersey City for him.

Q. Did you make any attempt to get a writing after that? A. No; I took his word.

By the Court:

Q. Even after he had rather gypped you in getting possession of that stock? A. He had not gypped me up to that time.

Q. I understood your testimony to be that he was going to lend you several thousand dollars on that stock, and after you got the signatures of Bowles guaranteed, and after he got the stock in his possession, he told you he would not give you anything more than a thousand dollars? A. No.

I left the stock there around three o'clock in the afternoon. The next day was Saturday. Mr. Goren came up and gave me one thousand dollars in cash and told me that his man was away over the week-end and that he could not get any more money at the time. Then on Monday he came up with another thousand dollars and said that was all he would give me as a loan.

Q. And that he would hold the stock as security for the other debt, which had not been discussed before that, had it? A. Yes; it had.

Q. That he was to hold the stock? A. No; no; I was to pay off the interest at the time.

Q. I would like to ask you this: On the day and at the time the mortgage was executed at Mr. Colgan's office, was there anything about the talk, the actions, or the speech of Mrs. Allen which led you to believe that she was not mentally competent to understand what she was doing? A. (No answer.)

Q. Why do you hesitate so long? A. I am trying to separate from my mind what was told to me both prior and subsequent to the talk by the husband.

Q. I am asking for your observation as of that day, from her talk, from her actions or her speech, whether she was mentally competent to understand what she was doing when she executed the mortgage? A. I thought she was competent to understand what she was doing. I think she was influenced by the husband. All I noticed about her was that she was extremely nervous and excitable. I thought she was doing it because the husband asked her and did not go into her understanding of it at all.

Eugene F. McGee. Called by Defendants. Cross.

By Mr. Doherty:

Q. Didn't it occur to you that she was doing a most irrational thing, in mortgaging her home in order to supply you, a total stranger, with money to stay in a failing business; didn't that strike you as being a little bit irrational? A. I had so much confidence in the future of the business and in the ability to sell the stock, that it did not surprise me because I had converted Allen to my bright prospect of the mine, and I think I had almost won over Mr. Colgan and Mr. Goren as to the prospects of it. I never thought it would come to foreclosure.

Q. Was there anything done or said by her to show you that she shared your hopefulness of the future in respect of your business? A. Yes; when she said she would do anything to help her husband.

Q. Mr. McGee, at the time this woman was signing the mortgage, did you yourself not have a realization that it would be a most unwise and foolhardy thing for her to do, unless there was some basis for the hope that you would sell this stock? A. If I had not believed I could have sold that stock to pay off the mortgage, I would not have asked Allen to get his wife to sign a mortgage.

Q. Do you consider a married woman who mortgages her home to pay the debts of a stranger a sane woman?

Mr. Newton: Objected to.
The Court: Objection sustained.

By Mr. Newton:

Q. Did you ever sign any writing evidencing this arrangement between you and the Allens? A. No, sir.

Q. Did Allen ever ask you to sign such writing? A. No, sir.

Q. Did Mrs. Allen ask you to sign any such writing? A. No, sir.

Q. What was Allen to get out of this transaction? A. Well, a share of the profits—was not definitely fixed, but I thought there would be plenty enough for all of us. If I had been successful, he would have been well taken care of.

Q. You are positive that there wasn't any writing between you and Allen? A. Allen took my word for it.

Q. How did you first meet him? A. Tom Galagher brought him to me. I met him first seven or eight years ago, one time when he was an official.

By Mr. Doherty:

Q. What substantial basis was there for your anticipation of making money out of that mine, that you say that you communicated to these people?

Mr. Newton: I object unless he characterizes "these people".

Mr. Doherty: Well, Mr. and Mrs. Allen.

A. I sent out 20,000 letters and out of these 20,000 letters I received orders for forty-six thousand and some shares of stock.

Q. What do you know about the value of the mine—anything? A. I had an engineer's report. I had brought the president of the mine from Arizona on. I had talked to him. I had sent a representative out there to look over the mine.

Q. Did you tell that to Mrs. Allen? A. No.

Q. Did you tell Mrs. Allen anything about the volume of orders that you had for the stock? A. No.

By the Court:

Q. You told all of this to Mr. Allen? A. To Mr. Allen.

Q. All of this had been told to him? A. Yes.

Q. Before Mrs. Allen executed the mortgage? A. Yes; and I gave it to everybody in that office.

By Mr. Doherty:

Q. Did anybody in your hearing tell Mrs. Allen what basis there was for the expectation that your concern would make money before she signed the mortgage? A. No, sir.

Q. That was concealed from her? A. I did not conceal anything in this transaction. I did it with the best intention.

Q. You say that Mr. Dowden gave her some information at Colgan's office? A. Mr. Dowden talked to her at Mr. Colgan's office.

Q. This was immediately before the signing? A. Well, he talked with her two or three times while they were there and she went out; she left the room altogther and got a drink of water a couple of times. She was not feeling well.

Q. Tell us what you heard Dowden say to her? A. I did not hear it.

Q. Tell us what you heard her husband say to her?

The Court: He has already testified to that.

David J. Allen. Called by Defendants. Direct.

DAVID J. ALLEN, one of the defendants, sworn as a witness on the part of the defendants, testifies as follows:

DIRECT EXAMINATION BY MR. DOHERTY:

Q. You are one of the defendants in this suit, are you? A. Yes, sir.

Q. You have not, in your own behalf, interposed an answer in these proceedings, have you? A. No, sir.

Q. The co-defendant, Mrs. Ellen Allen, is your wife? A. Yes, sir.

Q. How long have you been married? A. Since 1901.

Q. What is your wife's age? A. Forty-six or forty-seven. She will be forty-seven October 5.

Q. How many children were born to you? A. Four.

Q. Are all alive? A. There were five. One died.

Q. What are their ages? A. Twenty-five, twenty-two, eighteen and fourteen.

Q. All living together? A. Yes, sir.

Q. In the premises described in the bill of complaint? A. Yes, sir.

Q. Will you tell us what the nature of your business activity has been in the course of your life? A. From 1896 to 1905—

The Court: How is that material?

Mr. Doherty: I want to establish the extent to which he was qualified to advise his wife as to the nature of the transaction.

Q. Do you know Eugene F. McGee? A. Yes, sir.

Q. Will you tell us the circumstances under which you formed his acquaintance? A. Tom Gallagher introduced him to me.

Q. And Mr. Gallagher is a real estate operator in Jersey City? A. Yes.

Q. After your introduction to Mr. McGee, was any business relationship entered into between the two of you? A. No partnership, no, except in a general way with Colgan, Dowden and Goren.

Q. What does that mean? A. That we were to receive a proportion of the profits, if there was any profit, from the subscriptions that were signed for stock in this Arizona mine.

Q. Why were you to participate? A. For two reasons. First, I helped them pay the check.

By the Court:

Q. What check? A. The $2,000 check.

Q. How did you help to pay it? A. By getting the mortgage.

By Mr. Doherty:

Q. Go on. A. And secondly, I made it possible for the Automotive Standard stock to be worth something.

Q. On what consideration was Mr. Colgan to participate? A. Same as me.

Q. That is, as a reward, for furnishing such financial assistance as you did? A. Colgan, Goren, Dowden and myself and Jimmie Dolan were told by McGee that this would be a profitable enterprise and that there would be an equal cut after the expenses were paid.

Q. An equal cut on what? A. Profits.

Q. From what? A. From the sale of the stock.

Q. When did you first open up this arrangement with McGee? A. I met McGee in the early part of March.

Q. 1929? A. Yes.

Q. Was anything said by him to you about a check held by Goren? A. Yes, sir. He didn't say anything to me. Jimmie Dolan spoke to me and I went to Paddy Dolan.

Q. Who is Paddy Dolan? A. Chief of Police. Jimmie told me they were going to have a criminal warrant for him on this check and Tom Gallagher asked me if I could not help out.

Q. To avert the arrest of anybody? A. Of Dolan and McGee.

Q. Did you help out? A. Yes, sir.

Q. How—through this mortgage? A. No, sir. I asked Chief Dolan to speak to Goren and delay the matter.

BY MR. DOHERTY:

Q. When first did you have an interview with Goren himself? A. About the middle of March, I should say.

Q. Where? A. At Colgan's office.

Q. Had you previously seen Colgan himself? A. I do not remember seeing him previous to that.

(At this point recess is taken until two o'clock in the afternoon. After recess witness resumes the stand and Direct Examination continues.)

Q. Before recess you had gotten down to the point where you went to see Chief Dolan of the Boulevard Police? A. Yes.

Q. For what purpose? A. To get some time on the $2,000 check issued by McGee.

Q. Was it your understanding that he was an influential friend of somebody? A. Yes.

Q. Of whom? A. Mr. Goren.

Q. What came of that? A. He said he would see what he could do, and then McGee and Colgan had telephone conversations—the details I do not know —but the talk about criminl proceedings stopped.

Q. Were you present at either end of the wire? A. I was in McGee's office when he talked to Colgan.

Q. What previous talk of criminal proceedings had you heard emanating from the complainants? A. I had not met them up to this time. I heard from McGee and Judge Dolan.

Q. Go on and tell what happened. A. Then McGee showed me his subscriptions for the stock and asked me to go to Colgan's office with Judge Dolan and him. I went down with Mr. Dowden.

Q. What was Dowden's connection? A. Acting as my attorney and my friend; and McGee explained that he had the subscriptions.

Q. Who else was present besides Colgan? A. Goren, Dowden, Dolan and I.

Q. You said McGee explained that he had the subscriptions? A. And that the stock would be listed on the stock exchange at Salt Lake City, and there was a lot of money to be made. Then they got another extension.

Q. Did he make any explanation as to the effect of having that stock listed on the Salt Lake Exchange? A. He said if any action was taken on the $2,000 check, it would ruin them.

Q. Did he explain what was the purpose of having the stock listed on the Salt Lake Exchange? A.

Yes; these subscriptions were to become payable immediately.

Q. He explained that those were the terms of the subscriptions? A. Yes.

Q. Had he told you how much stock he had? A. He told me it was $141,000 in money.

Q. That much had been subscribed? A. Had been contracted for, contingent upon being listed.

Q. Was it $141,000 or was it 141,000 shares? A. I took it for dollars. I was not interested in shares.

Q. How did they receive that proposition? A. They appeared interested.

Q. Did you hear any specific offer of division made by McGee to them; did you hear McGee specifically offer them a share of the profits? A. He told us all we would make a lot of money, without specifying,—that we would all participate in the profits of the sale of this stock.

Q. In consideration of that reward, for doing what were you to participate? A. As a consideration for letting him alone on the $2,000 check and as a consideration to put in more money.

Q. Did he explain what his need was for more money? A. He wanted to pay the $2,000 check; he was short on some stock he had sold, and he had a chance to enter into a contract with Bowles of the Automotive Standard.

Q. Was it for that that he wanted the additional money? A. He wanted the additional money.

Q. With what readiness did they agree to give him the additional money? A. They appeared interested or sold on the proposition, but they made no definite promise that day. I came back and I talked with Gallagher and I told him I had unbounded confidence in Dolan and asked him if McGee was all right, and he said Yes.

Q. Why did you do that? A. I was going to offer to get that security.

Q. What security did you contemplate? A. First off, Automotive Standards stock.

Q. Did you own some? A. No, but I could have gotten it.

Q. You proposed to McGee that— A. I told McGee that I could borrow some Automotive Standards stock from Bowles with the understanding that they would help us through this organization they had there to dispose of the stock. At that time Bowles was negotiating with a pool and William Toben to sell Automotive Standards.

Q. You had a previous business connection with Toben? A. Yes.

Q. Was either of them at the time aware of this? A. Yes, through Mr. Burdette in Boston.

Q. Do you know whether Mr. McGee transmitted that proposition to the complainants? A. Yes.

Q. How do you know? A. I was with him when he offered the stock.

Q. To whom? A. To Goren and Colgan.

Q. How did they react? A. They did not want the stock.

Q. What was their criticism? A. They did not think it was worth anything at that time.

Q. What was next done? A. Then as a last resort, I offered if they would take a second mortgage on 7 Belmont.

Q. Where was that offer made? A. I offered that to McGee in his office and he called up Colgan.

Q. On the phone? A. Yes.

Q. What conversation did you hear on your end? A. McGee called him and told him that Gallagher had told him the house was worth $25,000;

that there was a mortgage of $8,000 on it; there was no interest or taxes due; and that I would give a mortgage, a second mortgage, for four months. Then they had this second conference or third conference in Colgan's office and they agreed to take the mortgage.

Q. Were you there? A. Yes, sir.

Q. How long after the telephone conversation, did you go down to Colgan's office? A. Two or three days—maybe a week.

By the Court:

Q. Was the amount fixed then? A. No, sir.

By Mr. Doherty:

Q. In what terms was the renewal of your offer for the mortgage made when you got down to Colgan's office? A. McGee brought the telegram from Salt Lake City; he brought along the sheets, the subscription sheets, and other data, and he did most of the talking, and he sold his proposition to the crowd of us.

Q. What was agreed as to the terms of the mortgage, how long was it to run? A. He only wanted it for sixty days.

Q. Who? A. McGee. Dowden insisted upon a year.

Q. Dowden still representing you? A. Yes.

Q. What, if anything, was said as to the means whereby the mortgage would be paid off? A. Through the listing of the stock; these moneys that were contracted for on the subscriptions would become immediately due.

Q. Did you hear that explained by McGee? A. Yes.

Q. To these two complainants? A. Yes.

Q. They would get all their money? A. All their money back.

Q. And more with it? A. And a cut in the profits.

Q. Up to that time, had you consulted with your wife about this thing? A. I never said anything to her at all.

Q. How do you account for your assurance in offering to have this mortgage made on your wife's property? A. She would do anything I told her to.

Q. This was her property? A. Absolutely.

Q. How did she acquire it? A. Through the sale of a piece of property on Summit Avenue that she inherited.

Q. You had nothing yourself invested in this house? A. No, sir.

Q. You say she always agreed to do everything you said? A. Yes.

Q. Theretofore had she ever participated in any business transactions in respect to real estate? A. Except the purchase of this piece on 7 Belmont Avenue.

Q. And the making of mortgages on that property? A. She always signed the mortgages; just ask where she should sign and sign.

Q. Under whose direction would she act? A. Under mine.

Q. We will go on. On the occasion of that interview, when the subscription sheets and telegrams were exhibited, was it then that the matter was agreed to? A. Yes, sir.

Q. Do you know whether or not these complainants had ever made an inspection of your house up to that time? A. Well, they told me they had

been up there and looked over the house and the house was not worth what Gallagher said it was.

Q. Who told you that? A. Mr. Goren. He said he walked through the first floor.

Q. Had you any information of your own that he had been up there? A. No, sir.

Q. You were not present on the occasion of their visit? A. No, sir.

Q. You were not there to introduce them to your wife? A. No, sir.

Q. The matter being settled, how did it proceed after that? A. They designated a day, and Mr. Dowden and I met McGee at his office with my wife.

Q. Tell us how far off that day was that they fixed for the closing? A. It may have been a week. We went down there. The mortgage was prepared. I sat behind the—

Q. At the first conference, what was said with respect to how that money should specifically be used—the $7,000? A. It was always agreed that the $2,000 check should be paid—

Mr. Newton: I object.

Q. Tell us what was said. A. It was said and carried out—

Mr. Newton: I renew the objection.

The Court: Strike out the answer.

Q. (Former question repeated) At the first conference, what was said with respect to how that money should specifically be used—the $7,000? A. That the $2,000 would be paid.

Q. Who said that? A. McGee and Goren and Colgan.

Q. What else? A. That there would be $700 paid for a bonus.

Q. To whom? A. To Goren; and that there would be some other expenses amounting to a few hundred dollars. The details on that I am not clear on right now.

Q. What was said by anyone as to the ultimate disposition of the residue—the balance? A. That McGee was to get it to carry on.

Q. What was said as to what you or your wife was to get. A. Nothing, except we were all in the gentleman's agreement for a cut in the profits.

Q. You were telling us about the day when the loan was closed. Up to that day, had you spoken to your wife? A. No, sir.

Q. When did you first mention to her the necessity of her participating in some transaction? A. The morning of the day that the mortgage was signed.

Q. Where? A. Home.

Q. What did you tell her? A. I told her that I wanted to help out a couple of friends that were trying to stay in business, and that I wanted her to sign a mortgage; that she was not taking any chances; that it would be paid in ninety days, and that Judge Dolan was interested in the concern and that McGee was a pretty good fellow that was misunderstood.

BY THE COURT:

Q. Why did you mention Judge Dolan's name? A. We are all neighbors.

Q. She knew Judge Dolan? A. Knew of him.

Q. Where did Dolan live? A. He lived on Monticello Avenue.

Q. That is not close to 7 Belmont Avenue? A. Well, our children went to school together.

Q. Did she know Judge Dolan? A. Yes.

Q. Where had she seen him? A. Around Jersey City. He has been at our house since 1920.

Q. She had some regard for him? A. She knew he was a Jersey City man and a former Judge and we were neighbors.

Q. You thought that would reassure her in this transaction? A. I did.

Q. Did you think she could understand that? A. Yes, sir.

BY MR. DOHERTY:

Q. How long were you married before your wife was taken sick? A. About fourteen years.

Q. Do you know anything about the exciting cause of her sickness? A. The infantile paralysis epidemic and the death of a child.

Q. You lost a child in the infantile paralysis epidemic? A. My youngest child died.

Q. And your wife "went off" as she says? A. Yes.

Q. Her trouble is epilepsy? A. Yes.

Q. How often does she have seizures? A. Well, three or four times a month, sometimes more.

Q. What was the effect of the affliction on her mind? A. Well, she is childish.

Q. You were telling us that you were explaining— A. I told all of these men; yes.

Q. What is that? A. I told McGee, Colgan and Goren just what condition she was in.

Q. When did you tell them? A. The morning she signed the mortgage. I said: "Don't keep her here long."

BY THE COURT:

Q. Is that all you said? A. I said: "She is an epileptic."

Q. Is that all you said? A. When she came in—

Q. Is that all you said about her condition? A. I said: "She is an epileptic, and she is subject to great excitement, and she may have a spell."

Q. This was at Mr. Colgan's office? A. Yes, sir.

Q. Did you know that she did not understand what she was doing? A. Yes, sir.

BY MR. DOHERTY:

Q. Why did you take care to explain the matter to her if you thought there was no doubt as to her understanding? A. I don't understand you.

Q. Why did you explain to her the transaction if you had any doubts as to her ability to understand it? A. I had to give her an excuse to get her to go with me and that it was to render a service for Judge Dolan.

BY THE COURT:

Q. You said she would do anything you asked her to do? A. Yes.

Q. You did not have to give her any explanation? A. Some explanation.

Q. Why some explanation? A. Because she would not go out if I did not ask her and give some reason for going out.

Q. You gave here a reason which you thought she would understand? A. Yes.

Q. And she apparently did understand it? A. Yes.

By Mr. Doherty:

Q. Did you leave the house with her? A. Yes.

Q. How did you travel to Colgan's office? A. In Dowden's automobile.

Q. He called for you? A. Yes.

Q. Where did you pick up McGee? A. At McGee's office.

By the Court:

Q. Did you explain your wife's condition to Mr. Dowden? A. Dowden knows because he has been coming back and forth to the house for a few years.

Q. He was aware of your wife's mental condition? A. He never knew the name of the disease, but he knew there was something the matter with her.

Q. Didn't he know she had epilepsy? A. No, sir.

Q. She had these attacks four or five times a month? A. Yes.

Q. And he had been coming to your office for a few years, you say? A. I never discussed it with him. I never told him until that morning that she was epileptic. I have always hidden it.

By Mr. Doherty:

Q. Notwithstanding your attempt at concealment, is it apparent to the casual observer what your wife's mental condition is?

Mr. Newton: Objected to.
The Court: Objection sustained.

Q. Will you tell us what is her manner in the presence of strangers? A. Well, it is retiring, and she is always embarrassed.

Q. When you got down to Colgan's office, who were assembled there? A. Mr. Colgan, Mr. Goren, Mr. Dowden, Judge Dolan, Mr. McGee and myself and my wife.

By the Court:

Q. Why did you tell her there was no risk in signing the papers? A. My unbounded faith in the proposition.

Q. Did you believe she understood there was some risk? A. No; I don't believe she did.

Q. What was the necessity of telling her there was no risk, if you think she did not understand what the transaction was? A. To get her to go with me.

Q. All you had to do was to tell her, as I understand it, that you were going down to sign some papers, to help a friend? A. I cannot order her around. I can coax her.

Q. I cannot get the idea of your talking about risk to her. Why did you tell her there was no risk? A. She believes there is a risk in signing papers; she knows there is a risk in that.

Q. She knows there is risk in signing any paper? A. Yes, sir.

By Mr. Doherty:

Q. How long did the meeting down at Colgan's office last when the papers were signed? A. From three-quarters of an hour to an hour.

Q. During that period, what was transpiring there? A. Just the legal work of preparing the papers.

David J. Allen. Called by Defendants. Direct.

Q. Was there any conversation among the people there as to the nature of this transaction within the hearing of your wife? A. No, sir; that had been gone over at a previous conference.

By the Court:

Q. What did you all do during that three-quarters of an hour to an hour? A. In and out of the office with papers.

Q. You were all seated in one room? A. Yes.

Q. Your wife, yourself and these other men? A. Yes.

Q. There must have been some talk going on? A. They discussed with Dowden the surety on the bond. I was under the impression that he was surety on the bond.

Q. On the bond that went with the mortgage? A. On the bond that went with the mortgage. There was some discussion on that.

By Mr. Doherty:

Q. Was it signed by Dowden? A. Not there, but it was agreed.

Q. Do you know the purpose of it? A. I do know that he guaranteed that the place was worth at least $16,000 and that in the event of foreclosure, he would buy it back.

Q. Was any disclosure made at that time to your wife as to McGee undertaking to pay off the mortgage? A. Yes.

By the Court:

Q. Who said so? A. McGee.

Q. What did he say? A. He said he would pay it off in sixty or ninety days, that we did not need the mortgage for a year.

Q. Did he say that to your wife? A. He said to us. He did not address any remarks to my wife.

Q. Was she close enough to hear? A. She sat in the corner.

Q. Was she close enough to hear? A. Yes.

Q. Did she make any response? A. No, sir.

Q. Did you say anything to her on that subject? A. Not that time.

Q. Before the mortgage was signed? A. On the morning before we came down, I told her that McGee would pay the mortgage and would pay me a profit.

Q. And there would be no liability to her? A. And that there would be no liability to her.

Q. She understood there was some liability? A. She understood there is always a risk in signing papers.

Q. You found it necessary to explain to her that there would be no liability on her part, in signing the mortgage. Why did you do that? A. To get her to go with me.

Q. Because you believed she would not go with you, if there was to be any liability on her part? A. No; I had a reason for her going. I said to her—

Q. I am asking you why you explained to her there would be no liability on her part in signing the mortgage? A. To have her go with me.

Q. But if she understood there was liability, she would not go? A. If she thought she was doing anything that would be a liability, she would not have gone.

BY MR. DOHERTY:

Q. Was any information given to her while you were present as to the need that McGee had for this money, in order to stay in business? A. I did not go into any details with her.

Q. Was it explained to her that McGee's concern already issued a worthless check? A. No, sir.

Q. Or that McGee was threatened with criminal prosecution? A. No, sir.

Q. Or that McGee's ability to discharge this mortgage depended entirely on the success with which the stock of his corporation was listed on the Salt Lake Exchange? A. No, sir.

BY THE COURT:

Q. She was helping McGee as a favor to you? A. Because I asked her to help McGee and Dolan?

Q. You had explained to her what McGee's necessities were? A. No, sir; I did not, only that he needed money.

Q. What explanation was given to her about the necessity of helping McGee? A. That he needed money to carry on.

Q. And he was a friend of yours? A. That he was a friend of mine and that Judge Dolan was a friend of mine.

BY MR. DOHERTY:

Q. Did she say anything to you as to her realization of a liability attaching to the signing of the mortgage? A. No, sir.

Q. Did she say anything to you as to her realization of the risk? A. No, sir; she left that entirely to me.

Q. Did she say anything at all as to her doing you a favor or the necessity of doing it for McGee—did she say anything at all? A. She did not say anything once we started on our way.

Q. Can you recall one thing that she said in response to what you said to her either at the house or in response to what was said to her at Colgan's office? A. She said: "I will do anything you tell me to do."

Q. Then the papers were signed, were they? A. Yes.

Q. You signed a bond in which you and she acknowledged that you owed Goren $7,000. Did you owe Goren $7,000?

Mr. Newton: I object.

The Court: Objection sustained.

Q. Up to the time that you signed the bond for $7,000, had you or Mrs. Allen received any money from Mr. Goren? A. No, sir.

Q. Had you in any way incurred liability to him? A. No, sir.

The Court: I think the evidence shows what the bond and mortgage were given for. The complainants do not claim anything else.

Q. When the bond was signed by your wife, what was her situation in the office—was she sitting down? A. Yes.

Q. Where were you? A. Back of her chair.

Q. Doing what? A. Pointing out where she was to sign.

Q. Did she get the amount of the check? A. No, sir; she did not ask for it.

Q. What was done about the check? A. After we signed the mortgage and other papers in Colgan's office, we went to Darling's office at Five Corners.

Q. Why? A. To make out checks, several checks.

Q. Can you tell us why the Colgan check was made out for $7,000, in view of the fact that he was reimbursed for the amount of the Goren check and also $700—why was that done? A. So it would agree with the amount of the mortgage.

Q. You say the journey was made from Colgan's office to Dowden's office to divide up that check? A. Yes, sir.

Q. When was this check certified? A. I don't know. I did not handle the check.

Q. It appears to bear date March 22, and certified March 21, the day before. Do you know anything about that? A. No, sir.

Q. Was the check surrendered to Mrs. Allen by Colgan at his office? A. No, sir.

Q. Was it ever surrendered to her? A. No, sir.

By the Court:

Q. The fact is that you all went to Mr. Dowden's office. Mr. Dowden had the check? A. He had the check.

Q. Was Mr. Colgan up there? A. Yes.

By Mr. Doherty:

Q. What was done with the check when you were at Dowden's office? A. I don't know.

Q. Did you see it endorsed by your wife? A. Yes.

Q. Where was it lying when she endorsed it? A. They put it on the desk.

New Jersey State Library

Q. In Mr. Dowden's office? A. In Mr. Dowden's office.

Q. Who asked her to endorse it? A. I did.

BY THE COURT:

Q. What did you say to her? A. "Endorse that check. Sign here."

Q. Is that all you said? A. That is all.

BY MR. DOHERTY:

Q. Then the check was deposited in the account of "Darling Trust Fund"? A. I don't know anything about that.

Q. You saw other checks made out? A. Yes.

Q. Can you recall their amounts? A. One was for $2,000 and one was for $700.

Q. What about the others? A. I don't know anything about the others.

BY THE COURT:

Q. Were you not curious to know where the other $4,300 went? A. I assumed McGee got it.

Q. Didn't you see him get it? A. No, sir; I did not see him get it.

BY MR. DOHERTY:

Q. Did you see any checks passed out except those two, one for $2,000 and the other for $700? A. No, sir.

BY THE COURT:

Q. To whom did the $700 check go? A. To Mr. Colgan.

Q. Do you know to whose order that check was drawn? A. No, sir.

New Jersey State Library

By Mr. Doherty:

Q. I have a memorandum here. Will you tell me whether that is in your handwriting? A. That is my handwriting.

Q. When did you write it? A. March 22.

Q. Is that serviceable to refresh your memory? A. Yes. This is a copy of a memorandum handed to me by Mr. Darling: "Check to Ellen E. Allen, McGee—$1,500; check to Ellen E. Allen endorsed to Colgan, $700; check to Ellen E. Allen endorsed to Colgan, $2,000; check to Ellen E. Allen endorsed to McGee, $2,800."

Q. What did you do after all these checks were made out; after they were made out, were they endorsed? A. Yes, sir.

By the Court:

Q. Mrs. Allen endorsed them all? A. Every one of them.

Q. At Mr. Dowden's office? A. Yes.

By Mr. Doherty:

Q. Did she participate in any conversation while she was up there? A. No, sir.

Mr. Newton: May this memorandum be marked for identification?

(Marked C-5 for identification.)

Q. What was the next communication that you had in respect to this transaction? A. In this transaction?

Q. Yes. You told us McGee was to pay the mortgage off in sixty days. At the end of sixty days, what happened? A. Nothing happened.

Q. Were you still in contact with McGee during that period? A. Yes, sir.

Q. Did you have any business relationship with McGee at all except the expectancy of being rewarded for helping him out in his business? A. That is all.

By the Court:

Q. You were helping him with that other stock? A. And that Automotive Standards stock.

By Mr. Doherty:

Q. When did you receive the information that McGee had not paid off the mortgage? A. November, 1929, after election.

Q. In what way did the information come to you? A. Mr. Dowden told me.

Q. What did you do about it? A. We arranged to meet—he told me that they were working it out during the summer.

Q. Who did? A. Mr. Dowden; and after election he told me they had started foreclosure because $120 interest was not paid, and I said: "The mortgage is not due until March." Then we got hold of McGee and McGee said he had given 800 shares of Automotive Standards to Goren. He said it was to be credited against the mortgage and there had been a dispute as to the Automotive Standards stock, and they were going to get together—Mr. Goren's wife was sick, and then she died and I did not want to press the matter at that time for that reason. We did get together. McGee did not want to go down because there was friction between him and Goren. We went to Colgan's office

and Colgan said that that was the first he heard of the 800 shares of stock; that Goren was not representing him, and I told Goren he was guilty of conversion, and it ended in a row and Mr. Goren threatened to have Mr. McGee arrested.

Q. Had you ever received any notice of the assignment by Goren of part of his interest to Colgan? A. No, sir. Mr. Dowden may have gotten notice. I don't know.

Q. You never got any communication from Colgan. Do you know whether your wife did? A. She did not get anything.

Q. You heard of the assignment when? A. I never knew there was an assignment.

Q. Did you know the original mortgage had been given to Goren alone? A. To Goren; yes.

Q. You never learned of the assignment until you went down and saw Colgan in November? A. That is all, but I figured we were all in partnership.

Q. At any time during negotiations for this mortgage, did Mr. Colgan express any opinion as to the prudence or imprudence of Mrs. Allen's course in giving such a mortgage?

Mr. Newton: Objected to.
The Court: Objection overruled.

A. Yes; one Sunday afternoon with Mr. Dowden, he told me in his office that it was not the proper thing to have done. I do not know as that is his exact language.

By the Court:

Q. This was before the mortgage was made or afterwards? A. After the mortgage.

By Mr. Doherty:

Q. Do you know of his having passed any comment before the mortgage was made? A. No, sir.

Q. Do you know whether Mr. Dowden, in the presence of Mr. Colgan or Mr. Goren, expressed any opinion as to wisdom or folly of signing the mortgage? A. Dowden didn't want us to give the mortgage. Dowden advised against the mortgage.

By the Court:

Q. This was before the mortgage was given? A. Yes.

Q. Advised whom? A. Advised me.

Q. What did he say? A. He said: "Why have you such unbounded faith in McGee and Dolan?"

Q. He told you there was a risk? A. He told me; yes.

Q. Of course you knew if McGee did not make good on this promise you say he made, that Mrs. Allen would be called upon to make good on the bond and mortgage? A. Yes, I knew that.

By Mr. Doherty:

Q. You thoroughly understood that the transaction as it was agreed to by the complainants, was one in which McGee was to be liable in the first instance and Mrs. Allen liable secondarily?

Mr. Newton: I object.

The Court: Objection sustained. I will allow you to reframe the question.

Q. What did you ever hear said before the execution of the mortgage by either of these complain-

ants or any person in their presence in respect of the order in which McGee and Mrs. Allen would be called upon to pay off the money that was being advanced? A. It was never discussed that she would have to pay the money.

Q. It was never discussed that she would have to pay the money. Was it discussed who would have to pay the money? A. That McGee would pay the mortgage through the sale of the stock within sixty to ninety days.

Q. That was the proposition made by McGee to whom? A. To Goren, Colgan and the rest of them.

Q. Did Goren and Colgan assent to or dissent from that proposition? A. They never dissented from it.

By the Court:

Q. Can you explain to me why, if you and Mrs. Allen and the rest of the parties agreed among yourselves, that Mrs. Allen should not be called upon to pay this mortgage, but that McGee was the one who should discharge it, why you had them take a bond and mortgage from Mrs. Allen? A. I think in the avariciousness of us all to participate in the profits that McGee was to make and Mr. Goren saw an excuse to lend the money. That is where Mrs. Allen came in.

By Mr. Doherty:

Q. Was this avariciousness explained to your wife at any time? A. No, sir.

The Court: Does she not say in an affidavit she made that it was explained if she did sign,

she would have a sum of money coming in weekly or monthly?

Q. Was it explained to her that Mr. Colgan was eager to have an opportunity to lend some money; was that explained to your wife? A. There was no explanation made to her except in a general way by me.

BY THE COURT:

Q. You did tell her, did you not, that if she signed this bond and mortgage, there was money to be made in which she would share? A. No, sir.

Q. Where do you think she got the statement from that she puts in her affidavit? A. You said "she would share". I would share.

BY MR. DOHERTY:

Q. Do you know where your wife got the idea that she was to get some money weekly or monthly? A. No, sir.

Q. You didn't tell her, did you? A. No, sir.

Q. Will you tell us what your wife's physical condition was as evidenced by her conduct when she was down in Colgan's office? A. Dull, docile.

Q. Did she converse with anybody? A. No, sir.

Q. What, within your knowledge, is your wife's ability to transact ordinary business? A. I doubt whether she knows what it is all about. She don't transact any business.

Q. What is the arrangement for the management of your household? A. I have a housekeeper.

Q. To what extent does your wife fulfill housewifely duties? A. She might at times make the beds.

Q. Does she make any purchases? A. Small purchases on Monticello Avenue where they all know her.

Q. You mean the merchants there? A. Yes.

Q. What is the effect of their acquaintance in the way of aiding her in making purchases? A. Well, they humor her.

By the Court:

Q. Have you been with her when she made purchases? A. Yes. Sometimes the child goes with her and sometimes the woman goes with her.

Q. Does she ask the price of things? A. She picks up things and pays for them when they tell her the price.

Q. Then she goes shopping at the different grocers and butchers on Monticello Avenue? A. Sometimes; not so frequently.

Q. Does she buy her own hats and dresses? A. No, sir.

By Mr. Doherty:

Q. Can you tell us how long before the signing of this mortgage, your wife had an attack? A. Within a few days—the early part of March or the middle of March.

Q. The effect of an attack persists or lingers how long? A. Well, it is hard to judge. If they are violent attacks, when she has two or three in succession, it may last for weeks.

Q. In the light of what you observed about your wife's condition at that time and prior to that time, what is your opinion as to whether at the time of the signing of this mortgage she had a rea-

sonable understanding of what the nature of the transaction was and its consequences, the nature of the business in which she was engaged?

Mr. Newton: Objected to.
The Court: Objection sustained.

Q. How was this mortgage signed by your wife? A. A gentleman came in and explained to her what she was signing and I showed her where to sign.

By the Court:

Q. What did he say to her? A. "Do you acknowledge signing this mortgage for $7,000?" She said: "Yes."

Q. She had not signed it? A. He was right there. They did it almost simultaneously.

Q. You say you showed her where to sign? A. I pointed out where to sign.

Q. While she was signing, he said: "Do you acknowledge signing this mortgage?" A. After she signed, he said something about her acknowledging that as her signature, that she was signing—

Q. Do you recall what he said? A. No, sir, I do not recall what he said.

Q. Do you recall that he told her that it was a bond and mortgage? A. He said: "This is a bond and mortgage, and you are Ellen E. Allen and you signed this." That is what he said. That was the meat of it.

Q. What did she say? A. She nodded her head: "Yes."

By Mr. Doherty:

Q. Down in Mr. Colgan's office, did anything else transpire except what you have told us, in the pres-

ence of these two complainants? A. Nothing that I can recall of any importance.

By the Court:

Q. Did you tell her that this was a bond and mortgage she was signing? A. No, sir; I just told her to sign.

Q. You didn't say: "This is a bond and mortgage you are making." A. No, sir.

Q. You didn't make any explanation? A. I did not have to make any explanation.

Q. Why? A. Because she would do just as I told her.

Q. You said before that you had to make an explanation before you could get her to leave the house? A. She would not have gone out.

Q. But after she got down there— A. She would do anything I asked her to.

By Mr. Doherty:

Q. How often does she leave the house? A. She spends most of her time on the porch. She may go out once or twice a week.

Q. Ordinarily she would not go out with you unless you give her a reason? A. Different times, maybe I walk around the block where we live.

Q. Did anything occur at Mr. Dowden's office that your attention has not been called to? A. Except the signing of the checks.

Q. You told us of that? A. Yes.

Q. You say your wife had none of the money at all? A. She did not expect to get any.

Q. Is there anything else that you want to tell us? A. Automotive Standards stock.

Q. What about that? A. The Automotive Standards stock entered into this transaction,—these shares that McGee talked about. It was understood that after he was in receipt of these shares that they were to be given to Mr. Goren, the proceeds of them, in settlement of the mortgage.

Q. How did you participaate in that arrangement? A. I went for Mr. Bowles to Boston and made the connection for them that made this stock of the Automotive Standards worth something, through Mr. Burdette, and made it possible for them to sell the Automotive Standards to the Tobins.

Q. Were you the instrument whereby McGee got hold of that stock? A. I think that I made it possible for him to get it.

BY THE COURT:

Q. What was the consideration from McGee to whomever issued the stock for the stock; how did McGee come to get it? A. For services.

Q. McGee's services? A. For the services of the organization. I was part of the organization; I made the connection between—

Q. I want to know why he got the stock? A. For services.

Q. For services that he rendered Bowles? A. That his organization rendered to Bowles.

Q. Did you get some, too? A. Not a share.

Q. Then, they were really McGee's shares of stock? A. Yes.

Q. Just as much as though he had paid cash for them? A. Yes.

David J. Allen. Called by Defendants. Cross.

BY MR. DOHERTY:

Q. Did you have any connection with Goren about these shares, other than what you have told us? A. No, sir.

Q. You say there was an understanding that Goren should accept these shares and satisfy the mortgage. You were not a party to any agreement made with Goren? A. That was the understanding between Goren and McGee and Dowden.

Q. As reported to you by whom? A. By Mr. Dowden.

CROSS EXAMINATION BY MR. NEWTON:

Q. How well does Mrs. Allen know Judge Dolan? A. You mean to see him?

Q. Is she acquainted with him? A. She knows the family ever since she was a kid.

BY THE COURT:

Q. The question is: "Is she acquainted with Judge Dolan?" A. Just whether she would be able to point anybody out I could not say.

BY MR. NEWTON:

Q. Has she ever held any conversation with him? A. Yes.

Q. How many times? A. In years gone by, maybe four or five or six times.

BY THE COURT:

Q. How many years gone by? A. 1918 to 1924.

Q. Not since 1924? A. No, sir.

BY MR. NEWTON:

Q. He has been a frequent visitor according to you, at your home? A. I did not say frequent.

Q. He has been a visitor at your home? A. Yes.

Q. When he has been there, he has conversed with you? A. Yes.

Q. I am reading from Mrs. Allen's affidavit; "I don't know Mr. Goren, nor Mr. Colgan, nor Mr. McGee, nor Judge Dolan. I do know Mr. Dowden, who was a friend of my hnsband's and cannot understand how he would let me sign anything that was not right." A. When she said that she believed it.

Q. Does she know Judge Dolan? A. She knows Judge Dolan and she knows the family, but she might not remember him. She doesn't know Judge Doherty half the time.

Q. You recall her signing these affidavits? A. Yes.

Q. How did she come to sign them? A. Judge Doherty prepared them.

Q. Who asked her to go and sign them? A. I don't know who asked her to go to Judge Doherty, but I went with him when he prepared them. I told her where to sign them.

Q. That is, they were prepared in your presence? A. Yes.

Q. They were signed by her in your presence? A. Yes.

Q. Is that right? A. Yes, sir.

Q. Were they read over by her or to her before she signed them? A. Yes.

BY THE COURT:

Q. Which? A. They were read to her and explained to her in detail.

David J. Allen. Called by Defendants. Cross.

BY MR. NEWTON:

Q. By whom? A. By Judge Doherty.

BY THE COURT:

Q. Did she ask any questions? A. She asked if it was all right.

Q. Asked whom? A. Asked me.

BY MR. NEWTON:

Q. After they were read to her and explained by Judge Doherty, she still denied that she knew Judge Dolan? A. She believed that she did not know him when she signed.

Q. You testified that you told Colgan and Goren before the mortgage was signed in Colgan's office, that your wife had epilepsy? A. I said that she was epileptic.

Q. Did you say that in her presence? A. No.

Q. Where was she when you said it? A. Sitting over in the corner.

Q. In the same room? A. Yes.

Q. You recollect that you signed an affidavit in this matter on the motion to reopen the decree pro confesso? A. I signed an affidavit.

Q. Why didn't you in that affidavit say that you told Colgan and Goren that your wife was an epileptic?

Mr. Doherty: I object to that as not proper cross examination.

The Court: Objection overruled.

A. I did not tell the entire story in that affidavit.

Q. You said: "I recall that she asked Colgan to indulge her because she was sick and Colgan replied she looked sick." You did not tell Judge Doherty all that took place so he could put it in this affidavit. A. I did, all that I remembered at the time.

Q. Do you remember now that you told Colgan and Goren that your wife was an epileptic? A. That has been emphasized to me too often.

BY THE COURT:

Q. You remember now that at the time of the mortgage was signed you told Colgan and Goren that your wife was an epileptic? A. Distinctly.

BY MR. NEWTON:

Q. You did not remember it at the time you signed this affidavit? A. I remembered it then, too.

Q. I understood you also to testify that you tried to conceal from the public that your wife was afflicted with epilepsy? A. From the public; yes.

Q. And yet you did not feel called upon down in this law office with a number of men around, to conceal the fact? A. I was going in business with these men.

Q. Why did you tell them that your wife was an epileptic? A. Because I did not want them to have any misunderstanding about her.

BY THE COURT:

Q. What misunderstanding was there to be? A. She was signing a mortgage.

Q. Why was there any misunderstanding likely? They all knew she was signing it, and you say she

was signing upon the understanding had with all the men that she would not be liable in any event to pay? A. No, sir; but then there would not be any lengthy discussion about the details of the business while she was there.

Q. You say that at the time this bond and mortgage were executed by your wife, it was the agreement of everybody that she was not to be liable to pay this sum of money? A. That was the understanding.

Q. Why was it necessary to tell them that she was an epileptic? A. So that they would not have any lengthy discussion about the details of the business while she was there.

Q. But you stayed there for an hour talking about the details of the business in her presence; is that so? A. Yes, sir.

Q. How soon after you got to the office did you tell them she was an epileptic? A. Right away.

Q. Immediately? A. Yes.

By Mr. Newton:

Q. How did you come to tell them that she was an epileptic? A. Well, because she does not act naturally like a normal person and it was more of an apology for anything that she might do that would not be just right, if I make myself understood.

Q. Did you tell them as soon as you went in the office with your wife? A. Well, we might have been there for a minute or two.

Q. Do you also recall her signing a bond and mortgage to the New Jersey Title Guarantee & Trust Company? A. Yes.

Q. Were you present when that was signed? A. Yes.

Q. Did you tell the officials of the Title Company present that she was an epileptic? A. No, sir.

Q. Why not? A. Because there were not any ramifications to it.

Q. There were not any what? A. Ramifications.

Q. Have you been present when she signed any other deeds or mortgages? A. Whatever she has signed I have always been present.

Q. Please answer the question. A. I don't remember.

Q. Do you remember whether or not she has signed any other deeds or mortgages? A. I don't remember.

Q. Now, do you want us to understand, that you did not use your own judgment in permitting your wife's money to go into this McGee enterprise? A. I used my own judgment; yes.

Q. You felt that it was safe for your wife to obligate herself, notwithstanding this check for $2,000, upon which the McGee enterprise had defaulted? A. I had unbounded confidence in McGee and Dolan.

BY THE COURT:

Q. You also must have had confidence in what the Salt Lake City Exchange was going to do? A. Yes; and I had confidence in our Automotive Standards.

BY MR. NEWTON:

Q. Was the first mortgage to the Title Company discussed at any time prior to the execution of the second? A. The information was furnished that

there was an $8,000 mortgage held by the New Jersey Title Guarantee & Trust Company.

Q. Now, Mr. Allen, you want us to infer that at the time Mrs. Allen signed this bond and mortgage in Colgan's office, Colgan and Goren knew that Mrs. Allen was incompetent?

Mr. Doherty: I object to the form of the question.

The Court: Objection sustained.

Q. Did you hear Mr. McGee testify that before the mortgage was signed by your wife in Colgan's office, McGee heard your wife say to you: "Is it safe? Is it all right?" A. I heard McGee testify to that.

Q. Do you deny the truth of that statement? A. I do not remember any such statement.

Q. You would not say it was not true? A. No, sir.

Q. Who prepared the mortgage? A. Well, I don't know.

Q. Would it refresh your memory if I showed you the mortgage? A. I don't think it would. I don't know who prepared it—either Dowden or Colgan—Benny Dowden prepared it.

Q. That does not refresh your rocellection?

The Court: He says Benny Dowden prepared it.

Q. Your purpose in telling Colgan and Goren that your wife yas an epileptic, you have just stated was to prevent them from going into too many ramifications of the transaction; is that it? A. Yes.

Q. Your purpose, I take it, was not to indicate to Colgan or Goren in any way that she was not competent to sign the mortgage? A. No, sir.

Q. Whom did Dowden represent? A. Me.

Q. Didn't he represent Mrs. Allen? A. No, sir.

Q. Did he have any conversation with Mrs. Allen? A. Not in my presence, and I do not believe he had any.

Q. Mrs. Allen then went to Dowden's office after the check for $7,000 had been passed? A. At the time the $7,000 check was passed.

Q. Why did your wife sign the mortgage? A. Because I asked her to do it.

Q. What was the necessity of her signing it if she did not incur any liability? A. There would not be any necessity.

Q. So that you knew at the time she signed it she did incur liability? A. Absolutely.

Q. Has Mr. Dowden ever represented your wife? A. Darling, Barnes & Dowden represented my wife.

Q. In how many matters? A. One or two matters.

Q. What was the first one? A. When she bought 7 Belmont Avenue.

Q. And the other one? A. Well, I forget just what it is. I know it is something.

Q. What member of the firm of Darling, Barnes & Dowden handled the matter? A. Benny Darling.

Q. And at the time of the execution of this mortgage on March 22, 1929, Mr. Dowden was a member of the firm of Darling, Barnes & Dowden? A. Yes, sir.

Q. Now, Mr. Allen, you wanted to protect your wife against any default on the part of McGee, didn't you? A. Naturally.

Q. Why didn't you have this arrangement put in writing? A. What arrangement?

Q. The sixty or ninety days provision—the payment by McGee? A. Because we were going in business, to participate in profits, and we entered into a gentlemen's agreement.

Q. I take it you have had some business experience? A. Yes, sir.

Q. You have been in business? A. Yes.

Q. Did you ever hold any official position? A. Yes.

Q. Will you state what? A. I was agent to the Attorney General and Purchasing Agent in the Department of Justice.

Q. I take it that you are aware of the necessity of reducing an agreement to writing? A. Most of the business that I have done—and I have purchased millions of dollars worth of goods—has been done orally.

Q. I take it you know that a mortgage has to be in writing? A. I don't know much about mortgages.

Q. Now, Mr. McGee testified that at the time Goren said he would put up $7,000 with the house as security, he said he would make a present to all concerned, that is, to Colgan, to Goren and to you? A. Oh, no, he said we would all get a cut.

Q. You think that that meant that you would all share in the profits, is that it? A. Absolutely.

Q. But all he said was that you would all get a cut? A. Yes.

Q. You were not trying to impose upon your wife by having her execute this bond and mortgage, were you? A. No.

Q. You testified to some conversation with Mr. Colgan in his office on Sunday? A. Saturday.

Q. It was on a Saturday? A. Yes.

Q. If your testimony reads Sunday it is wrong? A. Saturday.

Q. Was Mr. Dowden in Colgan's office on this Saturday? A. Yes, sir.

Q. What was the language that Colgan used? A. Well, I cannot give you exactly the language. I can give you the gist of it, that the mortgage was a foolhardy thing.

Q. Is your wife able to converse over the telephone? A. No, sir.

Q. She never uses the telephone? A. No, sir.

Q. Has she ever used the telephone? A. Years ago.

Q. How many years ago? A. 1918.

Q. Does she go to the theatre? A. No, sir.

Q. Does she go to church? A. No, sir. She has never been in a movie.

Q. Does she have any correspondence? A. No, sir.

Q. Has she a bank account? A. Yes.

Q. Where? A. In the New Jersey Title Guarantee & Trust Company.

Q. In her name? A. Yes.

Q. Subject to whose draft? A. Rosemary's.

Q. How did she open the account? A. Signed her name. It is years ago. She has had it for twenty-five years or more.

Q. How did Rosemary come to draw on it? A. She o. k.'d her by giving her the power of signing.

Q. That is, she signed a power of attorney? A. Yes.

Q. How many years ago is that? A. Two years ago.

Q. What bank is that? A. Foye Place.

David J. Allen. Called by Defendants. Cross.

Q. Bergen Branch of the New Jersey Title Guarantee & Trust Company. Has she ever drawn any checks on that bank account? A. I don't know. I think whenever she wants money she takes her book there.

Q. Is it a checking account? A. Savings bank and checking account.

Q. She has two accounts? A. No; they pay by check. I don't know. I have never taken any interest in it. I know Rosemary can sign checks.

Q. Have you ever had the passbook? A. No, sir.

Q. How do you know she has an account? A. I have seen the cover of the passbook.

Q. What does it say on the cover of the passbook? A. Rosemary.

Q. Who is Rosemary? A. My daughter.

Q. Does your wife shop in New York? A. No, sir; she doesn't go to New York.

Q. Does she read the newspapers? A. No.

Q. She never reads the newspapers? A. No.

Q. Does she read any literature? A. No.

By Mr. Doherty:

Q. Is your wife ever in the house or outside unattended? A. No, sir.

Q. Always somebody with her? A. Yes, sir.

Q. You say there was no writing expressive of the terms on which McGee undertook to pay off the mortgage. Was there any writing at all between the parties? A. No, sir.

Q. Was there any application, any written application for the mortgage? A. Not that I know of.

Q. Just what consideration induced you to make the explanation to Mr. Colgan about your wife's trouble? A. Well, she might have been nervous when she got down there and I wanted him to overlook it.

Q. Can you give us any other explanation of what inspired you to make that statement? A. Well, that is the only explanation I can make. She did not know what it was all about. No use talking about it.

Q. You said you thought it was safe for your wife to sign this mortgage? A. Yes.

Q. Although you realized she might be called upon to pay this $7,000 back? A. Yes.

Q. If McGee didn't have good luck? A. Yes.

Q. And was it your sharing in the bright hopes of McGee that justified you in getting your wife into this deal? A. That is what justified us all.

Q. Without those hopes sustaining you, would you have lugged her into this? A. No, sir.

By Mr. Newton:

Q. Directing your attention to Dowden's office when the $7,000 check was split up, who told Dowden how to split it up? A. McGee and Goren and Colgan agreed upon the split.

Q. I did not ask you that. Who instructed Dowden how to split up the $7,000 check? A. McGee.

Q. What did you say? A. O. K.

Q. It was done with your approval? A. Yes.

Q. I show you what purports to be an affidavit of title signed "Ellen E. Allen", dated March 22, 1929. Do you recall your wife signing that document? A. That is her signature.

Q. Do you recall her signing it? A. No, sir.

Q. Do you recall Mr. Lightdale, that is this gentleman, reading that to her? A. He might have. He read something to her.

Mr. Newton: I ask to have it marked for identification.

(Marked C-6 for identification.)

ELLEN E. ALLEN, one of the defendants, sworn as a witness in her own behalf, testifies as follows:

DIRECT EXAMINATION BY MR. DOHERTY:

Q. What is your name? A. Ellen E. Allen—Mrs. D. Allen.

Q. What is your husband's full name? A. D. J. —is that right?

Q. "D" stands for what? A. That is Dave.

Q. How long have you and Dave been married? A. (No answer.)

Q. Do you understand the question now? A. Wait until I see how that light is. Where is Dave?

Q. Dave is down there. He is around all right. We want you to tell us this: Can you remember the date when you and Dave got married? A. (No answer.)

Q. If it is hard for you to remember, I will withdraw the question. A. Wait.

Q. All right, we will wait. A. What difference does that make?

Q. How many children have you got? A. Four

Q. That is, there are four alive? A. Yes.

Q. Did you lose any? A. I think I did. I think I buried one.

Q. You think you buried one? A. Yes.

Q. Where do you live now; what is the address up there. What is the number of your house? A. It is the first house. Seven, I guess, or five.

Q. Do you know Judge Brinkerhoff? A. No.

Q. Do you know Senator Brinkerhoff? A. No.

Q. Do you know Vice Chancellor Fielder? A. No.

Q. Do you know where you are now? A. No. This is a funny place.

Q. Do you know what place it is? A. Is it the courthouse?

Q. Do you know what case is here in court that you are interested in? A. I didn't do anything to come here.

Q. Do you know what this case is that we are all interested in and that you are in? Do you know what it is about? A. No; I don't know why I should be here. I didn't do nothing.

Q. Here is a paper that is called Exhibit C-1, and has a signature on it, two signatures. Do you know whose signatures those are? A. Do you want me to sign anything?

Q. No. Do you know whose signature this is that I now point to? Take it and look at it. Whose signature is this to which I now point on top of the other signature? A. There is nothing there.

Q. Nothing on this paper? I am asking you to look at this signature—"Ellen E. Allen". Tell us whether or not you signed that? A. When was this? This was long ago?

Q. Cannot you tell us whether or not you wrote that name there? A. How long ago is it? How long ago is this?

Q. This was signed about a year and a half ago, and according to the testimony here it was signed

in the office of Mr. Colgan downtown? A. Where is he?

Q. Don't you know where Mr. Colgan's office is? A. No.

Q. Do you know Mr. Colgan? A. No.

Q. Do you know who he is? A. No.

Q. Did you ever meet such a man? A. No.

Q. Would you know him if you saw him? A. No.

Q. Do you know who I am? A. No.

Q. Don't you know who I am? Look me over? A. Wait now.

Q. This is the bond that you are being sued on in this case along with the mortgage. You are said to have signed this bond and that your husband David signed his name under yours. Do you not now remember anything at all of signing it yourself and Dave signing it? A. No. That don't look like Dave's writing.

Q. I now show you the mortgage in this case that is called Exhibit C-1. I ask you to look at the signatures that are on that paper. Do you recognize that signature as being yours? You do not recognize that as your signature, "Ellen E. Allen"? A. Why did I sign it? If I did I don't know.

Q. Did you sign it? A No.

Q. Did Dave sign anything else? A. That don't look like his writing.

Q. It does not look like his? A. No.

Q. You are said, Mrs. Allen, to have signed these two papers because a check for $7,000 was given to you by Mr. Colgan? A. I never got anything from anyone.

Q. Have you any recollection of receiving such a check? A. Oh, no. $7,000?

Q. $7,000. A. No.

Q. Do you know Benjamin Dowden, the lawyer? Do you know Benny?

(Mr. Dowden being requested, stands up.)

A. Yes.

Q. Where have you seen Mr. Dowden? A. I don't know.

Q. Did you see Mr. Dowden at the office of Mr. Colgan about a year and a half ago when, according to the testimony in this case, you and Dave signed these two papers? Do you remember seeing Mr. Dowden there? A. No; I do not remember going down there to any place.

Q. You don't remember being at Colgan's office? A. No; I do not.

Q. Do you know Mr. McGee, Eugene McGee? A. No.

Q. Did you see a man testifying here today who called himself Mr. McGee? A. Was he a man with glasses on?

Q. He was a man with glasses, a fine, florid good-looking face. Do you remember him? A. What does he do?

Q. Did you ever see him before? A. No, not that I know of. He was never in my house I don't think.

Q. It has been testified here that because Colgan and Goren gave Mr. McGee $7,000 to help him along in his business, that you signed these two papers so that Mr. Goren would get the money back. Do you remember anything about that? A. Oh, no; I don't know anything about that.

Q. Do you know what I am talking about? A. What did I do to anybody?

Q. You signed these papers, didn't you? A. What is the matter with them? I don't remember. What is the matter, if I did sign them? What do they want? Why don't they do whatever they are going to do and shut up?

Q. Do you understand that by signing these papers you gave anybody the right to sell your house to pay $7,000 off that you owed them? A. Oh, no.

Q. Was that ever explained to you? A. No.

Q. Did you know that at the time when you signed these papers? A. No.

Q. If you signed the papers? A. I don't remember.

Q. Is that your signature? A. I don't know. Where is Rosemary's?

Q. Rosemary's is not on there. Does Rosemary sign papers for you? A. No, but I always ask her where—do I sign any place I go.

Q. Mrs. Allen, what kind of health do you enjoy? A. I don't know. I stay home and mind my own business and don't bother with anybody. Why don't you Republicans keep away from me?

Q. Do you understand the Republicans have anything to do with this matter for your annoyance here? A. I don't know.

Q. I am asking you how your health is. You say you are not in very good health? A. I don't know. I know if I did anything, I could have a fall and burn myself and cut myself.

Q. When did you burn yourself? A. I don't know when. It was a couple of months ago.

Q. How did you burn yourself. Do you remember that? A. No.

Mr. Doherty: I feel that in view of the difficulty in conducting this examination, I would like to confine my examination to such matters as the Court may suggest.

The Court: It is up to you to determine what questions to ask.

The Witness: I have been here all day.

By the Court:

Q. Have you been here all day? A. I think so. Have I?

Q. You just said you had been here all day. What makes you think that? Don't you recall you came down here at ten o'clock this morning? A. I have a little home and I went to see that it is taken care of.

Q. Do you know now that it is nearly four o'clock? A. I asked outside what time it was.

Q. What did they tell you? A. I don't know. People say everything.

Q. Did they tell you what time it was? Have you got a watch? A. No.

By Mr. Doherty:

Q. Do you remember going to the office of Mr. Dowden about a year and a half ago? A. No.

Q. Do you remember a check for $7,000 being put before you and your signing your name on the back of it? A. Oh, no.

Q. Did you do such a thing? A. No.

Q. Do you then remember Mr. Dowden making out four checks for smaller amounts, all to your order, and your signing your name to the back of those checks? A. If they got the money?

Q. Do you remember the incident of the checks being signed? A. No.

Q. Do you remember Mr. Goren and Mr. Colgan? A. No.

Q. If this is your name on these papers, can you tell us why you put your name on these papers? A. Oh, no.

Q. Look at it. Is that your name? Can you read without glasses? Maybe you can't see without glasses. Have you any glasses here? A. No.

BY THE COURT:

Q. Do you use glasses? A. I do not bother with them.

Q. Do you read newspapers? A. No.

Q. Or books? A. No.

BY MR. DOHERTY:

Q. Now, you see that handwriting there, don't you, "Ellen E. Allen",—you see that plainly enough, don't you? A. But I don't remember signing this paper whatever it is.

Q. Is that your name? Did you put that there with your pen? Does it look like the way you write your name? A. (No answer.)

Q. If it is true that you signed this bond and mortgage in which you agreed to pay $7,000 to a man named Goren and in which you agreed to have your house sold if you did not pay the $7,000,—if you did sign this paper,—do you know what the transaction was? A. No; nobody told me that.

Q. Did anybody tell you that? A. No.

Q. Did Dave explain to you that you were signing off the house for $7,000? A. I cannot tell you.

If he did, I don't know. Why did they bring me in this case?

Q. Do you know what this transaction is about? A. No.

Q. Do you know what a mortgage is? A. No.

Q. Do you know what a mortgage will do to you if you sign one and do not pay the money? A. No.

Q. Do you know what a foreclosure is? What does it mean to foreclose a mortgage? Do you know what that is? A. Yes; it means pay your taxes and things.

Q. No; it means that you lose your property if you do not pay the debt. Do you know what that means? A. Did someone give me money? Is that what you mean?

Q. Yes; I am asking you if someone gave you money? A. No; nobody gave me anything—Republicans or anyone.

CROSS EXAMINATION BY MR. NEWTON:

Q. I want to ask you a few questions. What are taxes? A. I don't know. It is something the city gets, isn't it?

Q. And where do you pay taxes? A. That I don't know.

Q. How did you come to move on Belmont Avenue? A. Do you mean where did I get the money?

Q. Yes. A. I had money myself.

Q. Where did you get the money? A. My people. You don't think I got it from the Republicans, do you?

Q. What did you do with that money that you got from your people? A. I bought my house.

Q. And where is that house? A. Mr. Sexton used to come around every day and take me around to see the house.

Ellen E. Allen. Called by Defendants. Cross.

Q. How did you come to go to this house on Belmont Avenue? A. I don't remember. I think they say I was in the house next door for a week or a few days or something.

Q. What became of the money that you got from your people? A. I bought my house and paid my bills.

Q. To whom did you pay the money when you bought the house? A. I cannot tell you where now.

Q. How long have you been on Belmont Avenue? A. I don't know.

Q. Who lived in the house with you? A. This woman I have had for the last eighteen years. She told me this morning—when I came I was taken out of bed—when I come back to go back to bed. I said: "Where am I going?"

Q. Have you ever signed any papers that Dave asked you to sign? A. I don't know.

Q. You don't know? A. No.

Q. When you paid this money for the house on Belmont Avenue, did you get any paper showing that you had the right to live in the house? A. Mrs. Sommers died, the lady I bought the house from.

Q. How did you come to move into the house? A. I could not tell you. I could not tell you a thing about that.

Q. Do you recall paying money so that you could move into the house? A. I don't know anything at all. I must have done something or I could not go in there.

Q. Can you read? A. Oh, yes.

Q. Have you ever read the bible? A. I don't go to church or anything now.

Q. Have you ever read the bible. Do you think you can read a verse out of the bible for us? A. I don't know.

Q. Can you read that print? It is small? A. Oh, no.

Q. Can you read these words on top there? You may take it in your hand. Will you please read that as loud as you can? A. Why don't you have somebody here instead of me?

Q. Won't you read that for me? How do you spell your first name? A. Sometimes Nellie; and sometimes it is Ellen.

Q. And how do you usually sign your first name? A. Is this a court room?

Q. Do you know what this word is here? A. "Know".

Q. Do you know what a-l-l spells? A. Yes.

Q. What does it spell? A. That spells "all", does it not?

Q. What does m-e-n spell? A. Men.

Q. Where were you yesterday? A. Let me see? Was it Sunday? Sunday or Monday. I am always home. I don't go out. I stay home and mind my own business.

(At this point adjournment is taken to Tuesday, January 6, 1931.)

IN CHANCERY OF NEW JERSEY.

Between CHARLES C. COLGAN and MAX GOREN, Complainants, and ELLEN E. ALLEN and DAVID J. ALLEN, Defendants.	On Bill &c.

Transcript of shorthand notes of testimony taken on continuation of final hearing in above stated cause, pursuant to adjournment, January 6, 1931, at Chancery Chambers, in Jersey City, before his Honor, James F. Fielder, Vice Chancellor.

APPEARANCES.

DAVID A. NEWTON, Esq., for complainant, Charles C. Colgan;

SAUL NEMSER, Esq., for complainant, Max Goren;

RICHARD DOHERTY, Esq., for defendants.

Mr. Newton: May I ask what the procedure will be with reference to the examination of Dr. Beling. Your Honor appointed Dr. Beling to make this examination of Mrs. Allen, and I do not know whether I should examine him on direct.

The Court: I think, perhaps, you better examine him on direct, Mr. Newton. He is not to be credited on either side. He was suggested by me as a

physician to make the examination and whatever benefit either side can get from his examination will be proper.

CHRISTOPHER C. BELING, sworn as a witness, testifies as follows:

DIRECT EXAMINATION BY MR. NEWTON:

Q. What is your profession? A. I am a physician.

Q. Are you licensed to practice in New Jersey? A. Yes, sir.

Q. When were you licensed to practice? A. In 1900.

Q. Have you practiced your profession in New Jersey since then? A. Yes, sir.

Q. Will you state your medical education? A. I am a graduate of the Royal College of Physicians and Surgeons, Edinburg, Scotland. Then I have been connected with Columbia University, the Vanderbilt Clinic, five years, and I have been at the State Hospital at Morris Plains from 1901 to 1907. Since then I have been practicing in the City of Newark, specializing in nervous and mental diseases, and have had charge of the Neurological service of the Newark City Hospital. I am consulting Neurologist to St. Barnabas' Hospital, I am a physician to St. Michael's Hospital, consulting Neurologist to Mountainside Hospital, Montclair, and about a dozen other hospitals.

Mr. Newton. Perhaps I had better permit Judge Doherty to examine the doctor as to his qualifications, if he desires.

Mr. Doherty: I do not want to.

Testimony of Christopher C. Beling.

Q. Did you make an examination of Mrs. Ellen E. Allen? A. Yes.

Q. When did you make that examination? A. On January 2, 1931.

Q. Where did you make the examination? A. At her home.

Q. Where is that? A. 7 Belmont Avenue, Jersey City.

Q. Who were present when you made the examination? A. She was present, I was present, and her daughter Rose Mary.

Q. Will you tell what transpired on that examination? A. I went in there to see her and the daughter admitted me to the house and she said her mother was in bed. I went into an adjoining room. In a little while she came out. She was dressed in her bath robe, put over her clothes and she sat down. I proceeded with the examination. I asked her where she lived and she said: "I live next to Judge Brinkerhoff." I said: "Where is that?" She said: "I live next to Judge Brinkerhoff." I was able to find out from her that it was on Belmont Avenue, but she did not know the number. Then when I asked her how old she was, she said: "You ask too many questions."

Then she said: "If you had a crippled daughter and an insane son and a man that stays out, a Republican man, you would not like to be questioned." I asked her: "What time is it now?" She said: "Wait now. Let me see. Is it one o'clock?" It was about four o'clock.

Then she said: "Who sent you here?" I said: "Vice Chancellor Fielder sent me here," and I remarked then that he was a Democratic Governor of New Jersey. She said: "I like the Democrats but I don't care for the Republicans."

Then I asked her again, to test her memory: "What is the number of this house?" She said: I don't have to know the number of the house. It is next to Judge Brinkerhoff's. I can look it up if you want me to. I mind my own business and stay in my own house." I am going into details on this. I do not know whether you care to go into minute details.

Q. Yes; I would like it. A. I can summarize it very quickly.

Mr. Doherty: I prefer to have the details.
The Court: Both sides prefer the details.

Q. Please go on, Doctor. A. Then I asked her who was taking care of her. She said: "I have a woman staying with me in the house."

I asked her: "Have you had any spells today?" She said: "I have had no spells today."

It was difficult to get any answer to the questions. She was constantly referring to her husband, putting blame on him for being out a great deal. So the daughter Rose Mary, nineteen years of age, stated that for the past week, the mother had been pretty sick and that she had about three or four spells during the past week and before that she was all right; that these spells came on suddenly; that when she goes to stores, the daughter has to go with her.

Then I asked her again what her age was. She did not know her age. I asked her when she was married. She did not know that, but I had the information from the daughter that she was married at eighteen years of age and she had been married for thirty years and her birthday was on October 5, but she did not seem desirous to answer

these questions and in fact she did not answer these questions when they were asked. She seemed to me to be rather uncooperative and always asked me questions: "Where do you live?" "Why cannot I live in an apartment like any one else and not be in a place like this?" "I didn't do anything to any one; I am a Democrat and my husband is a Republican, and they run around at night and get me into a lot of trouble."

I obtained further history from the daughter that the mother is unconscious during the spells and after the spell she is dazed for some time, about fifteen minutes and then she would gradually clear up. She has had attacks both nocturnal and diurnal. These attacks are characterized by tonic movements, preceded by a cry, especially in the nocturnal attacks.

Then I observed that there was a scar of a burn over the knuckles of the third, fourth and fifth fingers of the left hand, and another one on the outer aspect of the little finger, and a scar on the outer aspect of the left wrist. The scar of the burns is due to spell she had when she fell in the kitchen unconscious and was burned by a baking pan. The pan fell on her during the spell. This was in March or April of 1930.

Eight years ago she was in a hospital in New York. Dr. Sullivan treated her for about seventeen or eighteen weeks.

By the Court:

Q. All of this information you got from the daughter? A. From her. The information with regard to the spells was obtained from the daughter.

Testimony of Christopher C. Beling.

BY MR. NEWTON:

Q. The information as to her being in the hospital was obtained from whom? A. Partly from her and partly from the daughter. At this time, I took her blood pressure. Her blood pressure was high. It was about 190 systolic and 100 dystalic.

BY THE COURT:

Q. What should it be for a woman of her age? A. It should not be over 130 or 140.

She also had a murmur over her heart, called a systolic murmur over the apex of the heart.

Then, during the course of conversation with her, I learned that her daughter Betty had infantile paralysis about 1913 and she said that she had buried a child one week and her daughter was born the next week. I asked her how many years ago it was. It was nineteen, almost twenty years ago.

Then she asked me: "Did you come here a doctor? Where is the doctor's paper?" She referred to my prescription pad.

You see, this examination had to be done slowly, because she was not cooperative and I had to take a great deal of time and I am trying to give it in the order in which I got it.

At that time, I made further examination of her neurologically and found that her reflexes were normal; her eye grounds were normal and she did not show that she had any organic disease of the central nervous system. She ate meat regularly and she took only an occasional drink of whiskey.

I asked her with regard to whether she had signed any papers. She said her husband made her sign papers; that he was very nice to her then. She

said: "When I was a little girl I worked hard to get ahead and get through. I am always signing something, dear."

Q. What is that? A. She said to me: "I am always signing something, dear. I did not think there was any harm in signing those things when he asked me to sign it on the back. I thought it was all right, but I don't know what I am signing. If I did not think it was all right, I would not sign it. He tells me we are going out next week, and I am always going to go out next week. My husband can coax me so nice. If he told me: 'Mom just sign here,' I would sign it.

"Q. Do you know when you bought this house?" I asked her. She said: "I think Mary says ten years. I did not get any money or anything. I did not get any money or anything." She asked me: "What did they get it for? Was it for the Republican party? The Republican party gets hundreds of dollars of my money," and to prove that, she said that she would show me some papers and she went to a drawer of a dresser and looked at a book containing expenses from January 12, 1928. This I saw at a distance very clearly on the top of the book, "Expenses from January 12, 1928," but she did not show me the book. She said that she had it in that book. I said I was not interested in it and she did not want to show it. I did not press her at all for it. She said she does not remember signing any papers at any time.

To sum up the examination, I found the patient did not recall the number of the house; did not recall whether she had signed any papers; that she talked coherently; she was disinclined to be cooperative; she showed no evidence of any delusions of any cloud on consciousness such as we see in epileptics,

but apparently her memory was not forthcoming. I cannot say whether it is due to lack of desire to state what she knew or whether she really did not recall. Physically there is no evidence of any organic disease of the central nervous system, although she has a high blood pressure and heart murmur.

Q. What was the result of the neurological examination? A. I said I didn't find anything organically wrong.

Q. Based on your examination, will you state, whether or not, in your opinion, she is or is not a lunatic? A. She is not a lunatic.

Q. Based on your examination, will you state, whether or not, she is of sound or unsound mind? A. I do not think she is of unsound mind.

Q. Did you find any evidence of epilepsy? A. Yes, in the history given me I found evidence.

Q. Did you find any objective evidence? A. No; I found no objective evidence.

Q. Would there be any objective evidence? A. Not necessarily. I might say there is a suggested objective evidence in the scar on her hand, but that is only collateral evidence.

Q. Based on your examination, Doctor, in your opinion, has she the ability to understand the nature and effect of the act of executing a mortgage? A. That will depend. She is capable. When she is in a lucid, normal state, she is capable. I would say she should be capable, she will be capable—I do not know how to express it—she has the capacity.

BY THE COURT:

Q. If any one explained to her that a paper presented to her was a mortgage on her home, for

such an amount, and told her that by signing her name on this paper, she would be placing an encumbrance on her property, do you think she would be capable of understanding the nature of the act she was called upon to perform? A. Yes.

Q. You think on the day you saw her that she was capable of understanding an explanation as to what a mortgage was and what the effect of her signing a paper called a mortgage would be? A. Yes.

By Mr. Doherty:

Q. In no case of epilepsy, would an examination between any seizures disclose the existence of the disease? A. Not per se. You see epilepsy—it is really a manifestation or a series of manifestations. A man has a spell—and there are varieties of spells —and the spell passes off. Unless we see the individual in the spell, we cannot say that a person has epilepsy. If it is a form of epilepsy that shows scars on the tongue where it has been bitten, or scars or injuries about the head from falls, one can then form an opinion that it is probably a case of epilepsy.

Q. Is epilepsy the manifestation of an organic impairment or a functional insufficiency? A. Both. It may be one or the other.

Q. What organ would you find marked to the extent that it is organic? A. No particular organ, but it is always referable to discharge of energy from the cells of the brain.

Q. So, your statement to Mr. Newton that you found no organic trouble, is not an indication that she is not an epileptic? A. Oh, no. In a great many epileptics, one does not find organic disease of the central nervous system.

Q. And when you testified that she was not a lunatic, that did not import that she was not an epileptic? A. Oh, no. There are a great many epileptics who are not lunatics, and a few epileptics who are lunatics.

Q. During the seizure, an epileptic is entirely incompetent? A. Yes.

Q. When does the seizure terminate? A. The seizure usually terminates with the subsidence of the motor manifestations—that is, the twitchings and the jerkings.

Q. Is the regaining of mental equilibrium coincident with the termination of the twitchings? A. No; not necessarily.

Q. It lingers? A. Yes—

Q. Is there any standard for the period of persistence after the seizure terminates? A. To answer that question, in certain epileptics, where the attacks are mild, they may have a spell, get up and be quite clear and go about their business. Others, where the spells are most severe, or have lasted over a longer period of time, they get a spell, they are drowsy, confused, they go off to sleep and they will sleep for an hour or half an hour and then wake up and be clear, or they may go on and be more or less befogged for a day or half a day, but usually the epileptic after a few hours clears up.

Q. Well, Doctor, there are periods between seizures. Before an attack, is there any mental manifestation of any kind? A. There has been described, and I have observed it myself, a peculiar makeup in these individuals. They have a certain irritability, emotional upset.

Q. You would not hesitate to say that all epileptics are in some measure below par? A. Oh, no; I could not say that. I think we have had classic epileptics who have been marvelous persons.

Q. Like Caesar? A. I don't know. They say he had the falling sickness.

Q. You told us everything that this lady told you at the time when you were getting her history, did you? A. I told you what she said.

Q. You told us that she lived next door to Judge Brinkerhoff? A. That Judge Brinkerhoff lived next door.

Q. The daughter told you that? A. I believe I got that from the daughter also, but she said she lived next door to Judge Brinkerhoff.

Q. Are you sure about that? A. I got it from the mother. I accepted that she lived next to Judge Brinkerhoff.

Q. What would your view of the matter be, if you were told that Judge Brinkerhoff is non-existent? A. I will accept that from you. I don't know. I took it when she said she lived next to Judge Brinkerhoff. she meant Judge Brinkerhoff's house. I did not go into the matter.

Q. Doctor, in making this examination, did you have any prior information as to the nature of the controversy here? A. I think I did. The information I received was that there was a case in which Vice Chancellor Fielder wanted an examination, and I told Mr. David Newton I would make the examination. I understood it was for the court, and I believe Mr. Newton told me it was with regard to her competency to sign legal documents.

Q. Did he tell you the dates on which she is supposed to have signed the documents? A. No. I do not recollect. If he did, I do not recollect; I did not charge my mind with it.

Q. The outcome of your examination was that if she was properly instructed as to the nature of the transaction, she would at that time, when you saw

her have been competent to sign a mortgage—that was the result of your examination? A. Yes, I believe that if it was explained to her, she had the mental capacity to sign a paper.

Q. Can you tell us how exact and meticulous would have to be the explanation in order that she would come to a realization of what she was going to sign? To what extent would you, at the time of your examination, have had to explain what a mortgage was, in order that she should appreciate it? A. I do not think it would have been very difficult for me to explain to her what a mortgage was; at least, that is my impression.

Q. I am not asking you about your capacity to give the explanation, but to what length you would have to go in order to elucidate what a mortgage was, her mind being in the condition in which you found it? A. When I spoke to her about a mortgage, she seemed to comprehend it.

Q. How? A. She said that whenever she was told to sign a paper by her husband, she would sign it, but she never paid any attention to what it was. That is what she said, but the fact is that she went and looked at her book and she has a detailed knowledge that she was able to show me all the expenses that were incurred and that she had a record of them, leading me to believe that she knew what she was talking about.

By the Court:

Q. Your opinion, as to her ability to understand, at the time you examined her, what a mortgage was, if an explanation was made to her, would be affected, would it not, by the fact that she had executed other mortgages? A. Yes, because she

said she had signed many papers for her husband, but I did not go into that meticulously. From my examination, she showed no lack of comprehension on her part, general comprehension, and no cloud on consciousness; in other words, she could receive what I told her; she could receive what I told her when I spoke to her.

Q. It registered on her mind? A. It registered on her mind; she could receive it.

By Mr. Doherty:

Q. But in the matter of the paper that she had executed, she told you that she always relied upon her husband? A. Yes.

Q. She had never exercised any judgment or discretion of her own in that matter? A. She said that her husband coaxed her to sign papers, and so she did it. That is all I got from her.

Q. Didn't you get a little more than that? Didn't you get an inkling of what was to be accomplished by signing papers? A. That her husband got her to sign papers to get money.

Q. Did she understand that she had gotten some money on this mortgage? A. She did not get any, she said.

Q. Did she understand that she— A. They promised to give her noney the next week, but she never got it.

Q. That she signed a mortgage and signed it on the promise that she would get money the next week? A. This was not in reference to any particular mortgage. I could not get any definite information as to any particular thing that she signed.

Q. Didn't you get this much information from her, that she signed a mortgage in expectation of

getting money from somebody on the strength of that mortgage, the next week, did she tell you that? A. This is what she said. She said: "If I did not think it was all right, I would not sign it. He tells me I will get it next week. I am always going to get it next week."

Q. That is, her conception of assuming liability on the mortgage was that she was going to get some money by reason of signing the mortgage; is that it? A. I don't know about that, but I know from what she said she expected to get money. You see, she was an unwilling witness. It was difficult for me to get more details. I tried very hard to get them, but I could not get them. I must be frank about that.

Q. You did not ascertain what her conception of a mortgage was? A. I was not trying to ascertain what her conception of a mortgage was.

Q. Did you ascertain? A. I did not, except in a general way. I think she knew that when she signed a paper, that she was executing a legal document. That was all I could conclude, but she was an unwilling witness. The only way I could conclude that was from what little she told at the time.

Q. Did you form any impression as to whether, when she executed a legal document, along with understanding its character as a legal document, that she could comprehend its nature and effect and consequence? A. That I cannot say from the general survey of her mental state. If it was not during an epileptic spell and her mind was not befogged, she had the capacity to do it.

Q. Would that opinion be corrected or modified, if you were told all the circumstances of the transactions that were entered into? A. I think it would help.

Q. If you were told that she signed a second mortgage on her home for $7,000 and that she had done it without receiving any benefit herself, or her husband, or her family, would that not be an illuminative circumstance?

Mr. Newton: I object. It is incompetent, irrelevant and immaterial and does not recite all the evidence that should be presented to the Doctor.

The Court: Objection sustained. It seems to me there are elements left out, the most important of which was that she was told it would benefit her husband, by signing a mortgage.

Q. Doctor, the facts of this case, subject to correction by court and counsel, are as follows: A man named McGee, who was in the brokerage business and in financial straits, wishing to raise money, made to the order of another man named Loori, a pre-dated check for $2,000; Loori took the check to one of the complainants in this case, Mr. Goren, and got money that he brought to McGee—
A. (Interrupting) Who is McGee?

Q. McGee is the man who is in the brokerage business, in failing circumstances, and a party unknown to Mrs. Allen. McGee's financial difficulties were further intensified by the fact that at the time the Attorney General of this state was instituting proceedings to put him out of business by the process of injunction—

Mr. Newton: I object to that upon the ground that at the time of the execution of the mortgage there is no evidence that the Attorney General was taking proceedings.

The Court: I do not remember just when those proceedings were pending. I do not see what all of this has to do with putting the question up to Mrs. Allen: "Sign that mortgage."

Mr. Doherty: I want to prove the circumstances so that he may gauge her wisdom and discretion.

The Court: I do not think that that has anything to do with it at all. The simple fact is that she was told that it would benefit her husband if she signed the mortgage; he was going into business with McGee.

Mr. Doherty: I will pass that.

Q. Suppose this: That on the 22nd of March, 1929, this lady was brought to the office of Mr. Colgan, one of the complainants in this case; that she was accompanied by her husband, by Mr. Dowden, by Mr. McGee and by Mr. Dolan; that in the lawyer's office a paper purporting to be a bond and another purporting to be a mortgage, were placed before her; that her husband told her that if she signed that paper, it would place him in the way of getting some monetary advantage and that she would share in it; that she signed the paper which was a bond and the paper which was a mortgage on her house and did so without inquiring how she was going pecuniarly to benefit by placing this mortgage on her house, that being a second mortgage and the premises being her own; would you say that that lady, signing that paper, in those circumstances, not only knew the nature of the transaction, but was able to comprehend any reasonable consequences and effect of it?

Mr. Newton: I object upon the ground that it does not recite, first, that the contents of the mortgage were made known to her by an attorney at law; second, that the wife inquired of her husband: "Is it all right? Is it safe?"

The Court: I will allow the question.

A. Well, that is a difficult question to answer, for the reason that perhaps she ought to have known the contents of that paper; she ought to have investigated it for herself, and yet, if she had confidence in her husband and believed what he said, she had taken his word for it and signed it, in either case she would know what she was doing.

By the Court:

Q. Was she, under those circumstances, capable of understanding the transaction? A. Provided she had not an epileptic attack some time before.

By Mr. Doherty:

Q. If you yourself were in her situation, could you have comprehended how the signing of a mortgage on your home, was going to benefit you in those circumstances? A. I am placing myself in the position of the wife.

Q. Could you understand, if you were in her situation, how you were going to benefit yourself, make yourself better off, by putting a second mortgage on your own home? A. Why, any time I put a mortgage on my own home, I certainly am not going to benefit myself unless I get the proceeds of it. That is the first thing. The second thing is, I may commit a serious error of judgment, because

of my emotional disposition, signing a paper and then regretting it for the rest of my life.

Q. But the signing of a mortgage on one's home, by a person who receives no benefit from it, is not ordinarily an indication of discretion, in your judgment? A. Well, no, not at all, but you see where the husband comes in the situation, or a brother, or sister, and there is a family tie, the woman has a sense of ownership and will do anything to help the husband out. In that way, then, if I were transacting the business, where you were concerned, or some other person who was not attached to me, through either marriage or kinship, why I certainly would be a big fool, I think.

Q. In this case, is it your conclusion, that at the time the mortgage was signed, this lady must have relied only upon her husband and given no regard at all to the character of the transaction or its nature and consequence? A. I could not say that, but I would say, from my examination, that this woman certainly had revealed to me that she often relied on her husband and that when he asked her to sign it, she signed, whether it was to the emotional element or being convinced by her husband that it was all right, and when her mind reached that stage, then she signed the papers. She had the capacity to do that.

Q. From her inability to recall her age, and the number of her house and when she was married, did you enter any opinion in your mind, as to her general mental strain? A. First of all, I think she was unwilling to say everything that she might say. That was the opinion I had because she was uncooperative. She questioned me a great deal about myself. She had the capacity to do that, but she was unwilling to give me any information about

herself. Didn't she ask you for a prescription? A. Oh, no. She wanted that to get my name and so on, and I told her who I was.

Q. Did you explain to her the purpose of your examination? A. Oh, yes. I stated that in my testimony, that I came there sent by Vice Chancellor Fielder to make an examination.

Q. Would she, at the time when you saw her, have possessed sufficient mental capacity, to enter into a transaction that involved the consideration of many complicated factors? A. I cannot answer that question unless I knew what all of these complicated factors were. There might have been certain complicated factors that she could not comprehend any way.

Q. If she was in a transaction in which she was giving a mortgage on her house to secure to a mortgagee the repayment of money that the mortgagee was advancing to a third person, and that third person was simultaneously undertaking to indemnify or reimburse her, and that she would thereby be placed in possession of the means of discharging that mortgage and relieving her home from this incumbrance, could she understand that sort of transaction? A. I think so. I think that that might lead her to sign it, because of the expectation of getting rid of the mortgage.

Q. And in that case, she would not be relying upon her husband at all? A. She might not be relying upon her husband. That depends upon her mental state at the time. It depends upon whether she decided in her own mind to rely on her husband or to accept what he said, and whether she would then be governed by her reasoning, or whether she would be governed by her attachment and love for her husband to help him out.

Q. Suppose the person who was the beneficiary in that transaction, who was the one who got the money from the mortgagee, suppose he was a total stranger to her, would that be an influential factor? A. Yes, it would, in case he was taking it without giving a quid pro quo to her husband or herself.

Q. If there was no quid pro quo, then it would be— A. (Interrupting.) A very foolish action and show poor judgment.

BY THE COURT:

Q. Any one who did that, not an epileptic, would be showing very poor judgment? A. Very bad judgment, foolish, stupid.

BY MR. DOHERTY:

Q. Suppose the man who benefitted by that act, was an insolvent man? A. That might depend on that man's personality. He might be able to sell a gold brick, when he had none.

BENJAMIN DOWDEN, sworn as a witness on the part of the defendants, testifies as follows:

DIRECT EXAMINATION BY MR. DOHERTY:

Q. Will you state what transpired in respect of the check that you received from Mr. Colgan and what disposition you made of that check? A. I received from Mr. Colgan a check for $7,000. That check was deposited in the Darling Trust Fund and the money was disbursed from the Darling Trust Fund as follows:

The first check that was issued by the Darling Trust Fund was No. 8109, dated March 22, 1929, made to the order of Ellen E. Allen for the sum of $1,500. That check was endorsed by Ellen E. Allen to the order of Eugene McGee and Eugene McGee cashed the check, he being identified by John H. Jobes, who was then with Darling, Barnes & Dowden.

Check No. 8112, dated March 22, 1929, made to the order of Ellen E. Allen, in the sum of $2,000. That check was endorsed by Ellen E. Allen to Eugene McGee and Eugene McGee endorsed it over to Charles C. Colgan. That check was deposited to the account of Charles C. Colgan.

Check No. 8113, dated March 22, 1929, $700, made payable to Ellen E. Allen. Ellen E. Allen endorsed it to Eugene McGee and McGee endorsed same to Charles C. Colgan. That check was likewise deposited to the account of Charles C. Colgan.

Check No. 8114, dated March 22, 1929, made to the order of Ellen E. Allen, $2,800, was disbursed. That check was endorsed by Ellen E. Allen to the order of Eugene F. McGee and it was cashed by me for Eugene F. McGee and the money turned over to him. He was not known at the bank.

Q. Mrs. Allen got no proceeds out of the mortgage at all, did she? A. No.

Q. Nor did David J. Allen? A. No, sir.

CROSS EXAMINATION BY MR. NEWTON:

Q. By the statement that Mrs. Allen got no proceeds, you mean that the money did not eventually reach her? A. I might qualify it this way: She received no money directly. The only thing she got out of the mortgage was the checks made to her and

she endorsed them over. She did not get any of the money personally which she took away.

Q. And the disbursement of the checks made by you, was made at the direction of Mrs. Allen? A. I would not say that. After we all went up there, it was decided that the checks were to be made to Mrs. Allen's order, which was agreeably to her.

BY THE COURT:

Q. Why do you say it was agreeable to her? A. Because when we all went up to the office of Darling, Barnes & Dowden from Mr. Colgan's office—

Q. With the check which was given for the mortgage? A. Yes.

Q. And Mrs. Allen endorsed that check? A. Mrs. Allen endorsed that check to our order.

Q. You deposited it? A. So as to disburse it.

Q. You got together up in your office? A. Yes.

Q. Was there a discussion about disbursing this money? A. Yes.

Q. Did she take any part in the discussion? A. I would say that she took no active part in the discussion.

Q. Was it had in her presence? A. Yes.

BY MR. NEWTON:

Q. Did her husband take any part in the discussion? A. Mr. Allen, Mr. McGee and Mr. Colgan, each one had some suggestion to make.

Q. As a result of those suggestions, you made the disbursements that you testified to? A. Yes, sir.

BY THE COURT:

Q. Who asked her to endorse the checks that you drew? A. I don't remember. I think it was Mr. Allen. I am not sure about that.

Q. Do you remember what was said to her? A. When we were down town and that one check was involved, the $7,000 check—

Q. That is, down at Mr. Colgan's office? A. Yes; at Mr. Colgan's office. I suggested that there should be some evidence of how that money was disbursed. Instead of turning the money right over to McGee, I suggested that there should be some evidence to show the transaction between Mrs. Allen and McGee, so that if anything transpired at a later day, she would be able to hold McGee and it was as a result of that advice, that we went up to my office.

Q. Do you know whether there was any explanation made to her about what those checks were for and why she endorsed them over to McGee? A. Yes, sir. At the time there was a talk as to why each amount was being given and that is the reason why these checks were all made separately.

Q. Was anything said to Mrs. Allen about that? A. Yes; Mrs. Allen was right there while the discussion was going on.

Q. Did she take any part in it? A. No; Mrs. Allen did not take any active part in the transaction.

Q. Did she have anything to say at all? A. I do not remember any specific thing that she said up at our office.

Q. Was anything said about this check No. 8113, to the order of Ellen E. Allen, for $700, that was eventually deposited in Mr. Colgan's account, as to why that check was drawn for that amount and endorsed by her and by McGee and by Colgan? A. Yes; that was in connection with the expense and I might say what might be called a bonus.

Q. I don't care what it was in connection with. Was anything said to Mrs. Allen as to why that check was drawn and endorsed in that way? A. Not directly.

By Mr. Newton:

Q. Who asked Mrs. Allen to endorse the original check for $7,000? A. I don't remember. Either Mr. Allen or myself asked her to endorse it.

Q. Have you any recollection of the form of the request that was made of her? A. Yes; there was a little discussion in reference to what was taking place. If I remember correctly, I do not think at the time I got the check from Mr. Colgan that he had enough to cover it. I think he had to get money from another bank and put it down in the Commercial.

By the Court:

Q. That has nothing to do with the question Mr. Newton asked you. A. It came up in connection with the discussion.

By Mr. Newton:

Q. What I want to know was the form of the request and by whom it was made to Mrs. Allen to endorse that check for $7,000? A. There was some talk as to how the check was to be handled.

Q. Talk between whom? A. Everybody that was there. It was general discussion. There was a big group of people.

Q. Mrs. Allen was present? A. Mrs. Allen was present, and I had in mind—I had told them—

Benjamin Dowden. Called by Defendants. Cross.

BY THE COURT:

Q. Don't go off into something that will be objectionable. What Mr. Newton is trying to get is to have you state, if you can remember, what was the form of the request directed to Mrs. Allen that called for her endorsement of the check? A. To the best of my recollection, I stated that there should be some evidence of the disbursements—

Q. The check had been drawn to the order of Mrs. Allen. Who requested her to endorse it and what was said to her? A. Either Mr. Allen or myself requested her to endorse it, I having stated that the check should be endorsed and deposited to our account and disbursed so that there woud be some evidence of the transaction between Mrs. Allen and McGee.

BY MR. NEWTON:

Q. Was she told what the check was? A. Yes.

Q. By whom? A. By Mr. Colgan.

Q. And she endorsed it after she was told? A. Yes, sir.

Q. Where was the endorsement of the $7,000 check made, if you recollect? A. I think that was made in Mr. Colgan's office. I am not sure about that.

BY MR. DOHERTY:

Q. You say at your office, when the four checks were being issued, that there was still discussion as to how these checks should be made out and who should get them? A. Yes, sir.

Q. That was after the bond and mortgage had already been delivered, was it not? A. Yes, sir.

Q. At that time was there any definiteness as to what was to be done with the money? A. It had been talked about in Colgan's office.

Q. Was there any continuation of the transaction before they arrived at your office? A. Yes; it was understood—

Q. By whom? A. By the parties there. They had talked it over down at Colgan's office.

Q. The parties there were McGee, Allen, Judge Dolan, yourself, Mr. Colgan, Mr. Lightdale. All of those parties understood it. Tell us one word that was said by Mrs. Allen down at Colgan's office. A. I don't remember.

Q. Don't you remember her saying that the Hudson River looked nice? A. Yes, sir.

Q. Do you remember her saying anything else? A. Yes; I remember that she spoke to Mr. Colgan, and she was commenting on the fact that he was unmarried; she couldn't understand; we were fooling with Colgan with reference to his being unmarried.

Q. What else was said by her? A. I don't recollect anything specific.

Q. What was said to her? A. When the bond and mortgage were brought in, Mr. Colgan had them on his side of the desk, and as I recall Mr. Colgan said: "This is a bond and mortgage."

BY THE COURT:

Q. To whom did he say that? A. To Mrs. Allen.

Q. Where was she then? A. She was seated right opposite to Mr. Colgan.

Q. Right across a desk of usual width? A. Yes. He told her what it was. It was a mortgage.

By Mr. Doherty:

Q. Give us his language. A. As near as I can recall, he said: "Mrs. Allen, this is a bond and mortgage for $7,000."

Q. Who is speaking? A. I think it was Colgan. "Covering the premises," and so forth. Then Mr. Lightdale, who was also there then, said to Mrs. Allen: "This is a bond and mortgage," and so forth.

By the Court:

Q. Mr. Lightdale said that? A. Yes. "Do you understand it?"

Q. Didn't he tell her what it was before he asked her that question? A. Yes. In substance he said what Colgan said to her. Mr. Colgan spoke about it first and then Mr. Lightdale.

Q. Cannot you give us more in detail what Mr. Colgan said and what Mr. Lightdale said to Mrs. Allen by way of explanation? A. Mr. Lightdale said: "Mrs. Allen, this is a bond and mortgage, covering the premises"—I do not think he named the premises—"covering the premises described in the mortgage."

Q. Didn't he tell her it was on Belmont Avenue? A. I do not recollect that. I remember that it was a bond and mortgage, $7,000, and he asked her if she knew the contents thereof, and he took her acknowledgment.

Q. You mean he did not tell her how much the interest was or when the mortgage was payable? A. I don't remember him telling her that; no, sir.

By Mr. Doherty:

Q. Did anybody else speak to her except Mr. Colgan and Mr. Lightdale, while she was in the office? A. I think we were all talking to her generally.

Q. To her? A. Yes; it was a general conversation.

Q. Tell us one word that you addressed to her? A. She asked me about the bond and mortgage.

Q. What did she say? A. She said: "Is it all right?"

By the Court:

Q. What did she say to you? A. She asked me if it was all right.

Q. Don't you see it is rather important to recollect what words she used, if you can? Did she just say: "Is it all right?" Did she say: "Is this a bond and mortgage? Is it all right?" What did she say? A. My best recollection is, she turned to me and said: "Is it all right," and I said: "Yes, you sign here."

Q. When was that? A. At Colgan's office.

Q. Before or after somebody had made an explanation to her as to what the papers were? A. That was after the explanation was made.

Q. By Mr. Lightdale or Mr. Colgan? A. By Mr. Lightdale and Mr. Colgan.

Q. How did she get there, by the way? A. I think she went down in my car.

Q. With you? A. With me.

By Mr. Doherty:

Q. Did she ask anybody else there, if it as all right, except you? A. I think she looked at her husband. She asked her husband, too.

Q. Any one else? A. No; I do not recall her asking any one else.

Q. The only advice she sought was from you and from her husband? A. Yes.

Q. Now, you stated that you were representing both her husband and her? A. Yes.

Q. You were not altogether impartial so far as her interests were concerned, were you? You were representing her husband, too? A. I was representing both of them.

Q. You were representing both of them, not her especially? A. No, sir; I represented both of them.

Q. You realized that her husband had some sort of an idea that he was going to make money from this transaction? A. I knew that he had some interest in the concern or had hopes of realizing some money out of it.

Q. You knew he had some self-serving purpose? A. Yes.

Q. And you represented him? A. Yes.

Q. You also represented her? A. Yes.

Q. She asked you if it was all right and you told her it was all right? A. Yes.

Q. Did you believe it was all right? A. What—the whole transaction?

Q. Did you believe it was a wise thing she was doing? A. I did not; no, sir.

Q. But you told her it was all right? A. No, sir; I did not tell her the whole transaction was all right. I told her the bond and mortgage was right as to form.

Q. Did you give her the benefit of your opinion as to whether it was a wise thing she was doing? A. I think I was talking to Mr. Allen and Mrs. Allen. I was opposed to the transaction because I thought it was rather a foolhardy thing to mortgage their home.

Q. Did you tell her you were opposed to the transaction, that she was doing a foolhardy thing? A. I don't remember.

Q. Didn't you feel under any obligation to advise her? A. I remember I told Mr. Allen.

Q. Did you feel under any obligation to tell her that too? A. No, sir.

Q. Did you consider that insofar as your relations to her were concerned, that you were independent? A. No, sir.

Q. You were tied up with Dave, were you not? A. No, sir. Mrs. Allen had told me—

Q. You had a professional interest in Dave at the time? A. Yes; I think there is no question about that.

Q. And McGee had told you all down there that when the stock of his mine would be listed, that he would be generous with all of you afterward, didn't he? A. Yes. He made a general statement.

Q. You included yourself within that promise or statement? A. No, sir.

Q. Didn't you expect that you would be generously treated by McGee? A. No, sir.

Q. I call your attention to your affidavit. Is that your signature? A. Yes, sir.

Q. The final statement in this affidavit, in paragraph 30, is: "I remember that while the bond and mortgage were being executed, or shortly after the execution, McGee made a general statement to the effect that the money would relieve his situation, that the stock in the mine in which he was interested would be forthwith listed on a western exchange and when that happened he would remember all of us."

Mr. Newton: I object upon the ground that it is an attempt to impeach his own witness.

The Court: I will allow the question, but he has answered it; he told you it was so.

Q. At the time you were there with Mrs. Allen under your guardianship, you were expecting a profit in a pecuniary way out of the results of that mortgage, were you not? A. No, sir.

Q. Is not that the import of your statement there?

The Court: He says that is what McGee said. He did not say that he believed what McGee said or that he expected he was going to make good.

Q. You did not consider McGee's promise in that respect worth anything? A. No, sir. If he had made good, I suppose he would have done something, but I have had so many promises in life that I do not put much confidence in them.

Q. Still, you knew McGee was undertaking to indemnify Mrs. Allen against the consequences of the mortgage. You knew that McGee was promising at that time to keep Mrs. Allen safe on the mortgage? A. Yes, sir.

Q. And you regarded him as untrustworthy? A. I did not say I regarded him as untrustworthy. When a promise is made in that general way, a general statement that way, there is no binding force to it. He might have made a million dollars and we could have no claim to it.

Q. Was the promise that was made by Mr. McGee with respect to the mining stock, of less weight than the promise he made that he would see the Allens all right on the mortgage? A. Yes.

Q. Was there any writing between McGee and Mrs. Allen? A. No, but there was a check which

showed that he got the money; there was evidence of the transaction between them. She can bring suit on the checks. She has the evidence.

Q. So that the purpose of having these four checks was in order that she might have some evidence available against McGee? A. Yes.

Q. Mr. Dowden, was not the real purpose to show that notwithstanding that she was acting as security for McGee, she got some benefit to herself or her estate? A. No, sir.

Q. Was not that the purpose of making out these checks? A. No, sir.

Q. Well, she was making this mortgage to pay the debts and to secure the default and liability of McGee, was she not? A. Yes.

Q. You knew that under the situation she would not be liable unless it could be shown that she got some benefit to herself, or her estate? You understood the posture of the law at that time, did you not? A. It all depends on what you consider.

Q. You understood that to be the law at that time? A. My conception is this, that it was not an absolute guaranty. What she was doing was using this money that was realized from the mortgage to pay over to McGee.

Q. She was using that only to pay over to McGee? A. Yes.

Q. Did she owe McGee any money? A. No, sir.

Q. She was raising the money for McGee; is that true? A. No.

Q. Tell us what she was doing? A. The arrangement was that McGee needed money; Mr. Allen was up there and associated with him.

Q. What do you mean by that? A. What?

Q. What do you mean by "associated with him"? A. He was up at the Journal Square office, at McGee's office.

Q. That is all you know about it? A. Yes; and when the question came up, it came up originally over one check that was in default and Mr. Allen wanted to help McGee out.

Q. Who did? A. Mr. Allen wanted to help McGee out, because McGee was in a jam, and it was as a result of Mr. Allen's interest in trying to help McGee out that this whole transaction eventually developed. McGee needed more than the original amount he first asked for; he needed more to go ahead with his business.

Q. Mr. McGee was in default of $2,000? A. Something like that, yes.

Q. And in the course of his negotiations with Colgan and Goren over that check, he proposed that they advance him some more money? A. Yes.

Q. Is that right? A. Yes.

Q. And they did eventually advance him $7,000? A. Yes.

Q. And that $7,000 was then disbursed by you so as to pay off the $2,000 check, is that right? A. Yes.

Q. And to pay Colgan $700 for his bonus and for his trouble in the matter, is that true? A. Yes.

Q. And $4,300 that was left over was turned over by you to McGee; is that right? A. Yes.

Q. That was the design of this mortgage, was it not? A. Yes.

Q. To raise from Colgan and Goren enough money to wipe out the check, to give Colgan $700 for services and to give McGee $4,300. You knew that Mrs. Allen was then giving a bond to pay the debt, default or liability of McGee, didn't you? A. I would not say that; no, sir.

Q. You say she was not asked to sign these checks in order to create the appearance of her

having received benefit from this transaction? A. No, sir. Colgan insisted that the original check be made out in one check.

Q. On the contrary, you say the checks were made out that way so that she might have some evidence against McGee? A. Yes, that is why these checks were made out that way.

Q. Why was there not a written memorandum drawn up between the two of them, between McGee and Mrs. Allen? A. I will tell you the reason why—because Mrs. Allen expected to receive a certain amount of money each week.

Q. Who told you that? A. McGee made some sort of a statement.

Q. Who was there when McGee told her that? A. I don't know. All I know is that she expected that she was going to get—

Q. When was this statement made by McGee to her, that she was going to get a certain amount of money each week? A. I don't recollect.

Q. Was it in Colgan's office? A. I don't recollect.

Q. Did you ever see McGee in her presence anywhere other than in Colgan's office? A. No, sir.

Q. The only place you saw the two together was at Colgan's office? A. Yes.

Q. Colgan's office and your office? A. Yes.

Q. Whatever conversation took place between Mrs. Allen and McGee, took place in one of those offices? A. Yes.

Q. Both at Colgan's office and at your office, Colgan and Goren were present listening to McGee, were they not? A. Yes.

Q. Did McGee say from what source he was going to get the money that he would give her every week? A. No, sir. There was some talk

about a mine, a mine that was to be listed on a western exchange.

Q. You say that at that time you were opposed to this transaction? A. Yes, sir.

Q. Did you express your opposition to anybody? A. Yes.

Q. To whom? A. To Mr. Allen.

Q. What happened? A. He said he had confidence in McGee, that he knew a man when he saw him.

Q. When Allen told you that, did you recede from your opposition? A. Yes.

Q. You were being dominated by Allen in this matter? A. I would not say that.

Q. Were you influenced in your judgment by Allen's view of the matter? A. I would not say I was influenced by it.

Q. You were opposed to a transaction that you said you thought was foolhardy and improvident; you expressed that opinion to Mr. Allen, and when Mr. Allen did not agree with you, then you receded from your opposition; is that right? A. Yes.

Q. You were more inclined to conciliate Mr. Allen than to look after Mrs. Allen?

Mr. Newton: I object.

The Court: Objection sustained.

By the Court:

Q. You were employed by somebody in this transaction originally? A. Yes.

Q. By whom? A. I was asked by Mr. and Mrs. Allen to go down.

Q. What do you mean by Mrs. Allen? A. She wanted me to go down so that there would be no

question about it. If the court will allow me to explain, I will explain why I went down. Mrs. Allen had an unfortunate experience with a closing that she had in 1923.

Q. Closing of what? A. Closing of title.

Q. To what? A. Real estate on Summit Avenue.

Q. She was selling? A. Yes.

Q. Property that she owned? A. Yes. At that time Mr. Mark Townsend represented the purchasers at the closing. He withheld a sum to cover inheritance taxes. I forget what the amount was, but I think it amounted to about $1,600 or $1,700, which he was going to hold from her and pay to the Comptroller's office. Mr. Darling was having a transaction with her at that time, and then we were asked to look after the matter, and we drew up several memorandums, and eventually we convinced Mr. Townsend and Mr. Hansen who represented a subsequent purchaser, that the tax was not fair one and that the money withheld should be returned to her. Naturally, whenever she had a closing—

Q. What closing did she have that you knew about? A. I know she had a mortgage up at Darling's office, and there was the closing of six or seven mortgages down at the title company.

Q. The closing with the title company was a first mortgage on the same property? A. Yes.

Q. How did you get into this transaction? A. Through my association with Mr. Allen.

Q. Somebody asked you? A. Mr. Allen, I think, was the one that asked me.

Q. Did you go and see Mrs. Allen, or did she come and see you? A. I used to go to their house nearly every other day.

Q. For what? A. I was a great friend of Mr. Allen.

Q. And Mrs. Allen too? A. I would not say I was a close personal friend.

Q. You were on friendly terms with Mrs. Allen? A. Yes.

Q. When you went there, did you talk with her? A. Yes; there was talk about it.

Q. Was the first conversation between Mrs. Allen and you on the subject of this mortgage, started by Mrs. Allen or by you? A. I would say that it was started by her husband.

Q. Did you talk with Mrs. Allen? A. I talked with Mrs. Allen.

Q. Who started the talk? A. I would not be alone. Mr. Allen would be there and he would say he wanted her to do certain things.

Q. Now, you are at Mr. Allen's house; Mrs. Allen is there and Mr. Allen said something to you about this mortgage; is that right? A. I do not think Mrs. Allen raised the question. I think Mr. Allen said he wanted to get the mortgage signed.

Q. I understood you to testify that Mrs. Allen asked you to look after her interest. A. Yes, but she—

Q. How did she ask you? A. I think she said to me: "I want you to go down". In fact, I think she asked me to take her down because it was so hard for her to get around. She was a sickly type of woman.

Q. What discussion did you have with her at her home before you went to Mr. Colgan's office, on the subject of the mortgage? A. I don't remember that I had any particular discussion with her—just a general reference to going down.

Q. She asked you to go down to Mr. Colgan's office, or take her down? A. Yes.

Q. You must have said something to her, that caused her to ask you to go down, or take her down? A. No, sir; I think the conversation was all between Mr. Allen and Mrs. Allen and me in a general way. It was said: "We are going to Colgan's office. Call for her. I want you to take her down".

By Mr. Doherty:

Q. Your first activity in this matter was in respect of the $2,000 check, was it not? A. Yes, sir.

Q. You had several conversations with Mr. Colgan and Mr. Goren about that? A. Yes, sir.

Q. And you had those conversations before any mention was made at all of a mortgage? A. Yes, sir.

Q. Well, before the mention of the mortgage, you were not representing Mrs. Allen? A. No, sir.

Q. You were representing McGee? A. I was not representing McGee.

Q. Whom were you representing? A. Mr. Allen.

Q. What connection did Mr. Allen have with the matters that would require the services of a lawyer? A. I came back from Trenton one day and I went into McGee's office. When we were in there, Mr. Allen said to me that they were having trouble with Colgan and Goren and Colgan, I think, had threatened receivership, and he wanted to know if I would call up Colgan and see if I could not get him to hold off for a couple of days. There is nothing unusual in that.

Q. Then you were representing Mr. Allen only? A. Yes.

Q. Exactly at what point did you extend your representation to Mrs. Allen? A. At the time she was to go down and sign the mortgage.

Q. You had no previous discussion at all with her about this matter, had you? A. I think there was a general discussion. I do not remember any specific talk. Mr. Allen talked to his wife. For instance, I remember that she said that she had confidence in her husband, and so forth.

Q. You want his Honor to understand that on the day the mortgage was made, she asked you to go down there and represent her in connection with the execution of a mortgage? A. No, sir.

Q. Did she know anything about a mortgage when you started down to Colgan's office? A. Yes.

Q. Why do you say that? A. Because she asked me, or somebody had asked him, either Mr. Allen or Mrs. Allen with him—together they said something about going down and driving her down to Exchange Place and looking after things.

BY THE COURT:

Q. The mortgage had been discussed between Mr. and Mrs. Allen in your presence, before you were asked to go down? A. Yes, in a general way.

BY MR. DOHERTY:

Q. What was said in a general way? A. I don't remember.

Q. Or what was conveyed to Mrs. Allen by you, or by her husband? A. I don't remember. Mr. Allen said something. I do not remember just what it was.

Q. Was anything explained to her about McGee's $2,000 check before you went down? A. No, sir.

Q. Was anything said to her about the $700 that was going to Colgan? A. No, sir.

Q. Was anything said to her about the $4,300 that McGee was going to get? A. No, sir.

Q. Was anything said to her about the gold mine that was going to be listed? A. That was not a gold mine. I think it was a copper mine.

Q. Was anything said about it? A. I don't know, unless her husband told her. I didn't tell her anything about a mine.

Q. Was anything said to her about the financial condition of McGee's concern and that he was getting the money to tide him over? Was that disclosed to her? A. I did not disclose it to her.

Q. Did you hear anything disclosed about it to her? A. No, sir.

By the Court:

Q. Did you hear Mr. Allen say anything about any interest he was going to have in McGee's business? A. Near as I can recall, I think Mr. Allen referred to the fact that this mine was to be listed or something to that effect.

Q. What good was that going to do him? A. He was interested. He was up there with McGee. I don't know what his particular interest was.

Q. Did he tell Mrs. Allen that he was to get some interest out of her execution of the mortgage? A. I think he did.

Q. That it was going to benefit him? A. I think he did.

Q. What makes you say that? A. Because she kept constantly referring to the fact that she was

to get money weekly out of it. The impression on Mrs. Allen was this, that she would have some definite source of weekly income.

Q. This was before the bond and mortgage were executed? A. Yes, sir.

Q. At her own home, did she say this? A. I think it was at her own home. There was some talk about it, and after it was executed she raised some question why she was not getting money each week.

By Mr. Doherty:

Q. Do you know where she derived the idea that she was going to get the money each week by signing this mortgage? A. I don't know.

Q. Was any explanation given to her by anybody as to what benefit would accrue either to her or her husband, through the signing of the mortgage? A. I don't remember. In fact, her husband and she had talked it over, and I remember there was some general conversation, what she had in mind, getting a definite amount each week.

Q. At the time she signed the mortgage, did she know how the money was going to be split? A. I would say no.

Q. It was after she signed that Goren put in $2,000 and Colgan put in the other $5,000—it was after she had signed it? A. No.

By the Court:

Q. Before you arrived at the amount of $7,000 for the mortgage, there must have been some figuring? A. They had been down there.

Q. Before the bond and mortgage were executed, before the $7,000 was fixed? A. They had been down there and McGee had—

Q. Judge Doherty asked you whether anybody knew how the money was to be split? A. I knew this, I knew there was a check to be paid and I knew that Colgan was to be paid.

By Mr. Doherty:

Q. How did you know that? A. Because Colgan gave us the amount of $700 to cover his expenses.

Q. Did it include the services that he was rendering Goren in collecting the bad check? A. Yes.

Q. That was put on the mortgage, too? A. Yes.

Q. Was that disclosed to Mrs. Allen before she signed the mortgage? A. I don't think so.

Q. She did not know what she was giving this mortgage for, did she? A. She didn't know what?

Q. She didn't know what she was giving the mortgage for, did she? A. I would say that she knew.

Q. She knew that she was raising $4,300 for McGee? A. I would say that she was raising the money and it was to be used in connection with the business.

Q. Did she realize that out of the $7,000 McGee was to get $4,300; was she informed of that? A. Yes, she endorsed the check to that effect.

Q. Was she informed that out of that mortgage money, Goren was to get $2,000 on the bad check; was she told that? A. Yes.

Q. She was told that Goren's lawyer was to get $700 for his trouble? A. That I don't remember.

Q. Where was she told these things? A. There was talk about it in Colgan's office and when we came up to my office discussion came up as to how this money should be disbursed.

Q. If she was told, she was informed in the manner of hearing other people talk about it? A. Yes.

Q. When she got an earfull she knew and if she did not, she was in darkness, is that true? A. Yes.

BY THE COURT:

Q. Do you know whether, when you were at Mr. Colgan's office, in any conversation that you had with her or that Mr. Allen had with her in your presence, that she was told what was going to be done with the moneys to be raised on the mortgage? A. No; I never told her.

Q. Did Mr. Allen tell her in your presence? A. Yes.

Q. Did he tell her what the purpose was? A. The purpose was this business he was to become interested in.

Q. Did he tell her that the money which was to be raised on this mortgage was to go in that business? A. That it was to go to McGee, yes.

Q. That was before she went to Colgan's office? A. Yes.

Q. What was her condition of health the day she went to Colgan's office? A. I would say fair. Mrs. Allen has never been what I would call a healthy woman.

Q. Was she in as good physical condition on that day as you had seen her on the various occasions at her own home? A. I would say yes. I have seen her in much worse conditions.

Q. Had you seen her on any other occasion when she executed legal documents? A. Yes.

Q. What was her condition on the day she executed this bond and mortgage as compared with

her condition on the days when she executed other legal documents? A. I would say about the same.

Q. How long have you known Mrs. Allen? A. I have known Mrs. Allen since 1923 or 1924.

Q. From your acquaintance with Mrs. Allen, from your observation of her, from your conversations that you had with her on those occasions when you were at her house, when you met her on other occasions, what would you say as to her ability to understand what a mortgage was? A. I think that Mrs. Allen understood.

Q. On the day this mortgage was executed, do you think from what you saw and from what you knew of her, from your acquaintance with her, that she understood what a bond and mortgage were? A. Yes.

Q. That she understood the effect and consequences of executing a bond and mortgage? A. Yes. She would not be able to technically define it like some people, but she knew she was putting a mortgage on her home.

By Mr. Doherty:

Q. Did she understand the improvidence of the transaction? A. That I don't know.

Q. It was an improvident transaction, in your opinion? A. Yes, as it developed, my opinion was right in the first instance.

Q. Do you recall at Colgan's office at the time of the execution, that there was a discussion as to what would transpire when Colgan or when Goren took her house under foreclosure, do you remember that being discussed in her hearing? A. I think there was some question raised by Colgan as to guaranteeing the mortgage.

Q. That was discussed in the hearing of this woman? A. Yes.

Q. That in the event of foreclosure and the taking over of her house, certain things were to be done? A. Colgan wanted the mortgage guaranteed and I said—

Q. You did sign a paper in which you agreed that when Goren took this house under foreclosure, you would buy it from Goren for $18,000? A. Yes.

Q. And that was in the hearing of Mrs. Allen? A. Yes; I think—

Q. (Interrupting) And there was no reaction on her part to that conversation? A. No, sir.

Q. You yourself signed that agreement in contemplation of her house being lost? A. I never did any such thing.

Q. When did you sign it? A. At the time the question was brought up as to whether or not the property was worth that money, I told Colgan it was worth the money; it was worth $16,000.

Q. (Showing witness) At what stage was this agreement signed? A. I think that agreement was drawn and signed after the bond and mortgage were signed; I am not sure about that.

Q. After? A. Yes, shortly after.

Q. What good was it after? A. I don't know what good it was after. I think it was executed just a little after.

Q. You identify this paper? A. Yes.

Mr. Doherty: I offer this paper in evidence.
(Marked Exhibit D1, Jan. 6, 1931.)

Q. Look at that agreement and tell us whether it was signed after, or whether the recitals do not show it was signed before? A. I know the recitals

show it was signed before, but my opinion is it was signed a little after. I think the bond and mortgage were drawn and this paper was drawn after.

Q. You agreed that if the parties of the second part took over the property you would purchase the same for $16,000 within sixty days of the taking over of the said premises by the party of the second part. A. Yes.

Q. That was discussed in the hearing of Mrs. Allen? A. Yes, sir.

Q. She said nothing? A. No, I do not recall that she said anything.

Q. Would you say now in further explanation of her condition, that she understood that you and Colgan and Goren were making an arrangement as to her property after she lost it through signing the mortgage? A. This agreement—

Q. Is it your opinion that she realize what you were talking about? A. Yes.

Q. That you were making an arrangement for her to lose her property through signing the mortgage and then you would put it back? A. No, sir, that was not the arrangement at all. You are very unfair to me in that question.

Q. I apologize. A. That is dastardly. Mr. Allen and I were friendly. I had the greatest confidence in the world in him and I think he had the greatest confidence in the world in me. Anything he could have done for me, he would have done. Anything I could do for him, I would have done for him. That is how the thing came up. It was not a question of trying to hook anybody's property. He was there. She was there. He is an intelligent man.

Q. I am asking you, do you think she knew anything about the agreement? A. I think she did, yes. As a matter of fact, at the time this agreement was signed, I had in my mind that if I had to, I would try to protect her. I know if I were in a position where I was losing anything, Mr. Allen would have helped me.

BY THE COURT:

Q. The purpose of this agreement on your part, was to induce Mr. Colgan's client to feel satisfied that he was lending $7,000 on ample security? A. Yes, that came up. It came up in this way: I told Colgan that the property was worth more than $16,000. I think Colgan wanted to back down, if I recall, at the last minute.

Q. On the ground of insufficiency of security? A. Yes. He hemmed and hawed about it, that Goren was not willing to go through. My recollection is that Colgan hemmed and hawed about it. He said something to me about guaranteeing and one thing or another.

BY MR. DOHERTY:

Q. You had no disposition to make any inducement to Goren to lend the money, except so far as the money was going to go to McGee; you were not interested in paying the bad check, were you, or paying Colgan's fee? A. What do you mean by Colgan's fee?

Q. I say, did you have any interest in the advancement of the money by Goren beyond the advance of it to McGee? A. No, I had no interest.

By the Court:

Q. You had an interest in helping your friend Allen, didn't you? A. I did to that extent. I would have done anything for Mr. Allen.

By Mr. Doherty:

Q. You had no basis for the supposition that Allen was being helped in this thing? A. Yes, I had the idea Mr. Allen had something to gain by it.

Q. What was that idea? A. If the mine had gone through, I figured he would have had something there.

Q. Was it within the purview of the general statement that McGee had made? A. I did not know what his relationship was to McGee.

Q. You knew something about it? A. I did not know the details of it.

By the Court:

Q. Who first approached you on the subject of raising money to help McGee? A. It came up as a series of transactions. One afternoon on returning from Trenton I went to McGee's office. There had been a series of transactions. I had been down to Trenton one day and on returning to McGee's office I saw Mr. Allen. Mr. Allen was very often at McGee's office. I went in to see Mr. Allen. When I got in there Mr. Allen said that Colgan was threatening a receivership—

Q. You have testified to that. A. Yes.

Q. Who first talked about raising money to help McGee? A. There was this check matter with Colgan, and then we went down to see Colgan and

when we got down there Allen said that if it was possible, he would help McGee, and I think he said: "We will give a mortgage to the amount of the check." I think that was the—

Q. A mortgage on what? A. A mortgage on his house.

Q. Allen's house? A. Yes. Then some other talk came up about it and McGee said that he really needed more money.

Q. What did Allen say to that? A. My recollection is that Allen asked Colgan what they would—I think they had an amount in mind—they had some discussion about it, and they asked what they would put up, and I think Colgan said he would put up $3,500 and Goren would put up $3,500.

Q. Then Allen knew that $7,000 was the amount needed? A. Yes.

Q. What did he say about raising that amount of money? A. He said he would get a mortgage on Mrs. Allen's house.

Q. It was after that that you heard Allen and Mrs. Allen discuss it? A. It was after that. I think there was some talk about it.

By Mr. Doherty:

Q. Can you tell us what the discussion was between Allen and his wife? A. I do not recall it. This is quite a while ago, but I know there was a talk about it. Mrs. Allen, of course, didn't give approval entirely. She said to me that she had confidence in her husband.

Q. Up to the point where Allen made the suggestion that he would give a mortgage, you did not in any sense represent Mrs. Allen? A. No, no. There is no question about it.

Q. Whom did you represent then? A. I really was not representing anybody in particular. We went down there at that time as a result of Mr. Allen's desire to help McGee.

Q. Throughout the transaction at any time, were you representing anybody in particular? A. I would say the day I went down, I represented Mr. Allen and Mrs. Allen.

Q. Looking after her interest? A. The only thing was to see that the mortgage was properly executed and the money disbursed.

By the Court:

Q. And that the mortgage was properly drawn? A. Yes, the form of it.

By Mr. Doherty:

Q. What interest did she have, as you understood it, that required you to be there? A. People sign bonds and mortgages oftentimes with somebody there. As to the amount and so forth, the title, and the form.

Q. Can you tell us just what her interests were that needed to be safeguarded? A. I would say to see that the mortgage was the amount agreed upon and the term of the mortgage.

Q. Had the term of the mortgage been agreed on before you went down? A. I think the term of the mortgage was agreed upon.

Q. And the rate of interest, had that been agreed upon? A. As far as the term of the mortgage was concerned, they wanted to make the term three months at the start.

Q. But before you went down to Mr. Colgan's office, was the term of the mortgage agreed on? A. Yes.

Q. Did anybody tell Mrs. Allen what the term of the mortgage was before she went down to Colgan's office? A. I did not.

Q. Did you hear anybody tell it to her before she went down to Colgan's office? A. No, except when it was told to her down there.

Q. Did anybody tell her what the rate of interest was? A. I think both Mr. Colgan and—

Q. Before you went to Mr. Colgan's office? A. No, sir.

Q. Before you went to his office, had anybody told her how often interest was to be paid? A. No.

(By consent witness is withdrawn for the purpose of calling other witnesses.)

PHILIP F. BOTSONG, sworn as a witness on the part of the complainant, testifies as follows:

DIRECT EXAMINATION BY MR. NEWTON:

Q. What is your profession? A. Lawyer.

Q. How long have you been admitted to the Bar? A. Since 1893.

Q. Are you connected with any institution in Jersey City? A. New Jersey Title Guarantee & Trust Company.

Q. How long have you been connected with that institution? A. Eleven years.

Q. In what department? A. Title Department.

Q. I direct your attention to the 23rd day of October, 1928. Did you meet Mrs. Ellen E. Allen on that day? A. Yes.

Q. Where? A. At my office at the title company.

Q. Do you recall who else were present? A. I think Dave was there and Benny Dowden.

Q. Under what circumstances? A. The Central Building and Loan Association was threatening foreclosure of a mortgage on her property and she had applied to the title company for a loan, which was granted.

Q. Do you recall where her property was located? A. I do not, no. I can tell you from the report. Southwest side of Belmont Avenue.

Q. In Jersey City? A. Yes, sir.

Q. Will you tell what transpired on that day? A. Yes. I filled out and took her affidavit, what we call the owner's affidavit, and arranged for paying off the mortgage, some taxes and water rent, and then after paying our bill, gave her the balance of the money.

Q. At that time, did Mrs. Allen execute a bond and mortgage to the title company? A. She did.

Q. Who took the acknowledgment? A. I did.

Q. Did you explain the contents of the mortgage to her? A. I certainly did.

Q. In your opinion, did she have the ability to understand what you said to her?

Mr. Doherty: I object to that.

The Court: Objection overruled.

A. In my opinion, yes.

By the Court:

Q. You also took her affidavit? A. I did.

Q. Did you read the affidavit to her? A. Yes.

P. F. Botsong. Called by Complainants. Direct.

By Mr. Newton:

Q. In your opinion, did she have the ability to understand that affidavit? A. Certainly.

Q. And did she sign and swear to the affidavit? A. Yes, sir.

Q. Before you? A. Before me.

Q. Did she at that time, also execute the accompanying bond? A. She did.

Q. What was the amount of that mortgage? A. $8,000.

Q. How was the consideration paid? A. We paid off a building and loan mortgage of $5725.65.

By the Court:

Q. By check directly to the building and loan association? A. Yes; direct to the building and loan association.

By Mr. Newton:

Q. Have you that check with you? A. Yes.

Q. What else? A. We paid taxes for 1926, 1927 and 1928, check to the city collector, $1,224.58; check to the order of the water cashier of Jersey City, $21.54; and paid the company's bill, $165, and Ellen E. Allen, balance of loan, $863.23.

Q. Have you the checks representing these disbursements? A. Yes.

Q. Will you produce them? A. Here is check to the Central Building and Loan Association, dated October 23, 1928.

Q. Whose check is it? A. Treasurer's check, New Jersey Title Guarantee & Trust Company. It is the regular company check.

Q. State its amount? A. $5,725.65.

Q. Please state the endorsement on it? A. For deposit only Central Building and Loan Association by Carter, treasurer.

Q. Next. A. James Radigan, City Clerk.

Q. Date? A. Same date, October 23, 1928.

Q. Check of the New Jersey Title Guarantee & Trust Company? A. Yes, in the amount of $1,224.58.

Q. Endorsed by whom? A. Quinn.

Q. State the next check. A. May I put in here that each one of these checks has the mortgage number G30918.

Q. What does that mean? A. That identifies it with this particular application.

Q. It identifies it with the application for the loan? A. Yes.

Q. On the premises owned by Mrs. Allen? A. Right.

Q. The next check? A. Water Cashier of Jersey City, $21.54; endorsed Frank A. Kelly, Water Cashier.

Q. And the next check? A. The next check is our own, $165.

Q. What does that represent? A. That represents the bill for guaranty of the title and drawing the papers and recording fees.

Q. And the next check in connection with the transaction? A. Ellen E. Allen, $863.23; endorsed Ellen E. Allen.

Q. Is there anything to indicate where it was deposited? A. Yes.

Q. Where? A. Bergen Branch.

Q. Of your company? A. Yes.

Q. That is, the New Jersey Title Guarantee & Trust Company? A. Yes.

Q. Does that represent all the disbursements on that mortgage account? A. That represents the full amount of $8,000.

Q. Have you got the application of Ellen E. Allen, for the loan? A. Yes, sir.

Q. By whom is it signed? A. Ellen E. Allen.

Q. And is dated when? A. July 16, 1928.

BY THE COURT:

Q. Signed in your presence? A. No; that was not signed in my presence. It was signed in Miss Norton's presence.

BY MR. NEWTON:

Q. Had you ever seen Mrs. Allen before that time? A. Yes.

Q. When? A. I cannot recall just when.

Q. Were you acquainted with her before that time? A. I could not say I was acquainted with her. I had known who she was. I knew Mr. Allen.

Q. And at the time she executed this bond and mortgage, and you took the acknowledgment of the mortgage, was there anything in her appearance to lead you to believe that she was not rational and normal and understood perfectly what she was doing? A. No.

CROSS EXAMINATION BY MR. DOHERTY:

Q. She got full value and consideration for that mortgage, didn't she? A. Yes.

Q. She was accompanied by her husband and Mr. Dowden? A. Yes.

Q. And your communications with respect to the transaction, were with her? A. With her directly; yes.

Q. Did you have any conversation with her at all? A. Except the conversation explaining to her the contents of the affidavit and bond and mortgage.

Q. That did not evoke any replies from her, did it? She just assented to your explanation; isn't that it? A. If you are asking me whether I had any conversation other than that, I cannot recall. There are so many people coming in, day after day—

Q. Do you know whether she audibly acknowledged the mortgage? A. She must have done so audibly. I do not take nods of the head.

Q. You accept an open expression? A. Yes.

Q. Your purpose would have been satisfied by her saying "Yes"? A. Yes.

BY THE COURT:

Q. Have you any recollection of this particular transaction? A. No; nothing more than the ordinary course of every day work.

BY MR. DOHERTY:

Q. When you say, that she appeared to have a realization of the nature of the transaction, that was because there was nothing happened to arouse your suspicions; isn't that it? A. No. While we were waiting for the checks to come up, we must have had some conversation.

Q. Do you remember? A. No; I cannot remember anything about this transaction.

BY THE COURT:

Q. How long would the transaction naturally take, from the time she came in till she went out? A. About an hour.

P. J. Botsong. Called by Complainants. Cross.

By Mr. Newton:

Q. You said you had seen her before. Do you recall under what circumstances? A. Why, I am not sure about that, but my impression is that Dave and his brother were down there on some other matter, some other mortgage, but I cannot say what it was.

Q. Mrs. Allen,—did you see her before? A. Yes; I had seen her before. I knew who she was.

By Mr. Doherty:

Q. Is the application in her handwriting? A. Yes.

Q. Written out in her handwriting, or merely signed by her? A. It is written out. It corresponds with the application on the back.

Q. The application is typewritten? A. That is typewritten and read to her and she signed it.

Q. Did you do the reading? A. No; Miss Norton did that.

Q. You don't know who conducted the matter of signing that, do you? A. No.

By the Court:

Q. The application clerk is Miss Norton? A. Yes; she would get the information from Mrs. Allen who was there at the time.

By Mr. Doherty:

Q. Why do you say she would get the information from Mrs. Allen, if Mr. Allen and Mr. Dowden were there? A. It is hearsay. Miss Norton told me this morning that Mrs. Allen was there with a little girl.

WARD EBERSOLE, sworn as a witness on the part of the complainants, testifies as follows:

DIRECT EXAMINATION BY MR. NEWTON:

Q. By whom are you employed? A. New Jersey Title Guarantee & Trust Company, Bergen Branch.

Q. Where is that located? A. 768 Bergen Avenue, Jersey City.

Q. Has Ellen E. Allen an account with that branch? A. Yes.

Q. In her own name? A. Yes.

Q. Have you got the signature card for that account? A. Yes.

Q. Please produce it? A. (Witness produces card.)

Q. You produce four signature cards. What is the earliest in date? A. March 26, 1915.

Q. Being the signature card of Ellen E. Allen, giving her residence as 288 Summit Avenue and her father's name as Patrick Fallon and her mother's maiden name Mary Ann Conner; and the second card is dated when? A. October 15, 1920.

Q. Name Ellen E. Allen, address 288 Summit Avenue, scratched out and 7 Belmont Avenue interlined; is that right? A. That is right.

Q. The next card? A. July 21, 1924.

Q. Signature Ellen E. Allen, residence 7 Belmont Avenue; next card is dated when? A. April 4, 1928.

Q. Ellen E. Allen, 7 Belmont Avenue, Jersey City? A. Yes.

Q. Have you the cards showing drafts and deposits in that account? A. Yes, sir.

Q. Are drafts on that account subject to withdrawal by anybody other than Ellen E. Allen? A. She is the only one who can draw money out.

Q. Your deposit cards, cover what period of time? A. They cover from July 28, 1920 to January 3, 1931. That was the last entry. Previous to the cards, we had a ledger that I was not able to bring down.

Q. May I look at the cards? Will you turn to the card showing deposits or drafts on or about October 23, 1928 and see if you observe a deposit at that time in the neighborhood of $860? A. October 23, 1928, there was a credit made at our bank on her account for $863.28.

Q. So that she has been making drafts on that account between the period you stated, that is, from 1920 down to—when was the last draft made? A. The last draft was made January 3, 1931, this year.

Q. In the amount of how much? A. $25.

Q. What was the draft preceding that? A. December 24, 1930, for $20.

Q. When before that? A. December 16, 1930, $30.

Q. Turn to around March 22, 1929 and give us any draft made around that day, or from the first of March. A. There were no drafts made in the month of March at all.

Q. In February? A. February 9th, $10; February 15th, $15; February 19th, $10.

Q. Were there any in April? A. No; no drafts.

Q. Were there any drafts in January of that year? A. Yes; January 2, 1929, $100; January 5, $40; January 9, $50; January 14, $85; January 22, $60.

Q. Did she have a checking account besides that? A. No; I could not find any record.

Q. These drafts, of course, would have to be signed by her? A. Yes, to draw the money.

Q. And have the book produced? A. That is right.

Q. Do you know Mrs. Allen? A. I have a faint recollection of seeing Mrs. Allen in the bank. I have never waited on her.

CROSS EXAMINATION BY MR. DOHERTY:

Q. Did you ever attend to her when she came to the Bank? A. No; I did not.

Q. The making out of a draft is a very simple proposition? A. No, sir.

BY THE COURT:

Q. How simple is it? A. Why, the form is brought out, the printed form, and the number of the book is placed—

Q. The depositor has to go to somebody and explain what is wanted? A. The depositor presents the book to the teller, stating that she wants to withdraw money or put money in.

Q. If she wants to withdraw money? A. If she wants to withdraw money, the draft is made out.

Q. For her? A. For her.

Q. Or she can make it out herself, I suppose? A. She can make it out herself and she signs the draft.

Q. After the draft is signed, it is returned to the window? A. It is returned to the window and deducted from the book and she gets cash.

Q. The entry is made in the book and given back to the depositor? A. Yes.

Q. The book has to be produced in order to get any money on withdrawal. Of course, anybody can make a deposit, produce the book and have the entry made in the book? A. Yes.

BY MR. DOHERTY:

Q. Three steps are necessary—produce the book, state the amount of money that you will withdraw, and sign the slip? A. Yes.

Q. Is the signature verified before the draft is honored? A. Yes.

Q. Are there any questions asked based on the signature card? A. If the signature on the draft does not agree with that on the signature card, there may be a question asked for the purpose of verification, something like that.

Q. What are those questions usually?

The Court: What difference does it make? If the paying teller knew Mrs. Allen, he would not ask any questions. Mrs. Allen has been dealing with the bank since 1913. The teller probably knew her and did not question her.

BENJAMIN DOWDEN, heretofore sworn as a witness on the part of the complainants, resumes the stand:

BY MR. NEWTON:

Q. Before Mrs. Allen executed this mortgage, was an inspection of the premises proposed to be mortgaged made? A. Yes.

Q. By whom? A. I am not sure. I think Colgan and Goren.

Q. Were you present at that time? A. I don't remember. I would not be a bit surprised if I was. I don't remember.

Q. Won't you try and refresh your recollection and tell us whether or not you were there? Do you remember as to whether or not you were present? A. I don't remember. It runs through my mind that I was present.

Q. Do you recall any of the circumstances of the inspection? A. No.

Q. Do you know whether David Allen was present? A. I don't remember. I have a vague recollection. I think I was there at one time when Colgan and Goren were there.

Q. And Mrs. Allen, have you any recollection of her being there? A. I don't know. I don't remember. It may be that Colgan and Goren and we drove up from their office that day. I am not sure about it.

Q. You stated on direct examination that you represented Mr. and Mrs. Allen in various transactions. Do you recall since what time? A. I would say about 1923.

Q. Do you recall that you represented her in October, 1925, when Mrs. Allen sold the premises 288 Summit Avenue to Adolph Koment? A. I did not represent her in that transaction. Mark Townsend closed that title and withheld the money.

Q. The amount stated in your affivadit is $1,552.50? A. That is the amount.

Q. You were instrumental in securing the return of that amount to Mrs. Allen; is that right?

BY THE COURT:

Q. Did you have occasion to consult her in respect to that transaction? A. If I recall, I had some talk with her, but most of the talks I had in connection with that, was with Mr. Allen. That is how I met Mr. Allen—through that transaction.

Benjamin Dowden. Called by Complainants. Direct.

By Mr. Newton:

Q. Is it your recollection that you secured the return of that money around January 31, 1924? A. Yes.

Q. Did you also represent Mrs. Allen in a suit in the Hudson County Circuit Court, wherein Charles J. Hansen was plaintiff and Elizabeth E. Allen was defendant? A. Yes; that was in connection with the same settlement. We got that straightened out some way.

Q. Do you recall that during the month of November, 1927, you represented Mrs. Allen in a suit brought by Saks & Company of New York City against David J. Allen and Elizabeth E. Allen, who is designated by the name of Margaret, her first name being stated to be fictitious. Do you have any talks with her during your representation of her in that matter? A. In that matter, no, sir.

Q. To whom did you talk? A. I think Mr. Allen gave me the summons and said to take care of it.

Q. You also represented her on or about October, 1923, when she executed a mortgage to Benjamin J. Darling? A. No; I did not represent her in that transaction. Mr. Darling took care of it directly.

By the Court:

Q. Did the suit of Saks & Company go to trial? A. No.

By Mr. Newton:

Q. Did you represent her on or about March 3, 1924, when she executed a mortgage to the Central

Building & Loan Association in Jersey City? A. No, sir; Mr. Darling was at the closing.

Q. Did you represent her in the month of October, 1928, when she executed a mortgage for $8,000 to the New Jersey Title Guarantee & Trust Company of Jersey City? A. Yes; I was down there.

Q. What is your recollection as to how the visit of inspection came to be made at the house? A. I think we went together down to Colgan's office. This was some days prior to the execution of the mortgage. I think some question was raised as to going up and looking at the property. I know they went up. Whether I was with them or not, I cannot recall. I think I was.

Q. I show you Exhibit C-1 and Exhibit C-2, being the bond and mortgage in suit, and ask you if you recall who drew them? A. We drew them up in our office.

Q. When was the matter of giving a mortgage on the Allen house, first broached? A. I would say about four or five days before the transaction was actually closed.

Q. And you talked with Mrs. Allen at that time and before the execution of the mortgage? A. In a general way. I don't remember.

Q. Where did you talk with her? A. Well, I think I stopped at the house. I did not stop especially to talk about the mortgage. I was a constant visitor, almost daily, at the house.

Q. You knew them socially, as well as professionally, I take it? A. Yes; and politically.

Q. Did you ever represent her in anything else? A. I do not recall any other transactions. I have them all set out in the affidavit.

Q. Where did you get the details from which you drew the bond and mortgage, Exhibit C-1 and

Exhibit C-2? A. That was agreed upon down at Colgan's office. The reason that I drew the bond and mortgage was that this thing was done—Colgan didn't have any description of it. We had the description in connection with the Central closing and that is how we came to draw that bond and mortgage.

Q. Didn't you have the deed in front of you? A. I do not think we had the deed. We had the description.

Q. You had the description from an antecedent transaction? A. That is the thing Colgan didn't have—the description.

Q. I observe that Exhibit C-1 bears the recital: "Being the same premises conveyed to said Ellen E. Allen by Mary C. Somers, widow of Charles Somers, by deed dated October 6, 1923, recorded in the Hudson County Register's office October 9, 1923, in book 1497 of deeds, page 353". Does that refresh your recollection as to whether or not you had the deed? A. No; I do not think I had the deed. I think this is the way it was—

By the Court:

Q. You think you had information in some papers in your office? A. I do. That is the reason I drew that bond and mortgage. We had made the original search and a continuation.

By Mr. Newton:

Q. You were present at the last hearing? A. Yes.

Q. Did you hear David Allen testify that you did not represent Mrs. Allen? A. I think I remember

his testimony. I did not take it substantially that way. He may have testified that way.

Q. As a matter of fact, did Mr. Allen ever ask you to represent Mrs. Allen in this transaction? A. Yes, sir.

Q. On how many occasions? A. I don't know how many occasions. It was just as a matter of course—"We are going down. We want you to go down with us".

Q. He requested you to go down? A. Yes.

Q. To represent not only himself, but his wife? A. Yes; to represent them in the transaction.

By the Court:

Q. Did your social calls at the Allen home continue after this transaction was closed? A. Yes; it continued right up to the time that the affidavits were filed in this matter.

Q. Did you discuss the matter of this transaction with Mrs. Allen on any occasion, after the bond and mortgage were signed? A. Yes; Mrs. Allen was very much upset when she did not receive any weekly amount of money.

Q. When did that first occur? A. I would say probably a month or so after the mortgage was executed.

Q. In what way did she manifest it? A. Mrs. Allen said she was not receiving any money, any weekly amount.

Q. To whom did she say that? A. To me.

Q. What did she say about it? A. She said: "That fellow has not given me any money".

Q. Was that all she said? Did she speak about the bond and mortgage? A. No; she did not speak specifically about the bond and mortgage. She just

spoke about that, that McGee did not give her any money.

By Mr. Newton:

Q. I show you Exhibit C-4, an assignment by Eugene F. McGee, of a claim against Max Goren? A. Yes.

Q. Do you recall him delivering that document to you? A. Yes.

Q. And did you subsequently execute a release of that claim? A. Yes; there was a release executed.

Q. I show you D-1 for identification and ask you if that is the release? A. That is my signature.

Q. You delivered that release? A. Yes.

Mr. Newton: I offer the release in evidence.
(Marked Exhibit C-1, January 6, 1931.)

Q. I also show you an agreement dated December 14, 1929, between Charles C. Colgan and Max Goren, parties of the first part, and David Allen and Ellen E. Allen, of the second part, and ask you if you were present at the signing and delivery of that instrument? A. Yes, sir.

Mr. Newton: I offer it in evidence.
(Marked Exhibit C-2, Jan. 6, 1931.)

By Mr. Doherty:

Q. When Mrs. Allen spoke to you about not getting any weekly sum that she was to get from that fellow, did you know to what she referred? A. To McGee.

Q. Did you have any knowledge of McGee's promise to her? A. No. She had it in her mind from the talk that she had with her husband, that she would get a definite amount each week.

Q. Was the basis of that idea anything that McGee told her? A. No, sir.

Q. Or anything you heard her husband tell her? A. No, sir.

Q. Do you know where she got the idea from? A. No, sir.

Q. And she complained right after the signing of this paper that she was not getting her money? A. About a month after.

Q. You have identified and there has been marked in evidence, an agreement in which you stipulate that there is no defense to this action? A. Yes, sir.

Q. You acknowledged the service of the subpoena to Mrs. Allen? A. Yes.

Q. Did you acknowledge for Dave, too? A. Yes.

Q. Dave gave you authority? A. Yes, sir; he was there when the man came up with it; he happened to be in my office.

Q. Then you acknowledged for both? A. Yes.

Q. You had no previous talk with Mrs. Allen? A. No; I do not recall any previous talk.

Q. But Dave told you it would be all right for you to sign for both of them? A. Yes, sir.

Q. And you did? A. Yes.

Q. This agreement dated December 14, 1929, that was executed after the institution of the suit? A. Yes; after the institution of the suit.

Q. It was on an occasion when you were down in Colgan's office to see if you could not delay these proceedings; is that it? A. No; it was in connection with the settlement of any claim McGee might

have against Goren arising out of a separate stock transaction.

Q. McGee said he had a claim against Goren? A. Yes; McGee's contention was that he had a claim against Goren.

Q. On account of stock? A. On account of some stock.

Q. That had been hypothecated with Goren for a loan of $2,000; is that right? A. Yes.

Q. And Goren had sold the stock and had acquired a surplus which was not turned over to McGee? A. Yes.

Q. And there was a controversy as to the amount of the excess that Goren had realized on the sale of the stock? A. Yes.

Q. And as to the price at which he sold the stock? A. Yes.

Q. McGee gave you an assignment of his claim against Goren? A. Yes.

Q. And you had negotiations with Goren, that resulted in what? A. They made an allowance on the mortgage. I do not recall the specific amount. I think around $2,000.

Q. Who are "they?" A. I say "they". I mean Goren and Colgan.

BY THE COURT:

Q. They made an allowance of $2,000 on the mortgage? A. No; $1,500 it was and $500 was turned over to me to reimburse me for interest that I had to pay. I had paid interest to the title company and then I had another payment—

Q. $1,500 was to be credited on the principal of this mortgage? A. Yes; and it was credited.

BY MR. DOHERTY:

Q. Was that the day when you gave this agreement? A. No; that took place over a period of time. Goren's contention was that he did not owe anything, and we went out and obtained figures and we used our figures to effect a settlement.

Q. Do I understand that Goren claimed he did not have any surplus on the sale of the stock? A. I think that is what he said.

Q. Then you made an investigation of market prices and you found that he should have had a surplus? A. According to certain prices. He said he got one price and we were taking other quotation as the basis. I think the original amount he offered us was $1,500 and we talked it up to $2,000.

Q. Did he make that offer to you or to McGee? A. That was made to me. McGee, by that time, had lost interest in everything. I had a hard time to get the assignment from McGee.

Q. Was Goren present when this agreement of yours was signed?

The Court: What agreement?

Mr. Doherty: The agreement of December 14, 1929.

A. I think he was present; yes.

Q. Where? A. At Colgan's office.

Q. Was the matter of allowance that was forthcoming from Goren, discussed there in Colgan's office? A. Yes.

Q. Goren told Colgan what to allow on the mortgage? A. I am not sure about that. I am not sure whether the first time we were there Colgan was not alone.

Q. Was there any such formality as the giving of a check for $1,500 in settlement of the claim? A. No.

Q. Merely a bookkeeping adjustment? A. A bookkeeping adjustment.

Q. You did get some cash? A. Yes, about $500.

Q. You got $500? A. Yes.

Q. And you got credit for $1,500 on the mortgage? A. Yes.

Q. Mrs. Allen knew nothing about that, did she? A. No.

Q. She knew nothing about your signing this stipulation that she had no defense, did she? A. I don't think she did. All I know she was very much worried. At that time Mrs. Allen was in a very serious condition, and this thing began to prey on her mind and she got worried and Mr. Allen was fearful that it might cause her death.

Q. You believed at that time that she did not have any color of defense? A. I could not see any defense.

Q. Can you tell us the number of shares of stock that were the subject of this agreement? A. No.

Q. You cannot tell us— A. Mr. Allen and I had gone over—

Q. You cannot tell us what your investigation disclosed as to how much he got from the sale of the stock, can you? A. No, I never got that.

(At this point recess is taken until 2 o'clock in the afternoon.)

H. B. Lightdale. Called by Complainants. Direct.

HAROLD B. LIGHTDALE, sworn as a witness on the part of the complainants, testifies as follows:

DIRECT EXAMINATION BY MR. NEWTON:

Q. You are an attorney at law of the State of New Jersey? A. I am.

Q. When admitted? A. At the October term, 1928.

Q. March 22, 1929, were you associated with Mr. Charles C. Colgan, in the practice of your profession? A. I was.

Q. I show you Exhibit C-1, being the mortgage in suit, and call your attention to the certificate of acknowledgment on the back, signed Harold B. Lightdale, Attorney at law of New Jersey, and ask you if that is your signature? A. That is.

Q. The certificate of acknowledgment recites that you made known the contents of the mortgage to Ellen E. Allen and David Allen. Did you do that? A. I did.

Q. On that day? A. On that day.

Q. Will you state to the Court what you did when you made known the contents to David J. Allen and Mrs. Ellen E. Allen? A. Why, I explained to Mr. and Mrs. Allen, first, that that was a mortgage, they were signing, in the sum of—I do not recall exactly what the sum was.

BY THE COURT:

Q. You had the paper before you in your hand, at that time? A. I did.

Q. Did you read from the paper, the facts that you gave them in explanation? A. Yes.

Q. What did you tell them? A. I told Mr. and Mrs. Allen that this was a mortgage in the sum

of $7,000, which was due within one year; that the interest was payable quarterly from the date of the signing.

By Mr. Newton:

Q. Did you or did you not state the rate of interest? A. At six per cent. Yes, I did.

Q. What further did you explain to them? A. I stated further that should there be default in the payment of interest, in accordance with the terms of the mortgage, for thirty days, that that would make the principal amount of the mortgage due and foreclosure could be started. I also stated that should taxes remain in arrears for a space of six months, in accordance with the terms of the mortgage, the principal sum would become due, and I further said that the mortgage was given on a piece of property which was owned—the words I used were that it was on her house on Belmont Avenue, as I recall it; the mortgage was given on her house on Belmont Avenue. After I finished stating that, then I asked whether she had signed, sealed and delivered the bond and mortgage—I asked whether the bond and mortgage were her voluntary act and deed and she said yes.

By the Court:

Q. She had already signed? A. She had already signed.

Q. Did you see her sign them? A. Yes, she signed them both in my presence.

By Mr. Newton:

Q. Did you then sign as a witness? A. Yes; I signed and took the acknowledgment.

Q. You made known the contents to Mr. and Mrs. Allen at the same time? A. Yes.

Q. You talked to both of them? A. Yes.

Q. Where were they physically with relation to you? A. Well, they were practically opposite me, or diagonally. I was at the side of Mr. Colgan's desk and he was behind the desk and they were in front of the desk. You might say at a right angle. They were diagonally away from me.

Q. Before Mrs. Allen signed the mortgage, did you hear her address any question to anybody? A. Not in particular, except perhaps—

Mr. Doherty: I object to any speculation.

Q. What do you recall? A. Well, I do recall Mr. Allen and I both together showing her where her signature was to be affixed. That is, I said: "This is the place to sign, on the first line" and Mr. Allen was there and he nodded his head and agreed with that and then he signed the mortgage after her.

By the Court:

Q. How far away from her were you? A. Two or three feet.

Q. Did she look at you when you were making this explanation? A. Yes.

Q. Did she say anything? A. No; nothing except that she said "yes", when I asked her if she had signed, sealed and delivered the instrument as her voluntary act and deed.

By Mr. Newton:

Q. She said: "Yes"? A. Yes. They both said "Yes".

Q. Both Mr. and Mrs. Allen said "Yes"? A. Yes.

Q. Did she appear to understand what you were saying? A. Oh, yes.

Q. I show you a paper heretofore marked C-6 for identification, purporting to be an affidavit of title signed "Ellen E. Allen", and purporting to be verified before you. Was that paper signed by Mrs. Allen and sworn to before you? A. Yes; it was.

Q. Did you make known the contents to her? A. I did.

Q. Will you state what you did in making known the contents to her? A. After the bond and mortgage were signed by both Mr. and Mrs. Allen and the acknowledgments were taken on the bond and mortgage, then Mrs. Allen signed this affidavit of title. If my recollection is correct, I do not believe that I read this verbatim, but I explained it to her in every day language, that it was an affidavit, that she was a citizen and twenty-one years old and I explained the contents of it. I did not read it word for word to her. In other words, I did not say: "Ellen E. Allen, being duly sworn" and so forth. When I finished, I said to her: "This is an affidavit of title and states the following facts," and then I repeated the facts contained in the affidavit. When I finished, I asked her to raise her right hand and swear that the contents were true, and she did.

Q. And you thereupon took the affidavit? A. Yes.

By the Court:

Q. Did she raise her right hand? A. She did; yes.

Q. What did she say when you said: "Do you swear the contents are true?" A. She said: "Yes" on both occasions. I can recall it very clearly.

Q. Was there any hesitancy on her part in raising her right hand? A. None whatsoever.

Q. Or in replying to your request? A. None whatsoever.

Q. Did anybody have to make the suggestion besides you, that she raise her hand and swear? A. No.

By Mr. Newton:

Q. You explained the affidavit to her alone? A. Alone.

Q. Where was Mr. Allen? A. He was right there. He was within—perhaps a little closer than I was. He might have been a foot or two from her when I was a yard away from her.

Q. Did she sign with any hesitancy? A. No hesitancy whatever.

By the Court:

Q. Did anybody give her a pen to sign the bond and mortgage, or did she pick the pen up herself, do you remember? A. I do not recollect, but I do recollect that she used the pen from Mr. Colgan's desk. Whether I picked it up or whether Mr. Allen picked it up for her, I could not swear.

Cross Examination by Mr. Doherty:

Q. The bond and mortgage and affidavit were all ready before you became active; they were all drawn up and laid on the desk before you got at them? A. Yes.

Q. Can you remember whether she signed the bond before you took any acknowledgment, or did she sign the bond and mortgage and make the acknowledgment and then sign the affidavit? A. It is my best recollection that she signed the affidavit after I took the acknowledgment to the mortgage.

Q. Are you certain of that? A. Well, I will say to the best of my recollection—I have taken a number of them, but to the best of my recollection in this case, she signed the affidavit of title subsequent to signing the bond and mortgage and after I had taken her acknowledgment to the mortgage.

Q. Can you recall any circumstance in the matter that creates that impression on your mind? A. Yes. As I recall it, after the bond and mortgage had been executed and I was still there—I don't know whether it was Mr. Colgan or myself, noticed that an affidavit of title was present in the case and that that would have to be signed and sworn to in the execution of the papers. That is one thing that brings it to my recollection that it was done in that manner. It is some time ago and I would not want to go on record one way or the other.

Q. Explaining the contents of the mortgage, did you explain separately to each one or both together? A. Both together.

Q. In asking for their declaration of acknowledgment, did you ask them separately or both together? A. Both together.

Q. You say you remember her distinctly saying "yes"? A. Both of them said "yes" together.

Q. It was not necessary to the fulfillment of your duties that they should say "yes"? A. No, but they perfectly understood the question I put to them apparently.

Q. How do you know? A. Well, they were all attention to what I said. I was the only one in the room speaking at the time.

Q. Was there anything in her manner different from his? A. Not that I noticed, except that she sat there quietly, not saying anything, and he sat alongside of her as a husband would in taking his wife to sign a paper. I saw nothing irregular whatsoever.

Q. And you heard her say "yes"? A. I am positive of that.

Q. Did you hear her say anything else? A. Well, except that when Mr. Colgan called me in and introduced me and said: "This is Mr. Lightdale, an attorney at law and he will take your acknowledgment" and "This is Mr. and Mrs. Allen", they both said "How do you do."

Q. You were not present during the preliminaries? A. No; not whatsoever; I was called in when the bond and mortgage was on the table and I believe the affidavit of title was in the file or on the table—I do not recall that—but I do recall the bond and mortgage. I do recall this, as Mr. Dowden mentions the fact, that Mr. Colgan first started to take the acknowledgment, after he had introduced me, and I interrupted and went on to explain the contents and took the acknowledgments in the form as I have heretofore testified.

Q. McGee and Dowden and Judge Dolan were there? A. They were there, but I could not swear that they were all in the room at the time the acknowledgments were taken. They might have been in the outer office. Mr. Colgan has two rooms—an outer office and an inner office. I do recall being present, Mr. Colgan, Mr. Dowden and Mr. and Mrs. Allen. There were several other gentlemen

present in Mr. Colgan's office, but whether or not they were in the room at the time, I could not swear.

Q. Do you remember who signed the mortgage first, whether it was Mr. Allen or Mrs. Allen? A. I recall that Mrs. Allen signed the mortgage first.

Q. Then you went out after that? A. After that I left the room, yes. I do recall that everybody else went out and I believe, from what I heard, they all went up to Mr. Dowden's office.

Q. Did you see the checks? A. I did not see any checks; no.

Mr. Newton: I offer in evidence the affidavit heretofore marked C-6 for identification.

(Paper heretofore marked C-6 for identification, received in evidence and marked Exhibit C-6.)

CHARLES C. COLGAN, one of the complainants, heretofore sworn as a witness on the part of the complainants, recalled and further examined as follows:

DIRECT EXAMINATION BY MR. NEWTON:

Q. Will you state the first time that you met David Allen and Eugene McGee, in connection with this transaction, with reference to the date of the mortgage? A. About two weeks prior—two or three weeks prior to the execution of the mortgage.

Q. State the circumstances of your meeting them. A. Mr. Goren, who was a client of mine, brought me a check for $2,000, made by the American Trad-

ers and Investors Company. My recollection of that is, that I called up—I called a telephone number and I got Mr. McGee on the telephone.

Q. Goren handed this check to you for collection? A. For collection.

Q. What did you proceed to do? A. I called up Mr. McGee. My client was insisting upon immediate payment.

Q. How did you know that McGee had any connection with the American Investors and Traders Company? A. I think Mr. Goren told me.

Q. You called him up? A. Yes. Mr. McGee asked me to give him time and I did say I would give him a day or two, and the next thing, Mr. McGee was down at my office. My recollection is that Mr. Allen and Mr. Dowden—or Mr. Dowden called me up afterwards and he got a further extention and then they came down to my office and they were down every day for about two weeks thereafter, up to the time of the execution of the mortgage.

Q. When they first came down, after your first call on the telephone, what proposition did they make to you, with respect to the check? A. They were offering as security, this stock which has been testified to, "Automotive Standards", but Mr. Goren would not accept it.

Q. Was Mr. Goren present at the interview when they offered the stock ? A. I don't think so, no, but I told them that I did not think that Mr. Goren would take it. Mr. Goren told me he wanted the money.

Q. You rejected the offer of the stock? A. Yes.

Q. Did they make any further proposition with reference to the $2,000 check? A. Yes. They wanted to know what kind of security Mr. Goren would

take. I told them he wanted the money, he did not want security, he wanted the money, and it was Allen who suggested, would he take a mortgage.

Q. How did Allen suggest that? A. He just asked me the question, would he take a mortgage.

Q. Did he state whose mortgage? A. No; he did not state at that time.

Q. What did you say in response to that? A. I told him that Mr. Goren might possibly take a mortgage, if they could not get the cash; that I would submit it to him. I did submit it to Mr. Goren this question whether he would take a mortgage. In the meantime, Mr. Allen or Mr. McGee had got in touch with Mr. Goren; they were getting in touch with Mr. Goren at the same time and it was then suggested would Mr. Goren take a mortgage on this property of Mr. and Mrs. Allen for $2,000.

Q. Who broached the particular property? A. Mr. Allen.

Q. Where did he say that? A. In my office.

Q. Who were present? A. There were in the office Mr. Goren, Mr. McGee, Mr. Dolan—Mr. Dolan seemed to be the prime mover in it that time—Mr. Goren and myself and Mr. Dowden.

Q. Prior to that time, in order to obtain delay on the collection of the check, was any offer made to obtain other signatures? A. Signatures to what?

Q. Endorsers or guarantors? A. Yes. Well, that was taken up before the mortgage was suggested—would Mr. Goren take a note with good security.

Q. Were you or were you not satisfied with the names of the guarantors? A. Mr. Goren was not satisfied because they were New York people.

Charles C. Colgan. Recalled. Direct.

Q. Then he suggested that a mortgage be given on this property, 7 Belmont Avenue. In what amount was that mortgage first discussed? A. $2,000, the amount of the check.

Q. Did Goren agree to that? A. Well, that was not accepted. Mr. Allen said he wanted more money.

Q. Allen said he wanted more money. To whom did he make that statement? A. To Mr. Goren and myself.

Q. As security for more money, what did he offer? A. He offered to give a mortgage on his house, which I understood was in his name at that time.

Q. Did Allen at that time, state the amount that he wanted? A. Yes. He stated he wanted between $7,000 and $8,000, my recollection is, on a second mortgage on his house.

Q. At the time, was anything stated with reference to the payment of the $2,000 check that Mr. Goren held? A. Mr. Goren stated that out of any mortgage he would give, the $2,000 would have to be taken care of.

Q. Did Goren then agree to give $7,000 on the mortgage? A. Why, not at that time. We just made arrangements to go up and see the security which Mr. Allen offered.

Q. Did you go up? A. Mr. Dowden, I, Mr. Goren and my recollection is that Mr. Dolan was there, and I am not sure whether Mr. Allen was there.

Q. Where did you go? A. We went up to No. 7 Belmont Avenue.

Q. Whom did you see there? A. Mr. Dowden went in first.

BY THE COURT:

Q. Whom did you see there? A. Mr. Dowden let us in. I do not know how—

Charles C. Colgan. Recalled. Direct.

By Mr. Newton:

Q. Whom did you see there? A. Mrs. Allen.

Q. Anybody else? A. Her daughter.

Q. You are not sure whether Dave Allen was there? A. I am not sure. I do not think he was.

Q. Did you inspect the property? A. We inspected the property.

By the Court:

Q. How did you get in? How did you meet Mrs. Allen? A. When we were inside, Mr. Dowden introduced Mr. Goren and myself to Mrs. Allen then who was in the parlor and told Mrs. Allen that Mr. Goren was up there to look over the property as he was going to take a mortgage.

By Mr. Newton:

Q. Did you and Goren inspect the property? A. Mr. Goren inspected the property. I sat down and conversed with Mrs. Allen in her parlor.

Q. Did Mrs. Allen take any part in the inspection of the property by Goren? A. Yes. Mrs. Allen showed Mr. Goren in the rear, the back room, the back parlor and dining room and the kitchen and then wanted to know whether he wanted to go upstairs, and Mr. Goren said No, he had seen enough.

Q. After that, did you have a conversation— A. Mrs. Allen then came in the parlor and sat with me and there was present her daughter who was crippled. I was conversing with Mrs. Allen as to her condition and she told me—

By the Court:

Q. As to whose condition? A. The daughter's condition. She told me she had got that way after an attack of infantile paralysis.

Charles C. Colgan. Recalled. Direct.

By Mr. Newton:

Q. You are quite clear that the purpose of your visit was explained to Mrs. Allen? A. Absolutely certain.

Q. By whom? A. By Mr. Dowden.

Q. Do you recall what he said? A. Yes; he said: "This is Mr. Goren, who has come up to look at the property for the purpose of putting a mortgage on it."

Q. What did Mrs. Allen say? A. She said, all right, she knew all about it at the time we went up.

Mr. Doherty: I move to strike that statement out.

The Court: Strike it out.

Q. Did she say that she had any previous knowledge of the purpose of your visit? A. No; she did not say that.

Q. Did she say anything to indicate that she knew a mortgage was to be given on the property? A. No, outside of what Mr. Dowden had said to her.

Q. How long did you converse with her? A. We were in the house altogether a half hour. I think of that half hour I was talking to her around fifteen minutes. Her daughter was sitting in the other room at the same time.

Q. Did she appear to understand what you talked about? A. Absolutely.

Q. Did she ask any question of you? A. My recollection of that conversation, Mr. Dowden testified to what took place—my recollection is that Mr. Dowden referred to the fact that I was not married and she wanted to know because she said I remind-

ed her of some one she knew. Mr. Dowden testified that that was in the office, but my recollection is that it was in the house at the time we went up to inspect the property.

Q. You concluded the inspection. Do you recall how long prior to the date of the mortgage, the inspection was made? A. About three days,—two or three days.

Q. Did you communicate to anybody whether or not Goren was satisfied to place the mortgage? A. It was communicated the next day, because they were all down in my office the next day.

Q. Communicated in your office the next day to whom? A. To Dowden, McGee, Dolan and Allen. They were all down there.

Q. Tell us the discussion that was had then? A. Mr. Goren said he would put the mortgage on there, but the $2,000 would have to be paid. Mr. Allen agreed to that.

Q. Was the amount agreed on at that time? A. Yes; $7,000.

Q. Can you recall the language that was used in fixing that amount? A. My recollection is that they wanted around $8,000, but Goren said the most he would put on was $7,000. That is all I recall.

Q. The amount then was fixed at $7,000. What was said about the $2,000 check? A. That that was to be paid out of the $7,000.

Q. Who made that statement? A. That statement was made before we even looked at the house, that any mortgage that would be placed on the house, the $2,000 check would be taken care of out of the mortgage.

Q. Was anything said about expenses? A. Yes. Mr. Goren said that I had been entertaining these

people in my office for two weeks; they would come in the morning and they would come in the afternoon, and he thought I ought to be paid for my trouble.

Q. What was said to that? A. Allen said he would be perfectly satisfied to pay the expenses. He asked me my bill. I told him I thought I was entitled to around $800 for all services to date. Somebody made a remark there that they would have to pay ten per cent to get a second mortgage from somebody else and they thought that $700 should compensate me for the amount of work that I did. The only question of a bonus that took place was in this remark, that they would have to pay about ten per cent for a second mortgage.

Q. That was to include the work you had been put to, in attempting to collect the $2,000 check? A. And the search on the property.

Q. And what else? A. Placing the mortgage loan, recording the papers.

Q. What arrangement was then made for the execution of the bond and mortgage? A. Well, the next day they were to bring Mrs. Allen. Then it was we learned that the property was in Mrs. Allen's name.

Q. Who told you that? A. Mr. Allen did.

Q. Was Mr. Dowden present then? A. Mr. Dowden was present.

Q. What was said that time? A. Just that they would bring Mrs. Allen down the next day. We fixed, I think, ten o'clock in the morning.

Q. What was said as to who was to draft the bond and mortgage? A. Mr. Dowden offered to draw up a bond and mortgage, because I asked for the deed for a description which I could put in the

mortgage. He said he had the description and would prepare the bond and mortgage.

Q. They came to your office on March 22nd. Now, who were there that day? A. Mrs. Allen, Mr. Allen, Mr. McGee, Mr. Dolan, Mr. Dowden, myself and Mr. Goren and then Mr. Lightdale came in and took the acknowledgment.

Q. What is your recollection of the first thing that happened when they arrived there? A. Why, I met Mrs. Allen at the time of my visit to her house and I knew her. As she came into my office—my office faces the Hudson River—she looked at the river and she said: 'You certainly have a very fine view here." Then she sat down. That is all I recollect of any conversation. That is about the extent of any conversation that Mrs. Allen took part in, outside of answering what Mr. Lightdale asked her.

Q. From the time this crowd came into your office, until the mortgage was executed, what length of time elapsed? A. We did not get through there until twelve o'clock.

Q. What time did they get there? A. They got there around ten o'clock.

Q. What happened in the interval? A. Why, in the interval, they were in and out of my inside office and outside office.

Q. Who were in and out? A. Mr. McGee and Mr. Allen. They would go outside in the hall and converse. I think it was Mr. Dolan who came in later. I do not think he came in first with them, but during all of the time there, there was some discussion. Mr. Goren raised the question as to whether he was doing the right thing in putting $7,000 on that property, as he did not think the real estate value was worth $7,000.

Charles C. Colgan. Recalled. Direct.

Q. You were still discussing the amount of the mortgage at that time? A. Yes, sir.

Q. Mr. Allen, in his testimony, said Mr. McGee on that day at your office stated that you were to receive a portion of the profits, if there was any profit, from the subscriptions that were signed for stock in this Arizona mine. Did McGee make any such statement to you? A. He did not.

Q. What do you recall that McGee said? A. McGee did make a remark, as I recall it, he said when his ship came in, he was going to remember all of us. He was referring to the mine which he had been talking of before.

Q. Mr. Allen in his testimony refers to a partnership that was entered into in a general way with Colgan, Dowden, Goren and Allen. Did you enter into any partnership or business relationship with Allen or any or all of these people? A. I did not.

Q. Mr. Allen also said that at the time he brought his wife into your office, he stated to you, or told McGee, Colgan and Goren just what condition she was in and that he stated: "She is an epileptic." Did he or did he not use those words to you? A. He did not.

Q. Did he make any statement to you as to his wife's physical condition? A. He did state that his wife was not feeling well that morning.

Q. He did state that his wife was not feeling well that morning? A. Yes.

Q. When was the first time that you heard that she had epilepsy? A. When this notice was served by Judge Doherty.

Q. What notice? A. Disaffirming the mortgage after the foreclosure suit was started.

Q. Was that notice served before there was a motion to reopen the decree pro con against Mrs. Allen in this suit? A. Yes.

Charles C. Colgan. Recalled. Direct.

Q. I show you what purports to be a check by Max Goren to your order for $7,000, dated March 22, 1929, and certified by and drawn on the Hudson County National Bank, bearing the endorsement: "For deposit Charles C. Colgan, Attorney—Charles C. Colgan" and I ask you if you received that check from Mr. Goren? A. I did.

Mr. Newton: I offer the check in evidence.
(Check marked Exhibit C-3, Jan. 6, 1931.)

Q. That was paid to you for what purpose? A. For the consideration of this mortgage.

Q. Mr. Allen said that he used this language to you with reference to his wife's condition: "She is an epileptic. She is subject to great excitement and she might have a spell." Did he say that to you? A. He did not.

Q. Mr. Allen says that one Sunday afternoon, when Mr. Dowden was present, "he (meaning you) told me in his office that it was not a proper thing to have done." I do not know whether that is his exact language, but later on in his testimony, he corrected that and said it was on a Saturday afternoon. Do you recall having any conversation with Mr. Dowden and Mr. Allen in your office? A. I do.

Q. Will you state your recollection of what you said? A. That was the time when these words were used and that was the first time that I had information that all of this money went to McGee and I did say to Mr. Allen: "You were very foolish mortgaging your house and turning all the money over to that McGee."

Q. Now, in attending to the execution of the mortgage, why did you call in Mr. Lightdale; why didn't you take the acknowledgment yourself? A. Mr.

Goren was hesitating on giving the mortgage and I told Mr. Goren at that time that if the mortgage was given and he found that he needed money for other purposes, I might be interested in taking half of it and I had started to take the acknowledgment and I had asked Mr. Lightdale if he would take the acknowledgment. When I started to take it Mr. Lightdale called my attention to the fact that he was going to take it. I had explained to Mrs. Allen that this was a mortgage that she was giving on her home for $7,000. I had not gone any further, when Mr. Lightdale interrupted me and proceeded to go over what I had done.

Q. Mr. Lightdale proceeded with the acknowledgment? A. Yes.

Q. Did he start over again? A. He started all over again.

Q. At this point I show you a check for $3,500 to the order of Max Goren, dated March 3, 1929, and ask you: "Did you receive that check?" A. I gave that check to Mr. Goren.

Q. What does it represent? A. That represents half of that mortgage.

Q. That is the consideration that you paid for the assignment Goren gave you for a half interest in the mortgage? A. Yes.

Mr. Newton: I offer the check in evidence. (Marked Exhibit C-4, Jan. 6, 1931.)

Q. What is your recollection of what Mrs. Allen said immediately preceding her signing of the mortgage? A. In reference to the mortgage?

Q. Yes. A. I do not recall any conversation as to it. The conversation was going on between McGee and Allen and sometimes Mr. Goren and Mr.

Dowden. Mrs. Allen sat there. She was very quiet, and the only talk I heard from her was that as soon as she came into the office, she commented on the view I had in my office.

Q. You, I take it, were dealing with Dowden and her husband? A. Yes. As a matter of fact, I was being called outside. People would come into my office. I was in the office all the time.

Q. You were not devoting your exclusive attention to this particular business? A. No.

Q. Now, then, I show you Exhibit D-2, purporting to be your check dated March 22, 1929, to the order of Ellen E. Allen, for $7,000, and I ask you if you delivered that check? A. I did.

Q. When did you deliver it? A. On the morning that the bond and mortgage were signed.

Q. On its date? A. On its date.

Q. To whom did you deliver it? A. To Mrs. Allen. I might say that Mrs. Allen turned it over to Mr. Dowden.

Q. Did you see her turn it over to Mr. Dowden? A. I did.

Q. Did she endorse it, before she turned it over to Mr. Dowden? A. She did not. That check was endorsed up in Mr. Dowden's office, at the time she endorsed the checks that Mr. Dowden made out.

Q. Why did you all repair to Mr. Dowden's office? A. Mr. Dowden didn't have his check book with him and he wanted to put this through the Darling Trust Fund.

Q. Did you go to Dowden's office? A. I did.

Q. Who went with you? A. Dowden, Mrs. Allen, Mr. Allen, Mr. Dolan and Mr. McGee, myself and Mr. Goren. We went up at different periods. They went up first, and Mr. Goren and I went up later.

Q. Dowden had the check? A. Yes.

Charles C. Colgan. Recalled. Direct.

Q. What did you see him do with the check? A. When we went out it was to go out to lunch. We went out to lunch. We got back around one or half past one. Mr. Dowden called in one of his stenographers and instructed her to make out the checks.

Q. Do you recall what he said to her? A. Well, he gave the amounts, all to the order of Ellen E. Allen.

Q. First, what did he do with the check for $7,000? A. He gave it to the girl to be deposited.

Q. Did he send for a bank book? A. Yes, and he had Mrs. Allen endorse the check before he deposited it, in his office.

Q. He sent the check down for deposit and then he called in a stenographer? A. Yes.

Q. What did he dictate to the stenographer? A. He gave the amounts of the checks to be drawn, to the order of Ellen E. Allen, and in this list was a check for $2,000 and a check for $700, all to be drawn to the order of Ellen E. Allen.

Q. Was the check for $2,000 drawn? A. Yes.

Q. To whose order? A. Ellen E. Allen.

Q. Endorsed to whom? A. Endorsed to me.

Q. Was it not endorsed to Mr. McGee? A. To McGee, I beg your pardon.

Q. To whom was that $2,000 check delivered? A. I delivered it to him. He endorsed it over to Mr. Goren.

Q. To whom was the check for $700 endorsed? A. That was endorsed to Ellen E. Allen—I am not sure whether that was endorsed to me.

Q. Finally you became the holder of it? A. I got it.

Q. Was there any discussion before you got that $700 check, as to its amount? A. No.

Q. Had that been previously— A. I don't know. When Mr. Goren and I got up there, they were already up there, after lunch.

Q. They went up ahead of you? A. They went up ahead of us. Mr. Goren and I went out and had lunch. When we got up there, they were already there.

Q. You got the $2,000 check and the $700 check from Dowden? A. Yes.

Q. How long did you stay after you got these checks? A. We left as soon as we got these two checks.

Q. Do you know what became of the balance of the $7,000? A. I don't know. I never knew it until the time when the release was given on that Saturday afternoon.

Q. Now, when did you first hear about this credit of $1,500 on the mortgage? A. Mr. Dowden called me up—it was on a Saturday morning—and wanted to know whether he and Allen could come down in the afternoon. I think that they were talking to Mr. Goren previously because they said that Mr. Goren was going to be down there, and they did come down, and the question of this stock came up and Mr. Dowden told me that they had been out to see a Mr. Bowles, that he and Mr. Allen and Mr. Goren had gone up to see this Mr. Bowles to determine the value of that stock.

Q. With reference to the time, I show you a check dated December 17, 1929, to the order of Benjamin Dowden, attorney, $500, by Max Goren, drawn on the Hudson County National Bank. Does that refresh your recollection as to the time? A. Yes; that is right.

Q. Was that the first you knew of any transaction between Goren and McGee, with reference to

this stock that has been testified to? A. No; that was the second. I had heard first about it the time we were up to Mr. McGee's office. Mr. McGee testified, I think, that we all came up to his office. I told Mr. McGee there that I had known nothing about it, that what Mr. Goren was doing was not binding on me, and that was a separate transaction; I knew nothing at all about it.

Q. At any rate, there was an assignment of McGee's claim against Goren made to Ben Dowden? A. Yes.

Q. And after that assignment was made, McGee and Dowden and Goren participated in the discussion as to the amount that was to be credited on the mortgage because of that assignment; is that right? A. Yes.

Q. Did you participate in that discussion? A. No; I did not.

Q. It resulted in a credit of $1,500 on account of the mortgage. At that time, was a check given to Mr. Dowden by Goren? A. Yes.

Q. That is the check that you have previously identified as being for $500 and which I showed you? A. That is right.

Q. What was the purpose of giving Dowden that check? A. That was to pay the interest and taxes, interest on the first mortgage and taxes on 7 Belmont Avenue.

Mr. Newton: I offer this check in evidence. (Marked Exhibit C-5, Jan. 6, 1931.)

Q. Did any part of this $700 that was paid to you for your legal fees and expenses go to Max Goren? A. No, sir.

Charles C. Colgan. Recalled. Cross.

Q. Prior to the execution of the mortgage, was anything said as to this $700 being a bonus? A. No, sir.

CROSS EXAMINATION BY MR. DOHERTY:

Q. Your first interest in the matter was when Goren brought you the check of the American Traders and Investors Company? A. Yes.

Q. To the order of Loori? A. Yes.

Q. Which had been cashed by Goren? A. Yes.

Q. And your retainer was to approach the American Traders and Investors for collection? A. Yes.

Q. You knew that Loori was the endorser? A. Yes.

Q. You knew he was perfecly solvent and good? A. No, I did not know that.

Q. Don't you know that Thomas Loori is as good as gold? A. No, I do not.

Q. Anyhow, you made no effort at all to collect from Loori? A. No.

Q. You say you telephoned first to McGee? A. My recollection is, yes.

Q. Are you familiar with the statements in three affidavits of yours that are on file here? A. I think I am. I say my recollection is that I telephoned. I may have written a letter. I don't know. I don't recollect.

Q. You might be in error about that? A. I might be in error. I think my affidavit is more in error, because I have had more time to think it over. Mr. McGee's testimony refreshed my recollection. I did telephone.

Q. Dowden and Allen had been at your office in connection with the payment of the check, had they not? A. No. Dowden and Allen never came down

alone. When they came down, the three of them were together.

Q. Was McGee with them? A. McGee was with them.

Q. That was about the date that you got in communication with McGee? A. Yes; a day or so.

Q. About the check? A. Yes.

Q. Their purpose in coming down was to have you extend some leniency in the matter of collecting the amount of that check? A. Yes.

Q. You told them that your instructions were to be a little vigorous in getting the money in; is that so? A. Yes.

Q. You say that was a couple of weeks before the mortgage was signed? A. My recollection about two or three weeks, yes.

Q. During that interval, they were at your office nearly every day? A. Yes.

Q. And the proposal extended from the matter of your showing indulgence to the matter of your aiding them to get some money to carry on the business? A. Not me. They seemed to have interested Mr. Goren in getting him to hold up. Mr. Goren, after talking with McGee and Mr. Allen, did not press me to press them, so I played along with them.

Q. In your affidavit, bearing date March 24, in paragraph 4, do you not say: "Allen, McGee and Dolan were at my office on four or five different occasions and spent practically the whole afternoon discussing ways and means of liquidating the different accounts against their concern". A. Yes.

Q. They discussed that, did they? A. Yes.

Q. In the latter part of paragraph 3 of the same affidavit you say: "I wrote to the American Traders and Investors Company, stating that I had the

check and proceedings would be instituted. Mr. McGee, Mr. Allen and Ex-Judge Dolan came to my office in reply to this letter and asked me to hold up and they would make the check good. The matter was pending for about two or three weeks when Mr. Allen informed me that he was connected with Mr. McGee in the business and did not want a suit instituted and suggested that I try to obtain a second mortgage on his property No. 7 Belmont Avenue, Jersey City, as he stated that this claim of $2,000 and other claims were pressing and that he wanted to keep the concern in good standing until certain stocks were listed on the exchange". A. That is all right. I find I have not a copy of the letter written to McGee, so I must have telephoned.

Q. Then, the purpose of raising this money was to keep the McGee concern afloat, was it not, until the stocks were listed? A. That was Mr. Allen's idea. It was not my idea.

Q. It was communicated to you that that was the idea? A. It was communicated to me, but I told Mr. Allen that all that I was interested in was the payment of the $2,000.

Q. I am asking you that because you say that at the time this transaction was closed, you were not aware that McGee was going to get the money? A. No; I was not.

Q. But you had, nevertheless, been informed that the basis of their idea for getting the money was to keep the concern afloat until the stocks were listed? A. That is what they said.

Q. You knew nothing to the contrary, did you? A. No.

Q. You told us twice today that the first time you learned that McGee was getting all of this

money, was on the occasion when there was this discussion on Saturday afternoon. That is so? A. That is so.

Q. Look at paragraph 6 in your affidavit under date of March 24th. A. I have got paragraph 6 here.

Q. "At the time of the signing of this mortgage—" A. I have the wrong one.

Q. Does this language appear there? "At the time of the—"

The Court: It does appear there, if it is there.

Q. In paragraph 6 of this affidavit of March 24th, you say: "At the time of the signing of this mortgage I was not acquainted with the fact that this $7,000 was to be turned over to Mr. McGee, and the only items I was aware were to be taken out of the $7,000 was the $2,000 in payment of the check issued by the American Traders & Investors Company, the firm with which Mr. McGee and Mr. Allen were connected and the $700 for expenses, and it was only upon reading the affidavit of Mr. Dowden that I became acquainted with the fact that all of this money with the exception of the $2,000 and $700 checks and the $500 check paid by Mr. Dowden to the New Jersey Title Guarantee & Trust Company for interest on the first mortgage covering same premises, was turned over to Mr. McGee". Which is true, that you found it out from Dowden's affidavit, or that you found it out from Dowden's information when the release was given, or that you found it out at the time that the transaction was being closed? A. From Mr. Dowden's affidavit.

Q. Then, you did not know it at the time of the signing of the release, did you? A. Yes; I knew it then.

Q. And you knew it before Dowden's affidavit? A. No. I did not know it before Dowden's affidavit.

Q. Dowden's affidavit was submitted in this case, was it not, after the release was signed? A. On the opening of this case?

Q. Yes; that was the time of Dowden's affidavit, was it not? A. The release was signed on what day?

Q. December 14, 1929. When was it you found out that McGee got the proceeds? A. My recollection is when that release was at hand, that Saturday afternoon, because it was then that I told Mr. Allen that I thought he was very foolish to mortgage his house for Mr. McGee.

Q. You were present when the four checks were made out at Dowden's office, were you not? A. There were four checks made out—

BY THE COURT:

Q. Were you present? A. Yes.

BY MR. DOHERTY:

Q. You saw the checks disbursed? A. I did not. I got two checks and then I went out—the $700 check and the $2,000 check. They were still in the office when I left.

Q. In your other affidavit of March 29, 1929, paragraph 9, do you not use this language: "It is absolutely false, as per statement made in Mr. Allen's affidavit, that there was no disclosure to

Mrs. Allen as to how the moneys were to be disbursed. At Mr. Dowden's office when he drew the checks, he explained to Mrs. Allen before she endorsed the checks, just who the checks were going to and for what purpose." Is that true? A. That is true. He made some explanation. I do not know of my own knowledge what explanation he made where those checks were going.

Q. Was the explanation that Dowden made to Mrs. Allen such that you could not understand it? A. Yes, for the reason that I was not attending to that part of it. I was walking around the room. The only thing that I recall about the explanation given was that Mr. Dowden had a memorandum and he was explaining to Mrs. Allen what those figures were. I do know that he explained that $700 was going to me and $2,000 was to be taken out for this check. That is all I paid any attention to. I was not representing Mrs. Allen. I had no idea where the other money was to go.

Q. Now, can you tell us what explanation was given until after the signing of the mortgage? A. I cannot. I do not know.

Q. Nothing like that was said to her down in your office? A. Not that I heard. They were all talking down there.

Q. They were talking for two hours down there? A. They were; yes.

Q. Will you tell us one thing that was said down at your office in the hearing of Mrs. Allen? A. By whom?

Q. By any one. A. The only thing I heard was when Mr. Lightdale explained the bond and mortgage to her and the fact that she commented on the view from the office. That is all I know of.

Charles C. Colgan. Recalled. Cross.

Q. Where were these conferees during the two hours she was there? A. They were in the inside office and some times walked outside. I was not with them.

Q. Did you observe one circumstance that would indicate that she knew what was going on? A. Yes.

Q. What? A. As she was signing the mortgage she turned to Mr. Dowden and her husband and asked whether it was all right.

Q. Was anything said in her hearing preliminary to the signing of the mortgage? A. There were lots of things said, but I do not recollect them.

Q. You do not recollect? A. I do not recollect.

Q. In your first affidavit, Mr. Colgan, you said that Allen went up to the house on the trip of inspection, did you not say that? A. Yes.

Q. You are wrong in that? A. I am wrong about that.

Q. In the same section you say that Allen told his wife on that occasion what you men were there for. Were you not wrong in that? A. I was in error on that. I think it was Mr. Dowden, instead of Mr. Allen.

Q. You did not know she was the owner of the house at the time, did you? A. Yes.

Q. What did you know about that? A. Well, that she was the owner of the house in the sense that she was his wife.

By the Court:

Q. You testified that all along until near the end, you thought Allen was the owner of the house? A. Yes, sir.

Q. Judge Doherty asked you whether on that occasion, when you went to the house, which was a few days before the bond and mortgage were signed, you knew she owned the house? A. No.

By Mr. Doherty:

Q. You learned it next day, didn't you? A. I don't remember whether it was the next day or not.

Q. Did you not testify here today that it was on the next day when they learned from you that the loan was to be granted, that you were told that she was the owner of the house? A. That is my recollection.

Q. That is true? A. Yes.

Q. At the time when you went up there on the tour of inspection, with Dowden, you did not understand him to be there representing her as advisor or counsellor, did you? A. Absolutely, I did.

Q. You consider that she had a lawyer looking after her interest in this matter? A. I thought he represented both of them.

Q. Whatever explanation was made to her on that occasion, was made by Dowden alone? A. Yes.

Q. And his explanation was: "These men have come up to look this house over, to put on a second mortgage"? A. He said this: "Mr. Goren is putting a second mortgage on your house", or "on this house". I do not know whether he said "your house" or "this house".

Q. What other information? A. "And he wants to look it over", and Mrs. Allen took Mr. Goren through the first floor.

Charles C. Colgan. Recalled. Cross.

Q. What else did Dowden say except that this man came up to look over the place for the purpose of putting a second mortgage on it? A. Just that he talked about the condition of the daughter.

Q. Dowden said no more than that? A. No more than I recall.

Q. He said nothing about McGee's bad check? A. Not that I heard.

Q. He said nothing about the bill that had been incurred in your office by these men? A. No.

Q. He said nothing about the $4,300 that was eventually to be turned over to McGee, did he? A. No.

Q. Did he say anything about the failing circumstances that McGee and the company were in? A. No.

Q. Whatever he knew about that was kept to himself, was it not? A. I don't know.

Q. He said nothing to her about any undertaking on McGee's part to indemnify her as to this mortgage? A. No.

Q. He didn't tell her anything about that? A. No.

Q. There has been testimony here that this lady expected, on signing the mortgage, to get some weekly allowance. You do not know whence she derived that idea? A. I don't know.

Q. That was not told to her by anybody connected with this transaction, so far as you know, was it? A. No.

Q. You state in one of your affidavits that you did not take this woman's acknowledgment because you had an interest in the mortgage?

Mr. Newton: I object to that.

The Court: He has already testified to that effect. It is in evidence that he started in to

take the acknowledgment before he realized that he was to have an interest in the mortgage.

Q. You didn't have an interest at that time, did you? A. No.

Q. Nevertheless you thought it prudent not to take the acknowledgment because you contemplated an interest that you would acquire; is that right? A. Yes.

Q. Did you say anything to Mrs. Allen about either a present interest that you had in the mortgage or any contemplated interest that you might acquire? A. No.

Q. Did anybody say anything to that effect? A. No.

Q. Did you have an itemized bill of your services when you were paid this $700? A. No.

Q. You thought it was entirely proper to make this lady give a mortgage to reimburse Mr. Goren for the money that he had paid you as counsel?

Mr. Newton: I object.

The Court: Objection sustained.

Q. Did you explain anything to Mr. Allen about your bill? A. Why, I did. I told him—

Q. When did you? A. At the time when it was finally—when the agreement was finally concluded, that is, a day or two before the mortgage was to be signed.

Q. But it was not told to Mrs. Allen by you? A. By me, no.

Q. Or by anyone in your hearing? A. No.

Q. You have stated here repeatedly that Dowden was representing Mrs. Allen. At what time did he

commence to represent her? A. Why, from the start Mr. Allen told me that Mr. Dowden was his attorney and his wife's.

Q. And it was on Allen's statement that you assumed that he was representing Mrs. Allen, was it? A. Yes; and Mr. Dowden's statement, too.

Q. The time when this agreement was signed or this stipulation that there was no defence to the action, you had no knowledge of Dowden's sight to sign such a stipulation, had you? A. No. I thought he had the authority because Mr. Allen said his wife was not feeling well and he wanted Dowden to handle the papers.

Q. Was not that a suggestion made by you after Dowden had called on you, that he sign such a stipulation? You suggested that, didn't you? A. No; I did not.

Q. In your affidavit did you not say that you demanded it because of the contention they made that Goren had received stock on account of the payment of this money? A. Demanded what?

Q. This stipulation. Why, Mr. Colgan, did you resort to the particular method that you did in making out that check for $7,000 and turning it over to Mrs. Allen to be endorsed? A. I always do that in every mortgage loan.

Q. Why, inasmuch as money was coming to you and money coming to your client, was that not taken from the amount and she given the balance? A. As I said before, I always do it that way.

Q. There was no particular reason for doing it in this case? A. No particular reason at all.

Q. You did not understand at all that this money was going to McGee and that she was giving her mortgage as security for McGee? A. Outside of the $700 and the $2,000, I didn't know it.

Q. You gleaned no information at all from the fact that during the conversation that McGee and Allen and Dowden had, they all stressed the fact that they needed money to keep McGee's concern going, to pay the creditors and to tide him over until he could get the stock listed? From that you did not derive any idea that McGee was getting the money? A. Yes. I derived the idea that Allen was a partner or interested in this firm of McGee's. I did derive that from it.

Q. You had an intimation that the money was going to McGee's concern? A. Outside of $2,700, I did not.

Q. You did not know? A. No; I did not.

Q. You did not get an impression, when Allen told you that he wanted a second mortgage because there were claims pressing against McGee and that he wanted to keep the concern in good standing—you did not learn from that that McGee was getting the money, did you? A. No; I figured that the $2,000 was the pressing concern at that time.

Q. You did not learn it from the fact that Allen, McGee and Dolan were at your office on many occasions discussing the means of liquidating the indebtedness against McGee's concern? A. No.

Q. You did not know from that that McGee needed the money? A. No; I did not take it that way.

Q. In what way did you take it—that Mrs. Allen was getting this money herself? A. I took it that Mr. Allen was deriving a benefit from it or he would not be mortgaging his house for the purpose of getting money.

Q. You knew that Mrs. Allen herself was not getting any of the proceeds of the mortgage? A. I did not know any such thing. As a matter of fact,

I had no interest in knowing where the money went to.

Q. You say you were not there when the $4,300 was turned over to McGee? A. No; I did not know where that money went to at all.

Q. Were you present when Dowden expressed his doubts as to the prudence of this transaction? A. No; I was not.

Q. Were you present when the discussion was going on as to Dowden taking back the property at $16,000 after you had taken it under foreclosure? A. Yes.

Q. And Mrs. Allen was there at that time? A. Yes.

Q. Did she evince any interest at all in that concern? A. It was said in her presence. She did not make any comment on it.

Q. No response at all, was there? A. No.

Q. Did you make a search on this property? A. Yes; that is, I made a continuation search.

Q. As I understand it from your testimony here, you went up to inspect the property on March 20, you gave the decision to place the loan on March 21, and the deal went through on March 22? A. Yes.

Q. And it was during that time that you made the search? A. I made a continuation search from the time the Title Company placed its mortgage, because Mr. Allen wanted the matter closed as quickly as possible and he told me about the Title Company having a mortgage; so I just made a continuation search.

Q. What service did you render in the way of securing this loan from Goren? A. None—well, outside of searching the property, I did not render any service. Mr. Goren put his own money in. I attended to the legal part of it.

Charles C. Colgan. Recalled. Cross.

Q. It was not you who first proposed to Goren to lend the money? A. I don't think so. I think it was Allen who suggested it to Goren.

Q. In your presence? A. Yes; that is my recollection.

Q. And at the same conversation at which Allen stated his desire to see the McGee concern financed so as to tide it over its difficulties, was it? A. No, sir.

Q. Will you look at paragraph 4 of your affidavit of March 29? First, look at paragraph 3: "Allen, McGee"—

The Court: Don't read the affidavit. What is the question?

Q. In that paragraph you state that the request for the additional money was made by Mr. Allen.

The Court: He has already testified to that, too.

Q. Is that right? A. I haven't got the affidavit you are referring to.

Q. Here it is. A. Yes; that is so.

Q. In the next paragraph it is stated that the proposition emanating from Allen for the mortgage was at the same conversation in which Goren was asked to invest in the McGee concern? A. That is right; yes.

Q. And then it says that after that the offer was made by Allen for a loan on the premises in question and Goren raised a question as to the value of the house. A. Yes.

Q. So that the proposition for the mortgage on Allen's house was the outcome of that conversation

that had for its main object the alleviation of McGee's financial plight? A. No; I would say Mr. Allen's financial plight. As I understood it, Mr. Allen was in the concern.

Q. You are not right in that? A. I think I was. I thought that Mr. Allen was in the concern at that time. I firmly believe that he was a partner of Mr. McGee.

Q. You believe that now? A. Yes.

Q. You believe that he got something out of the mortgage? A. I don't know. I would not say that.

Q. Is it not true that you know nothing at all about Allen's relations with McGee except his apparent social intimacy with him? A. Except what Mr. Allen told me himself.

Q. That he was a partner? A. That is my impression of what he told me.

Q. You took that as a ground for his interest in McGee getting the money? A. Yes; because Mr. Allen was continually pestering me during the time this thing was going on.

Q. You know now that McGee got the money? A. I don't know it, but from what I hear now it looks that way.

JAMES P. DOLAN, sworn as a witness on the part of the complainants, testifies as follows:

DIRECT EXAMINATION BY MR. NEWTON:

Q. You are a counsellor at law of this state? A. Yes.

Q. Were you present in the office of Charles C. Colgan on March 22, 1929, when Mrs. Allen executed a mortgage? A. I was.

Q. You saw Mrs. Allen that day? A. I saw her there.

Q. Did you have any talk with her? A. No; I did not.

Q. How did she appear to you with reference to her ability to understand what she was doing? A. Well, I cannot say that my observation of her was of such a character as to justify me in drawing a conclusion as to her condition because at that time I was not observing or paying any attention.

By the Court:

Q. What was your interest in being there? A. I was interested in the American Investors and Traders.

Q. You were an old friend of Mr. and Mrs. Allen, were you not? A. I had known Mr. and Mrs. Allen for—I met them, I should say, prior to this about a year or a year and a half.

Q. Did you visit at their house? A. I went to see Mr. Allen on some business.

Q. More than once? A. I might have been there four or five times.

By Mr. Newton:

Q. You had talked with Mrs. Allen? A. At her home?

Q. Yes. A. I have had some conversation.

Q. Did she appear to understand what you were talking about? A. I would say that at the time I talked to her, she understood my conversation.

Q. Did you hear Mr. Lightdale explain the mortgage to her? A. No; I did not.

Q. Where were you when that was being done? A. Well, I was probably in the outside office or

room. The room that Mr. Colgan occupied was small and there were several others there—Mr. McGee, Mr. Allen, Ben Dowden, Mrs. Allen and myself. I think I went out to the outside office to make a call several times. I was in and out of the office, so that I do not recall that I was in the room at the time of the execution of the instrument.

Q. Were you at the Allen home at the time Mr. Goren and Mr. Colgan went on the visit of inspection before the mortgage was executed? A. No; I was not there.

CROSS EXAMINATION BY MR. DOHERTY:

Q. In your conversation with Mrs. Allen you did not advert to her placing this mortgage, did you? A. Oh, no; I never had any conversation with Mrs. Allen with reference to this mortgage.

Q. Did you hear anybody have any conversation with her about the mortgage? A. I cannot say that I did.

Q. You were present in Mr. Colgan's office at the closing? A. I was there; yes.

Q. Did you go there with Mrs. Allen? A. I am just trying to think back now whether I—I don't think I went down with Mrs. Allen. I think I arrived there later. They were there ahead of me. I think they went in Mr. Dowden's car. It was crowded and I did not get in the car.

BY THE COURT:

Q. Was the mortgage discussed at Mr. Colgan's office in Mrs. Allen's presence while you were there? A. Why, there was some discussion of the mortgage. What the detail of that discussion was, my best

recollection is simply the fact that it was to be drawn or was drawn. They were sitting around—

Q. You are wrong about that. The mortgage had been drawn before they got to the office. A. That might be true.

Q. The bond and mortgage had been drawn by Mr. Dowden and had been taken or sent to Mr. Colgan's office. A. That might be true.

Q. But there was some discussion about the bond and mortgage in Mrs. Allen's presence on that occasion. A. I think there was. There was some discussion. What it was or the nature of it I do not recollect, but I recollect that we were in the office for some considerable period of time.

Q. You were down there to have the mortgage signed? A. Yes.

Q. And Mrs. Allen was to sign it? A. Yes.

Q. You knew that? A. Oh, yes.

By Mr. Doherty:

Q. You also knew for whom the money was being raised. A. I knew; yes.

Q. You learned that from previous conversations which you had in Mr. Colgan's office. A. Yes; I was at Mr. Colgan's office. My best recollection is twice I think it was, prior to this day when this mortgage was executed. I do not recall that at any of the conversations I attended, there was any discussion about the mortgage.

Q. Was there a discussion about raising funds for McGee? A. Yes; there was.

Q. Was Mr. Colgan present? A. Yes; Mr. Colgan was there, too.

Q. And Mr. Goren? A. Yes.

Q. And it was subsequent to these discussions that the matter of a mortgage being resorted to, was brought up, was it? A. I don't think I was present at the conversation when this thought of a mortgage was suggested. The conversations I was present at were originally with reference to the check which McGee had given to Tom Loori, this $2,000 check, and Mr. Colgan had it. By cashing it, it had reached Mr. Goren, and he wanted his money, and it was explained at that time that the concern could not take up this check because it was given to Mr. Loori more or less with the understanding that he would advance the money as a loan.

Q. From the conversation in which Goren and Colgan participated, you got a complete understanding that the money was being raised for McGee?

Mr. Newton: I object as not proper cross examination.

The Court: Objection sustained, but not for that reason.

Q. Can you recall McGee asking Goren to give him some money to tide him over his difficulties?

Mr. Newton: I object on the same ground.

The Court: Objection overruled.

A. Yes; there was some discussion about getting some money.

Q. Can you recall whether or not the solicitation of McGee embraced both the subject of the $2,000 check and more money that Goren was to advance? A. Yes; I think Mr. McGee wanted him to advance him some money.

Q. Can you recall Goren being willing to make this advance if he was properly secured? A. Well, at first, my recollection is, he didn't want to discuss the thing at all. He did not want to advance any money. He wanted his $2,000 for this check, and I think at the second conversation there was some further discussion between McGee—well, everybody there. Suggestion was made by McGee trying to get Mr. Goren to advance some more money, and, of course, Mr. Goren—at the second conference, I think—wanted to know how it was going to be paid back. My recollection is there was some discussion of getting an endorser on a note—something of that sort—but there was no discussion at that time of raising funds through any mortgage.

Q. When did that discussion follow?

The Court: He has said several times that he was present at no conversation when the mortgage was discussed.

Q. Is that right? A. Yes. I was not present at the conversation when it was proposed that the money be raised by a mortgage.

Q. Were you present at any conversation when a mortgage was spoken of? A. No; I was not present at any conference when mortgages were discussed or raising money through a mortgage. I did not have any part in any discussion or meeting where a mortgage was discussed until I went down this day when this mortgage was to be executed.

Q. Were you present at Mr. Colgan's office the day before the execution, do you recollect? A. I don't recall that I was there. Mr. McGee did most of the work. The discussion—

BY THE COURT:

Q. The question is: Were you at Mr. Colgan's office the day before the mortgage was executed? A. No; I cannot recollect that I was there the day before.

BY MR. DOHERTY:

Q. You spoke of Mrs. Allen being able to understand your conversation. A. Yes; I went to her home to see Mr. Allen on some business. Of course I met her.

Q. You never discussed any business matters with her? A. No; just casual talk, social talk; not on business.

———

MAX GOREN, one of the complainants, sworn as a witness on the part of the complainants, testifies as follows:

DIRECT EXAMINATION BY MR. NEMSER:

Q. You are one of the complainants in this case? A. Yes.

Q. Where do you live? A. 25 Gifford Avenue.

Q. Do you recall the time that you went to Mr. Allen's home, 7 Belmont Avenue, the first time in March, 1929? A. I do.

Q. Who went with you? A. Mr. Colgan, Mr. Dowden and myself.

Q. Whom did you find there in the house? A. I found Mrs. Allen and a little girl, a cripple girl.

Q. Did you talk to Mrs. Allen? A. Yes.

Q. What did you say to her and what did she say to you? A. She asked me why I am there. I told her I am going to place a mortgage here. She took me and showed me the floor and told me it cost over $25,000.

Q. Mrs. Allen said that the house cost over $25,000? A. She said to me: "You will never feel sorry if you place a mortgage here. You will always get your money back."

Q. Did you go through the house? A. No; I went on the first floor.

Q. Did you have any conversation with her about anything else besides the mortgage? A. Yes. I asked her how many children she had. She said she had three; one she had at a boarding school. I told her I had a little girl and she advised me to send her to a boarding school.

Q. Did you discuss anything else? A. That is all.

Q. Did you go back again before the mortgage was actually placed? A. Yes, I did.

Q. When was that? A. The second day.

Q. Alone? A. Myself because I was dissatisfied.

Q. Whom did you see on the second occasion? A. Mr. Allen, Mrs. Allen and the little girl.

Q. What did you do in the house that day? A. I went upstairs, because the first time when I only saw the first floor, I made up my mind not to lend the money. I thought the security was not good.

By the Court:

Q. You had not gone upstairs the first time? A. No.

BY MR. NEMSER:

Q. On the second occasion, when Mr. and Mrs. Allen were there, you then went upstairs? A. Correct.

Q. Did you talk to Mr. and Mrs. Allen? A. I did.

Q. What was the conversation? A. For the mortgage.

Q. What did you say? A. I said: "I think I am going to place the mortgage, provided Mr. Dowden will guarantee the mortgage."

Q. You were somewhat afraid of the security? A. I was afraid of the security.

Q. Did Mrs. Allen say anything on the second occasion? A. She said: "What are you afraid of? It cost $25,000. $8,000 is there. You give us $7,000. That's $15,000."

Q. On either of these two occasions did you observe anything about Mrs. Allen which would lead you to believe that she did not understand what she was talking about or what you were saying to her? A. I think she did. I figured she was an educated woman.

Q. Did you see the little girls there? A. Yes.

Q. Mrs. Allen's daughter? A. Yes.

Q. Did you talk to her? A. No; she was only a child.

Q. Was anything said at that time about the first mortgage on the property? A. Yes; she told me there was $8,000 first mortgage.

Q. Are you sure it was Mrs. Allen told you? A. Absolutely.

Q. You finally made up your mind to place a loan for $7,000? A. Yes.

Q. You gave your attorney, Mr. Colgan, a check for $7,000? A. Yes.

Q. Were you present in Mr. Colgan's office on the day when the bond and mortgage were actually signed? A. I think I was, only I didn't pay any attention. As long as I turned over to my attorney the check, I was through with the transaction.

Q. Did you know who owned the property? A. No.

Q. When did you first find out that Mrs. Allen had the title? A. I just found out today.

BY THE COURT:

Q. Today? A. Well, in the trial.

BY MR. NEMSER:

Q. Who did you think owned the property? A. Mr. Allen.

Q. As I understand you, when you gave the check to your attorney, you left the details to him? A. Correct.

Q. Were you present on the occasion when they went to Mr. Dowden's office? A. Yes.

Q. Why were you there? A. I was supposed to get my $2,000.

Q. For what? A. The bad check.

Q. The Loori check? A. Correct.

Q. On any of these occasions between the time when you first went to the Allen house and the time the deal was closed did you ever see Mr. McGee? A. I saw him a few times.

Q. Was anything ever said in your presence by anybody to the effect that this mortgage money was to go to McGee or in McGee's business? A. I didn't know anything about it.

Q. Did you know what the mortgage money was going to be used for? A. The only thing I know was the $2,000 and the $700. That is all I know.

Q. Did you ever find out that the balance of the mortgage money went into McGee's business? A. I didn't know at the time. Ben Dowden told me in October, 1929.

Q. Ben Dowden told you that? A. Correct.

Q. Mr. Goren, Mr. McGee has testified about some kind of a stock deal that he had with you. Do you remember what date that was? A. It was before the Fourth of July—a day or two before the Fourth of July.

Q. It was not at the time this mortgage was placed? A. Oh, no.

Q. Will you try and give us your recollection on that stock transaction? A. Mr. McGee came to me and he wants to sell 800 shares.

Q. Of what stock? A. I really don't—

Q. Automotive Standards? A. Correct. He looked to me like a gentleman. Of course, if I knew that time what I know now, of course I would not do business with him. He said the stock is listed $7 to $8 in the Produce Exchange. I said: "Why do you want to sell it for $4,000?" He said he promised his word to Mr. Bowles he will never sell the stock on the market; and I did agree not to sell that stock for thirty days.

Q. You did agree? A. I did. He had it in writing.

Q. Did you buy the stock? A. I bought the stock.

Q. McGee says he asked you for a loan? A. No; he didn't. I was supposed to make four payments, $1,000 each. Then, when I found out the stock is a fake stock—

Q. What do you mean "a fake stock?" A. You could not sell it.

Q. How do you know? A. I was trying to get enough from it, six times a day. Nobody wants to buy it.

Q. Was the stock quoted in the various papers? A. It was quoted $6. I couldn't get six cents.

Q. You tried? A. I tried enough.

Q. How many shares did Mr. McGee turn over to you? A. 800.

Q. In different certificates? A. Yes; 100 to each.

Q. You were supposed to pay how much? A. $4,000.

Q. Was there any other stock turned over to you by McGee besides this? A. No.

Q. Was any other stock involved in the transaction? A. There was another stock—Swift Company.

Q. How many shares? A. I think it was ten. I turned it over to my bank, and the bank told me the stock was stolen.

Q. What did you do with it? A. I turned it right back to McGee.

Q. That was the Swift stock? A. That was the Swift stock.

Q. You held on to the 800 shares of Automotive Standards? A. Correct.

Q. What did you finally do with that stock? A. I finally sold it. I peddled it all over the city.

Q. How much did you get for it? A. I got $3900.

Q. Have you got the exact figures? A. Yes.

Q. What did you finally realize on the 800 shares? A. I realized $3,958.40.

Q. Then, as I understand the story, you paid $2,000 to McGee? A. Correct.

Q. You gave Allen credit for $1,500 on the mortgage? A. Correct.

Q. A check for $500 to Dowden? A. Correct.

Q. Then, according to your story, you turned over $4,000. You must have lost money. A. I lost $41.60.

Q. Did you ever have occasion to visit Mr. Bowles with respect to Automotive Standards? A. Yes; I did.

Q. Whom did you go with? A. I went with Mr. Dowden and Mr. Allen.

Q. What did you find out when you met Mr. Bowles?

Mr. Doherty: I object to any conversation in the absence of Mrs. Allen.

Q. What was the purpose in going there? A. They were asking me I should—

By the Court:

Q. What was the purpose in going there? A. To convince Allen and Dowden how much I got for the stock.

By Mr. Nemser:

Q. Did you convince them that the amount you said you had realized was the correct amount? A. Correct.

Q. At that time did Mr. David Allen make any figures on a sheet of paper in conversation with Mr. Bowles? A. Correct. Here is the sheet of paper.

Q. Whose handwriting is this? A. It is Allen's or Dowden's. I cannot say which.

Q. Dowden's or Dave Allen? A. Correct.

Q. Now, after you finally settled with McGee by giving credit for $1,500 on the mortgage and giving Dowden a check for $500, you obtained this release that has been marked in evidence? A. Correct.

Q. And that was the end of that stock transaction? A. Correct.

Q. Did you ever see McGee after December, 1929? A. I did not.

(At this point adjournment is taken to Thursday, January 15, at ten o'clock in the forenoon.)

Court met pursuant to adjournment this fifteenth day of January, 1931.

Appearances as heretofore.

MAX GOREN, one of the complainants, sworn as a witness on the part of complainants, resumes the stand.

CROSS EXAMINATION BY MR. DOHERTY:

Q. How old are you? A. Thirty-nine.

Q. You have been in business a great many years? A. Yes.

Q. You were originally in the mercantile line? A. Mercantile?

Q. You kept a store, didn't you? A. Yes.

Q. From that you branched out into financial matters, didn't you? A. No.

Q. Real estate? A. Yes.

Q. Previous to the time when you got into this transaction, you had many real estate transactions? A. No; not before.

Q. Not before this? A. That was 1927 business got very bad.

Q. You had been in many real estate transactions before you went into this one? A. Yes.

Q. At that time you owned considerable real estate, didn't you? A. Yes, sir. Of course—

Q. Before this time you also lent money on real estate? A. Not much.

Q. Did you testify recently in the District Court in this building, in response to a question, that you could not remember whether you owned seventy-five pieces of real estate?

Mr. Newton: Objected to.

Q. Did you recently, while a witness in the District Court, in answer to a question, say you did not remember whether you owned seventy-five pieces of real estate?

Mr. Newton: Objected to.
The Court: Objection sustained.

Q. How many pieces of real estate did you own?

Mr. Newton: Objected to as immaterial.
The Court: Objection overruled.

A. I used to buy real estate—

By the Court:

Q. How many pieces did you own in 1929? A. I think I had two.

By Mr. Doherty:

Q. In Jersey City? A. Jersey City.

Q. No more? A. No more.

Q. But you had participated in a great many real estate transactions in the interest of others, had you not? A. Yes; I was in a lot of deals.

Q. About how many pieces of real estate had you been concerned in the purchase or sale of at the time of this transaction with the Allens? A. Since that time?

Q. Before that time. A. I could not say. Possibly fifty or sixty.

Q. You were thoroughly familiar with real estate transactions? A. Yes.

Q. And with mortgages? A. That is right.

Q. You made two affidavits in this case? A. I believe I did.

Q. Had you any previous dealings with McGee or the American Investors and Traders, before you cashed the $2,000 check? A. Never in my life.

Q. At the time you cashed this check, did you know who they were? A. I didn't know.

Q. The check was brought to you by Tom Loori? A. He told me to cash the check.

Q. You knew Tom Loori? A. I do.

Q. His endorsement was on the check? A. Yes.

Q. You gave him the $2,000? A. I gave the cash in the bank.

Q. Did you give him the $2,000 on the check? A. Yes.

Q. You know that Loori is a well-to-do man? A. I thought he was.

Q. You know that he has lots of money? A. He hasn't got a dime.

Q. Didn't he have a dime at the time you cashed the check? A. I thought he had.

Q. You cashed it entirely for Loori's accommodation? A. He told me to cash it at my bank.

Q. Without any benefit to yourself at all? A. No.

Q. When the check defaulted, you told your lawyer to go after McGee and the American Traders and Investors? A. I went to Tom Loori first, and he said: "I ain't got a dime." Then I went to my lawyer.

Q. You got no bonus out of this matter? A. Out of what?

Q. Out of this matter? A. I did not.

Q. After your lawyer wrote to McGee and the American Traders and Investors Company, right away there was conference at Mr. Colgan's office? A. Not with me.

Q. Were you not there at a conference that resulted from writing the letter, at which Judge Dolan and McGee and Mr. Dowden were present? A. I was at one. Mr. Colgan told me he had several before.

Q. Were you at only one? A. I was at one, I think, when they told me there will be some kind of security.

Q. At that conference there were Allen, McGee, Dolan, Dowden and Mr. Colgan? A. Correct.

Q. How long after you turned the matter over to Mr. Colgan was that conference held? A. It was probably a week or ten days.

Q. At that conference did they request further time and say that they expected to raise some money in the course of a week? A. I left it to my lawyer—

Q. Did they say that? A. I don't—

Q. Now, then, after that you say they did? A. That is the second time. When they came the second time Mr. Colgan—

Q. In your first affidavit you say that they said they wanted further time and they expected to receive money in a week.

Mr. Memser: I object.

The Court: Suppose he did.

Mr. Doherty: This is testing the credibility of his statement at the last hearing.

By the Court:

Q. They said it at one conference? A. They said it at one conference.

By Mr. Doherty:

Q. When was the mortgage first spoken of—at that conference that we have just been talking of? A. Not at that conference.

Q. How many conferences were had?

The Court: At which he was present?

Mr. Doherty: Yes.

A. At the second one I was present and they spoke about a mortgage.

Q. Who did the speaking? A. Mr. Colgan said—

By the Court:

Q. The question is, who did the speaking about a mortgage? A. Mr. Allen—Mr. David Allen.

By Mr. Doherty:

Q. What did he say? A. He said: "I have a piece of property. I am going to place a mortgage."

Q. He said that to whom? A. He said that to me; I was in the office.

Q. At that conference was anything said about paying you for the check? A. It was.

Q. Was anything said at that conference about McGee getting money to carry on his business? A. No, sir.

Q. In your first affidavit, in paragraph 5, you say: "Mr. Allen informed me that he was a partner of McGee's and that they expected to have certain stocks listed on the Chicago Exchange, which would make the stock which they held very valuable, and that they only needed a little cash to tide them over." Did Allen say that? A. I think he said it.

Q. That was at the time they were asking for the mortgage? A. I don't recollect.

Q. Allen was asking you to lend them some money so that they could tide their business over? A. I don't remember.

Q. You don't remember that? A. I don't remember.

Q. Don't you remember now whether you loaned this money to Mrs. Allen or whether you loaned it— A. I loaned it to Mr. and Mrs. Allen.

Q. You didn't lend it to McGee? A. No, sir.

Q. At the last hearing you testified that you didn't know that Mrs. Allen owned the property until you heard it that day in court. A. Correct.

Q. How, then, were you lending any money to Mrs. Allen? A. She had to sign.

Q. You thought Allen was the owner and she was his wife? A. Correct.

Q. You were not lending money for McGee's benefit at all? A. No, sir.

Q. In the third paragraph of your second affidavit you say: "I was being continually pestered by Mr. Allen and McGee to grant the loan." A. I think yes.

Q. McGee was pestering you? A. Because he needs money.

Q. McGee was pestering you to grant the loan? A. McGee and Mr. Allen were asking.

Q. Is it true that Mr. McGee and Mr. Allen were asking you to grant the loan? A. The two of them, yes.

Q. You say that you called at Allen's house twice? A. Correct.

Q. And the first time Mr. Allen was not there? A. I don't think he was there. I am not sure. I don't think he was there.

Q. You testified last week that he was not there. Is that true? A. I think it is correct.

Q. You think so? A. I think it is correct.

Q. You don't remember seeing him there? A. No.

Q. You said that you went there that time with Mr. Colgan and Mr. Dowden? A. Correct.

Q. And that Mrs. Allen let you in; that Mrs. Allen came to the door and let you in. A. No; I think it was a little girl. I don't recollect.

Q. You saw Mrs. Allen? A. I did.

Q. You testified that she asked you why you were there? Is that true? You testified last week that Mrs. Allen asked you why you were there. A. She knew about it.

Q. You testified that she asked you why you were there. Is that correct? A. Maybe it is true.

Q. Do you know? A. I don't think I testified that.

By the Court:

Q. What is the fact? Did she ask you why you were there? A. I don't think she did.

Q. Did she ask you anything? A. No.

By Mr. Doherty:

Q. Did she say anything to you? A. Mr. Dowden introduced us and she showed us—

Q. Did she say anything? A. She told me she knows about it; her husband arranged to give a mortgage on that property.

Q. Did she tell you that? A. Yes; the first time.

Q. How did she come to tell you that her husband had arranged to give a mortgage on the property? A. I said I wanted to look at the property.

By the Court:

Q. You told that to her? A. Yes.

By Mr. Doherty:

Q. Then, you say that you told her that you wanted to look at the property and she said to you: "My husband wants to arrange to get a mortgage," did she? A. That is correct.

Q. She said that? A. That is correct.

Q. In the hearing of Mr. Colgan? Was Mr. Colgan there? A. Yes.

Q. And Mr. Dowden? A. Correct.

Q. Was Judge Dolan there, too? A. I don't think so. I don't recollect that.

Q. What else did she say to you? A. That is the first time. Then she showed me the rooms.

Q. What else did she say, outside of: "My husband wants to arrange to get a mortgage"? A. That is all.

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By the Court:

Q. You mean she didn't speak about anything else to you? A. Not the first time.

Q. When she showed you the house, didn't she say: "This is a nice room"? A. Yes; she said: "Here is a nice room."

By Mr. Doherty:

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Q. She said all of these things his Honor mentioned? A. Yes.

Q. She said: "Here is a nice room"? A. Yes; and she said some kind of a judge lived next door. I don't recollect the name.

Q. You testified last week that she said: "If you place this mortgage, you will get your money back." Did she say that? A. Yes; the second day.

30 Q. She said that? A. Yes.

Q. That was when Mr. Colgan and Mr. Dowden were there? A. No. That was the second day. I went the second day to look at the property again.

Q. You testified last week as follows: "She asked me why we were there and I told her. She said: 'If you place your mortgage you will get your money back'." A. That was the second time.

Q. Not the first time? A. Not the first day.

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Q. The second day you say Mr. Allen was there? A. Correct.

Q. And you say that on that occasion she said to you: "What are you afraid of? We paid $25,000 for this place. There is an $8,000 mortgage on it. If you put your mortgage on here there will be $15,000 mortgages in all." She said that, did she? A. Correct.

Q. What did her husband say? A. He stood at the window. He was fixing his tie. He didn't say a word.

Q. You saw him there? A. Yes.

Q. He said nothing at all? A. I said: "Good morning, Dave."

Q. Did he say anything at all? A. He said: "Hello." I think he wanted her to show me the rooms again. The first time I was not upstairs. I was only downstairs, because I made up my mind not to give the mortgage.

Q. That is all he said? A. That is all he said.

Q. She brought you upstairs? A. She did.

Q. Why did you want to see upstairs? A. I wanted to see how the rooms were up there.

Q. Paper on the wall? A. I think so. I am not sure.

Q. It was necessary for you, in order to fix a value on the place in your mind, that you should see the rooms upstairs? A. Absolutely.

Q. Although a day or two before you had seen the general outlay of the place downstairs; is that true? When you were there the first time didn't you ask her how many rooms they had upstairs? A. No; I was not upstairs to know.

Q. You were interested in the first floor when you were looking around? A. Yes.

Q. But then you were not interested in the bedrooms upstairs? A. Correct.

Q. It was in order to get a look at the bedrooms that you went around a couple of days later? A. Correct.

Q. In your second affidavit you say: "I went with Colgan and Dowden and whether Mr. Allen came with us I don't know, but he was there and he introduced us to Mrs. Allen." Is that true? A. I don't recollect it.

Q. You don't recollect whether Allen, on the occasion when you called with Mr. Dowden and Mr. Colgan, was there and introduced you to his wife? A. I don't recollect.

Q. In that same affidavit you say: "Mr. Allen explained to his wife the reason why we were there, and we were there for a half hour." Is that true? A. I don't recollect it. Possibly it was.

Q. And: "And there was nothing in Mrs. Allen's attitude or her actions which would indicate to my mind any mental infirmity or weakness"? Did you swear to that? A. I took an affidavit.

Q. That is in your affidavit. Is that correct? A. Yes; I suppose so.

Q. What were her attitude and actions upon which you formed an opinion as to her mental condition? A. She acted like every woman—nicely.

Q. Are you thinking now of the time she showed you the first floor and told you that you would get your money back? A. That was the second time when she told me that.

Q. What did she say the first time? A. Just "The judge lives next door. It is a nice location."

Q. She was telling that to you? A. Yes.

Q. What else did she say? A. I really cannot recall. You know how a woman talks.

Q. When it was explained what you were there for, will you tell us who it was that gave the explanation? Was it her husband, or was it Mr. Dowden, or was it you? Who was it? A. She told me she knows all about it. I don't know who explained it.

Q. She knew all about what? A. That I was going to give a mortgage on the house.

Q. I understand that at that time nobody told her anything? A. She told me she knows it.

Q. When did she tell you that? A. When she tried to show the rooms.

By the Court:

Q. The first time you were there Mr. Allen was there, but you don't remember whether he went there with you; is that correct? A. Correct.

Q. Somebody introduced you to Mrs. Allen? A. Correct.

Q. Whether it was Mr. Dowden or Mr. Allen you do not recall; is that right? A. Correct.

Q. When you were introduced to Mrs. Allen by somebody, did that somebody who introduced you say to Mrs. Allen why you were there? A. Yes.

By Mr. Doherty:

Q. Who was it, and what did he say? A. He said: "Mr. Goren is going to take a mortgage on your property."

Q. Who said that? A. I don't recollect—Dowden or David Allen.

Q. Is your memory so bad that you cannot remember? A. I don't recollect.

Q. You don't remember? A. I do remember it is Allen or Dowden.

Q. Can you remember what was said? A. "Mr. Goren is going to take a mortgage on your property."

Q. What else? A. "Mr. Goren wants to look at your house."

Q. What else? A. "Mrs. Allen, will you please show him the rooms?"

Q. Was McGee mentioned? A. No.

Q. Nor the American Investors and Traders? A. Not a word.

Q. Nor the bad check? A. Not a word.

Q. Nor was there anything said about Mr. Colgan's bill for his services to you? A. Not then; not a word.

Q. Was anything said about her husband being in partnership with McGee and they wanted some money until the stocks were listed? A. Not a word.

Q. She was given no information at all as to what the money was wanted for, on that occasion? A. That is correct.

By the Court:

Q. She was given no information as to what the money was wanted for? A. Not from me.

Q. And not by anybody else? A. Not that I know of.

By Mr. Doherty:

Q. She was given no information as to any of the business that had taken place between you men? A. Not at all.

Q. You saw her again at Mr. Colgan's office?

The Court: He saw her again at the house.

Q. When you saw her again at the house was anything said about how the $7,000 was going to be divided? A. I don't know whether Mr.—

BY THE COURT:

Q. Yes or no. A. No; I didn't tell her.

BY MR. DOHERTY:

Q. Then you saw her at Mr. Colgan's office? A. I did.

Q. Nothing was said to her there about how the money was to be divided. A. Not what I know.

Q. At Mr. Dowden's office when the checks were made out and passed over, was anything said to her? A. No.

Q. You say you did not know yourself about the money going to McGee? A. I didn't know.

Q. But you did know that McGee had issued a bad check, didn't you? A. Correct.

Q. Was anything said to her about this money being used to help out a man who had issued a bad check? A. Not that I know.

Q. Or was anything said about his being connected with a concern that had to get some money to tide it over? A. No.

Q. She was given no information whatever as far as you know? A. Not as far as I know—nothing.

Q. In your first affidavit you said: "Mrs. Allen was fully acquainted with the purpose of this mortgage, as they talked about it in her presence at her home when we inspected the property and also at the office of Charles C. Colgan, at the time of signing the mortgage." Is that so? A. I don't recollect it.

Q. It is in your affidavit. A. I don't recollect it. It is two years ago.

Q. In paragraph 3 you say: "Mr. Allen introduced me to his wife and also introduced Mr. Colgan, at which time it was explained to Mrs. Allen that we were looking over the property in order to place a second mortgage." Is that right? A. That is right.

The Court: Except that he cannot remember whether Allen was there or not.

Q. Did you keep any books on this transaction? A. I did not.

Q. You do keep books? A. No; not lately—not the last three years.

Q. You got some stock from McGee later on, I understand? A. Correct.

Q. You testified last week that he sold you the stock? A. Correct.

Q. And he wanted $4,000 for it and you agreed to buy it? A. Correct.

Q. You were to make four payments? A. Correct.

Q. And you agreed not to sell the stock for thirty days? A. Correct.

Q. Is that true? A. Correct.

Mr. Newton: I ought to object to any questions along this line as not binding on Mr. Colgan.

The Court: It certainly is binding on Mr. Goren.

Q. In your second affidavit, paragraph 7, you swear: "McGee came to me for a loan of additional moneys, which was in no wise connected with the

mortgage." Was that true? A. That is correct. After the mortgage he came for some more money.

Q. He wanted a loan. Did you make a loan to him? A. No.

Q. You bought stock instead? A. Correct.

Q. You say in this affidavit: "I took an assignment of stock with the privilege of selling same when I saw fit." Was that true? A. It is not so.

Q. What is in your affidavit is not true? A. It is not so.

Q. Then the affidavit you made in this case is untrue, is it? A. The affidavit is not right. I bought the stock.

Q. You bought the stock? A. Yes.

Q. In paragraph 8 of the same affidavit you say: "I did sell these shares of stock and after payment of the moneys I had to loan to McGee, I had $2,000 left which I informed McGee that I would pay back to him." Is that correct? A. Correct.

Q. Then, it was a loan, was it? A. I bought it. If the Court will allow me, I will explain—

Q. Was it a loan? A. No; I bought the stock. I paid him $2,000, and I stopped—I didn't make another payment when I found out the stock is a fake.

Q. You bought the stock, but you didn't pay for it. A. I am not supposed to pay. I am supposed to make four installment payments. I didn't have the money—

Q. Is that the reason you didn't make the payments? A. That was my agreement with McGee.

Q. And you sold the stock? A. I sold it.

Q. Notwithstanding you told McGee you would not sell the stock? A. I didn't—

Q. You made one payment, got control of the stock, and then you suited yourself whether you would pay for it or not. A. I made two payments.

Q. You testified only last week: "I agreed not to sell for thirty days." Was that correct? A. Correct.

Q. You bought the stock, but you agreed not to sell for thirty days? A. That was a gentleman's agreement, not to sell for thirty days. He didn't want me to sell the stock for thirty days.

Q. Although he was selling to you outright; is that true? A. That is correct.

Q. When you were taking this stock over, did you find out what its market value was? A. No; I took McGee's word.

Q. When you were buying it? A. Yes.

Q. But not when you were selling it? A. When I was selling it I was going all over New York to see what I could get for it.

Q. You say the stock went down before you sold it? A. That is what I understood.

Q. When you sold that stock was it because of any information that you got that it was going down, or did you try first to sell it and then find out what it was worth? A. After the thirty days I started to sell the stock.

Q. Was it your intention when you bought this stock, that you would sell in thirty days whether it was paid for or not; was that what was in your mind? A. Yes.

Q. The stock was listed on the Produce Exchange —did you know that? A. I didn't know anything about it.

Q. When did you sell it? A. I sold it September 11, 100 shares.

Q. How many shares? A. 100 shares.

Q. 100 shares? A. Yes.

Q. To whom did you sell? A. I sold it to Hardie & Company.

Q. What price? A. Five dollars.

Q. When did you sell the next? A. The next day, the 12th.

Q. To whom? A. To the same people.

Q. What price? A. Five dollars, except commission. The commission has to come off and the tax.

Q. What have you there—confirmation of the sale? A. Yes.

Q. How many shares did you sell September 12th? A. 100 shares. The 13th I sold 200 shares.

Q. At what? A. Five dollars.

Q. Now you have your $2,000 back. What did you do with the rest? A. I paid back to Mr. Dowden. He had an assignment of the claim against me.

Q. You still have 400 shares to account for? A. Yes.

Q. You sold first 100 shares for $500? A. Correct.

Q. You sold next day 100 shares for $500? A. Correct.

Q. Then 200 shares for $1,000, giving you your $2,000 back. What about the other shares? A. I sold them.

Q. Have you any confirmation for the sale of those 400 shares there? A. No; there was no confirmation. I had to peddle it on the streets.

Q. What are those things that you have there? A. All the confirmations. They would not take it any more.

Q. You had sold 400 shares, giving you your money back? A. Yes.

Q. You say you had to go and peddle the other 400 shares? A. Yes, because McGee was suing me for the rest of the money.

Q. McGee was suing you? A. Yes. The minute I made a default in the rest of the payments, he wrote me a letter he was going to sue me for $2,000.

Q. These confirmations are to Ross Matthews. How is that? A. My broker would not take it.

Q. Ross Matthews is a real estate man? A. Yes.

Q. You turned this stock over to him to sell? A. Yes; I did.

Q. When? A. That was about the first of September.

Q. Why? A. When I had to sell it.

By the Court:

Q. He is a friend of yours? A. Yes.

Q. He is in the real estate business in Jersey City? A. Correct.

By Mr. Doherty:

Q. Why couldn't you sell it? A. My broker told me it was a fake stock.

Q. You didn't know the stock was listed on the Produce Exchange? A. It doesn't mean anything.

Q. I am referring now to a report of the Produce Exchange. You did not find out at any time during the month of September that that stock sold at $12? A. You couldn't sell it. It was listed, but you couldn't sell it.

Q. You didn't find out that the lowest it sold was at the beginning of the month, at five dollars? A. It was sold less. It was sold 1¾.

Q. What is that—what month? A. Tuesday, September 19th.

Q. Tuesday, September 19th, you didn't sell? A. When I sold I got $5. It was sold 1½. I got a good proposition.

Q. You produce two confirmations here, from Hardie & Company to Ross Matthews? A. Correct.

Q. For two sales of 100 shares? A. Yes.

Q. Have you any confirmation from anyone at all for the block of 200 shares? A. I sold it in the street.

Q. Have you any confirmation? A. I ain't got it.

Q. Have you a check, or a receipt, or a scrap of paper bearing on that sale? A. Yes.

Q. What have you? A. McGee has it in his possession.

Q. What? A. I had a slip of paper. McGee took it away from me.

Q. Is there one thing to confirm your statement that you sold 200 shares of stock for $5? A. Yes.

Q. Was is there? A. The man who bought the stock wrote it down. He gave us the figure how much he bought the stock. I was with Allen—

Q. You mean that some time afterwards you went to the man who bought the stock— A. The man who has the stock now in his possession.

Q. What have you to show in confirmation of your statement that you sold 200 shares for $5 a share—anything? A. Nothing.

By the Court:

Q. Do you know to whom you sold that stock? A. I do.

Q. Can you give us the name of the party? A. Here it is (indicating)—I. D. Noll & Company, 50 Broad Street, New York.

By Mr. Doherty:

Q. What have you on the sale of the other 400 shares? A. I have nothing, except a quotation from the man who has the stock.

BY THE COURT:

Q. Who is the man? A. Mr. Bowles. No; I don't know if he is—

Q. To whom did you sell? A. I sold it to Keefe & Company.

Q. All of it? A. All of it.

BY MR. DOHERTY:

Q. I served notice on you to produce your bank books in respect to this matter. Have you your bank books showing your deposits around this time? A. No. It wouldn't show. I didn't deposit the money in any bank. I borrowed the money, and I paid the money back.

Q. McGee asked you to show confirmation, didn't he? A. I gave it to him. That is why—

Q. When was it he asked you for confirmation? A. It was when he said he was going to start suit.

Q. In Colgan's office? A. I think it was.

Q. Was it when he accused you— A. I accused him. He didn't accuse me.

Q. He threatened to sue you? A. It is not so.

Q. You say he did sue you? A. For $2,000.

Q. Did he sue you or threaten to sue you? A. He threatened to sue.

Q. That was in Colgan's office? A. No.

Q. Where was it? A. I don't know where it was; I cannot recollect.

Q. Did he ever in Colgan's office threaten to sue you? A. I don't recollect.

Q. Did you boast that you had political standing around here? A. I did not.

Q. And did you telephone to your friend Inspector Underwood to drive McGee out of the city? A. I did not.

Q. When he asked you to show confirmation of the sale of the stock? A. I did not.

Q. In your affidavit you say that there was $1,500 paid to you on account of this mortgage? A. That is correct.

Q. That is not so, is it? A. Correct.

Q. Who paid you $1,500? A. Mr. Dowden paid me $1,500.

Q. Dowen paid you $1,500? A. Correct. He told me to credit the mortgage $1,500, and I gave him a check for $500.

Q. In paragraph 5 of your affidavit of March 24th you say: "This was the only check that I received, that is, $2,000, besides a check for $1,500, which was paid later on account of the mortgage." A. I gave him credit on the mortgage—$1,500.

Q. I was asking you about what transpired at Mr. Colgan's office when the mortgage was signed. You then told Mr. Dowden that you wanted to have him guarantee to buy the property when you foreclosed it and took it over, did you not? A. Correct.

By the Court:

Q. You didn't use that language at all, did you? A. Not exactly that language; no.

By Mr. Doherty:

Q. In your affidavit you say this: "At the closing of the mortgage loan I was still doubtful as to the security, and I stated this to my attorney Charles C. Colgan, who asked Dowden if he would guarantee the loan? A. That is correct.

Q. "Dowden agreed in writing that in the event of our having to foreclose, he would purchase same

within sixty days for the sum of $16,000." A. Correct.

Q. That is true? A. Correct.

Q. "Mrs. Allen was present and knew of these arrangements." A. She was there.

Q. While this conversation was going on between you and Colgan and Dowden, Mrs. Allen said nothing, did she? A. Mr. Allen was there, too.

Q. Did Mrs. Allen say anything? A. I don't think she said anything.

Q. Did you hear her remark that the Hudson River looked pretty? A. I think she did say it.

Q. Did you hear her say anything else? A. I don't recollect.

Q. Outside of the remark concerning the river, you don't remember that she said a word? A. I do not.

BY THE COURT:

Q. Did you say in your affidavit that Mrs. Allen was present during all of this conversation? A. Mrs. Allen was present and knew.

The Court: The affidavit says that Mr. Allen was present.

BY MR. DOHERTY:

Q. What is the fact? Was Mrs. Allen present when this matter of taking the house and Dowden buying it was discussed? A. I think she was there, too.

Q. You think so? A. Yes, sir.

Q. You also say in your affidavit that this was purely a direct transaction with Mr. and Mrs. Allen. A. Correct.

Q. Why do you say it was a direct transaction with Mrs. Allen, outside of the fact that she showed you around the house? A. That is their property, and they got the money.

Q. Did she do anything more than that? A. Yes; she signed the bond and mortgage.

Q. Is that all? A. She got the money.

Q. What money did she get? A. She got the $7,000. I turned over my $7,000.

Q. You know what became of the $7,000? A. Now I know it. I didn't know it before.

Q. Didn't you know then what became of it? A. I did not.

The Court: He has said several times that he did not know.

Q. Were you not with the party that went from Colgan's office up to Dowden's office before that check was cashed? A. Yes.

By the Court:

Q. You were not with the party, were you? You went up there by yourself later on, didn't you? A. To the house?

Q. To Dowden's office? A. I was with Mr. Colgan.

By Mr. Doherty:

Q. You didn't go with Mr. and Mrs. Allen? A. No.

Q. You went with Mr. Colgan? A. Correct.

Q. When you got to Dowden's office you saw that check endorsed, that $7,000 check? A. I didn't see anything.

Q. Did you see any cash?

The Court: The witness has testified several times, according to my recollection, that he did not know how the money was distributed at Dowden's office, except he knew that he got what was coming to him.

BY THE COURT:

Q. Is that correct? A. Correct.

The Court: He knows that Mrs. Allen got a check for $7,000, which she endorsed. That is his ground for saying that she got the $7,000.

BY MR. DOHERTY:

Q. You did not know, even when she got the check, that she was the owner of the property, did you? A. I did not.

Q. When you saw the check being made out to Mrs. Allen you still thought that Mr. Allen was the owner of the property? A. I didn't see it made out to Mrs. Allen. It was made out to Mr. Colgan, Attorney.

Q. Then, you don't know anything about the check. A. I know—

BY THE COURT:

Q. Didn't Mr. Colgan tell you that the title search showed that Mrs. Allen was the owner? A. No; he didn't.

Max Goren. Called by Complainants. Cross.

BY MR. DOHERTY:

Q. You told us that you gave a $7,000 check to Mr. Colgan and in your affidavit you say that you were short of money and that Mr. Colgan helped out. A. I told him I might be short. I told him I might need the money for something else.

BY THE COURT:

Q. You had $7,000 in your account? A. Yes.

Q. But it was going to make you short to put it up? A. That is correct.

BY MR. DOHERTY:

Q. In your affidavit of March 29, in Paragraph 3 you say: "I did finally consent to the granting of the loan and not having cash at the time, my attorney Charles C. Colgan took part of it". That is not true, is it? A. That is not true. It is not so.

Mr. Nemser: He didn't say that. He said: "Not having the full cash available at the time".

Q. Did I correctly understand you to say that you stold any of this stock to Bowles? A. No, sir.

Q. Bowles is president of the concern? A. No, sir; I didn't say it. I said I sold it to people that sold it—

Q. L. D. Noll? A. I. D. Noll.

Q. 50 Broad Street, New York? A. Correct.

Q. And Hardie & Company are also at 50 Broad Street? A. Correct.

Q. Did any correspondence pass between you and Mr. Ross Matthews? A. No, sir.

Q. Your bank book shows nothing at all?

The Court: He has testified to that.

Q. You never had any agreement with McGee in writing? A. Yes; I did.

Q. Where is it? A. He has got it.

Q. How did McGee get this agreement? A. After I gave him a thousand dollars he said: "When are you going to pay the other $2,000?" I said: "After a while I will get some money and I will pay you", and I agreed to pay Mr. McGee $2,000 August 15, 1929, and I signed it and—

Q. Is that the only paper? A. The only paper and McGee has it. That is the reason I paid him $2,000.

Q. Then, there was no written agreement between you and McGee over the loan of $7,000? A. It was not a loan. I bought the stock.

Q. There was nothing in writing between you and Mrs. Allen, was there? A. I didn't have anything to do with Mrs. Allen.

Q. You said an application for the loan was submitted to you. That application was not in writing, was it? A. No.

Q. There was nothing in writing? A. No; nothing in writing. Mr. Colgan told me.

Q. Referring again to the conversation that you had in Mr. Colgan's office with McGee after the sale of the stock, that was a rather troublesome time that you had there with McGee, was it not? A. Yes.

Q. Wasn't the trouble started because McGee told you that that stock had been turned over

to you for the purpose of satisfying the loan that you made when the mortgage was given? A. It is not so.

Q. And that your conduct was dishonorable because you knew that he had put that stock in your hands to satisfy this mortgage? A. It is not so.

BY MR. NEMSER:

Q. This mortgage was placed in March. When was this stock turned over? A. July 1st or 2nd.

Q. After the mortgage was signed? A. Yes.

Q. When was the last date of the disposition of the final block of stock? What month was that? A. 20th of September, 1929.

Q. You mentioned a man by the name of Bowles. Who is he? A. The president of that company.

Q. He is president of the Automotive Standards? A. Correct.

Q. When did you see him—what month? A. It was in December.

Q. December? A. Correct.

Q. What year? A. 1930.

Q. Do you mean 1930? A. You don't mean last month, do you? A. No; 1929.

Q. Where did you see him? A. In his office.

Q. Who else was present? A. Mr. Allen and Mr. Dowden.

Q. Was McGee there? A. No.

Q. What was the purpose of your visit? A. To prove how much I got from the stock.

Q. At that time did Mr. Allen make any notation in writing? A. I don't remember.

Q. Was Mr. Allen with Mr. Dowden? A. Correct.

Q. What quotations were given?

Mr. Doherty: Objected to as not binding on Mrs. Allen.

The Court: Objection overruled.

A. How much Mr. Noll had paid for the stock.

Q. Did Mr. Bowles have the same stock that you sold? A. Correct.

Q. I show you this paper representing the list given by Mr. Bowles. Was that list made out in your presence? A. In my presence.

Q. In whose handwriting? A. Mr. Dowden's and Mr. Allen's.

Q. That shows how much you received for each block of stock? A. How much he paid. I sold to—

Q. Do you know what the total amount of these figures that Mr. Bowles gave you is? A. They amount to $4,000.

Q. What did you realize in the aggregate? A. I realized $3,958.40.

Q. As a result of this visit to Mr. Bowles' office was Mr. Allen satisfied as to the amount that you had received for this stock?

Mr. Doherty: Objected to.

The Court: Objection sustained.

Q. You have testified that 200 shares of this stock was sold to Hardie & Company? A. Yes.

Q. You had 800 shares? A. Correct.

Q. Will you tell us what you did in attempting to sell that other stock? A. I was going back to that broker. He said it was a fake stock. He didn't want to have anything to do with it? Then

I told him: "Where can I go to sell it? Where is the best man to sell this stock?" He told me to go to I. D. Noll & Company. Then I went to I. D. Noll & Company. They told me to put it up. I said: "How much?" They told me 5½ less commission. They said: "Put it up". Then they called me back. They offered 4. I said: "Sell it for 4". I come back. They will only give me 3½. I said: "Let me have the stock. I will go back". Then a fly fellow comes in and calls me aside—

Mr. Doherty: Objected to.
The Court: Overruled.

Q. Go on. A. He said: "You will never sell the stock that way". I said: "How can I sell it?" He said "You come in every day with 100 shares and I will take it up for you". I came—

Q. You sold 100 shares on successive days? A. Successive days.

Q. Was this stock listed at that time at 5 or 6 or 7 dollars? A. It was listed at that time—

Q. How much? A. 5½ or 5¼.

Q. When you turned the certificates over to the man in charge of I. D. Noll & Company did you get a check or cash? A. Cash. They would not give a check.

Q. Why not? A. Because they have to sell the stock higher. They told me what kind of stock it is.

Q. What kind of stock did they tell you it was? A. It is a fake stock.

Q. Do you know what "rigging the market" is? Do you know what that means? A. Whenever he explained—

Q. Do you know what that means? A. I don't know.

Q. When you went out to Bowles, who was president of this Automotive Standards Corporation, did you find out that the certificates that you turned over to I. D. Noll & Company were in the possession of the president of the company? A. Yes; I found it out.

Q. Then it turned out that Mr. Bowles had the certificates that you had turned over? A. Correct.

Q. Was Mr. Allen there at the time? A. Correct.

Q. You say that Mr. Bowles gave Allen or Bowdent the exact figures that he gave for the stock? A. Correct.

Mr. Doherty: I offer this paper in evidence. (Marked Exhibit D-1, Jan. 15, 1931.)

Q. Did you see McGee after you came back, in Colgan's office? A. I didn't see McGee.

Q. Did you talk to Allen after that? A. Yes.

Q. What did he say? A. He told me not to give McGee the money.

Q. This was when? A. That was September.

Q. 1929? A. That is right.

Q. You finally settled the claim that McGee had against you for the balance of the money? A. Correct.

Q. When did you settle that claim? A. I will have to look at the paper.

Q. December, 1929? A. I don't recollect.

Q. How did you settle it? A. I gave $1,500.

Q. Before you settled it did you have a conversation with anybody? A. Certainly.

Q. With whom? A. With Allen and with Dowden.

Q. With Allen and Dowden? A. Yes.

Q. What had Dowden to do with the stock transaction? A. He had an assignment of the claim.

Q. I show you this paper marked Exhibit C-4. Do you recognize this paper? A. Yes; that is the paper.

Q. As a result of your conversation you settled with Dowden? A. Yes, sir.

Q. And received this release? A. Correct.

Q. You didn't actually take the $2,000 and pay it to Mr. Dowden? A. No; I did not.

Q. How much did you give Dowden? A. $500.

Q. What was the $500 for? A. He is supposed to pay the first mortgage interest and taxes.

Q. Now, when you finally made up your mind to place a loan on this property, did you leave the details to Mr. Colgan? A. Correct.

Q. You made a check to Mr. Colgan? A. Correct.

Q. You didn't know whether the money was going to Mr. Allen or Mrs. Allen or both? A. I know it was going to Mr. and Mrs. Allen.

By Mr. Doherty:

Q. How did you know it was going to Mr. and Mrs. Allen? A. It was their property.

Q. You didn't know that at the time you made out the check. You didn't know then whose property it was, did you? A. Mr. and Mrs. Allen's.

Q. How many certificates of stock did McGee turn over to you? A. Eight.

Q. What are the numbers, do you know? A. Yes; I have got it.

Q. Where did you get those numbers? A. From Mr. Bowles.

Q. How do you know that those numbers are the same numbers as on the certificates that you sold? A. Because Mr. Bowles said it was Mr. McGee's stock, and I did recognize the stock, too.

Q. How did you recognize it? A. Because I had it.

BY THE COURT:

Q. Had it not been transferred to Mr. Bowles yet? As I understand it, he had the certificates that McGee gave you. A. No. I will explain—

BY MR. DOHERTY:

Q. But you have testified that when you went to Bowles' office, you found the same certificates in Bowles' possession that you had turned over to I. D. Noll. Is that true? A. Correct.

Q. How do you know that? A. Because it was Bowles' name; it was not McGee's name. The certificates were in Bowles' name that he gave to McGee.

Q. How do you know that? A. I had them in my hands.

Q. That is, the certificates that McGee turned over to you had Bowles' name? A. Correct.

Q. When you went to Bowles' office you saw certificates with Bowles' name? A. Mr. Bowles told me: "That is the certificates I gave to McGee, and that is the reason I bought them back".

Q. That is, Bowles said that he had given that stock to McGee? A. Yes.

Q. And that he bought it back? A. Yes.

Q. He told you that? A. Yes. He told me the best think he did it.

Q. Did Noll & Company give any reason for not turning over a check? A. He said: "You can never sell it". It was a fake stock. He wouldn't have anything to do with it.

Q. You told Mr. Nemser that the man in charge of Noll & Company would not give you a check; that he gave you cash? A. Yes; over the counter. He said: "You will never sell that way".

Q. Who was it that said that? A. I can tell when I see him.

Q. Do you know his name? A. No.

Q. And after you heard this stock was a fake stock you sold it to the public? A. The public knew it. He told me: "You will never sell it for a dollar".

Q. After you got your $2,000 back on the sale of the 400 shares, why did you bother with the rest of it? A. I was supposed to pay another $2,000.

The Court: He says it was his stock.

Q. The last stock you sold was in September? A. Yes; September.

Q. The credit for $1,500 was given in December? A. Correct.

Q. In the meantime you gave no part of that money to anybody? A. Correct.

Q. You were holding it for yourself? A. No, sir.

Q. Was it in September that you went up with Allen to see Mr. Bowles? A. No; it was in December.

Q. In December? A. Something like that.

Q. You say that on that trip to Bowles, Mr. Allen told you not to turn any money over to

McGee? A. They told me that before that. They came in and asked me a favor not to turn over to McGee any money.

By Mr. Nemser:

Q. These certificates that McGee turned over to you, whose name were they in? A. They were made out to Bowles.

Q. Were they endorsed to Bowles on the back? A. Correct.

Q. Did your name appear on them? A. No.

By Mr. Doherty:

Q. I still do not understand why you say the certificates that Bowles had were the same certificates that McGee turned over to you? A. Bowles told me.

Q. Is that all you know about it—what Bowles told you? A. And I did recognize the certificates myself.

(Complainants rest.)

David J. Allen, already sworn as a witness on the part of the defendants, recalled in rebuttal.

Direct Examination by Mr. Doherty:

Q. You went out to Bowles with Goren, did you? A. Yes.

Q. Were any certificates exhibited out there by Bowles? A. No, sir.

Q. Did Bowles have any conversation with Goren that you heard? A. Yes.

Q. What was it? A. Goren wanted more Automotive Standards stock because the Du Ponts were trying to control the Automotive Standards Company.

Q. Was that said? A. Yes; by Mr. Goren and Mr. Bowles, and they made an engagement to get the Bayonne Trust Company to advance $75,000. Mr. Dowden made a memorandum of what Bowles considered was an average price of Automotive Standards over a certain period. There was no stock certificate displayed there.

Q. Goren says that on one occasion he called at your house, and he testified that you were there and that you were dressing, and that while you were so occupied your wife brought him upstairs and exhibited the upper part of the house to him. A. I never met Mr. Goren in my house.

Q. He was never there? A. I never saw him there; I never met him there.

CROSS EXAMINATION BY MR. NEMSER:

Q. Did you make any notations in Mr. Bowles' office? A. No, sir.

Q. Did Mr. Dowden in your presence? A. I think he did.

Q. I show you Exhibit D-1 and ask you if that is the notation made by Dowden in your presence.

Q. This is a memorandum made by Mr. Dowden.

Q. What was the purpose of that memorandum? A. He was getting an average price on the stock over a certain period from Mr. Bowles—Mr. Bowles' opinion of the average price.

Q. Nothing was said about the stock that Goren had sold? A. Not this particular 800 shares. They were talking about $75,000 worth of Automotive Standards stock. Dowden was acting for Goren at that time.

Q. Dowden was acting for Goren? A. For Goren and Bowles.

Q. Why did you go up there? A. Because I was interested in the deal.

Q. In what way? A. If there was anything to be made out of it, I would be in on the deal.

Q. What was the deal? A. $75,000 of Automotive Standards for the purpose of acquiring the Indian motorcycle. There was some arrangement between Mr. Goren and Mr. Dowden.

Q. Didn't they say anything about the mortgage that you had signed? A. There was mention of the $90,000 that was supposed to be agreed for the 800 shares of stock.

Q. Then, you were concerned as to whether Goren had received enough for the stock? A. Absolutely.

Q. Is it not a fact that you went up there to check up on what Goren had received for the stock? A. No, sir. We were satisfied this was going to be worked out.

Q. Can you explain why this notation covers September, 1929? A. That is the period Mr. Goren said he had sold the stock.

Q. Why did Mr. Goren say anything about selling his stock if he was up there to buy more Automotive stock? A. He was getting the average price of the stock.

Q. Didn't Goren get the average price of the stock? A. He claimed not.

David J. Allen. Called in Rebuttal. Cross.

BY THE COURT:

Q. This was in December? A. They were talking back to December.

Q. In December, when you say he went there to buy more stock, he wanted to know what the price was in September? A. Yes.

BY MR. NEMSER:

Q. Did he get what the price was in October or November? A. I don't know.

Q. As a matter of fact, the stock was ruled off the board? A. No, sir.

Q. Is it still on the board? A. Yes.

Q. Still on the Produce Exchange? A. I could not tell you, because I know the Du Pont acquired control and they own all the stock.

BY THE COURT:

Q. They were going to take Mr. Goren— A. No; they were trying to put through a deal to acquire the plant of the Indian Motorcycle Company.

Q. Were they going to take Mr. Goren in? A. Mr. Bowles was.

BY MR. NEMSER:

Q. Do you see this name here? Do you know this name? A. No.

Q. Did you ever see this paper before? A. No, sir.

Q. Do you know how much Mr. Goren got for his Automotive Standards stock? A. Only what I have been told.

Q. By whom? A. By Bowles and McGee.

Q. How did it come about that McGee's claim against Goren was settled in this manner? His claim was assigned to Dowden and—

The Court: That is not proper cross examination.

By Mr. Doherty:

Q. Your son was with you when you went to see Bowles? A. Yes.

Q. Your son is here now? A. Yes.

Richard J. Allen, sworn as a witness on the part of the defendants, in rebuttal, testifies as follows:

Direct Examination by Mr. Doherty:

Q. You are a son of the defendant David J. Allen?

Q. You accompanied your father and Mr. Dowden to the office of Mr. Bowles? A. I drove the car.

Q. Were you present at the conversation out there? A. I was in the room.

Q. Did you see Mr. Bowles produce any certificates of stock? A. He didn't produce any while I was there.

Q. Did you hear him state that these certificates were identically the certificates that McGee had had? A. Well, I didn't see any stock.

Q. Was there any reference made to Bowles having in his possession the same certificates that

McGee had had? A. The only reference to stock that I heard, I believe it was the purpose of Mr. Goren—

Q. Don't tell us what you believe was Mr. Goren's purpose. Did you hear anything said about Bowles having in his possession the same certificates that McGee had had? A. No; not that I recall.

Q. Did you hear Goren conduct any negotiations for acquiring more of that stock at that time? A. Yes.

Q. What were those negotiations? A. I don't know the exact negotiations. I know they were speaking of $75,000 for stock.

Q. What stock? A. Automotive Standards.

Q. Who was the prospective purchaser of that stock? A. Mr. Goren. Mr. Goren was to finance it in some way or other—I don't know—through the Bayonne Trust Company. He said he would have to check it up with his banker and would let Mr. Bowles know tomorrow or the day after.

By Mr. Nemser:

Q. Were you present at the last hearing when Mr. Dowden testified? A. When was that?

Q. About ten days or two weeks ago. A. No.

Q. Were you ever present when Mr. Dowden testified in this case? A. I was present at the first hearing. I don't remember him testifying.

Q. Did you hear Mr. Dowden testify that the purpose of going up there was to check up on the price Goren had received for the stock? A. I don't recall Dowden testifying.

Q. Did you see what— A. Mr. Bowles was writing, and Mr. Goren was writing, and Mr. Dowden

was writing. They were figuring. I don't know what they were figuring. I was not in the conversation. I was in the room.

Q. Were you present during the entire conversation? A. At the first part I was in the other room outside but I could hear all the conversation. Then I walked in.

Q. How long were you waiting outside before you walked in? A. Only a few minutes.

Q. What was your purpose in waiting outside? A. I wasn't in any hurry to go inside.

Q. Were you not interested? A. I was not supposed to be in on the conversation.

Q. Why did you go inside and stay there? A. Because no one had any objection to my being there.

Q. You got lonesome outside by yourself, did you? A. Yes, sir.

Q. You heard your father testify in this hearing? A. Yes.

Q. Did you hear your father testify who were present? A. Yes.

Q. Did he mention your name?

The Court: The record shows whether he did or not.

A. I believe he did.

Case closed.

Exhibit C-1.

THIS INDENTURE Made the Twenty-second day of March in the year of our Lord One Thousand Nine Hundred and twenty-nine.

BETWEEN Ellen E. Allen and David J. Allen, her husband, of the City of Jersey City, in the County of Hudson and State of New Jersey, party of the first part;

AND Max Goren of the of in the County of and State of party of the second part;

WHEREAS, the said Ellen E. Allen is justly indebted to the said party of the second part, in the sum of Seven thousand ($7000.00) Dollars, lawful money of the United States of America, secured to be paid by her certain bond or obligation, bearing even date with these presents, in the penal sum of Fourteen thousand ($14,000.00) Dollars, lawful money as aforesaid conditioned for the payment of the said first-mentioned sum of Seven thousand ($7000.00) Dollars, lawful money as aforesaid, to the said party of the second part, executors, administrators and assigns on the Twenty-second day of March, which will be in the year One Thousand Nine Hundred and thirty and interest thereon, to be computed from the date hereof and thereof at and after the rate of six (6) per cent. per annum, and to be paid quarterly on the twenty-second day of each June, September, December and March, the first interest day to be June 22, 1929.

AND IT IS THEREBY EXPRESSLY AGREED that should any default be made in the payment of said interest or of any part thereof, on any day whereon the same

is made payable, as above expressed, or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become due and payable, and should the said interest or any part thereof remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of sixty days then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods as the case may be, the aforesaid principal sum of Seven thousand ($7000.00) Dollars, with all arrearage of interest thereon, shall, at the option of the said party of the second part, or his, legal representatives or assigns, become and be due and payable immediately thereafter although the period above limited for the payment thereof may not then have expired, anything therein before contained to the contrary thereof in anywise notwithstanding: and the holder of this mortgage may, at his option, pay such tax, assessment, or water rent in arrear, and the amount so paid shall be added to and become part of the principal sum secured by the said bond and by this mortgage, and shall be payable on demand with interest at six per centum per annum, as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

NOW THIS INDENTURE WITNESSETH, That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration

of the sum of one dollar, to them in hand paid by the said party of the second part at or before ensealing and delivery of these presents, the receipt whereof is hereby acknowledged have granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, release, convey and confirm, unto the said party of the second part, and to his heirs and assigns forever.

ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Jersey City, in the County of Hudson and State of New Jersey, which on a Map of 44 Choice Building lots property of B. Vetterlein, Jersey City Heights, N. J. made by A. Onderdonk, surveyor, and filed in the Office of the Clerk, now Register, of Hudson County is shown as lot number seventeen (17) and part of lot number sixteen (16) fronting on Belmont Avenue bounded and described as follows:

BEGINNING at a point in the southwesterly side of Belmont Avenue where the same is intersected by the southeasterly line of lot number seventeen (17) as shown on said map and distant ninety feet and nine tenths of a foot (90.9 ft.) northwesterly from the corner formed by the intersection of said Southwesterly line of Belmont Avenue with the westerly line of Summit Avenue and running thence (1) northwesterly along the southwesterly line of Belmont Avenue thirty-four (34) feet; thence (2) southwesterly at right angles to Belmont Avenue one hundred (100) feet; thence (3) southeasterly parallel with Belmont Avenue thirty-four feet (34 ft.) to the southeasterly line of lot number seventeen (17); thence northeasterly along said southeasterly line one hundred (100) feet to the point of beginning.

BEING known by the Street number 7 Belmont Avenue.

BEING the same premises conveyed to the said Ellen E. Allen by Mary A. Somers, widow of Charles J. Somers, deceased, by deed dated October 6, 1923 and recorded in the Register's Office of Hudson County October 9, 1923 in Book 1497 of Deeds at page 353.

Subject to a first mortgage now held by the New Jersey Title Guaranty Trust Company in the sum of $8,000, and this mortgage is subordinate to the said mortgage of $8,000.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, and remainder and remainders, rents, issues and profits thereof. AND ALSO, all the estate, right, title, interest, curtesy, right of curtesy, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances: TO HAVE AND TO HOLD the above granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof for ever. PROVIDED ALWAYS, and these presents are upon this express condition, that if the said party of the first part, their heirs, executors or administrators, shall well and truly pay unto the said party of the second part, his heirs, executors, administrators and assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof,

that then these presents, and the estate hereby granted, shall cease, determine and be void.

AND the said Ellen E. Allen for herself, her heirs, executors, and administrators does covenant and agree to pay unto the said party of the second part, his heirs, executors, administrators and assigns, the said sum of money and interest, as mentioned above and expressed in the conditions of the said bond.

AND IT IS ALSO AGREED, by and between the parties to these presents, that the said party of the first part, their heirs, executors, administrators and assigns shall and will keep the buildings erected, and to be erected, upon the lands above conveyed, insured against loss or damage by fire by insurers, and in an amount approved by the said party of the second part, his heirs, executors, administrators and assigns, and assign the policy and certificate thereof to the said party of the second part; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, payable on demand, with interest at the rate of six per cent, per annum, from the time of payment of such premium or premiums; and in default thereof for ten days after demand, the principal sum hereof, with all arrearage of interest thereon, shall, at the option of the party of the second part, his heirs or assigns, become and be due and payable immediately thereafter.

AND THE SAID Ellen E. Allen, the owner of the lands above described for herself, her heirs and

assigns does further covenant and agree to and with the said party of the second part, his heirs, executors, administrators and assigns, that she or they will pay in full, all taxes levied, or to be levied, upon the lands embraced in this mortgage, and will not claim any credit on, or make any deduction from the interest or principal hereby secured by reason of the payment of any taxes so levied, or to be levied, during the continuanec of the lien of this mortgage, and upon the breach of this covenant or any part thereof, this mortgage may become and be due and payable immediately, at the option of the said party of the second part hereto.

And the said mortgagor, Ellen E. Allen, does covenant with the mortgagee that she is seized of an indefeasible estate in fee simple in said premises, and will warrant and forever defend the title thereof unto the mortgagee, his heirs, executors, administrators and assigns, against all lawful claims whatsoever.

All of the covenants and conditions hereinabove contained shall be for the benefit of and shall apply to and bind the said parties hereto and their respective heirs, executors, administrators, successors and assigns.

In Witness Whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

Ellen E. Allen (Seal)
David J. Allen (Seal)

Signed, Sealed and Delivered
in the presence of

Harold B. Lightdale

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

BE IT REMEMBERED, That on this 22nd day of March in the year of our Lord One Thousand Nine Hundred and twenty-nine, before me, the subscriber, an attorney at law of New Jersey personally appeared Ellen E. Allen and David J. Allen, who, I am satisfied, are the mortgagors mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon they acknowledged that, they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

HAROLD B. LIGHTDALE,
Attorney at Law of New Jersey.

Compared

MORTGAGE.

Ellen E. Allen et vir.

TO

Max Goren

Indexed under County Block No. 705.

Dated, March 22, 1929.

RECEIVED in the Register's Office of the County of Hudson, N. J. on the 22 day of Mar. A. D., 1929, at 2:06 o'clock, in the afternoon and recorded in Book 1541 of MORTGAGES for said County, on page 579.

CHARLES F. X. O'BRIEN,
Register.

CHAS. C. COLGAN
15 Exchange Place
Jersey City, N. J.

(Register's Office Mar 22 2 06 PM 1929 Hudson County, N. J.)

Number 1205

Exhibit C-2.

KNOW ALL MEN BY THESE PRESENT: That I, Ellen E. Allen, and David J. Allen, her husband, of the City of Jersey City, County of Hudson and State of New Jersey, am held and firmly bound unto Max Goren in the penal sum of Fourteen thousand dollars lawful money of the United States of America, to be paid to the said MAX GOREN, his heirs, executors, administrators or assigns: FOR WHICH PAYMENT well and truly to be made, I bind myself, my heirs, executors and administrators, jointly and severally firmly by these presents. Sealed with my seal. Dated the Twenty-second day of March One Thousand Nine Hundred and twenty-nine.

THE CONDITION of the above obligation is such that if the above bounden obligor, her heirs, executors or administrators, shall well and truly pay, or cause to be paid, unto the above named Max Goren, His heirs,—executors, administrators or assigns, the just and full sum of Seven thousand ($7000.00) dollars, on the Twenty-second day of March will be in the year One Thousand Nine Hundred and thirty, and the interest thereon, to be computed from the date hereof at and after the rate of six (6) per cent. per annum, and to be paid quarterly on the twenty-second day of each June, September and December and March, the first interest day to be June 22, 1929, without any fraud or other delay, then the above Obligation to be Void, otherwise to remain in full force and virtue.

AND IT IS HEREBY EXPRESSLY AGREED, that should any default be made in the payment of said interest, or of any part thereof, on any day whereon the same is made payable as above expressed, or should any tax, assessment, water rent or other municipal

or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond, and become due and payable; and should the said interest or any part thereof, remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them, remain unpaid and in arrear for the space of sixty days then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid principal sum of Seven thousand ($7000.00) Dollars, with all arrearage of interest thereon, shall, at the option of the said MAX GOREN, or his legal representatives, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding, and the said Obligee may at his option, pay such tax, assessment, or water rent in arrear, and the amount so paid shall be added to and become part of the principal sum secured by the said mortgage and by this Bond, and shall be payable on demand with interest at six per centum per annum.

ELLEN E. ALLEN (Seal)
DAVID J. ALLEN

Signed, Sealed and Delivered }
In the Presence of }

HAROLD B. LIGHTDALE

(On Back)

1205—GLG

BOND.

ELLEN E. ALLEN

To

MAX GOREN,

Amount, - - - - - - - - - - $7000.00

Date March 22, 1929

Due, " " 1930

Interest payable quarterly

Exhibit C-3.

KNOW ALL MEN BY THESE PRESENTS, THAT I, Max Goren party of the first part, in consideration of the sum of Thirty-five ($3,500) Hundred Dollars lawful money of the United States, to me in hand paid by Charles C. Colgan party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over, unto the said party of the second part, all the undivided one half of a certain indenture of mortgage bearing date the 22nd day of March in the year One Thousand Nine Hundred and Twenty-nine which said Mortgage was recorded in Liber 1541 of Mortgages for the County of Hudson on page 579.

TOGETHER with the lands therein described and the covenants and stipulations therein contained, and the bond or obligation therein recited, and the money due and to grow due thereon with the interest, TO HAVE AND TO HOLD the same unto the said party of the second part, his heirs, executors, administrators and his assigns forever, subject only to the proviso in the said Indenture of Mortgage mentioned. And I do hereby make, constitute and appoint the said party of the second part my true and lawful attorney, irrevocable, in my name or otherwise, but at his proper cost and charges, to have, use, and take all lawful ways and means for the recovery of the said money and interest, and in case of payment to discharge the undivided one-half the same as fully as I might or could do, if these presents were not made.

In Witness Whereof, I have hereunto set my hand and seal the Eighth day of April in the year one thousand nine hundred and twenty-nine.

Max Goren L. S.

Signed, Sealed and Delivered in the presence of

Harold B. Lightdale.

State of New Jersey, County of Hudson, } ss.:

Be it Remembered, That on this Eighth day of April in the year one thousand nine hundred and twenty-nine before me, an Attornew at Law of New Jersey personally appeared Max Goren who, I am satisfied, is the assignor named in, and who executed the within Assignment; and I having first made known to him the contents thereof, he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed.

Harold B. Lightdale,
Attorney at Law of N. J.

ASSIGNMENT OF MORTGAGE.

Compared

Register's Office Apr 17 9 01 AM 29 Hudson County, N. J.

MAX GOREN

To

CHARLES C. COLGAN

Dated April 8th, 1929.

Received in the Office of the Register of the County of Hudson on the 17th day of Apr. A. D., 1929 at 9:01 o'clock A. M., and 193 in book 193 of Assignment of Mortgages for said County, page 193.

CHARLES F. O'BRIEN,
Register.

Return to
Charles C. Colgan
15 Exchange Place
Jersey City, N. J.

Exhibit C-4.

December 4, 1929.

I, Eugene F. McGee, of the City of New York, New York, for and in consideration of the sum of One dollar and other valuable considerations, hereby assign all my right title and interest in and to any and all claims which I may have against Max Goren, of the City of Jersey City, County of Hudson and State of New Jersey and particularly arising out of stock received by Max Goren and collateral security to loan or loans made to me, to Benjamin Dowden, Attorney.

I hereby authorize said Benjamin Dowden, Attorney for Ellen E. Allen to give satisfaction of any claim which I may have against said Max Goren, as aforesaid and apply proceeds toward payment of mortgages on premises 7 Belmont Avenue, Jersey City.

In Witness Whereof, I have hereunto set my hand and seal this fourth day of December, 1929.

EUGENE F. McGEE. (Seal)

Signed, sealed and delivered in the presence of.

M. J. CRONIN.

STATE OF NEW JERSEY,
COUNTY OF HUDSON, } ss.:

Be it remembered that on this Fourth day of December, in the year of our Lord One thousand nine hundred and twenty-nine, before me the subscriber, a Master in Chancery of New Jersey personally appeared EUGENE F. MCGEE, who, I am satisfied is the person named in the foregoing assignment, to whom I first made known the contents thereof, and thereupon he acknowledge that he signed sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

MAURICE J. CRONIN,
Master in Chancery of New Jersey.

Exhibit C-5.

HUDSON COUNTY NATIONAL BANK
At Pavonia Avenue and Grove Street

No. .....

Jersey City, N. J. Dec. 17th 1929

Pay to the order of Benjamin Dowden, Atty.
$500.00 Five hundred and 00/100 Dollars.

MAX GOREN.

Jan. 6 1931

(On back)

Benj. Dowden, Atty.
For deposit
Benjamin Dowden

RECEIVED PAYMENT
Through Northern New Jersey Clearing House
Prior Endorsement Guaranteed
Dec. 17 1929
COMMERCIAL TRUST CO. OF NEW JERSEY
Four Corners Branch
FRANK PRATT, Asst. Treasurer.

Exhibit C-6.

STATE OF NEW JERSEY
CITY OF JERSEY CITY } ss.:
COUNTY OF HUDSON

Ellen E. Allen being duly sworn, says that she resides at 7 Belmont Avenue that she citizen of the United States, twenty-one years of age and upwards; and that she now in possession, and the owner in fee simple, of premises 7 Belmont Ave. Jersey City, this day to be mortgaged by her to Max Goren.

Deponent further say that the said premises have been held by her for six years last past, and that her possession thereof has been peaceable and undisturbed, and that the title thereto has never been disputed or questioned to her knowledge, nor do deponent know of any facts by reason of which said possession or title might be disturbed or questioned, or by reason of which any claim to said premises, or any part thereof, might arise or be set up adverse to her deponent; and that she is informed and believes that her grantors held the said premises for more than twenty years prior to the transfer to her; and that no person has any contract for the purchase of, or claim to or against said premises, except as hereinafter stated: and that the same are now free and clear of all taxes, incumbrances or liens by mortgage, decree, judgment, or by statute, or by virtue of any proceeding in any Court, or filed in the office of the clerk of any County or Court in this State, that there are no outstanding claims for the furnishing of material or labor, for the erection, construction, or alteration of any building on said premises whereby the same are now or might become subject to mechanic's or other liens; that there are no prospective

assessments for improvements which have already been made on or about said premises and that said premises are now free and clear of all liens of every nature or description, save and except first mortgage in the sum of $8,000. now held by New Jersey Title Guaranty and Trust Company.

The premises are occupied as follows: one family house occupied by deponent.

Deponent further say that she is married to David Allen who is over the age of twenty-one years, and who is the same person who executed, with deponent, the mortgage on the said premises, and that she has never been married to any other person now living; and that there are no judgments, or decrees, or attachments, recognizances and bail bonds or orders of any Court or officer for the payment of money against her, or to which are partly, unsatisfied or not cancelled of record in any of the Courts, or before any officer of the United States, or of this State, or any suit or proceeding pending anywhere affecting said premises, to her knowledge, information or belief, and that any judgments found of record against her are not against deponent but against other of similar name; and that no proceedings in bankruptcy or insolvency have ever been instituted by or against deponent.

Deponent makes this affidavit to induce Max Goren to accept a mortgage upon said premises, and pay the consideration therefor, knowing that he relies upon the truth of the statement herein contained.

ELLEN E. ALLEN.

Sworn to before me this 22nd day of March 1929

HAROLD B. LIGHTDALE
Attorney at Law
of New Jersey.

Exhibit C-1.

(January 6, 1931)

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN:

Know ye, that I, Benjamin Dowden, of the City of Jersey City, County of Hudson and State of New Jersey, for and in consideration of the sum of Two thousand dollars lawful money of the United States, to me in hand paid by Max Goren, of the City of Jersey, County of Hudson and State of New Jersey, have remised, released and forever discharged, and by these presents do for myself, my heirs, executors and administrators, remise, release and forever discharge the said Max Goren, his heirs, executors and administrators, of and from all and any manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds and bills, specialties, covenants, contracts, controversies, agreements, premises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, which against the said Max Goren, Eugene F. McGee or I ever had, now have or which I, my heirs, executors or administrators ever had, now have or which I, or Eugene F. McGee, my heirs, executors or administrators hereafter can, shall or may have, for, upon or by reason of claim arising out of sale or pledge of stock of Automotive Standards, Inc. heretofore made by Eugene F. McGee, or me, by reason of assignment of any and all claim or claims which Eugene F. McGee had against said Max Goren, which assignment was made to me by said Eugene F. McGee.

IN WITNESS WHEREOF, I havere hereunto set my hand and seal, this Fourteenth day of December, One thousand nine hundred and twenty-nine.

BENJAMIN DOWDEN (Seal)

Signed, sealed and delivered
in the presence of.

CHARLES C. COLGAN

Exhibit C-2.

(January 6, 1931)

This agreement was made this 14th day of December, 1929, between Charles C. Colgan, and Max Goren, parties of the first part;

AND David Allen Ellen E. Allen, of the City of Jersey City, County of Hudson and State of New Jersey,—parties of the second part;

Whereas, the parties of the first part has pending a foreclosure proceeding on mortgage for $7000.00 on premises No. 7 Belmont Avenue, Jersey City, N. J., which mortgage is in the name of the parties of the first part;

And Whereas, the parties of the second part are desirous of securing an extension of time in which to pay off said mortgage and for a suspension of the foreclosure proceedings, the parties of the second part hereby agree to pay to the parties of the first part the sum of $1500.00, which moneys are now in the hands of Max Goren, aforesaid; the said parties of the second part hereby authorize the said Max Goren to turn over to said Charles C. Colgan, the aforesaid sum of $1500.00

And in consideration of said payment of $1500.00 on account of the principal sum, the parties of the first part hereby agree to hold up all further proceedings in the aforesaid foreclosure cause until March 1st, 1930, at which time the parties of the second part, hereby agree to pay the balance remaining due on said mortgage amounting to $5500.00, together with all interest and foreclosure charges that may be due;

The parties of the second part further agree that they have no defense either in equity or at law against the mortgage of $7000., or the balance of said mortgage, now held by Charles C. Colgan and Max Goren, and that if the said balance of $5500.00 together with interest and foreclosure charges is not paid on March 1st, 1930, then the parties of the first part are at liberty to proceed to final decree in said foreclosure action.

Dated Dec. 14th 1929.

Witness;

CHARLES C. COLGAN
MAX GOREN
DAVID J. ALLEN

BENJAMIN DOWDEN
Solicitor for defendant Ellen E. Allen.

I Benjamin Dowden agree to pay interest to N. J. Title Guarantee and Trust Co. December 18/29. Taxes to be paid by January 20/29.

BENJAMIN DOWDEN.

Exhibit C-3.

(Jan. 6, 1931)

HUDSON COUNTY NATIONAL BANK
At Pavonia Avenue and Grove Street

No..... Jersey City, N. J., March 22nd, 1929

Pay to the order of
Charles C. Colgan Atty $7,000. 00/100
Seven thousand and 00/100 Dollars
Payable in New York City through
Northern New Jersey Clearing House.

MAX GOREN

(On back)

For Deposit
Charles C. Colgan, Atty
Charles C. Colgan

To any Bank, Trust Co. or Banker
or Order
Mar 25 1929
Hudson County National Bank
At Montgomery & Washington Sts.
Jersey City, N. J.

Received Payment
Through Northern New Jersey Clearing House
Prior Endorsements Guaranteed
Mar 22 1929
Commercial Trust Co. of New Jersey
Wm. V. Toffey,
Treasurer

Exhibit C-4.

(Jan. 6, 1931)

No. 2518 Jersey City, N. J., March 30th 1929

COMMERCIAL TRUST COMPANY OF NEW JERSEY 55-41
15 Exchange Place, Jersey City, N. J.

Pay to the order of Max Goren Thirty five hundred and 00/100 Dollars.

$3500.00

Payable at par in New York City through Northern New Jersey Clearing House.

CHARLES C. COLGAN.

(On side of front)

Charles C. Colgan
Counsellor-at-Law

(On back)

Max Goren

Received payment through the
Northern New Jersey Clearing House Assn.
Prior endorsements guaranteed
55-32 Apr 2 1929 55-32
Hudson County National Bank
At Pavonia Avenue and Grove Street
Jersey City, N. J.

Exhibit D-1.

This agreement made this twenty-second day of March, 1929.

Between Benjamin Dowden, of Jersey City, Hudson County, New Jersey, party of the first part and

Max Goren and Charles C. Colgan, of Jersey City, Hudson County, New Jersey, party of the second part.

Whereas the parties of the second part are about to advance a mortgage of Seven thousand dollars on premises known as 7 Belmont Avenue, Jersey City, N. J. and desire some assurance that in the event that it is necessary for said party of the second part to take over said premises, that they will not be obliged to hold same.

It is therefore, in consideration of the sum of One dollar and other considerations agreed between the parties hereto as follows:

In the event that said parties of the second part have to take over said premises, the party of the first part will purchase said premises from said party of the second part for the sum of Sixteen thousand dollars, within sixty days of the taking over of said premises by said party of the second part, taxes, water rents and insurance to be adjusted as of the date of passing title.

This agreement is null and void if mortgage paid off.

Said premises are now owned by Ellen E. Allen.

In witness whereof, the parties hereto have hereunto set their hands and seals this 22nd day of March, 1929,

BENJAMIN DOWDEN (Seal)
(Seal)

Signed, sealed and delivered
in the presence of
HAROLD B. LIGHTDALE

STATE OF NEW JERSEY,
COUNTY OF HUDSON, } ss.:

BE IT REMEMBERED, That on this 22nd day of March in the year of Our Lord One Thousand Nine Hundred and twenty-nine before me an attorney at law of New Jersey, personally appeared Benjamin Dowden, who, I am satisfied, is one of the parties mentioned in the within Indenture, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

HAROLD B. LIGHTDALE,
Attorney at law of New Jersey.

Exhibit D-2.

No. 2500 Jersey City, N. J., March 22nd, 1929

COMMERCIAL TRUST COMPANY OF NEW JERSEY 55-41
15 Exchange Place, Jersey City, N. J.

Pay to the order of Ellen E. Allen Seven thousand and 00/100 Dollars.
$7000.00

CHARLES C. COLGAN.

Payable at par in New York City through Northern New Jersey Clearing House.

(Stamped across front)

Accepted
Payable through
Northern New Jersey Clearing House
New York City
J. Chas. Downing
Paying Teller

(On back)

Ellen E. Allen
For Deposit
Darling Trust Fund

Paid
Mar 22 1929
Commercial Trust Company
of New Jersey
Five Corners Branch

Conclusions.

(Filed July 24, 1931.)

NOT TO BE PUBLISHED IN ANY REPORT.

July 17, 1931.

IN CHANCERY OF NEW JERSEY.

76-90.

Between
CHARLES C. COLGAN and MAX GOREN,
Complainants,
and
ELLEN E. ALLEN and DAVID J. ALLEN,
Defendants.

On Bill &c. Conclusions.

MR. CHARLES C. COLGAN, MR. DAVID A. NEWTON and MR. SAUL NEMSER for Complainants.

MR. RICHARD DOHERTY for defendant Ellen E. Allen.

FIELDER, V. C.

One Mc Gee, operating in the name of a New Jersey corporation, was engaged in the sale of stocks and securities. He claimed to control the stock issue of an Arizona mine and his principal activity, at the time of the transaction hereinafter men-

tioned, was promoting the sale of this stock. His activities later attracted the attention of the Attorney General who brought proceedings against him, or his corporation, for dealing in worthless securities. Mc Gee's New Jersey corporation had issued a bad check for $2,000 which came to the hands of the complainant Goren, who placed it with his attorney, the complainant Colgan, for collection and Colgan threatened Mc Gee with receivership proceedings against the corporation. McGee was on friendly terms with the defendant David J. Allen and had interested Allen in his stock selling scheme, on the promise that in the event of success of McGee's enterprise, Allen would receive a generous share of profits and Allen believed he saw an opportunity to make money with little effort. McGee and Allen called on Goren and Colgan; stated that McGee's corporation was without funds, explained the mining stock venture in which McGee was engaged, told of McGee's certainty of success and pleaded for time for payment of the $2,000 check, whereupon ways and means for securing payment to Goren were discussed. The parties had several conferences at one of which McGee broached his need of funds in aid of his stock selling campaign and a loan was requested from Goren of a sum sufficient to satisfy his $2,000 claim and to place McGee in funds and Allen offered to place a second mortgage on his (Allen's) home, which Goren agreed to accept as security for a loan of $7,000. The parties agreed that out of the loan, Goren's claim of $2,000 would be discharged and Colgan should receive $700 for his legal services on Goren's behalf. Goren testified that he was interested only in the payment of his claim and his attorney's fees and the inference from his testimony

is that he understood that the $4,300 balance of the loan was to go to Allen, but every one connected with the transaction, including Colgan, knew that the $4,300 was to be paid to McGee and I am satisfied that Goren knew it also.

Title to the premises to be mortgaged to Goren was not in Allen but in his wife, the defendant Ellen E. Allen. She was not consulted by any one concerning the proposed mortgage, nor was she informed of its purpose or the disposition to be made of the mortgage money. A few days after Goren had agreed to make the loan, she was taken by her husband to Colgan's law office, to sign a bond and mortgage and there she met McGee, Goren, Colgan, Dowden and Dolan. Dowden is a lawyer and was present as Allen's friend and legal adviser. Dolan was a friend of Allen and was also interested in McGee's corporation. Goren testified that until long after the transaction was closed, he assumed Allen to be the owner of the property mortgaged but his attorney, Colgan, knew that the property belonged to Mrs. Allen. A bond and mortgage from Mr. and Mrs. Allen to Goren were produced, Mrs. Allen was requested to sign and she asked her husband if it was all right and he replied that it was, whereupon she signed and a Notary was called in to take the acknowledgments. He stated the contents of the mortgage to Mrs. Allen in the usual formal manner, asked her if she understood it and acknowledged its execution and upon her affirmative reply, certified her acknowledgment with that of her husband. Goren had given Colgan $7,000 and Colgan drew his check for that amount to Mrs. Allen's order and gave it to Dowden and the entire party repaired to Dowden's law office where Dowden had Mrs. Allen endorse the $7,000 check and Dowden then drew his

checks to Mrs. Allen's order, one for $2,000, another for $700 and two others for the balance of $4,300. At Dowden's direction Mrs. Allen endorsed the four checks so that the first was made payable to Goren, the second to Colgan and the third and fourth to McGee. Of the two checks for a total of $4,300, McGee received the entire amount. Goren subsequently assigned a half interest in the mortgage to Colgan and this suit is brought by Goren and Colgan to foreclose the mortgage. Allen has interposed no defence but for Mrs. Allen an answer was filed setting up mental incompetence to understand the transaction, fraud, concealment of facts and lack of independent advice and a counter-claim praying that the bond and mortgage be declared void and be delivered up for cancellation.

When Mrs. Allen executed the bond and mortgage she was about forty-six years old and she had been subject to epileptic attacks for twenty years, with seizures as often as twice a month. She was not permitted to leave her home unattended and the employment of a housekeeper to manage her household affairs had been found necessary. She has been under a physician's care many years and he testified that she is unable to transact business, being at times in a confused state of mind, although he expressed the opinion that if it were explained to her that she was called upon to sign a mortgage for $7,000 on her house, she could grasp the statement. During the trial of the cause I suggested that she be examined by a physician to be named by me and the suggestion was adopted. After making examination, this physician testified that the history of her case indicated epilepsy but that in his opinion she was capable of understanding, on proper explanation, what a mortgage is, and its effect. In the

course of his testimony this physician quoted many questions and answers which passed between Mrs. Allen and him and she was called as a witness before me. The quoted conversation with the examining physician and her testimony in court shows marked incoherency and mental incompetence, and if that were to be taken as the test of her ability to comprehend the nature an effect of a mortgage, there could be no hesitancy in deciding her absolute incompetence. The doctor thought that she was not co-operating with or aiding him in making diagnosis of her condition and as a witness she may have been dissembling or exaggerating her mental state, but whether capable or incapable of grasping a business transaction, she was far below the level of business intelligence of the men with whom she was dealing at the time she executed the bond and mortgage.

Five months prior to the execution of the bond and mortgage in question she executed a bond and what is now the first mortgage on her home, the proceeds of which were used to satisfy another mortgage, then under foreclosure, on the same premises and arrears of municipal liens. On the occasion of the execution of that bond and mortgage she was accompanied by her husband and Dowden and the testimony of the official who certified her acknowledgment on that mortgage is merely that he explained the contents to her, asked her if she acknowledged its execution, that she made some affirmative reply and that she appeared to understand what he said. She might be made to understand what a mortgage means, but she signed the one here in question because her husband requested her to and assured her that it would benefit him and her and that McGee had promised to pay it

New Jersey State Library

when it fell due, but I am confident that she did not appreciate the risk she was incurring and certainly no one explained the risk to her. Goren and Colgan had visited her home to inspect the property prior to Goren's agreement to make the loan and they testified concerning conversations had with her and testimony was given as to a few remarks she made at Colgan's office the day she signed the bond and mortgage, the purpose of such testimony being to show that her mental condition was good. Everything she is quoted as having said on both occasions was of a trivial nature, relating to ordinary matters and might have been uttered by a fourteen year old girl. Allen testified that before she signed the bond and mortgage he told all the men present at Colgan's office, that Mrs. Allen was an epileptic, but his testimony was denied and I do not believe it. Goren and Colgan testified that they were unaware of her physical condition but her appearance as she sat in court during the trial (about a year and a half after the mortgage was executed) would convince any one that she was not then in normal health.

Mrs. Allen was dominated by her husband and he took advantage of his control over her and her trust in him. It is not disputed that if any explanation was made to her as to the purpose of the bond and mortgage, or who was to receive the proceeds thereof, or as to the risk she assumed by placing a lien on her property, it was made by her husband and he denied making such explanation. The mortgaged property is her home and the foreclosure will result in taking it from her. It is covered by a first mortgage of $8,000 and her equity was not worth $7,000 in Goren's judgment, for at first he declined to make a loan of that amount on the ground of in-

sufficient security and before he finally consented he exacted a written agreement from Dowden that he (Dowden) would pay $16,000 for the property at any time within sixty days after foreclose of the mortgage. Goren says he thought Allen was the owner of the property. I think he knew to the contrary, at least on the day the bond and mortgage were executed. He must have known that Colgan's check for the amount of the loan was drawn to Mrs. Allen and of course he knew that Dowden's check to pay his (Goren's) claim was drawn to Mrs. Allen's order any by her endorsed to Goren. He knew that $2,700 of the mortgage money was raised to pay his claim against McGee and his attorney's fee for services in collecting the claim, but he says that he did not know that the balance of the mortgage loan was to go to McGee. He knew Allen was associated with McGee in a corporation which was unable to pay its $2,000 check and that the mortgage money was to be used for that corporation's purposes. As I have previously stated, I think Goren knew that the mortgage money except $700, was to go to McGee. Colgan knew Mrs. Allen to be the owner of the property and that she was executing the bond and mortgage at her husband's solicitation and for the purpose of raising money for McGee. The improvidence of Mrs. Allen's act being so apparent, the presumption is that she did not appreciate its consequences and upon the facts here present, the burden is on the complainants to show that her act was based on proper independent advice, that is, that she had conferred on the subject of the bond and mortgage with a person who was in a position to advise her impartially and who was competent to inform her correctly as to the legal effect of her act (Bliss v. Cronk, 62 N. J. Eq.

496; Thorp v. Smith, 63 N. J. Eq. 70; Post v. Hagan, 71 N. J. Eq. 234; Baur v. Cron, 71 N. J. Eq. 743; Groff v. Stitzer, 75 N. J. Eq. 452; Ware v. Mulford, 79 N. J. Eq. 470; Gautelli v. Brown, 84 N. J Eq. 33; In re Fulper, 99 N. J. Eq. 293) and they have failed to sustain the burden. Allen was allured by McGee's promise of easy money and by reason of his dominion over his sick wife, he obtained her signature to the papers without informing her of the consequences which might follow and he was anything but a disinterested and impartial adviser and neither Goren nor Colgan, Dowden nor Dolan made the slightest attempt to ascertain whether Mrs. Allen understood that she was assuming a debt wholly for McGee's benefit.

The bill of complaint will be dismissed and there will be a decree in favor of Mrs. Allen that the bond and mortgage are void and be delivered up for cancellation.

99

New Jersey Court of Errors and Appeals

Between CHARLES C. COLGAN and MAX GOREN, Complainants-Appellants, and ELLEN E. ALLEN, Defendant-Respondent.	On Appeal from the Court of Chancery.

BRIEF FOR APPELLANTS.

Statement of Case.

This is an appeal from a final decree entered in the Court of Chancery July 28th, 1931, wherein it was adjudged that the complainants' bill be dismissed and the prayer of the counterclaim of the defendant, Ellen E. Allen, be granted.

Complainants' bill was filed to foreclose a second mortgage covering the premises known as 7 Belmont Avenue, Jersey City, New Jersey, owned by the defendant, Ellen E. Allen. The defense was that the defendant, Ellen E. Allen, was so physically and mentally enfeebled by reason of epilepsy, that she was unable rationally to comprehend, understand or appreciate the nature and legal consequence of signing a bond and mortgage such as referred to in the bill of complaint. The counterclaim prayed that the complainants' bond and mortgage be declared void and that the same be delivered up for cancellation. The Court found in favor of the defendant, Ellen E. Allen.

The facts out of which the matters in controversy arose are as follows:

On March 22nd, 1929, Ellen E. Allen and David J. Allen, her husband, executed a bond (Ex. C-2) and mortgage (Ex. C-1), the mortgage being in the sum of Seven Thousand ($7,000.00) Dollars and the bond in the sum of Fourteen Thousand ($14,000.00) Dollars, to be paid on March 22nd, 1930, with interest at the rate of six (6%) per cent per annum, payable quarter-annually, from the date of said bond and mortgage, to Max Goren, one of the complainants. This mortgage being a second mortgage, subject to a first mortgage held by the New Jersey Title Guarantee and Trust Company. Said mortgage was first duly acknowledged and recorded in the Register's Office of Hudson County in Book 1541 of Mortgages, page 579.

The aforesaid bond and mortgage was first duly acknowledged before Harold B. Lightdale, an Attorney-at-Law of the State of New Jersey. At the time of the execution of said bond and mortgage, the said Defendant, Ellen E. Allen, also signed an affidavit of title before Harold B. Lightdale, an Attorney-at-Law of the State of New Jersey (Ex. C-6).

After the execution of said bond and mortgage at the office of Charles C. Colgan, a check for Seven Thousand ($7,000.00) Dollars, drawn to the order of Ellen E. Allen, was paid to the said Ellen E. Allen (Ex. D-2) and her Attorney, Benjamin Dowden, disbursed the aforesaid sum of Seven Thousand ($7,000.00) Dollars at his office at the Five Corners, through the trust account of Darling, Barnes and Dowden.

On June 22nd, 1929, three months' interest fell due on Complainants' bond and mortgage and remaining unpaid for more than thirty (30) days thereafter, foreclosure proceedings were instituted (p. 11).

On April 8th, 1929, the said Max Goren, one of the complainants in this suit, assigned all the undivided one-half of said mortgage to the other complainant, Charles C. Colgan, which Assignment of Mortgage, being first duly signed and acknowledged, was recorded in the Hudson County Register's Office in Book 193 of Assignments, Page 193 (Ex. C-3).

On October 19th, 1929, complainants filed a Bill of Foreclosure against the defendants, Ellen E. Allen and David J. Allen, her husband, to which no answer was filed by the defendants and a Decree *Pro Confesso* was taken. On December 14th, 1929, the defendants paid on account of said mortgage the sum of Fifteen Hundred ($1500.00) Dollars and in consideration of the payment of said sum of Fifteen Hundred ($1500.00) Dollars, the complainants agreed to hold up proceedings of the foreclosure until March 1st, 1930, which agreement was reduced to writing and signed by one of the defendants, David J. Allen and by Benjamin Dowden, Solicitor for the Defendant, Ellen E. Allen. It also provided in said agreement (marked Ex. C-2, Jan. 6, 1931) that the said complainants were to proceed with the foreclosure if the said balance of Fifty-five Hundred ($5500.00) Dollars, together with interest and foreclosure charges, was not paid by March 1st, 1930.

On or about March 1st, 1930, the complainants were served with a Notice of Avoidance and Disaffirmance and also a Rule to Show Cause why said Defendant, Ellen E. Allen, should not be allowed to put in a defense to said foreclosure and after a hearing on affidavits, the Court allowed the defendant, Ellen E. Allen, to file an answer to said foreclosure (p. 104).

The case came on for hearing before Vice-Chancellor James F. Fielder, and during the course of the trial, complainants asked leave of the Court to

have the defendant examined as to her mental condition, and at the Court's suggestion, Dr. Christopher C. Beling of Newark was appointed by the Court to make such examination.

The learned Vice-Chancellor in his conclusions (pp. 419, 423) found that the defendant, Ellen E. Allen, "whether capable or incapable of grasping a business transaction, she was far below the level of business intelligence of the men with whom she was dealing at the time she executed the bond and mortgage", and further found that her execution of the bond and mortgage in question was an "improvident" act, and that "the presumption is that she (Mrs. Allen) did not appreciate its consequences and upon the facts here present, the burden is on the complainants to show that her act was based on proper independent advice", and further found that the complainants had failed to sustain such burden.

The questions involved on this appeal are:

(1) The mental competency of Mrs. Allen *at the time* she executed the bond and mortgage.

(2) The application of the rule as to "independent advice".

ARGUMENT.

The Chancellor should have granted complainants the relief prayed for in the bill of complaint and should have ordered the foreclosure and sale of the mortgaged premises because:

A. The defendant, Ellen E. Allen, had the mental capacity to comprehend and she did comprehend the nature of her act in executing the bond and mortgage to complainants.

B. The rule of "independent advice" is inapplicable to the facts in the case at bar.

A.

THE DEFENDANT, ELLEN E. ALLEN, HAD THE MENTAL CAPACITY TO COMPREHEND AND SHE DID COMPREHEND THE NATURE OF HER ACT IN EXECUTING THE BOND AND MORTGAGE TO COMPLAINANTS.

The great weight of authority in this State supports the rule that where a contract with an insane person has been entered into with good faith, without fraud or imposition, for a fair consideration, *without notice of the infirmity* and *before adjudication of insanity;* and has been executed in whole or in part, it will not be set aside unless the parties can be restored to their original position.

Matthiessen and Weichers Refining Company vs. *McManns, Adm.* (38 N. J. L., p. 536);

Alexander A. Miller vs. *Siscilila Barber, et al.* (73 N. J. L., pp. 38 and 40);

Goldberg vs. *West End Homestead Company* (78 N. J. L., p. 70).

In re Owens, 90 N. J. Eq., p. 41:

In re Waldron vs. *Angleman,* 71 N. J. L., pages 166 and 168, the Court held:

> "The test of capacity to make a deed has been laid down by this Court as requiring that the grantor 'shall have the ability to understand the nature and effect of the act in which he is engaged and the business he is transacting'."

In *Eaton* vs. *Eaton,* 37 N. J. L., pages 108, 116 and 118, the Court held:

> The deed of an insane person before lunacy found by commission is voidable and not void and where, the transaction is made in good faith it will not be set aside if the consideration cannot be returned.

In *Younger* vs. *Skinner,* 14 N. J. Eq., page 389, the Court said that:

> "A court of equity will not, upon the application of the lunatic, or those claiming under him, set aside a contract overreached by a commission of lunacy, if *the purchase be fair,* for *a full consideration,* and *without notice of the lunacy to the purchaser,* especially where the parties cannot be fully reinstated to the condition in which they were prior to the purchase."

In *Kern* vs. *Kern,* 51 N. J. Eq., page 579, it was held:

> "The rule as to the mental capacity requisite in cases of ordinary contracts is well settled in this state and is thus stated by Vice-Chancellor Van Fleet in Davren vs. White, 15 Stew. Eq. 569:
>
> 'The test in the class of cases to which this case belongs is, did the person whose act is brought in judgment possess sufficient ability

> at the time he did the act to understand, in a reasonable manner, the nature and effect of his act or the business he was transacting? If he did, his act is valid. He may have been old or enfeebled by disease, or irrational upon some subject, yet if he had sufficient ability to comprehend, in a reasonable manner, what he was doing, his act will bind him.' "

In *Blakely* vs. *Blakely,* 33 N. J. Eq., page 502, the Court laid down the rule:

> "When no fraud is alleged, and where incapacity is the ground on which a deed is sought to be set aside, the test is, had the grantor sufficient mind to comprehend, in a reasonable manner, the nature and effect of what he was doing?
>
> A suitor who seeks to set aside a deed on the ground of incapacity, must do something more than show insanity; he must show that the transaction he seeks to invalidate was affected by the grantor's derangement.
>
> A deed made by a person of non-sane mind, before unsoundness is established by inquisition, is not void, but merely voidable, and may be confirmed in lucid intervals so as to be unimpeachable."

What are the proofs in respect to Mrs. Allen's mental competency?

Did she comprehend the nature of her act at the time she executed the bond and mortgage in question?

The question of Mrs. Allen's mental capacity has been disposed of by the very clear and convincing testimony of Doctor Beling, an Expert Alienist who had no interest in the case whatever, and was appointed by the Court to examine Mrs. Allen. A perusal of Doctor Beling's testimony, it is submitted, will set at rest, any question that may be raised as to Mrs. Allen's mental competency.

The only witnesses who have testified for Mrs. Allen on this point, were Doctor Flaherty and Mr. Allen. No neighbors nor any of Mrs. Allen's friends were called.

Doctor Flaherty admits that he is not qualified as an Expert (p. 160, l. 7).

Doctor Flaherty was asked (p. 152) the following questions and made the following answers, viz:

> "Q. You think that Mrs. Allen is unable to understand that if she signs a mortgage and the mortgage is not paid, it will be foreclosed? A. *Well, I suppose she would understand that ordinarily.*
>
> Q. So, Doctor, if somebody said to Mrs. Allen, showing her a paper; 'Mrs. Allen this is a mortgage securing a loan of $7,000. payable in one year, with interest at six per cent, mortgaging your home', would she understand that? A. *She would.*"

Again at pages 156 and 157, Doctor Flaherty was asked on cross examination,

> "By the Court:
>
> Q. That is not the question. The question is: If those words were read to her, or if she read them herself, would she understand them? A. She would just sign it.
>
> Q. Would she be capable of understanding the words? A. She would sign it and not know what was in it. She would sign almost any paper.
>
> Q. The question is not whether she would sign anything that was given to her. The question is, whether in your judgment, she would be capable of understanding those words if she read them herself or if they were read to her. A. She would understand, certainly.
>
> Q. *Could she understand the meaning of them?* A. *Yes.*
>
> By Mr. Newton:
>
> Q. (Reading) 'I am told that in the case to foreclose the mortgage a paper, which is called

a stipulation, was signed for me stating that there is no defense to the mortgage and that a judgment might be entered against me March 1st, 1930. I do not understand what that means and gave no one authority to do so for me.

Did she understand that language? A. The same answer.

Q. What do you mean by 'The same answer' —the answer you last gave? A. Yes. *If you read it to her, she probably understood it at the time.*

Q. (Reading) 'At the time when this affidavit was prepared I also signed another paper, of which I am keeping a copy, and which I understand to be a notice to Max Goren and Charles C. Colgan that I refuse to stand by the mortgage and also that I did not give Mr. Dowden any authority to sign the stipulation.'

What is your opinion as to that? Would she understand those words if they were read to her? A. *Yes; she would understand those words if they were read to her.*"

Again at page 163, line 3, Doctor Flaherty testified,

"Q. You do not think she is capable of understanding what a mortgage is, if it is explained to her? If a mortgage was explained to her, would she be capable of understanding what the mortgage was? A. I think she would; yes.

Q. If she were asked to sign a promissory note and the note was explained to her, do you think she would understand what the note was and what she was doing? A. She would sign the note whether she did or not.

Q. If the note was explained to her, would she understand that she was borrowing money on the promise to pay? A. I think she would; yes.

Q. Would she understand what borrowing money meant, if it was explained to her? A. *Yes; she would.*

Q. Would she not understand without any explanation? A. She is not that bad.

Q. She is not that bad? A. At times, no; at times, she is clear.

Q. If she borrowed money, would she be capable of understanding that she had to pay it? A. I think so."

A perusal of Doctor Flaherty's testimony discloses that in his opinion, Mrs. Allen understood the nature of the mortgage transaction, although in some parts of his testimony, he says at the same time, she did not. It is difficult to formulate a definite opinion from Doctor Flaherty's testimony. The foregoing excerpts from Doctor Flaherty's testimony, it is submitted, prove clearly that Mrs. Allen *did have* the mental capacity to understand and that she did comprehend the nature of the transaction. Even without Doctor Beling's testimony, the Court would be entirely warranted in so finding. Whatever doubt may have existed, has been effectually disposed of by Doctor Beling's testimony. Doctor Beling's testimony is clear and unequivocal. It shows a thorough and careful examination of the subject—testimony of an expert who is eminent in his profession and recognized as an outstanding Alienist.

He says, on page 234, line 31, that Mrs. Allen did not show that she had any *organic disease* of the *central nervous system.*

He testifies on page 235, line 25, that Mrs. Allen showed him an expense book containing various items. Doctor Beling testifies positively on page 236, line 15, that Mrs. Allen is *not a lunatic,* and states unequivocally that Mrs. Allen is *not of unsound mind,* and on page 237 testifies that she would understand *the nature of the mortgage transaction, such as the one in question,* and would also be able to understand an explanation.

On pages 240 and 241, Doctor Beling testified from his examination, Mrs. Allen showed no lack of comprehension, and no cloud on consciousness; that she could receive what the Doctor told her when he spoke to her and that it registered on her mind.

Doctor Beling also testified on page 238 that even in *severe* cases of epilepsy, when patients get a spell, they are drowsy, confused, they go off to sleep and they will sleep for an *hour* or *half an hour,* then wake up and be clear, or they may go on and be more or less befogged for a *day* or *half a day, but usually the epileptic after a few hours clears up.*

Doctor Beling further points out on page 246, line 38, that in his examination of Mrs. Allen, that she, *Mrs. Allen questioned the Doctor about himself,* that she had capacity to do that, but she was unwilling to give any information about herself.

Mr. Ebersole, an employee of the New Jersey Title Guaranty & Trust Company, Bergen Branch, on pages 286 etc., testified to certain bank accounts that Mrs. Allen had, covering a period of years,—that she made withdrawals from time to time in various sums—*that Mrs. Allen signed checks*—that Mrs. Allen's account was first opened on March 26th, 1915 (p. 286, l. 21).

Very important testimony to show that Mrs. Allen's mentality was not deficient and that she was capable of understanding the mortgage transaction in particular, is evidenced by the testimony of Mr. Botzong, Title Officer of the New Jersey Title Guarantee & Trust Company. He testifies, at page 280, that in October 1928, a few months prior to the mortgage transaction in question, he closed a Building & Loan Mortgage which Mrs. Allen executed on her home. Mrs. Allen had signed the application, Mr. Botzong had taken her affidavit of title, had taken her acknowledgment to the bond and mort-

gage, and explained the contents of the same to her. That in his opinion in October 1928, she had the ability to understand what was being said to her. He had read the affidavit of title to her, and that she understood it and swore to it. That a check was made out to Mrs. Allen in the sum of Eight Hundred and Sixty-three Dollars and Twenty-three Cents ($863.23), which was deposited to her account in the New Jersey Title Guarantee & Trust Company, Bergen Branch.

Mr. Botzlong also testifies on page 283, at the time he closed the mortgage loan in October 1928 that Mrs. Allen was accompanied by her husband and *Mr. Dowden.*

That there was nothing in Mrs. Allen's appearance, that would lead him to believe that she was not rational and normal and understood perfectly what she was doing. (The period referred to is in *October 1928,* when Mrs. Allen executed a bond and mortgage on the premises in question to the Title Company.)

Mr. Botzong also testifies on page 285, line 10, that he had known Mrs. Allen before, had seen her and that he knew who she was.

One of the witnesses called by the defendant, was Eugene F. McGee who testifies on page 127 that the bond and mortgage were executed at Mr. Colgan's Office, and there were present at that time, Mr. Colgan, Mr. Goren, Mr. Dowden, Mr. and Mrs. Allen, the man in Mr. Colgan's office and the girl, besides himself, and that Mrs. Allen was in the room within hearing of the conversation (on p. 133, l. 30, McGee says all the parties were there for about two hours) ; that Mrs. Allen was told that the proceeds of the mortgage were going to *McGee* and thereupon Mrs. Allen turned to her husband and asked him if he thought he was doing the right thing, and Mr. Allen thereupon assured her he was

and assured her that everybody would make money out of the transaction, and Mr. Allen told his wife that it was absolutely safe.

McGee testified on page 128 as follows:

> "Q. Can you recall what Mrs. Allen said when she inquired whether it was a proper thing to do? A. I know she said to Mr. Allen: *'Are you sure it is safe?'*
>
> Q. Can you recall anything else she said down there? A. I think she also said: *'I want to help you.'*
>
> Q. Are you sure of that? A. *I am almost sure of it.*
>
> BY THE COURT:
>
> Q. To whom did she address that remark? A. To Mr. Allen.
>
> BY MR. DOHERTY:
>
> Q. Was there any information given to her by either of these complainants as to the transaction? A. When we got to the office?
>
> Q. Yes. A. I think Mr. Dowden explained to her—
>
> BY THE COURT:
>
> Q. Judge Doherty asked you whether Mr. Colgan or Mr. Goren said anything about it? A. *I think Mr. Dowden and Mr. Colgan explained that she was executing a mortgage.*
>
> BY MR. DOHERTY:
>
> Q. Was anything said to her about your undertaking to pay this mortgage out of the proceeds of stock? A. Yes; I told her that.
>
> Q. You told her? A. Yes."

Mrs. Allen said that she wanted to help her husband (p. 130).

McGee further testified that after the bond and mortgage were executed, he saw Mrs. Allen in his office, accompanied by her daughter on a certain Saturday afternoon; that he spoke to her and that Mrs. Allen said she just wanted to see the place. This visit occurred a week or two after March 22nd, 1929, the date of the execution of the bond and

mortgage in question, and that McGee and Mrs. Allen indulged in a *general conversation,* for ten or twenty minutes (pp. 142 and 143).

David Allen, the husband of the defendant against whom a Decree Pro Con had been entered (p. 34) was called as a witness on behalf of his wife. He testified (p. 186) that on the morning of the day the bond and mortgage were executed, he spoke to his wife about the matter at their home. He told her that he wanted to help out a couple of friends who were trying to stay in business and *that he wanted her (Mrs. Allen) to sign a mortgage.* That she was not taking any chances, etc.

Mr. Allen further testified (p. 190) that Mrs. Allen *knows* that there is *risk in signing any paper.*

After the execution of the bond and mortgage, all the parties concerned went to the office of Mr. Dowden, the attorney for Mr. and Mrs. Allen. Four checks were drawn to the order of Mrs. Allen, totalling $7,000.00, the amount of the bond and mortgage, and she endorsed each one of them (p. 197, l. 21). That a full explanation was given to Mrs. Allen at the time she executed the bond and mortgage, is indicated by her husband's testimony (p. 204) where he testifies:

> "Q. How was this mortgage signed by your wife? A. *A gentleman came in and explained to her what she was signing* and I showed her where to sign.
>
> BY THE COURT:
>
> Q. What did he say to her? A. 'Do you acknowledge signing this mortgage for $7,000?' She said: 'Yes'.
>
> Q. She had not signed it? A. He was right there. They did it almost simultaneously.
>
> Q. You say you showed her where to sign? A. I pointed out where to sign.
>
> Q. While she was signing, he said: 'Do you acknowledge signing this mortgage?' A. Af-

ter she signed, he said something about her acknowledging that as her signature, that she was signing—

Q. Do you recall what he said? A. No, sir, I do not recall what he said.

Q. Do you recall that he told her that it was a bond and mortgage? A. He said: 'This is a bond and mortgage, and you are Ellen E. Allen and you signed this.' That is what he said. That was the meat of it.

Q. What did she say? A. She nodded her head: 'Yes'."

Allen admits that his wife did not expect to get any of the proceeds of the mortgage loan (p. 205, l. 36) and further testified (p. 213) that he, Allen thought it was safe for his wife to sign the mortgage.

The attorney representing both Mr. and Mrs. Allen, was Benjamin Dowden. He had represented *both of them* for a considerable period of time (p. 257). Mrs. Allen was told what the check representing the mortgage loan was (p. 253).

Referring to the fact that both Mr. and Mrs. Allen acknowledged their signatures on the bond and mortgage, Mr. Dowden testifies on page 255, that a full explanation was made by the attorney who took their acknowledgment. Mrs. Allen was told it was a bond and mortgage covering her home and the attorney asked Mrs. Allen if she knew the contents of the bond and mortgage, and that Mrs. Allen asked Dowden "Is it alright?" (p. 256).

Dowden further testified (p. 264) as follows:

> "Q. What closing did she have that you know about? A. I know she had a mortgage up at Darling's office, and there was the closing of *six or seven mortgages down at the title company.*"

Dowden further brought out the fact that he used to visit the home of Mr. and Mrs. Allen al-

most every day. Bottom of page 264 and page 292, and before Mr. and Mrs. Allen visited Colgan's Office to execute the bond and mortgage, the subject matter had been discussed, between Mr. and Mrs. Allen in Dowden's presence (p. 267).

On cross examination, Dowden was asked (p. 270):

> "Q. She didn't know what she was giving this mortgage for, did she? A. *I would say that she knew.*"

and then again on page 270:

> "Q. Was she informed that out of that mortgage money, Goren was to get $2,000. on the bad check; was she told that? A. *Yes.*"

Dowden further points out that Mr. Allen told his wife exactly what the proceeds of the mortgage loan would be used for (p. 271, ll. 10-25).

Further, on cross examination, Dowden gave the following significant testimony (p. 272):

> "Q. From your acquaintance with Mrs. Allen, from your observation of her, from your conversations that you had with her on those occasions when you were at her house, when you met her on other occasions, what would you say as to her ability to understand what a mortgage was? A. I think that Mrs. Allen understood.
>
> Q. On the day this mortgage was executed, do you think from what you saw and from what you knew of her, from your acquaintance with her, that she understood what a bond and mortgage were? A. *Yes.*
>
> Q. That she understood the effect and consequences of executing a bond and mortgage? A. Yes. She would not be able to technically define it like some people, but *she knew she was putting a mortgage on her home.*"

The discussion referring to the subject of executing the bond and mortgage took place between Mr.

and Mrs. Allen, at their home prior to the visit to Mr. Colgan's office, as Dowden testified, and Mrs. Allen didn't give her approval entirely at that time (p. 277, l. 30).

Prior to the execution of the bond and mortgage, both Mr. Colgan and Mr. Goren, the complainants, inspected the mortgaged premises.

Mrs. Allen took Goren through the rooms on the first floor of the house and showed him the general layout (p. 311). Mrs. Allen told Goren, the property cost over Twenty-five Thousand ($25,000.00) Dollars (p. 344). She said, "You will never feel sorry if you place a mortgage here. You will always get your money back" (p. 344, l. 10).

Mrs. Allen discussed the number of children she had—she said she had three children. Mr. Goren also told her that he had a little girl. Mrs. Allen advised Goren to send the little girl to boarding school (p. 344).

Goren went back to the premises a second time, to make an inspection of the entire house—he had only inspected the first floor of the premises on the occasion of his first visit—and Goren spoke to Mrs. Allen. Mrs. Allen said to him:

> *"What are you afraid of? It cost $25,000. $8,000. is there. You give us $7,000. That's $15,000."* (p. 345).

This testimony is uncontradicted.

Colgan, who was representing Goren as Goren's attorney, at the time the bond and mortgage were executed by Mr. and Mrs. Allen, testified on page 311 that he visited the Allen home and that Mr. Dowden had introduced both Goren and himself to Mrs. Allen, who was also present, and that Mr. Dowden told Mrs. Allen that Mr. Goren was there to make an inspection of the premises and that he was going to take a mortgage on the property.

That while Goren was inspecting the property on the occasion of his first visit, Colgan and Mrs. Allen conversed in the parlor of the house. Colgan on page 311 further corroborates Goren that Mrs. Allen showed Goren throughout the first floor of the premises—that she showed him in the rear, the back room, the back parlor and dining room and the kitchen, and that Mrs. Allen wanted to know if Goren wanted to go upstairs to see the premises, and that Goren said "No, he had seen enough." Colgan further testifies on page 311 that during the course of his conversation with Mrs. Allen, she mentioned the condition of her daughter—that her daughter became crippled after an attack of infantile paralysis; and on page 312, Colgan says that the purpose of his visit was made perfectly clear to Mrs. Allen by Mr. Dowden; that Dowden said to Mrs. Allen, "This is Mr. Goren, who has come up to look at the property for the purpose of putting a mortgage on it."

Colgan says on page 312, line 30, that he and Goren were in the house about a half hour and that during that time he spoke to Mrs. Allen for about fifteen minutes; that she appeared to understand everything that was being said; that Mrs. Allen asked Colgan if he was married; that all this occurred two or three days prior to the actual execution of the bond and mortgage (p. 313, l. 10).

Colgan testifying (p. 315) as to Mrs. Allen's visit to his office to execute the bond and mortgage, said that Mrs. Allen commented upon the very fine view of the Hudson River from Colgan's office (p. 315).

In view of the foregoing testimony, it is apparent that Mrs. Allen not only had the mental capacity to understand the nature of her act in executing the bond and mortgage in question, but that *she did* actually comprehend the same—the matter

was fully explained to her. The execution of a bond and mortgage was nothing new to her,—she had executed a number of them prior to March 22nd, 1929. She was not alone at the time of the execution of the bond and mortgage—she was accompanied by her attorney and friend of long standing, Mr. Dowden, and her husband, Mr. Allen. She was well represented. She certainly had the benefit of independent advice, even assuming that such independent advice was necessary under the circumstances.

B.

THE RULE OF "INDEPENDENT ADVICE" IS INAPPLICABLE TO THE FACTS IN THE CASE AT BAR.

The learned Vice Chancellor based his conclusions essentially upon the theory that Mrs. Allen's act in mortgaging her property was "improvident", and that under the circumstances, Mrs. Allen should have had the benefit of proper, independent advice before she executed the bond and mortgage in question.

The Vice Chancellor to sustain his conclusions on this point cites the cases of *Bliss* v. *Cronk,* 62 N. J. Eq. 496; *Thorp* vs. *Smith,* 63 N. J. Eq. 70; *Post* vs. *Hagan,* 71 N. J. Eq. 234; *Baur* vs. *Cron,* 71 N. J. Eq. 743; *Groff* vs. *Stitzer,* 75 N. J. Eq. 452; *Ware* v. *Mulford,* 79 N. J. Eq. 470; *Guatelli* vs. *Brown,* 84 N. J. Eq. 33; *In re Fulper,* 99 N. J. Eq. 293.

We respectfully urge that the learned Vice Chancellor misconceived the situation, and that the doctrine of "INDEPENDENT ADVICE" is entirely inapplicable to the instant case.

In *Bliss* vs. *Cronk, supra,* a wife mortgaged her separate property to a partnership, of which her

husband was a member, and for which she received no consideration whatever. The mortgage was given to secure her husband's debt to his firm, and the Court found there was fraud in the transaction.

In *Thorp* vs. *Smith, supra,* a father advanced in years and feeble in health, with his mental powers weakened, executed shortly before his death a mortgage on his home to his daughter. There was no consideration to the father for the mortgage.

In *Post* vs. *Hagan, supra,* a mother made a voluntary conveyance by way of gift of her real estate, to her son, thereby stripping herself of her entire estate by doing so.

In *Baur* vs. *Cron,* an old lady in ill health made a gift of a mortgage to her son, shortly before the mother's death.

In *Groff* vs. *Stitzer, supra,* a woman made a voluntary gift of a certain corporate stock to her stepdaughter and son, at a time when she was paralyzed, unable to talk and entirely helpess.

In *Ware* vs. *Mulford, supra,* an illiterate woman, ninety years of age, suffering from a broken hip, and as to whose mental impairment by age and illness the evidence was conflicting, made a voluntary gift to a relative, of all her property, and by thus depriving herself of her estate, became an object of charity.

In *Gautelli* vs. *Brown, supra,* an ignorant, inexperienced woman was induced to execute a mortgage to secure the debt of a third person, through fraud.

In re: Fulper, a gift was made by a father, eighty-six years of age, to his son, a comparatively young man, shortly before the father's death.

In the foregoing cases, relied upon by the Vice-Chancellor to sustain his findings, there was a close fiduciary relationship, existing between the parties

—a relationship of trust and confidence. The conveyances were voluntary—made without any consideration.

Here there are no such elements. Goren paid the full consideration of Seven Thousand ($7,000.00) Dollars for the mortgage. There wasn't any fiduciary relationship, or a relationship of trust and confidence between Goren and Mrs. Allen. They were strangers, dealing at arms length.

The relationship of the mortgagee to the mortgagor is purely a conventional one and not fiduciary. *Cornell* vs. *Woodruff*, 77 N. Y. 203-206.

The relation of the mortgagee to the mort- technically of a fiduciary character; properly speaking, neither is a trustee for the other; and therefore they may validly make new contracts or arrangements with each other in regard to the subject of the mortgage or the indebtedness between them, which generally are not subject to special scrutiny or to any disfavor, but are regarded and treated as any other contracts would be. *41 Corpus Juris*, page 602, Section 564.

Goren parted with his money at the time the bond and mortgage were executed and delivered. No advantage accrued to him. Mrs. Allen has never made an offer to restore Goren's money, or to place him in *status quo*.

The law did not impose any duty upon Goren to see to the application of mortgage money.

Once the money is in the mortgagor's hands, the mortgagee is ordinarily under no kind of duty to see to its application. 27 Cyc. 1231, sub. par. 4.

CONCLUSION.

The situation which brought about Mrs. Allen's loss was the fact that the proceeds of the loan were used with her consent to finance a business in which

her husband was interested. Surely a prospective mortgagee is not called upon to supervise the application of the proceeds of a mortgage after they have been placed in the hands of the mortgagor, or to decline to make a loan to a prospective mortgagor because of the fact that she may be about to make an unwise or foolish disposition of the proceeds; nor because the mortgagor is below the level of intelligence of the mortgagee. The situation which developed was unfortunate for Mrs. Allen. It resulted from circumstances for which the mortgagee was not responsible, and however desirous the court might be to help Mrs. Allen, upholding the decree below and upsetting the settled law of this State on the subject would destroy public confidence in mortgage security—a result which public policy dictates should be avoided.

Colonial Building & Loan v. *Griffin,* 85 N. J. Eq. 456.

It is respectfully submitted that the decree of the Court of Chancery should be reversed and a decree entered in this court in favor of the appellants.

SAUL NEMSER,
Solicitor of Appellants.

JOHN MILTON,
Of Counsel.

New Jersey Court of Errors and Appeals

Between

CHARLES C. COLGAN and MAX GOREN,
Complainants-Appellants,

and

ELLEN E. ALLEN,
Defendant-Appellee.

On Appeal.

BRIEF OF APPELLEE.

This is an appeal from a decree dismissing a bill to foreclose a mortgage, and granting the prayer of appellee's counterclaim that the mortgage be declared void and be cancelled. The conclusions of the Vice Chancellor were that the appellee was mentally enfeebled, received no consideration, did not have the benefit of independent advice, was defrauded through the concealment from her of the true facts of the transaction, was the victim of her own husband's imposition, and being a married woman was lured into executing the mortgage to secure the debt of a total stranger, and this before the repeal of the statute relating to the unenforceability of such an obligation.

Facts.

The mortgage for $7,000.00 was given March 22nd, 1929, by the appellee and her husband to the appellant, Max Goren. April 8th, 1929, Goren assigned a half interest to the co-appellant, Charles

C. Colgan. The mortgage covers property belonging solely to the appellee in which her husband has a right of curtesy. No process was served on the defendants below; Benjamin Dowden, solicitor, acknowledged service in behalf of both defendants, having no authority to do so from the appellee, Ellen E. Allen (p. 296, l. 30). The bill was filed and service so acknowledged October 19th, 1929, and on December 31st, 1929, in consideration of a credit of $1,500.00 allowed on the principal, Mr. Dowden, without consultation with, or authority from, the appellee, entered into a stipulation in her behalf that there was no legal or equitable defense, and that a final decree should be entered on March 1st, 1930, unless the supposed balance of $5,500.00 was paid on that date (p. 412; p. 296, l. 30).

February 26th, 1930, the appellee gave notice of avoidance of both mortgage and stipulation on the ground of her mental inability to comprehend the nature of the former, and on the ground of falsity and lacking authority of the latter (p. 27).

March 31st, 1930, an order was made granting leave to file an answer, and on that date her answer was filed, denying that, at the time of the giving of the mortgage, she was indebted to the mortgagee, and denying the execution of the bond and mortgage with mental competency to appreciate and comprehend the nature of the transaction.

The following separate defenses were contained:

> "That she was so physically and mentally enfeebled by reason of epilepsy as to be unable rationally to comprehend, understand or appreciate the nature and legal consequences of signing a bond and mortgage, which incompetency was known to both appellants, and that by notice she avoided the bond and mortgage.
>
> That she was induced to sign by fraudulent representations, of which appellants had

knowledge, that the mortgage was merely part of the transaction from which she would derive lucrative profits; and that the true facts of the transaction were fraudulently concealed from her by the appellants.

That the transaction was conducted by the appellants unfairly, in bad faith and with the purpose of taking advantage of her mental infirmity, lack of information and misinformation.

That she did not receive any benefit, or consideration, for the signing of the bond and mortgage.

That she was without the benefit of independent, impartial and trustworthy advice.

That appellants colluded with McGee, whom they knew to be insolvent and unworthy of personal credit, to induce the appellee to secure by the mortgage the repayment of money loaned by Goren to McGee.

That by the agreement of appellants the mortgage was to be paid by McGee, and that McGee delivered to Goren stock of sufficient value to satisfy the same.

That the indebtedness of McGee to the appellants, which the mortgage secured, was discharged by the delivery and acceptance of such stock.

That, appellee being a married woman, the bond and mortgage were void because given to pay the debt and answer for the default and liability of McGee."

The appellee exhibited a counterclaim asking that the mortgage be decreed to be void and delivered up for cancellation, and that she may have an accounting from the appellants (Answer and Counterclaim, p. 13).

In the early part of March, 1929, the American Investors & Traders, Inc., dominated by Eugene F. McGee and James P. Dolan, and engaged in the exploitation of mining stock, was in difficulties through the lack of money and the threat of receivership resulting from a dishonored check held

by Goren, for $2,000 (pp. 116-120-121). In this situation he formed the acquaintance of David J. Allen, husband of the appellee, and, representing to him that he was engaged in a worthy venture, induced Allen to join him in his efforts to avert the disaster threatened by Goren and Mr. Colgan, his attorney, and led Allen to believe that, in the event of financial assistance forthcoming, Allen would share in the profit of future business (pp. 120, 122, 174, 178 and 179).

Benjamin Dowden, a frequent visitor at the Allen home (pp. 264, 265 and 294), was asked by Allen to represent him in the early negotiations, and did so participate, acting as Allen's attorney solely (pp. 126, 180, 183, 214, 257, 266, 308 and 324).

Many conferences were had at Colgan's office, in which Goren, McGee, Dolan, Allen and Dowden participated, before any mention was made of a mortgage. At these meetings unsuccessful efforts were made to induce Goren and Colgan to accept a note for the amount of the dishonored check, with New York endorsers (pp. 119, 120, 121, 259, 260, 261, 266, 308, 309, 310, 341 and 342).

In the course of these conferences McGee explained that he had subscriptions to the amount of $141,000.00 for the mining stock, upon which the cash would be realized as soon as the stock was listed on the Salt Lake City Exchange, and in that event he would be generous in distributing among them the profit which he would reap. This arrangement was admitted by appellant, Colgan, and not denied by Goren (p. 316, l. 15).

The proposal that Goren take a note being unacceptable, Allen suggested a mortgage on his wife's home to the full extent of the equity over the first mortgage, so that, in addition to the satisfaction of the check, further capital would be raised by McGee, and the mortgageable value was

fixed at $7,000.00 (pp. 123, 124, 181, 182, 183, 201, 212, 277, 308, 309, 310, 311 and 355).

The money was wanted to tide McGee over for sixty or ninety days, and on this account it was agreed between all the parties that McGee would pay off the mortgage in that time out of the proceeds of the sales, and that the mortgage accordingly was to be given for four months (pp. 125, 181, 192, 197 and 257). The arrangement is not denied by the appellants, Colgan testifying "that the money was needed to keep the concern going, to pay the creditors and to tide him over until he could get the stock listed (p. 325), and that Allen suggested the mortgage because this claim of $2,000.00 and other claims were pressing, and that he wanted to keep the concern in good standing until certain stocks were listed on the exchange" (p. 324). Both Colgan's and Goren's testimony was that McGee and Allen were "pestering" them for the loan (p. 93, l. 12; p. 337, l. 25).

The appellants and Dowden (and according to Colgan, James P. Dolan also) called at the Allen home to make an inspection of the property, and while the accounts are widely divergent as to what occurred in the presence of the appellee on that occasion, there is complete agreement that nothing was said to her about the character of the transaction in which the parties were interested, the information being limited to Dowden's announcement that "Mr. Goren is putting a second mortgage on" (p. 330, l. 35).

In their early affidavits in the cause the appellants both swore that David Allen was present on the occasion, and gave his wife an explanation of their visit (p. 59, ll. 1-10; p. 92, ll. 30-40). In his testimony Colgan admits that both these statements were wrong (p. 329), and admits that Allen was not present (pp. 310 and 311).

Goren in a preliminary affidavit stated that "Mr. Allen introduced him to his wife (p. 92) and introduced Colgan, at which time it was explained to Mrs. Allen that they were looking over the property in order to place a second mortgage".

In his testimony he variously stated that Allen was there on the first visit (p. 344); also that Allen was there only on the second visit (p. 356); also that on the first visit he was accompanied only by Colgan and Dowden, and that upon arriving he found only Mrs. Allen and the daughter at home (p. 343).

The testimony of Dowden, Goren and Colgan as to the withholding of information from Mrs. Allen at the time may be found on pages 289, 290, 292, 311, 312, 315, 328, 329, 330, 331, 344, 357, 361, 362 and 363. From such testimony it appears that every detail of the pre-existing arrangement between the appellants, on the one hand, and McGee, Dowden and Allen on the other, that the mortgage money was to be used to pay off McGee's debts and supply his corporation with additional funds were concealed from the appellee; likewise, the fact of McGee's financial instability, his bad check and the expectation of Goren, Colgan, Dowden and Allen to derive profits from the future prosperity of McGee's concern.

According to McGee, the mortgage was executed two or three days after it was first proposed by Allen (p. 124); according to Allen, about a week later (p. 185); according to Colgan, about three days after the inspection (p. 313), and according to Dowden, four or five days after it was first broached (p. 292).

The record is bare of testimony as to any communications made to Mrs. Allen during the time intervening between the inspection and the day of execution. The secrecy maintained towards her previous to her arrival at the office of Mr. Colgan

is shown on pages 125, 128, 131, 132, 186, 188, 190, 277 and 279.

As to the concealment of the facts from her at the office of Colgan, where the mortgage was executed, see pages 127, 128, 129, 130, 131, 190, 191, 192 and 193.

The testimony referred to compelled the conclusions by the Vice Chancellor:

> "The parties agreed that out of the loan Goren's claim of $2,000 would be discharged and Colgan should receive $700 for his legal services on Goren's behalf" (p. 420, l. 35).
>
> "Everyone connected with the transaction, including Colgan, knew that the $4,300 was to be paid to McGee and I am satisfied that Goren knew it also" (p. 420, l. 37).
>
> "She was not consulted by anyone concerning the proposed mortgage, nor was she informed of its purpose or the disposition to be made of the mortgage money" (p. 421, l. 10).
>
> "Dowden is a lawyer and was present as Allen's friend and legal adviser" (p. 421, l. 18).
>
> "She might be made to understand what a mortgage means, but she signed the one here in question because her husband requested her to and assured her that it would benefit him and her and that McGee had promised to pay it when it fell due, but I am confident that she did not appreciate the risk she was incurring and certainly no one explained the risk to her" (p. 423, l. 35).
>
> "Mrs. Allen was dominated by her husband and he took advantage of his control over her and her trust in him. It is not disputed that if any explanation was made to her as to the purpose of the bond and mortgage, or who was to receive the proceeds thereof, or as to the risk she assumed by placing a lien on her property, it was made by her husband, and he denied making such an explanation" (p. 424, l. 27).
>
> "Allen was allured by McGee's promise of easy money and by reason of his dominion

> over his sick wife, he obtained her signature to the papers without informing her of the consequences which might follow and he was anything but a disinterested and impartial adviser; and neither Goren nor Colgan, Dowden nor Dolan made the slightest attempt to ascertain whether Mrs. Allen understood that she was assuming a debt wholly for McGee's benefit'' (p. 426, l. 8).

It is conceded that there was no application for the mortgage originally made by her, or that any feature of the transaction was committed to writing, except Dowden's agreement to indemnify Goren against loss through foreclosure (p. 416). No bill for interest was sent to her, nor demand of any kind made previous to the filing of the bill. No subpoena was served on her, and Mr. Dowden readily concedes that he had no authority to act for her, in either accepting service or stipulating that there was no defense to the bill to foreclose.

The evidence on the question of her mental capacity consists in the phenomena of her own testimony, the testimony of the physician who treated her for twenty years and the testimony of a neutral specialist selected by the Vice Chancellor.

Her own testimony is evincive of nothing but imbecility, and is found at pages 219 to 228. In pitiable manner she stated that nobody told her what the transaction was, did not know if her husband explained that she was signing a mortgage, inquired why she was brought into the case, did not understand the consequences of executing a mortgage, understood that foreclosure meant that one paid his taxes, and that nobody gave her anything—Republicans or anyone.

Dr. Flaherty, her own physician, testified that she never goes out alone, does not know of any business that she is capable of transacting, never appeared normal in the last twenty years, was not at the time of signing the mortgage capable of

comprehending the nature of the transaction and, in his opinion, she did not understand the legal consequences. She would sign any paper that she was told to sign. Her mind is like a child's, she would sign any kind of a paper, either knowing what was in it, or not knowing. A conversation with her would disclose "right off" that she was mentally weak (p. 146, *et seq.*).

Dr. Beling, designated by the Court, testified that, while she was not of unsound mind, her ability to understand the nature and effect of executing a mortgage would depend upon her being at the time in a lucid normal state (p. 236, l. 28). That she would be capable of understanding the nature of the act she was called upon to perform if the act and its consequences were explained to her (p. 236, l. 39; p. 239, l. 38). That, from a general survey of her mental state, he was unable to say whether, when she executed a legal document along with understanding its character, she could comprehend its nature and effect and consequences (p. 242, l. 28).

Her condition at the time of the signing of the mortgage was described as nervous, and appearing to be the same as her condition while in court (p. 130, ll. 1 to 12). This was the condition which the Vice Chancellor referred to as showing "marked incoherency and mental incompetence" (p. 423, l. 8). Colgan admitted that she was sick when mortgage was signed (p. 316, l. 35).

The testimony abundantly justified the Vice Chancellor's conclusions:

> "The quoted conversation with the examining physician and her testimony in court shows marked incoherency and mental incompetence, and if that were to be taken as the test of her ability to comprehend the nature and effect of a mortgage, there could be no hesitancy in deciding her absolute incompetence" (p. 423, l. 5).

"Whether capable or incapable of grasping a business transaction, she was far below the level of business intelligence of the men with whom she was dealing at the time she executed the bond and mortgage" (p. 423, l. 15).

"Goren and Colgan had visited her home to inspect the property prior to Goren's agreement to make the loan, and they testified concerning conversations had with her, and testimony was given as to a few remarks she made at Colgan's office the day she signed the bond and mortgage, the purpose of such testimony being to show that her mental condition was good. Everything she is quoted as having said on both occasions was of a trivial nature relating to ordinary matters and might have been uttered by a fourteen-year-old girl" (p. 424, l. 5).

"Goren and Colgan testified that they were unaware of her physical condition, but her appearance as she sat in court during the trial (about a year and a half after the mortgage was executed) would convince anyone that she was not then in normal health" (p. 424, l. 21).

McGee, in fulfillment of his promise to pay the mortgage, delivered to Goren corporate stock which, it was testified, attained while in Goren's hands a market value sufficient to satisfy the mortgage debt; Goren's testimony, lacking confirmation, was that he sold it at a sacrifice and hence was able to credit only $1,500.00 on the mortgage.

According to the grounds of appeal and the contentions of appellants' brief, it is designed to limit the present review to the Court's failure to find that the appellee's mental state was perfect, and its improper application of the rule respecting independent advice; and to ignore on this review the proof fully establishing that the appellee was deceived by fraudulent representations that she would absolutely profit by the transaction and incur no risk, the fraudulent concealment of the

prior agreements to effectuate which her mortgage was given, the proof of total failure of consideration to her, the proof of McGee's repayment of the loan, and her immunity as a guarantor under the original Married Woman's act—all of which considerations were sufficient to sustain the decree, even in the face of appellants' success on the select points now argued.

ARGUMENT.

1. The Court could not from the evidence have found that the appellee was mentally normal.

2. The improvidence of the transaction and appellee's mental weakness being shown, the burden was cast on the appellants to show that the transaction was equitable to her, in the course of which they were required to show her understanding through independent advice, which burden they did not even undertake to discharge.

3. The decree, independent of the rulings complained of, is supported by proof of fraudulent representation, concealment, lack of consideration, iniquitous collusion, satisfaction of the debt and disability under the Married Woman's Act.

POINT I.

The Court could not from the evidence have found that the appellee was mentally normal.

Appellee's husband testified to her incapacity to transact any business, to her complete pliability under his own influence and the subservience of her will at the time of the execution of the mortgage. Her physician testified to her incapacity to transact business during the twenty years that

she was under his care, and described her mental strength as being able to understand the contents of a document while it was being carefully explained, but would forget even such explanation in five minutes; that when urged she would sign a paper with or without such an explanation. The neutral alienist confirmed that she would not understand the contents of a document without special explanation, and balked on an opinion as to whether she would then comprehend its legal effect and consequences.

The appellants made no gesture to offset this testimony, but seemingly relied upon the testimony that she could understand the contents of an instrument when it was explained. The proof in the case is that a notary explained to her, while her husband was a foot or two from her, that the paper was a mortgage in the sum of $7,000.00, due within one year, and that the interest was payable quarterly from the date of signing (p. 300, l. 40), and that they both said "yes" when he inquired concerning their signature and voluntary act (p. 302, l. 35). That such explanation was made to husband and wife together and not separately, and both said "yes" together (p. 305, l. 25). If it was an explanation of documentary content, it was none of effect and consequences.

Apart from direct testimony as to her mental state, the most cogent proof of her imbecility was her involvement in the transaction. A mother of children was placing a second mortgage on the family home to pay the debts of a stranger operating in the blue sky racket. The improvidence of the transaction, which evoked from the appellant, Colgan (p. 317, l. 35), and from Dowden (p. 263, l. 20), who represented her husband, protests to the latter that it was *foolhardy,* was fully eloquent of her mental deficiency and prevented a judgment that she possessed sufficient ability at the time

to understand in a reasonable manner the nature and effect of her act and the business she was transacting.

Davren v. *White,* 42 N. J. Eq. 569;
Eaton v. *Eaton,* 37 N. J. L. 108.

These cases deal with the required mental standard in the absence of fraud, but when fraud is present other principles of decision are introduced:

Lozear v. *Shields,* 23 N. J. Eq. 509.

When mental disparity is shown, even though the result of age, feeble health, weak will or intellectual inferiority, the burden is cast on the one seeking to enforce the transaction to show entire good faith, the justice of the transaction, the benefit to the one so affected, full consideration, that no advantage was taken, no knowledge or notice of the incapacity, and that the parties cannot be placed *in statu quo.*

1 Story Eq. Redf. ed., pars. 227, 228;
2 Pom. Eq., par. 946.

The rule has been applied in the following cases, stressing the necessity of independent and disinterested counsel:

Thorp v. *Smith,* 63 N. J. Eq. 7;
Collins v. *Toppin,* 65 N. J. Eq. 439;
Bidwell v. *Piercy,* 71 N. J. Eq. 83;
Yauger v. *Skinner,* 14 N. J. Eq. 389;
Rickey v. *Davis,* 7 N. J. Eq. 378;
Higher v. *Little,* 20 N. J. Eq. 444.

In *Bliss* v. *Cronk,* 62 N. J. Eq. 496, relied upon by the Vice Chancellor, it was held:

(a) The validity of the liability of a mortgage depends upon the enforceability of the executory contract evidenced by the bond.

(b) When mortgagees know that a married woman is not indebted to them as the bond and mortgage falsely recites and that the credit is given by them to another, they are not entitled to relief.

(c) A covenant by a married woman to be surety for another is void both under our statute, and, before its enactment, under the ruling in *Perkins* v. *Elliot,* 8 C. E. Green 526, nevertheless, she may mortgage her land to secure her husband's debt.

(d) Where it affirmatively appears that a wife did not know, or have any reason to know, of an indebtedness by her husband, no question of estoppel arises in favor of third parties who have given credit to the husband's firm on the strength of finding such mortgage among its assets.

(e) When a mortgage contains a false recital that the married mortgagor is indebted, the mortgagor may set up the representations as an inducement to execute the instrument.

(f) It is entirely competent for the wife to show that she did not consciously give the mortgage for the purpose of securing the husband's debt; the burden rests on the mortgagee to show affirmatively that it was so given.

(g) It was the duty of the complainants, under the circumstances of this case, to see to it that the wife executed this mortgage with a full understanding of the effect of so doing.

Other cases dealing with the unenforceability of a wife's mortgage to secure the debt of a husband or other third person are:

Mahoney v. *Goepper,* 8 Ohio Reprint 154;
North West N. F. I. Co. v. *Blankenship,* 94 Ind. 535.

The rule as to independent advice has been applied where the mortgagor was merely illiterate and ignorant without full knowledge of the situation involved.

Walz v. *Oser,* 93 N. J. Eq. 283.

And where the consideration was grossly inadequate.

Cook v. *Cole,* 6 N. J. Eq. 627.

And where mortgagees were ignorant and inexperienced women, gulled by a man who intended to secure his own debt to a third person.

Guatelli v. *Brown,* 84 N. J. Eq. 33.

POINT II.

The case was a proper one for the application of the rule of independent advice.

An examination of the cases cited show that the rule is inseverably linked with the policy that a court of equity will not issue its decree when doubt is cast upon a party's understanding of a transaction into which he enters, and his complete assent to the consequences which the decree is asked to effectuate. The doctrines of constructive fraud, accident, mistake, clean hands and mutual intention, are all invoked to require the parties seeking relief to satisfy the judicial conscience.

This case of a sick woman with record for recurring insanity, mental subjugation to her husband's will and pledging the roof over her children's head to pay the debts of a stranger and a counsel fee of another stranger involved manifold features that called upon the appellants to establish that she assented to the foreclosure and loss

of her home. The appellants made no gesture towards sustaining such proof, and there is scant equity or graciousness in their contention that they should be relieved of so doing.

POINT III.

The contentions on this appeal are virtually academic, since the decree is supportable on other grounds than those argued.

The Vice Chancellor did not rest his decree upon the appellee's lack of normal mentality, nor did he make any definite ruling thereon. The *ratio decendi* was that the appellants failed to sustain the burden that appellee's act was based on proper independent advice, that is, that she conferred on the subject of a bond and mortgage with a person who was in a position to advise her impartially and who was competent to inform her carefully as to the legal effect of her act (p. 425, l. 30). He found such burden resulted from the apparent improvidence of the act and the presumption therefrom that appellee did not appreciate its consequences.

In his opinion, however, he further found that there was fraudulent concealment of the facts of the transaction from her and a fraudulent representation that the only effect of the mortgage would be the reaping of pecuniary reward by herself and her husband, and further found that she received no consideration.

Having been conducted to these conclusions, it was not necessary for him to deal with the questions of whether the loan was fully repaid by McGee to Goren, or her statutory immunity as a guarantor of another's debt. Whatever might be the judicial view upon the points of mental capac-

ity and independent advice now urged, the establishment of other defenses in the case furnishes ample support for the decree.

The rule as to independent advice is invoked in the case of a voluntary gift independent of the conventional relations of the parties, where equity requires that the donor should have understood fully the nature of the act. It is applied in a case where the evidence as to mental impairment is conflicting.

Ware vs. *Mulford,* 79 N. J. Eq. 470.

It is respectfully submitted that the decree under review should be affirmed.

Richard Doherty,
Solicitor for, and of Counsel with,
Appellee, Ellen E. Allen.