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Petition of Appeal.

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LOUIS PERAGALLO,
Complainant-Appellee,

vs.

PHILIP ONETO and JOSEPHINE
ONETO, his wife,
Defendants-Appellants.

On Appeal
from Court
of Chancery.

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

20 The petition of Philip Oneto and Josephine Oneto, the appellants in the above entitled cause, respectfully shows that:

30 1. Petitioner finds himself 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 June 24th, A. D., 1925, in a certain cause in said Court of Chancery, wherein the said Louis Peragallo was complainant and the said Philip Oneto and Josephine Oneto, defendants, in this respect, to wit: that the said decree orders, adjudges and decrees that the deeds of conveyance made by the defendants, Philip Oneto and Josephine Oneto, his wife, to Mary Dillon, bearing date the twelfth day of September, 1922, and recorded in Book 1457 of Deeds for Hudson County, on page 37, and also the deed of conveyance made by the said Mary Dillon to the said Josephine Oneto, bearing the same date and recorded in Book 1457 of Deeds for Hudson County, on page 37, be set aside, annulled
40 and made void as against the judgment and exe-

Petition of Appeal.

10 cution of the complainant, which judgment is more particularly set out in the bill in said cause; and further that said decree orders that the defendants pay the costs of the complainant, in said cause to be taxed, including a counsel fee of \$250.00, and that the complainant have execution thereof, according to the course and practice of said Chancery Court.

And petitioner appeals from the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous for the following reasons:

(1) It ordered, adjudged and decreed that the deeds aforementioned, be declared null and void, as against the judgment and execution of the complainant. 20

(2) The court should have decreed that the said deeds were valid.

(3) The court should have decreed that the said deeds were valid as an execution of a resulting trust existing between Philip Oneto and Josephine Oneto, his wife.

(4) The court should have adjudged and decreed that there was a resulting trust of the property in question, in favor of Josephine Oneto, the wife. 30

(5) Even if the court did not adjudge and decree that the execution of said deeds and the transfer of the property was valid as an execution of a resulting trust existing in favor of Josephine Oneto, as set out above, that then it should have adjudged and decreed that there was a resulting trust of said property existing in favor of the wife, to the extent 40

Petition of Appeal.

of the money actually advanced by her for the purchase of said property, which trust should have been decreed to be prior to the judgment and execution of the complainant.

10 (6) That the aforesaid decree in this case is based on findings of fact by the said court, not warranted by the evidence, and contrary to the weight of such evidence.

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

20 STUHR & VOGT,
Solicitors for and of counsel with
defendants-appellants.

Filed September 29, 1925.

30

40

Answer to Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

LOUIS PERAGALLO, Complainant-Appellee, vs. PHILIP ONETO and JOSEPHINE ONETO, his wife, Defendants-Appellants.	}	10 On Appeal from Court of Chancery.
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The answer of Louis Peragallo, the above named appellee, to the petition of appeal of Philip Oneto and Josephine Oneto, his wife, the above named appellants. 20

This appellee, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that a decree was, on June 24th, A. D. 1925, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, this appellee begs leave to refer thereto when the same shall be produced. 30

This appellee is advised and believes that the said decree is agreeable to equity; and he prays that the same may be affirmed with costs to be taxed in favor of this appellee.

ANTHONY P. LA PORTA
Solicitor for and Counsel with Appellee.

Dated 10/5/25 40

Bill of Complaint.

IN CHANCERY OF NEW JERSEY.

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

10 The complainant, Louis Peragallo, of the City of Hoboken, County of Hudson and State of New Jersey, respectfully shows that

1. On the 16th day of October, 1922, he sued Philip Oneto and Josephine Oneto, the defendants herein, in an action at law in the New Jersey Supreme Court, Hudson Circuit, on the pleadings annexed hereto and made a part hereof.

20 2. On the 25th day of April, 1923, the above action at law was tried before Judge Luther A. Campbell with a Jury at the Hudson Circuit.

3. The Jury rendered a general verdict against the defendant herein, Philip Oneto, and in favor of the plaintiff for \$2,130.00 with interest from January 6th, 1915.

30 4. A judgment of non-suit was rendered and entered as against the defendant, Josephine Oneto.

5. On the 28th day of May, 1923, a writ of execution was issued out of said Court and was returned as unsatisfied. A copy of said writ together with the return is hereto annexed and made a part hereof.

40 6. By deed dated May 2nd, 1910, and recorded on that day in Liber 1066, page 99, with the register of deeds of Hudson County, N. J., the defendant, Philip Oneto, became seized in fee simple in his own right of premises known as No. 708

Bill of Complaint.

Bloomfield Street, in the City of Hoboken, County of Hudson and State of New Jersey, and more particularly described as follows:

10 ALL that certain lot, tract or parcel of land and premises, situate, lying and being in the City of Hoboken, in the County of Hudson and State of New Jersey, being part of a certain tract of land known by the name of Hoboken, and which on a Map of said tract made by Charles Loss, and duly filed in the office of the Clerk of the County of Bergen, is situated and described as follows, to wit:—

20 COMMENCING at a point in the westerly line of Bloomfield Street, eighty six feet (86') northerly from the northwesterly corner of Bloomfield and Seventh Streets, and running thence northerly and along the westerly line of Bloomfield Street, twenty one feet and four inches (21'4"); thence westerly and parallel with Seventh Street, one hundred feet (100') thence southerly and parallel with Bloomfield Street, twenty one feet and four inches (21'4") and thence easterly and parallel with Seventh Street one hundred feet (100') to the westerly line of Bloomfield Street, the point or place of beginning."

30 7. On September 12th, 1922, for \$1.00 the defendant, Philip Oneto, and Josephine Oneto, his wife, pretended to convey said land and premises unto one Mary Dillion by deed of that date with 50 cts. Revenue Stamp acknowledged and of record in the register's office of Hudson County in Liber 1457, page 35.

40 8. On September 12th, 1922, said Mary Dillon (single) pretended to convey for \$1.00 said land and premises unto the said Josephine Oneto, wife of said Philip Oneto, by deed of that date with 50

Bill of Complaint.

cts. Revenue Stamp acknowledged and of record in the office of the Register of deeds of Hudson County aforesaid in Liber 1457, page 37.

10 9. Complainant is informed and believes it to be true, and therefore charges that said conveyances were based upon no actual considerations whatever, and were fraudulently made for the purpose of protecting said land and premises from the claim of complainant, and to prevent him from collecting his said debt; and that the said Philip Oneto has always held, occupied, possessed and enjoyed and received the rents, issues and profits of said land and premises to all intents and purposes as before the execution of said pretended conveyances.

20

10. Said land and premises are worth about \$18,000.

11. Said land and premises are encumbered as follows:

30 (1) By a mortgage in the sum of \$4500 dated June 15th, 1915, recorded in liber 1850 page 310 with Registrar of Deeds of Hudson County, made by Philip Oneto and Josephine Oneto, his wife, to the Hoboken Bank for Savings.

(2) By a mortgage in the sum of \$2400 made by Philip Oneto and Josephine Oneto, his wife, to Bernard Vezzetti and assigned to Charles Schultz and Walter Schultz, dated November 16th, 1915, recorded with Registrar of aforesaid county on November 16th, 1915, in liber 863, page 145, and assignment in liber 123, page 570.

40 (3) By a judgment unsatisfied in the sum of \$117.65 by Antonio Chiesa against Philip Oneto filed by Stuhr & Vogt, Attorneys for

Bill of Complaint.

Plaintiff, with the Hudson County Court of Common Pleas and recorded in liber 29, page 139.

12. The pretended deeds of conveyances were prepared and drawn by the law firm of Stuhr & Vogt, and that the intermediary Mary Dillon was at the time and still is the stenographer of said firm.

10

13. That no mention was made in the aforesaid pretended deeds of conveyances of the existing mortgage encumbrances and judgment of Antonio Chiesa.

Complainant is without adequate remedy in the courts of law and therefore prays

20

1. That Philip Oneto and Josephine Oneto, his wife, who are the defendants to this suit, may answer this bill of complaint without oath and each statement made therein.

2. That an account may be taken of the amount due on complainant's judgment with interest and costs.

3. That the defendants or one of them, may be decreed to pay the amount so found due, by a short day to be appointed by this Court or

30

4. That in default of such payment, said fraudulent conveyances may be set aside and declared null and void, so that said land and premises may be sold under execution of said judgment or otherwise, free, clear and discharged of said fraudulent deeds and encumbrances, and the proceeds thereof or such part of the same as may be necessary, may be applied to the payment of complainant's said judgment, interest and costs.

40

Bill of Complaint.

10 5. That the defendants Philip Oneto and Josephine Oneto, his wife, be restrained and enjoined pending this Bill from selling, encumbering or otherwise disposing of said land and premises until otherwise ordered by this Honorable Court.

6. That complainant may have such other or further relief in the premises as the nature of the case may require.

7. 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.

20 ANTHONY P. LA PORTA
Solicitor of and Counsel with
Complainant.

30

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Summons.

(COPY)

THE STATE OF NEW JERSEY to Philip Oneto and Josephine Oneto. You are summoned to answer the annexed complaint of Louis Peragallo, in an 10

L. S. action at law in the New Jersey Supreme Court, Hudson Circuit. And take notice that unless you file your answers to said complaint with the Clerk of the Supreme Court, at Trenton within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

20 WITNESS William S. Gummere, Chief Justice of the Supreme Court, at Trenton, this 16th day of October, A. D. Nineteen hundred and twenty-two.

ENOCH L. JOHNSON,
Clerk.

ANTHONY P. LA PORTA,
Attorney.

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Separate Answer of Josephine Oneto.

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

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LOUIS PERAGALLO, Plaintiff, <i>vs.</i> PHILIP ONETO and JOSEPHINE ONETO, Defendants.	}	Actiol. at Law.
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20 The defendant Josephine Oneto residing in the city of Hoboken, in the County of Hudson and State of New Jersey, answering separately, says that:

ANSWER TO FIRST COUNT.

1. She admits the first paragraph, except that she denies that there was any consideration for said note, and she denies that she received any consideration either directly or indirectly for her endorsement thereon.
- 30 2. She denies that any payments were made to plaintiff on account of said note either by her or by anyone for her.
3. As to the statements in the third paragraph defendant has not any knowledge or information thereof sufficient to form a belief.

ANSWER TO SECOND COUNT.

- 40 1. She denies the first paragraph.
2. She denies the second paragraph.

Separate Answer of Josephine Oneto.

3. She denies the third paragraph.
4. She denies that the plaintiff has demanded payment of said alleged balance claimed to be due, or any part thereof.

10

FIRST DEFENSE TO FIRST COUNT.

1. The cause of action stated in the complaint did not accrue within six years next before the commencement of this action.

SECOND DEFENSE TO FIRST COUNT.

1. At the time of making and delivering the alleged note mentioned in paragraph one of the first count, defendant was the wife of Philip Oneto.

20

2. Said endorsement was made by defendant as surety for the defendant Philip Oneto and this defendant did not obtain, 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 on the faith of said endorsement or in consideration thereof.

30

SEPARATE DEFENSE TO SECOND COUNT.

1. The cause of action stated in the complaint did not accrue within six years next before the commencement of this action.

STUHR & VOGT,
Attorneys for Answering
Defendant Josephine Oneto.

40

Writ.

WITNESS WILLIAM S. GUMMERE, Esquire, Chief Justice, at Trenton aforesaid, the twenty eighth day of May, A. D. nineteen hundred and twenty-three.

10 EDWARD J. KELLEHER, Clerk.

ANTHONY P. LAPORTA,
Attorney.

(A true copy)
EDWARD J. KELLEHER, Clerk.

ENDORSEMENTS

20 Recorded in the office of the Clerk of the Supreme Court, in A 43 of Process, page 802.

EDWARD J. KELLEHER, Clerk.

(A true copy)
EDWARD J. KELLEHER, Clerk.

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Return to Writ.

NEW JERSEY SUPREME COURT,
HUDSON COUNTY.

LOUIS PERAGALLO,

vs.

PHILIP ONETO impleaded etc.

—6

Under Sheriff.
Action at Law.
Fi. Fa. de bonis
et terris.

10

Ret'ble June 19th, A. D. 1923.

ANTHONY P. LAPORTA, Atty.

20

Levy damages.....	\$2130.00
Costs	54.34
	<hr/>
	\$2184.34

Interest on damages from Jan. 6, 1915. Besides Sheriff's exec'n fees \$0.12. Delivered to me June 2nd, 1923, at 11:30 o'clock A. M.

30

THOMAS MADIGAN,
Sheriff.

Filed July 27th, 1923.

EDWARD J. KELLEHER, Clerk.

July 27th, 1923, Return to Court unsatisfied.

THOMAS MADIGAN,
Sheriff.

By JOSEPH BUCKLEY,
Under Sheriff.

40

A true copy.
EDWARD J. KELLEHER, Clerk.

Answer of Defendant Philip Oneto.
IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> LOUIS PERAGALLO, Complainant, <i>and</i> PHILIP ONETO and JOSEPHINE ONETO, Defendants.	}	On Bill, etc.
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- 20 The answer of the defendant, Philip Oneto.
 This defendant, answering the bill of complaint, says that:
1. He admits paragraphs 1, 2, 3 and 4.
 2. He has no knowledge or information sufficient to form a belief as to the statements in paragraph 5 of said complaint.
 - 30 3. He admits that on May 2nd, 1910, he was seized and possessed in fee simple of the premises described in paragraph 6 of said complaint.
 4. He admits paragraphs 7 and 8, but he denies that the conveyances mentioned therein pretended to convey said land and premises, and insists that said conveyances were absolute, and were for a valuable consideration, the said Mary Dillon being an intermediary for the purpose of conveying said title to the said Josephine Oneto, his wife.
 - 40 5. He denies paragraph 9, and says that at the date of said conveyances and for a long time prior

Answer of Defendant Philip Oneto.

thereto, he was indebted to his said wife, Josephine Oneto, in the sum of \$4,000 and upwards, for cash moneys loaned and advanced from time to time by the said Josephine Oneto to this defendant and for his benefit, and were actually used by him in the purchase of said premises, and that said moneys so loaned and advanced as aforesaid by his said wife to him was the consideration for said last mentioned deeds, and he denies that since the date of said conveyances, he has held, occupied, possessed and enjoyed the rents, issues and profits of said lands and premises, but he insists that the said property is the sole separate property of his said wife and is held by her for her own use.

6. He denies paragraph 10 and says said premises are not worth more than the sum of \$11,000.
7. He admits paragraph 11.
8. He admits paragraph 12, but he denies that said deeds of conveyance were pretended, and insists that they were based on actual valuable consideration.
9. He admits paragraph 13, but denies that said deeds of conveyance were pretended.

STUHR & VOGT,
 Solicitors for answering defendant,
 Philip Oneto.

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Answer of Defendant Josephine Oneto.

IN CHANCERY OF NEW JERSEY.

10

Between

LOUIS PERAGALLO,
Complainant,

and

PHILIP ONETO and JOSEPHINE
ONETO,
Defendants.

On Bill, etc.

20

The answer of the defendant, Josephine Oneto.

This defendant, answering the bill of complaint, says that:

1. She admits paragraphs 1, 2, 3 and 4.

2. She has no knowledge or information sufficient to form a belief as to the statements in paragraph 5 of said complaint.

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3. She admits that on May 2nd, 1910, Philip Oneto, her husband, was seized and possessed in fee simple of the premises described in paragraph 6 of said complaint.

40

4. She admits that on September 12th, 1922, she and her said husband, Philip Oneto, conveyed the premises described in said bill of complaint, to Mary Dillon, who by deed bearing date the same day and year last aforesaid, conveyed the same premises to this defendant, but she denies that the same were pretended conveyances and insists that the same were absolute and made for a valuable consideration.

Answer of Defendant Josephine Oneto.

5. She denies paragraph 9 and says that at the date of said conveyances and for a long time prior thereto, her said husband, Philip Oneto, was indebted to her in the sum of \$4,000.00 and upwards, for cash moneys loaned and advanced by her and for his benefit at different times prior to said conveyances, and that said moneys so loaned and advanced by her as aforesaid was the consideration for said last mentioned deeds of conveyance, and that since the date of said conveyances, she has been the sole owner in fee simple of said premises and has held, occupied, possessed, enjoyed and received the rents, issues and profits of said lands and premises and she insists that the said property is her sole, separate property and is held by her for her own use.

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6. She denies paragraph 10 and says that said premises are not worth more than the sum of \$11,000.00.

7. She admits paragraph 11.

8. She admits paragraph 12, but she denies that said deeds of conveyance were pretended, and insists that they were for an actual valuable consideration.

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9. She admits paragraph 13, but denies that said deeds of conveyance were pretended.

STUHR & VOGT
Solicitors for answering defendant
Josephine Oneto.

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Replication to the Answers.

IN CHANCERY OF NEW JERSEY.

10

Between

LOUIS PERAGALLO,
Complainant,

and

PHILIP ONETO and JOSEPHINE
ONETO,
Defendants.

On Bill, etc.

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The complainant, Louis Peragallo, joins issue on the respective answers of the defendants Philip Oneto and Josephine Oneto.

ANTHONY P. LA PORTA,
Solicitor of Complainant.

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Special Replication.

IN CHANCERY OF NEW JERSEY.

LOUIS PERAGALLO,
Complainant,

vs.

PHILIP ONETO and JOSEPHINE
ONETO,
Defendants.

10

On Bill, etc.

20

In further reply to the defense of Philip Oneto and Josephine Oneto stating in each of their separate answers in paragraphs 5 and 6 the relation of Debtor and Creditor to each other and that the conveyances were made for actual valuable consideration and not anticipated in the Bill of Complaint; complainant by leave of court, says that:

30

1. At and prior to the time of the making of the loans for which he recovered judgment against the defendant, Philip Oneto, as described in this suit he made diligent inquiry of the defendants as to the ownership and title to the premises mentioned in the bill of complaint and each of the defendants asserted that he, Philip Oneto, was the sole and exclusive owner, and the defendant Josephine Oneto at the times aforesaid and up to the filing of this bill of complaint never claimed any right, title or interest in said property, and never claimed that her husband Philip Oneto was indebted to her.

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Special Replication.

10 2. That because of her conduct and representations, and the omission to inform the complainant of her interest in said property or claims against her husband for the alleged loans the complainant made the loans to the defendant Philip Oneto as is described in the complaint in the New Jersey Supreme Court and annexed to the Bill of Complaint.

20 3. Wherefore the defendants ought not to be admitted to say that the defendants bear a relation of debtor and creditor to each other and that the alleged consideration for the conveyances takes priority over the complainant's judgment against Philip Oneto.

ANTHONY P. LA PORTA,
Solicitor of Complainant.

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Memorandum.

(Original filed with Clerk, Sept. 28/25.)

IN CHANCERY OF NEW JERSEY.

Between

LOUIS PERAGALLO,
Complainant,

and

PHILIP ONETO and JOSEPHINE
ONETO,
Defendants.

10

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Decided May 26th, 1925.

Mr. ANTHONY P. LA PORTA, for the Complainant;

Messrs. STUHR & VOGT, for Defendants.

GRIFFIN, V. C.:

The bill in this cause is filed to set aside two conveyances as against the judgment of the complainant, one made by Philip Oneto and wife to Mary Dillon, dated and recorded September 12, 1922, and the other made by Mary Dillon, single, to Josephine Oneto, the wife of Philip, bearing date and recorded on the same day as the prior deed.

30

The premises in question were acquired by Philip Oneto, the husband of Josephine, from one Oscar Pflug, on May 2d, 1910. He retained title until the two conveyances above-mentioned, which vested the title in his wife Josephine Oneto, were made.

40

Memorandum.

10 The complainant, on September 25th, 1913, loaned to the defendant, Philip Oneto, \$600, and took his promissory note for that amount, payable in six months after date. On July 6th, 1914, the last mentioned note being unpaid, the complainant took the note of Philip Oneto for \$2,300, payable 10 six months after date, which included the \$600 note above mentioned and \$1,700 then and there advanced in cash. This note was endorsed by Philip Oneto and his wife Josephine Oneto.

20 The complainant commenced suit at law in the Supreme Court against Philip and Josephine on the last mentioned note, in which suit Josephine pleaded, admitting that she endorsed the note, but that she was the wife of Philip, and that the endorsement was made by her as surety, and that her separate estate received no benefit in consideration thereof. This apparently resulted in a dismissal of the suit against Josephine, and the case then proceeded to judgment against Philip, which judgment was entered on April 28th, 1923, for \$2084.34, and execution issued and a levy was made on the premises in question.

30 Shortly prior to the commencement of the suit at law, the complainant demanded payment of the said note, and shortly thereafter the two conveyances above mentioned, sought to be set aside, were made, which vested the title in the defendant Josephine. Josephine says that in 1910, when Pflug conveyed to Philip, the purchase money was advanced by her, and that it was the intention of the parties that the title should be taken in her name; but Philip took the title in his own name. I have carefully examined the evidence in support of the wife's contention, and have come to 40 the conclusion that \$1533.56, which was drawn by

Memorandum.

Josephine from The Bank for Savings in New York City on April 14th, 1910, was actually used as part of the consideration. The purchase price is uncertain. It appears to have been \$9500 or \$9700, which was paid by giving a purchase 10 money mortgage for \$6700, and the payment of the balance (\$2800 or \$3000) in cash. There are other items which were drawn from the wife's bank accounts about the time of passing of title, which, if applied on account of the purchase price, would substantially equal the sum paid in cash. But I have been unable, with any certainty, to determine that these additional items were used for that purpose.

20 Josephine says that, upon the conveyance to her husband, she repeatedly asked him to put the deed in her name, but they could not find time to do so, and did not have the money to pay for the drawing of the deed, etc. She also says that she knew that her husband had taken title in his own name within one year after the conveyance to him.

30 On June 15, 1915, she signed a mortgage to the Hoboken Bank for Savings for \$4500, on which day the mortgage to Pflug was cancelled of record. She also, on November 16, 1915, executed another mortgage to Bernard Vizetti, for \$2400. At either of these times she could readily have had the property placed in her name, if she and her husband had desired to do so. But both defendants delayed doing this thing until a short time before the complainant demanded payment of the note and commenced suit; and then the transfers sought to be set aside were made.

40 The complainant says that the \$1700 was borrowed, among other things, to make alterations

Memorandum.

10 in the house and to pay some bills. He also says that both Mr. and Mrs. Oneto, before he took the \$2300 note, told him that Oneto was the owner of the property. This they both deny. The building, after this loan, was changed from three to four stories. Philip says that the only thing that was done to effect this change was to put in a stove. How a building could be changed from three to four stories by merely putting in a stove is beyond comprehension. Mrs. Oneto does not say that the building was not altered.

20 In this case, Josephine swears that the endorsement of her name on the \$2300 note is not her signature. It is quite apparent that in the suit at law, when she admitted in her answer that the endorsement on the \$2300 note was made by her but that she was an accommodation endorser and that her separate estate received no benefit, she took a position quite in conflict with that which she takes in the present case. She says, in this case, that the endorsement is not her signature, and that the property was bought in trust for her and should have been in her name from the beginning. I am satisfied, however, that the endorsement on the note is her signature; and that 30 \$1700 in cash loaned at the time of the making of the \$2300 note, or a great portion thereof, was used in the alteration of the building on the premises which Josephine now claims as owner.

40 Having admitted, in the suit at law, that the endorsement was her signature, if she had there stated what she now claims in this case, namely, that the said building was her property, and admitted that the \$1700, or a portion thereof, was used in the alteration of the premises, it is quite plain that she would be liable on the note, and

Memorandum.

judgment would have gone against her. *Fisch v. Weinberg*, 3 N. J. Adv. Rep., 274, in which case the complainant here might have levied on the premises and sold the interest of husband and wife to pay the debt. If what she now says be true, she practiced a fraud on the law court, and should not now be permitted to prevail here by changing her position. 10

Passing from the question of the effect of her conduct in the suit at law, in pleading in variance with her plea in this suit, and assuming that she did advance the purchase money—when the \$2300 note was made I am satisfied the defendants told the complainant that Philip was the owner of the property. I am also satisfied that she knew that her husband was heavily indebted, and that he owed the moneys to the complainant from the date of the making of the note; and that her husband was in a losing business. She also permitted the title to remain in his name for a period of twelve years, during eleven of which she knew that the title was in her husband's name, and had ample opportunity, before the making of the note, to have the property transferred to her own name. Instead of doing this, she permitted the title to remain in her husband's name, stating to complainant that it was her husband's property, thus bolstering up his credit; and when he was about to be sued, seeks to protect herself by having it transferred to her in such manner as to defeat his creditors. In such situation she is estopped. *Besson v. Eveland*, 26 N. J. Eq., 468; *City National Bank v. Hamilton*, 34 N. J. Eq. 158, 162; *Mertens v. Schlemme*, 68 N. J. Eq., 549, 550; *Cramer v. Cale*, 72 N. J. Eq., 210, 215. 20 30 40

A decree will be advised for complainant.

Filed September 28, 1925.

Final Decree.

IN CHANCERY OF NEW JERSEY.

Between

10 LOUIS PERAGALLO,
 Complainant,

and

 PHILIP ONETO and
 JOSEPHINE ONETO,
 Defendants.

 } On Bill Etc.

20 The above entitled cause coming on to be heard in the presence of Anthony P. LaPorta, of Counsel for the complainant and Stuhr & Vogt of Counsel for the defendants;

 And the court having examined the pleadings, and taken proofs orally and in open court, and having heard and considered the arguments of counsel thereon;

30 And it appearing to the Chancellor that the several deeds of conveyance in the said bill mentioned and described, for the lands and premises therein set forth, were made and executed with the intent to defraud the complainant as a creditor of the defendant, Philip Oneto, and that the said complainant is entitled to the relief prayed for in his said bill of complaint: It is thereupon, on this 24th day of June, nineteen hundred and twenty-five on motion of Anthony P. LaPorta, of Counsel with the complainant, ORDERED, ADJUDGED, and DECREED, and the said Chancellor, by virtue of the power and authority of this court, does hereby

40 ORDER, ADJUDGE and DECREE, that the said deeds of conveyance made by the defendant, Philip Oneto and Josephine Oneto, his wife to the defendant

Final Decree.

Josephine Oneto, bearing date the 12th day of September, 1922 and recorded in Book 1457 of Deeds for said Hudson County, page 37; also the deed of conveyance made by the said Mary Dillon to the said Josephine Oneto, bearing date the same day and year last aforesaid, and recorded in Book 1457 of Deeds for said County, page 37, be set aside, annulled and made void as against the judgment and execution of the said complainant in said bill set forth and described; and that the defendants do pay the costs of the complainant in this cause to be taxed and including a counsel fee of Two hundred and fifty dollars and that the complainant have execution therefor according to the course and practice of this court;

20 And IT IS FURTHER ORDERED, that unless the defendants shall within three months after service upon them of a copy of this decree and of the taxed bill of costs, pay to the complainant or to his solicitor the amount due to him upon his judgment in this cause referred to, and the taxed costs of this suit and the counsel fee aforesaid, the sheriff of the said County of Hudson, to whom was directed and delivered the writ of *fieri facias de bonis et terris*, issued out of the Supreme Court of New Jersey, at the suit of the said complainant against the said Philip Oneto, and in said bill mentioned and set forth, do proceed to sell the said tracts of land and premises, free, clear and discharged of and from the said deeds of conveyance, and of and from all claims of the said Josephine Oneto thereunder or by virtue thereof.

E. R. WALKER
Chancellor

Respectfully advised,
JOHN J. GRIFFIN,
Vice-Chancellor.

A True Copy
THOMAS BARBER
Clerk

Minutes of Final Hearing.

IN CHANCERY OF NEW JERSEY.

10

Between

LOUIS PERAGALLO,
Complainant,
and

PHILIP ONETO and JOSEPHINE
ONETO,
Defendants.

} On Bill, etc.

20 APPEARANCES:

ANTHONY LA PORTA, Esq., for Complainant.
MESSRS. STUHR & VOGT, Mr. BONNANO, of
Counsel, for Defendants.

Before Hon. JOHN GRIFFIN, Vice Chancellor.

30

Chancery Chambers, Jersey City, N. J.,

October 28, 1924.

Mr. Bonnano: We have consented that Mr. La
Porta may introduce into evidence all records
such as deeds, mortgages, etc., without formal
proof; and Mr. La Porta has consented to per-
mit us to introduce into evidence statements from
banks, and bank books, without formal proof.

40

Minutes of Final Hearing.

THE CASE FOR THE COMPLAINANT.

Mr. La Porta: I offer in evidence certified copy
of writ of execution, returned unsatisfied, cover-
ing the property in question in this cause.

(Admitted and marked Exhibit C, 1.)

10

I also offer in evidence Abstract of Title of
Philip Oneto, which I understand is consented to.
This is the abstract of the search of the premises
involved in this suit.

(Admitted and marked Exhibit C, 2.)

I also offer in evidence depositions in supple-
mentary proceedings taken by virtue of an order
of the Supreme Court made by Justice Minturn,
in a suit between Louis Peragallo and Philip
Oneto, the defendant in this suit, which deposi-
tion includes also the other defendant, his wife.
I offer them as admissions. They are signed dep-
ositions.

20

Mr. Bonnano: I will object to the introduction
of these depositions in evidence, on the ground
that they will be immaterial, and any evidence
which they may desire to have before the Court
may be brought out by the witnesses, now, with
the opportunity by him to cross-examine them.
We have all the witnesses right in court, and the
depositions will be useless.

30

The Vice Chancellor: No, they may not be use-
less.

Mr. Bonnano: Or unnecessary, is what I mean.

The Vice Chancellor: No, they may not be legal
evidence.

Mr. Bonnano: These are depositions taken in
supplemental proceedings in the Supreme Court,
not in this case but in an entirely different case.

40

Minutes of Final Hearing.

The Vice Chancellor: I do not see how they are admissible. You can confront them with their evidence.

10 Mr. La Porta: I offer them as admissions, if the Court please. Your Honor may, after considering the depositions, rule them out. We are not here before a jury; we are trying to get all the facts before your Honor; that is the only purpose of offering them in evidence.

The Vice Chancellor: The depositions were taken in another case?

Mr. La Porta: Between the same parties, sir, touching the subject matter involved here.

20 Mr. Bonnano: My objection to them is this—that these depositions were taken in an action in a law court, and what might have been material in that action might be immaterial in this action; and, therefore, the depositions, as a whole, would be incompetent as evidence in this cause.

The Vice Chancellor: I think I will sustain the objection. You can confront the witnesses with them.

30 Mr. La Porta: I offer them as admissions. An admission is an admission, it makes no difference where made; and that is the ruling in *Sheridan vs. Brewing Company*. I had occasion to look at the State of the Case therein, and that was the course followed there. I cannot present your Honor with the State of the Case in the *Sheridan* case, but that is just exactly what was done in that case. I offer them in evidence for what they are worth.

The Vice Chancellor: I will sustain the objection for the present. You may have them marked for identification.

40 (The depositions are marked A. L. P. 1 for identification.)

Minutes of Final Hearing.

Mr. Bonnano: I ask that the bill be dismissed in this cause, on the ground that there was no other real estate owned by the defendant in the law action against whom the judgment was recovered which might be levied on. The case I am looking 10 for is one in which the Court held that on demurrer. The defendant in that case set up exactly the point that I set up. The Court first said that, merely on the ground that the bill did not set up that there was no other property the Court would not sustain the application on that ground; but it did say that the writ of execution merely showing that there was no personal property to be levied on, and the bill not showing that there was no real estate, the complainant has not shown that he has exhausted his legal redress, which, I 20 believe, is analogous to the pleadings and facts in this case.

The Vice Chancellor: I will overrule your offer. The time to have done all this was before you answered.

Mr. La Porta: I served the defendant with notice to produce (to Mr. Bonnano). Have you those papers?

(In pursuance to the notice to produce, the defendants' counsel produces deed, Philip Oneto and wife to Mary Dillon, Dated September 12, 1922, registered September 12, 1922 in Liber 1407 of deeds, p. 35; and the same is offered in evidence by Mr. La Porta, admitted and marked Exhibit C, 3). 30

Mr. La Porta: I also offer in evidence Deed made by Mary Dillon to Josephine Oneto, dated September 12, 1922, recorded in Liber 1457 of deeds, p. 37 (produced on call). (Admitted and marked Exhibit C, 4.) Also, Mortgage made by 40

Louis Peragallo—Direct.

Philip Oneto to Oscar Pflug, dated May 2nd, 1910; recorded May 2, 1910 in Book 706 of Mortgages, p. 100 (produced on call). (Admitted and marked Exhibit C, 5.)

10 Mr. La Porta: This is a purchase money mortgage, which, I believe, has been paid since. (Referring to Exhibit C, 5.)

The Vice Chancellor: It is referred to in the bill?

Mr. La Porta: No, sir; it is not referred to. I also offer in evidence Bond accompanying said mortgage, bearing the same date, from Philip Oneto to Oscar Pflug, in the sum of \$6,700 (produced on call). (The bond is admitted and marked Exhibit C, 6.) I want to call the attention of your
20 Honor to the fact that I demanded the production, among other papers, of the contract for the sale of this property to Philip Oneto, the defendant, in this suit, setting forth the terms under which he bought it; and that has not been produced. I have also demanded all the tax bills, water bills, and insurance policies from the time he took title to the time he disposed of his title to his wife through an intermediary, and those bills have not
30 been produced. I wish to offer in evidence my notice to produce showing exactly what I have demanded of these defendants and with which they haven't complied.

(Admitted and marked Exhibit C, 7.)

LOUIS PERAGALLO, SWORN.

Direct examination by Mr. La Porta:

40 Q. Mr. Peragallo, your full name? A. My name is Louis Peragallo.

Louis Peragallo—Direct.

Q. You are the complainant in this suit? A. Yes, sir.

Q. Where do you live? A. 415 Adams Street, Hoboken.

Q. I show you a note dated September 25, 1913, in the sum of \$600, drawn by Philip Oneto and ask you if you recognize that note? A. Sure, I recognize it. 10

(The note identified by the witness is offered in evidence, admitted without objection, and marked Exhibit C, 8.)

Q. I show you note dated July 6, 1914, in the sum of \$2,300.00 made by Philip Oneto and Josephine Oneto, and by Philip Oneto again, and ask you if you recognize that note? A. Yes, sir. 20

Q. That is your property, is it? A. Yes, sir.

Q. With the other note? A. Yes, sir.

(The note last identified by the witness is offered in evidence, admitted without objection and marked Exhibit C, 9.)

Q. Now, referring to your note of September 25, 1913, in the sum of \$600 (Exhibit C, 8)—will you tell us whether that was a loan, or what it was? A. Well, it was a loan— 30

Q. Was it a loan, yes or no? A. Yes, sir.

Q. It was a loan? A. Yes, sir.

Q. What was it a loan for?

Mr. Bonnano: I object to that evidence and ask that it be stricken out on the ground that it calls for a conclusion of law; whether it was a loan or not has yet to be proved by the evidence.

The Vice Chancellor: I will overrule the objection. 40

Louis Peragallo—Direct.

Q. What did you give this \$600 to Philip Oneto for? A. Well, business was bad, and I helped him to continue the business—the business he had at the house on Fourth & Bloomfield, and——

10 Q. You are talking about the saloon business—you say he needed that money in the saloon business?

Mr. Bonnano: I object to his testifying for the witness.

The Vice Chancellor: I overrule the objection.

Q. You spoke about the house—what about the house? A. Well, 708 Bloomfield street.

20 Q. What about that house, 708 Bloomfield Street? A. Well, he said he needed the money for alterations and to continue to pay the mortgage and one thing and another.

Q. The mortgage on what? A. The mortgage on the house,—that he had some bills to pay, and to make some alterations on the house.

Q. And the note of July 6, 1914, in the sum of \$2300—what was that note for? A. Well, for the same thing, for the same reason.

30 Q. What do you mean by “the same thing”? A. Well, to make alterations to the house—for him to make alterations.

Q. To make alterations to the house? A. Yes.

Q. Now, did this \$2,300 note include the \$600? A. Yes, sir; it did.

Q. In other words, the \$600 loan was raised to \$2,300 on July 6th, 1914, is that right? A. Yes.

Q. And that is the last note that you received? A. Yes.

40 Q. Now, on account of the note of \$2,300, what did you receive?

Louis Peragallo—Direct.

The Vice Chancellor: Is not that all settled by the judgment?

Mr. La Porta: Well, it is. I withdraw that.

The Vice Chancellor: Yes, you have got 10 a judgment here.

Mr. La Porta: I want to show other facts, but it is all right; I will refer to it later on.

The Vice Chancellor: It seems to me that the proposition is whether this transfer through the intermediary was fraudulent as against your judgment.

Mr. La Porta: That is it, exactly.

Q. Now, what business was Mr. Oneto in at the time you made these two loans to him? A. In 20 the saloon business.

Q. Did he own any property at the time? A. He owned property at 708 Bloomfield Street.

Q. Hoboken? A. Hoboken.

Q. Did he live there with his family? A. Yes, sir.

Q. What kind of a house did he own? A. Well, it was a three-floor house, three-story house, brick. 30

Q. A three family brick house? A. Yes.

Q. Now, at the time that you made these loans what did you say to him, and what did he say to you? A. Well, he asked me if I could help him with money. Well, I says, “Have you any property”? and he says, “Yes”, and then I asked Mrs. Oneto and she says he owned the property.

Q. Let me understand you right. You asked Oneto if he owned the property—what property did you mean? A. Well, 708 Bloomfield Street. 40

Q. What did he say? A. He said he owned the property.

Louis Peragallo—Cross.

Q. And then you asked Mrs. Oneto, and she said he owned the property? A. That the husband owned the property.

10 Q. And did she at that time claim that she had any interest in this property, at all? A. No.

Q. Did she claim that she ever loaned her husband any money? A. No, no, she did not claim nothing at all.

Q. Did she say she was a creditor of her husband? A. No, she never said anything.

Q. The note in the sum of \$2,300, dated July 6, 1914, is endorsed by Josephine Oneto, is it not? A. Yes, sir.

Q. Now why did you get that signature? A. To be more safe.

20 Q. To be more safe? A. Yes.

Mr. La Porta: That is all.

The Vice Chancellor: Have you offered your judgment in evidence?

Mr. La Porta: The writ of execution shows a judgment, and the judgment is admitted by the pleadings.

30 The Vice Chancellor: If the judgment is admitted by the pleadings, that shows the various dates when the debt was contracted, and that judgment was entered. The judgment is admitted by the pleadings, is it?

Mr. Bonnano: I believe so; yes, sir.

The Vice Chancellor: All right.

Mr. Bonnano: That is right; it is admitted.

Cross-examination by Mr. Bonnano:

40 Q. Mr. Peragallo, how long have you known Mr. and Mrs. Oneto? A. Oh, I have known Mr. Oneto for the last thirty-two years.

Louis Peragallo—Cross.

Q. Are you related in any way? A. Yes, a little bit.

Q. And prior to the time of this loan how long had you lived in Hoboken? A. Well, I lived there about a year, or a year and a half.

10 Q. Before the loan? A. Yes, sir.

Q. Did you live near the Onetos? A. Well, not far away.

Q. And did you see them very often? A. Oh, sure, very often.

Q. You were very close? A. Yes.

Q. Very intimate? A. Sure.

Q. And you visited them very often? A. Yes, well, I was in the saloon most every night.

Q. Were you in there during the day once in a while? A. Not during the day, because I was in business in New York, you see.

Q. I see. At the time that you made this loan in 1913, of \$600, what was the reason which Mr. Oneto gave you for wanting that loan? A. What reason?

Q. Yes? A. Well, he asked me if I could help him, to give him about \$600 what he needed for business, because the business was bad—see, and he had some alterations on the house, and one thing and another,—see.

Q. I see. The fact was that he wanted it for his business, wasn't it? A. That was the main thing.

Q. The main thing was that he wanted to use it in the saloon business? Is not that right? A. Yes.

Q. And, as a matter of fact, the question of the house never came up, did it—didn't he say, "I want to use the money because I need it in my business?" A. That is right.

Q. And that is the reason you gave it to him— 40 is not that so? A. Yes.

Louis Peragallo—Cross.

Q. Now, when you loaned \$600 to him you didn't speak to Mrs. Oneto about this thing, did you?

A. No, I didn't speak, because I didn't need it very bad at that time; and at the time he came to me and wanted some more—

10 Q. (Interrupting) When the time came for the loan of this money in 1914, in accordance with this note of July 6th for \$2300, did Mr. Oneto say to you that he needed some more money in his business? A. "For alterations".

Q. For alterations? A. Yes, for the alterations.

Q. Did he say he wanted to use it in the saloon business, too? A. No, not in the saloon business at that time—he no wanted more for the saloon.

20 Q. Did you know that Mr. Oneto had a chattel mortgage on that property? A. No, I didn't know that he had any mortgage at all—that is, I knew he had a little bit of mortgage, I didn't know how much.

Q. You knew quite some about the business—he told you a whole lot about the business, didn't he, confidentially? A. Yes.

Q. And did he tell you that he was going to use this money in his business? A. The second note was for alterations.

30 Q. The second note was for alterations? A. Yes.

Q. And at that time you just gave it to him—did you give it to him in cash? A. Sure—all cash.

Q. Where did you give it to him? A. In the saloon.

Q. This note is dated July 6th, 1914 (Exhibit C, 9)—can you tell me when he asked you for the money? A. When he asked me for it?

40 Q. Was it on the same date as this note? A. No, it was a few days before.

Louis Peragallo—Cross.

The Vice Chancellor: Is not all this merged in the judgment?

Mr. Bonnano: Well, it is; except that I am laying the foundation, which I think the court will see as I go along.

The Vice Chancellor: All right. 10

Q. How long before July 6th did he ask you for the money? A. Oh, about a few days before.

Q. As a matter of fact, wasn't it the afternoon before—didn't he ask you on the afternoon, and you gave it to him the next night? A. No, he asked me one evening about three or four days before.

Q. And why didn't you give it to him the next day? A. Because I hadn't enough. 20

Q. You didn't have enough? A. I didn't have enough.

Q. Well, did you see him in the interval between? When was it—three days before July 6th? A. Yes.

Q. And on July 6th did you see him to speak to? A. Yes, sure.

Q. What did you tell him about the note? A. Well, I told him, I says, "Well, I will give it to you on such a day"—see. 30

Q. I see; and at that time you didn't ask him about the house, though, did you? A. Sure, I asked him about the house.

Q. Why did you ask him about the house? A. Well, I say, "If you are the owner of the house?" And he says, "Yes."

Q. Why did you ask him about the house if you knew he was going to use it for alterations? A. Well, I say, "Are you the owner of the house" so nobody didn't have no more mortgages, you see. 40

Louis Peragallo—Cross.

Q. Why did you ask him if he owned the house, if you knew he was going to use it for alterations?

A. Well, he asked me—he needed the money for making alterations?

10 Q. During these several days before actually paying over the amount you had promised him you spoke to Mrs. Oneto—is not that right? A. Yes.

Q. You did see Mrs. Oneto, though, did you? A. Yes, I did.

Q. Where did you see Mrs. Oneto? A. In the saloon.

Q. When was that? A. Well, in the afternoon.

Q. What afternoon? A. Well, it was one day before I gave them the money on the 15th of July.

20 Q. On the 15th of July? A. On the 15th of July, yes—one day before I gave them the money.

Q. This (referring to the note Exhibit C, 9) is dated the 6th of July? A. Well, I saw him on the 5th of July.

Q. Oh, on the 5th? A. Yes.

Q. What time was this? A. In the afternoon, about three or four o'clock; I don't know.

30 Q. Well, I thought you said you took care of your business all day? A. Well, I wasn't at my business that day; sometimes I leave the business, too.

Q. Sometimes you left the business? A. Sure.

Q. Very often? A. No, not very often—just when I got to go some place.

Q. I want to get your testimony straight—before you said you very seldom, if ever, were in the saloon during the day, that you went there at night?

40 The Vice Chancellor: He said he went there that day.

Louis Peragallo—Cross.

Q. What did you say to Mrs. Oneto? A. Well, I says, "Is your husband the owner of this property?"

Q. You walked right up to her and asked her that, without any preliminaries? A. No.

10 Q. Did you tell her anything else? A. Well, I asked her did her husband own the property, she says, "Yes."

Q. She said "Yes"? A. Sure.

Q. Did you tell her about the loan? A. Sure.

Q. What did you say to her? A. She said, "All right; I am very pleased you loaned the money to my husband."

Q. And did she tell you that she didn't own the property? A. Yes, she said she didn't own the property.

20 Q. Why did you have her endorse that note then, if you knew she didn't own the property? A. Well, to be more saving.

Q. Well, you knew she didn't own it? A. Well, suppose the husband died, and one thing and another.

Q. Well, that would make no difference, because it was his property?

The Vice Chancellor: Well, he doesn't know anything about the law of married women. You are wasting your time on that.

30 Q. Before July 5th had you spoken to Mrs. Oneto about the ownership of the property? A. Before July 5th?

Q. 1914? A. Well, many times, you know, I would just talk about it; I can't remember the date.

40 Q. You did speak to her, before that, about the ownership of the property? A. Yes.

Louis Peragallo—Cross.

Q. And did she tell you then she was the owner of the property? A. All the time she said her husband was the owner of the property.

10 Q. How many times did she tell you that? A. Oh, a couple of times.

Q. Well, then, why did you ask her, on July 5th, if she had already told you that? A. Well, it was no harm to ask her again.

Q. Did you ask her because you didn't know? A. No.

Q. Why did you ask her, on July 5th? A. Well, I asked her to be more saving, because I wanted to give them the money.

20 Q. Well, she has told you several times before? A. Well, it was no harm to ask her another time, was it?

Q. Don't ask me questions—when did you ask her again? A. Well, I asked her.

Q. Did you ask her again on July 5th, or was it at times before that she told you—did you ask her on July 5th whether he owned the property? A. Yes, sir; I asked her that day, and the next day I gave him the money.

30 Q. And this was at three o'clock in the afternoon? A. About two or three o'clock—four o'clock, I don't know what time; it was in the afternoon.

Q. And you asked her again, despite the fact that you asked her several times before?

The Vice Chancellor: You have asked him that several times: you are only encumbering the record.

40 Q. Did you see Mrs. Oneto sign her signature to this note? A. Yes, sir.

Q. Where was it done? A. In the saloon.

Louis Peragallo—Cross.

Q. At the same time—at three o'clock on July 5th? A. Yes, sir.

The Vice Chancellor: July 6th, wasn't it?

Q. When was it—July 5th or 6th? A. July 6th 10 was the day I loaned the money.

Q. Where was that—in the saloon? A. Yes, in the saloon.

Q. She was there again on July 6th? A. Yes.

Q. At what time? A. About three or four o'clock in the afternoon.

Q. And you happened to be off again that afternoon in the day time? A. Well, I worked for me, I could leave any time I pleased.

Q. Now, did you know much about Mrs. Oneto's 20 financial position during this time—I mean what money she had and what she did, etc.?

Mr. La Porta: Objected to as immaterial.

The Vice Chancellor: I will overrule the objection.

A. I didn't know anything about it.

Q. Did you know anything about her financial position during this time? A. No, I didn't know 30 anything about it.

Q. Did you know that she worked? A. She worked before she was married.

Q. You knew she worked before she was married? A. Yes.

Q. And did you know that she had saved quite some money before she was married? A. I didn't know anything about what she saved; because it was none of my business; I know she worked before she married.

Q. Did you know she worked after she was mar- 40 ried? A. After she was married, she didn't work.

Louis Peragallo—Cross.

Q. In your visits to her home did you ever see her sewing on garments? A. Not after she was married, no.

Q. You didn't see her doing that? A. No.

10 Q. Did you know that Mrs. Oneto owned property in Park Ridge, N. J.? A. Yes; I was in that place.

Q. On what occasions were you there? A. Why, in vacation.

Q. What year was that? A. Well, this must have been about over twenty years ago.

Q. Do you remember that about 1914 or 1915 that property was sold at a public auction—do you remember that? A. Yes, sure.

20 Q. And did you have any conversation with Mr. Oneto with reference to loaning him money to buy that property? A. Well, he spoke to me about it many times about the property in Park Ridge. He never spoke about to buy the property.

Q. Well, were you interested in buying it? A. No, not me.

Q. Did you ever go out there and look at the property about 1913?

30 Mr. LaPorta: I submit that this examination is entirely outside of the direct examination.

The Vice Counsellor: Well, I don't know where it is going to lead to.

Mr. Bonnano: It is merely that this man has testified to the purpose of the loan—I am trying to show otherwise.

The Vice Chancellor: Go ahead.

40 Q. Didn't you visit the property around 1913 with a view of purchasing it? A. Where—at Park Ridge?

David Cohen—Direct.

Q. Park Ridge? A. No, I was at Park Ridge twice; that was over twenty years ago.

Q. Well, did you speak to Mr. Oneto about loaning him money so that he could buy it up at public auction? A. No.

Q. You did not? A. No.

10

DAVID COHEN, SWORN.

Direct examination by Mr. La Porta:

The Witness: Before I go on the stand, I would like to ask your Honor a question: I was asked to appraise this property in December, 1923. At that time I sent a bill for my appraisal fee. I never received it, and I would never be here today only I was subpoenaed here.

20

Mr. La Porta: I told him I would pay it myself. I guess Mr. Cohen did not understand.

The Witness: No, I did not.

Mr. La Porta: I will pay your fee. I will take care of him, Judge.

30

Q. How old are you? A. About forty-eight.

Q. Where do you live? A. I live at 209 Shippen St., West Hoboken.

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

Q. How long have you been in the real estate business? A. About thirty-five years.

Q. And you have been in that business where? A. In New York most of the time. I have been in Hoboken for the past eight years.

40

David Cohen—Direct.

Q. And during the past eight years, that you have been in Hoboken, have you made many sales?

A. Yes, sir.

10 Q. And appraised many properties? A. I have appraised a few.

Q. Are you familiar with the property, 708 Bloomfield Avenue, Hoboken, N. J.? A. Yes, sir.

Q. Did you make an appraisal of that property? A. Yes, sir; I went there last December.

Q. Do you recall when you made the appraisal? A. When?

Q. When? A. Some time last December, I don't know the date.

Q. What year? A. 1923.

20 Q. Do you know the value of the property? A. The assessed value, or the value that I put on it?

Q. The market value? A. Well, I appraised it at \$17,000.

Q. \$17,000? A. Yes, sir.

Q. Can you tell us the approximate market value on September 12th, 1922—in that year, can you tell us the market value, then? A. Well, I couldn't very well because I was not familiar with the property; I can give an approximate figure.

30 Q. From your examination of the property, as you found it last December, could you tell us, approximately, what the market value was? A. It would not vary much during that time.

Mr. Bonnano: I object to that testimony on the ground that he was not familiar with the property in September, 1922, and counsel is trying to bring out the value as of that date in contradiction of what his own witness has just said.

40 The Vice Chancellor: The witness did not answer to any effect—he said he was

David Cohen—Cross.

not familiar with the property at that time; now he is asked if there were any fluctuations in values from September, 1922, to December, 1923. He can answer that.

10 Q. Yes,—will you answer the question of the Vice Chancellor? A. Yes, there might have been a difference of a thousand dollars in value. That would bring the value of that property, at that time, around \$16,000.

Q. And around September, 1922, what would you say the value of the property was? A. That is just what I said.

Q. \$17,000? A. About \$16,000, at that time.

Q. What is the property worth now?

20 Mr. Bonnano: I object to that as immaterial, at this time.

The Vice Chancellor: I will sustain the objection.

Cross-examination by Mr. Bonnano:

30 Q. Mr. Cohen, on what did you base your estimate of \$17,000? A. On the property itself,—in looking over the property, and what is in it, and what income is derived from it. Of course, I cannot tell the income today; I could in December, when I appraised it; I knew what the income was then.

Q. What was the income then? A. I cannot recall it. I haven't my figures with me.

Q. Did you know then what the income was? A. Yes, sir.

40 Q. And how do you use income in basing values? A. Why, you figure up the expenses, and what balance you have left on a certain figure—what in-

David Cohen—Cross.

terest you would derive from it on the money invested.

10 Q. Well, if you get the "net profit" on it, as you would term it, how do you use that in obtaining value? A. I do not understand your question.

Q. Well, merely this—that you said you found the total amount of rent and deduct the expenses, and then got the net income? A. Well, if a piece of property will pay you a net income of about fifteen per cent on a certain figure, I consider it worth that figure.

20 Q. Well, now, if you pass what you consider it worth, what is the real way of figuring it out—is it fifteen per cent or more? A. I based the value of that property on properties that I have sold right in that block. If you want me to give you other figures on property I have sold in that block, I will.

Q. I have asked you to let me know exactly your method, and you have not given me a clear answer yet? A. The neighborhood establishes the value.

30 Q. Then it is not the income which does it? A. The income and neighborhood establish the value.

Q. Using your income method tell me what is the method you use to derive value? A. Well, the class of property—there are different methods and different classes of property; and it all depends on what kind of a piece of property you are trying to appraise and put a value on.

By the Vice Chancellor:

40 Q. With respect to this particular piece of property, what elements entered into your appraisal? A. Well, in the first place, it was a three story

David Cohen—Cross.

and basement house, it has four families in it; there are four rooms and bath, ranges, boilers and electric light throughout the house; and taking for instance the renting value and the cost of the building, I put a very conservative figure on that 10 property of \$17,000.

Q. In that calculation of value did you take into consideration the income? A. Yes.

Q. Well, what relation did the income have to the location of the property, in ascertaining the value—that is, the sales price—what relation would the income have to that—the selling price in the neighborhood? A. What relation has the income?

20 Q. Yes, to the selling price in the neighborhood? A. Well, of course, the income would figure; there is no question about it. If it is a piece of vacant land with no income, you can only put a land value on it; but when you have a house there that is bringing in a nice income and you buy it for an investment, naturally you are looking to the amount of money coming out of the property.

30 Q. Well, sometimes you have a large income and a low selling price, what is that due to? A. Well, a man who would get a piece of property of that kind would be very fortunate.

Mr. Bonnano: If the Court please, this man has not yet told us his method of deriving the value. I really believe he has no value on it, at all.

The Vice Chancellor: The witness has said that he sold property in the neighborhood and has fixed his value not only upon the sales in the neighborhood, but on income. 40

David Cohen—Cross.

10 Mr. Bonnano: And I have asked him what is the method used—I mean that sometimes a man will say, “We take the gross income and multiply it by a certain per cent, and thereby derive the value.” This man has not done that.

The Vice Chancellor: Go ahead; you can ask him any question you please.

By Mr. Bonnano:

Q. I ask you again—will you tell me if there is any method you use for deriving values based on either gross rents or net rents? A. I think I have explained all that.

20 Q. Will you explain it again, please? A. I explained that I arrived at the value of that property from other values of properties that were sold in that neighborhood, and I made comparison. In reference to income, the income of that property would warrant that property bringing \$17,000. I told you I did not know the figures today, I haven't them with me; I knew at the time; and I can state now that I can get \$17,000 for that house within twenty-four hours.

30 Mr. Bonnano: That last is not responsive. I ask that it be stricken out.

The Vice Chancellor: Yes.

Q. Then you have no estimate based on income, have you, because I have asked you and you have not answered me yet? A. I think I explained that to you; I figured the income of that property, figured the expenses and figured the profits on an investment of a certain figure.

40 Q. From whom did you find out the income of that property? A. From Mrs. Oneto.

David Cohen—Cross.

Q. Did you inquire of her? A. Absolutely. I was in her rooms and spoke to her.

Q. Did you go through the entire house? A. I went through two apartments.

Q. That was only once—in 1923? A. In December, 1923. Prior to this, I went to Mrs. Oneto, sometime ago, to get that house for sale, and I saw what improvements were made to that house, and what was in the property at that time; that was a couple of years ago. I was familiar with the property then.

Q. Why did you go to Mrs. Oneto and not Mr. Oneto? A. In what respect?

Q. To inquire about the house and the sale of the house?

Mr. La Porta: I object to that as immaterial.

The Vice Chancellor: I will overrule the objection.

A. Why, I was asked would I appraise that property. I went up there during business hours, and I met Mrs. Oneto in the apartments and asked her for the information; that is all.

Q. Who asked you to appraise it? A. Mr. La Porta.

Q. Did Mr. La Porta ask you to see Mr. Oneto in reference to the matter? A. No, sir.

Q. And during the conversation with Mrs. Oneto did she say that she was the owner? A. No, sir; I do not ask her.

By Mr. La Porta:

Q. Do you know Mrs. Oneto if you see her now? A. Oh, yes.

William J. Reynolds—Direct.

Q. Can you point her out to us? A. That is her, right there (pointing to Mrs. Oneto, here present).

10

WILLIAM J. REYNOLDS; SWORN.

Direct examination by Mr. La Porta:

Q. What is your name? A. William J. Reynolds.

Q. Where do you live? A. 821 Washington St., Hoboken.

20 Q. Are you an employee of the City of Hoboken? A. Yes, sir; Assistant Collector of Revenue.

Q. And have been for how long? A. Nine years, the 6th of this month.

Q. As such, will you tell the Court what your duties are—what you do in your line of duty? A. Well, my duties are to make out tax bills and collect the taxes.

30 Q. And do you make out tax bills for premises 708 Bloomfield St., Hoboken, New Jersey? A. Oh, yes.

Q. In whose name do you find that property under? A. Well, the records of my office show it to be Philip Oneto.

Mr. Bonnano: I object, on the ground that the record is the best evidence.

The Vice Chancellor: Well, it is objectionable on the further ground that it does not mean anything.

40

William J. Reynolds—Direct.

Q. You have the records here, haven't you? A. I have; I have a copy of the transfer from the Register's Office, which caused the change in my book.

By the Vice Chancellor:

10

Q. From Mr. Oneto? A. From Mr. Oneto to Miss Dillon, and from Miss Dillon to Josephine Oneto.

By Mr. La Porta:

Q. When was the change from Philip Oneto to Josephine Oneto entered in your books? A. When it was entered in my books I don't know. I did not make the entry.

20

Q. Well, what year? A. 1922, in September, 1922.

Q. And prior thereto, in whose name did you make the tax bills?

Mr. Bonnano: I object to that; the records are the best evidence of that, too.

The Vice Chancellor: Let him produce the record.

30

Q. Well, of your own knowledge, aside from any books, at all? You say you have been in the habit of writing out bills, have you? A. Well, my clerks have.

Mr. Bonnano: I object to that, on the same ground.

The Vice Chancellor: What is the use of being so technical? What is the point about the way the bills are made out? It doesn't make a particle of difference, anyway.

40

William J. Reynolds—Direct.

Q. And previous to 1922, to whom did you make the bills for 708 Bloomfield Street, Hoboken, N. J.?

A. Philip Oneto.

10 Q. Now, these books you have here, will you show the Court? A. I just have the 1922 books, showing the name changed from Philip Oneto to Josephine Oneto after this copy was received at the Register's Office, September 16, 1922 (the Register makes a copy, which he serves when transfers are made) "Philip Oneto to Mary Dillon, and Mary Dillon to Josephine Oneto"; and then the Clerk in the Assessor's Office comes to my office and changes the record accordingly; and I have the book here in which the record is changed.

20 Mr. La Porta: Would your Honor like to see these books?

The Vice Chancellor: No; it is utterly immaterial.

Q. Do you know Mrs. Oneto by sight—that is, have you ever seen her in your office? A. I am almost positive that I have.

30 Q. Have you ever received any payments from her for taxes for 708 Bloomfield Street? A. I could not say that I have; while we have received the payment, I have not—my clerks have.

Q. But you have seen her there? A. Oh, yes. We don't care who makes the payment.

Q. Have you seen Mrs. Oneto there? A. Well, I don't think I have; I cannot say that I have.

Mr. La Porta: The complainant rests.

40 The Vice Chancellor: Well, aren't you going to prove that there is no other property?

Philip Oneto—Direct—Cross.

Mr. La Porta: We do not know of any other property. That is why I wanted to offer in evidence the supplemental proceedings, to show that they have disposed of the other property. 10

The Vice Chancellor: Well, why don't you call them?

PHILIP ONETO, SWORN.

Direct examination by Mr. La Porta:

Q. Your full name? A. Philip Oneto.

Q. You are a defendant in this suit? A. Yes.

Q. Did you, on August 24, 1923, own any other 20 property beside the property 708 Bloomfield Street, Hoboken? A. No.

Q. Have you got any other property now? A. No.

Q. Whatever property you had you disposed of? A. Well, the one I had, yes, I disposed of.

Cross-examination by Mr. Bonnano:

Q. Are you working now? 30

Mr. La Porta: Objected to, as improper cross-examination; the witness was only called for one purpose.

Vice Chancellor: I will sustain the objection.

COMPLAINANT RESTS.

Philip Oneto—Direct.

THE CASE FOR THE DEFENDANTS.

PHILIP ONETO, recalled.

10 *Direct examination by Mr. Bonnano:*

Q. Mr. Oneto, where do you live? A. 708 Bloomfield Street.

Q. And you are the defendant in this action? A. Yes.

Q. And you are the husband of Mrs. Oneto? A. Yes.

Q. How long have you known Mr. Peragallo, the complainant in this cause? A. Well, for a good many years.

20 Q. What do you mean by "a good many years"? A. About twenty or twenty-five.

Q. And had you been very intimate with Mr. Peragallo prior to September, 1913? A. Yes.

Q. Did you, at any time prior to September, 1913, borrow any money from him? A. Yes.

Q. And on how many occasions did you borrow money from him? A. On two occasions.

Q. When was that—in September, or prior to that time? A. I don't recollect the date.

30 Q. Those two occasions that you mention—were the occasions when you made these notes? A. Yes.

Q. Will you explain to the Court the occasion on which you borrowed this six hundred dollars?

Mr. La Porta: The note speaks for itself.

Mr. Bonnano: Oh, no; on your case you have shown every circumstance connected with the loan.

40 Mr. La Porta: Then I ask counsel to explain what he means by "occasion"—I do not understand it.

Philip Oneto—Direct.

Q. Will you explain to the Court what conversation you had with Mr. Peragallo at the time you borrowed the money? A. Well, I asked him if he could help me out in business, you know.

Q. What do you mean by "in business"? A. 10 In the saloon business.

Q. In the saloon business? A. Yes.

Q. You were then conducting a saloon business? A. Yes.

Q. And what did he say? A. He says, "Yes".

Q. And how soon after you asked him for the money did he pay you the money for which this note is given? A. Six months.

Q. No,—how soon after you asked him for the money did he give it to you? A. He gave it to me 20 the next day.

Q. At that time did he ask you anything about whether you owned the property at 708 Bloomfield Street? A. No.

The Vice Chancellor: Well, he did own it, didn't he?

Mr. Bonnano: He did own it.

The Vice Chancellor: Well, I don't see, for the life of me, where all this testimony is leading to. There is but one point to try, 30 and that is whether this property was conveyed through an intermediary to this wife in fraud of creditors. Now, what did she pay for it? What did her husband owe her? What was the consideration? That is the only question.

Mr. Bonnano: Except that I believe the complainant is trying to set up an estoppel, and I am trying to rebut that by testimony. 40

Philip Oneto—Direct.

The Vice Chancellor: An estoppel? I do not see any estoppel here. This lady did not tell an untruth when she said the property belonged to her husband—it was so.

10

Q. Do you remember having purchased property in 1910, on May 2d, 1910—the property at 708 Bloomfield Street? Do you remember that a deed of that property was made to you on May 2d, 1910? A. Yes.

Q. And how did that purchase of property come about? A. I got the money—

Q. (Interrupting) Did your wife ask you to buy that property?

20

Mr. La Porta: I object to that, as leading.

Q. Well, explain to the court the circumstances connected with the purchase of the property—just where you got the money to buy it, and everything? A. She was lending me money in business, and so on; but she told me that she wanted the property, and I borrowed money during that time for paying bills in the saloon; and she got kind of angry, and she says, “This thing will have to be stopped, because I want a home, my own home”; so she says, “you go ahead, and, if convenient, buy this property”. So we went up and saw it. And she says, “I will produce the money to buy the property”; and I went ahead and closed the deal. It was satisfactory, and we got the property.

30

Q. Who signed the contract for the purchase of that property? A. I signed it.

40

Q. Did Mrs. Oneto sign it? A. No, because she was laid up.

Philip Oneto—Direct.

Mr. La Porta: I think the contract is the best evidence. I demanded its production, and no explanation has been given to this moment why it was not produced.

The Vice Chancellor: If you have the contract, produce it. 10

Mr. Bonnano: If the Court please, I haven't the contract; this contract was made in 1910, in the office of another attorney.

The Vice Chancellor: Prove the search for it and the inability to find it. This man signed a contract—now, you show by him, search, if you can, and inability to find it.

Q. Have you tried to obtain this old contract of 1910? A. No. 20

Q. Did you ask anybody for that contract? A. I never asked.

Q. I mean, in the last few days didn't I ask you to try to obtain that contract? A. Oh, you—yes.

Q. And did you try to obtain it? A. Yes.

Q. From whom did you try to obtain it? A. Caffareto.

Q. Who was Caffareto? A. He was the attorney that handled the matter at that time. 30

Q. What did he tell you? A. He says he would bring it up.

Q. He told you he would bring it to court? A. Yes.

Q. And is he here in court? A. No, sir.

The Vice Chancellor: Now it is shown that this contract can be had, that this lawyer has the contract; you can subpoena him to bring it here. 40

Philip Oneto—Direct.

Q. At the time you bought this property did you pay any money on deposit? A. Two hundred dollars.

Q. Who gave you that money? A. My wife.

10 Q. When it came time to close title did you have to pay any more cash? A. Well, to finish the cash.

Q. Did you have to pay any more cash? A. Yes.

Q. How much did you have to pay? A. \$2800—around like that.

Q. Who gave you that money? A. My wife.

Q. And what was the understanding with your wife as to in whose name this property should be taken?

20

Mr. La Porta: One moment; I object to what the understanding was, as calling for a conclusion, and I ask that the question be made more specific, and the facts stated—what she said, and what he said.

The Vice Chancellor: Well, let him state the conversation, if it is admissible.

30 Q. State the conversation with your wife in reference to in whose name the title to this property should be taken? A. It was to be taken on her name.

Q. And what was the conversation with her about it? A. I told her that it was all right, that everything will be on her name.

By the Vice Chancellor:

40 Q. Then, as I understand it, your wife expected that you were going to take the title in her name? A. Yes.

Philip Oneto—Direct.

Q. And that your name was not to be on the deed? A. Yes.

Q. Why did you take the title in your own name? A. She was laid up.

10

By Mr. Bonnano:

Q. What do you mean by “she was laid up”?
A. She was sick; she couldn’t go out.

Q. Was she pregnant at the time?

Mr. La Porta: I object; the question is entirely leading.

The Vice Chancellor: Well, it was not necessary for her to go out of the house to get the deed in her name.

20

Mr. Bonnano: Well, to be present at the transaction, and see that the deed was in her name, is what I am trying to bring out.

By the Vice Chancellor:

Q. I asked you why you did not take the deed in your wife’s name? A. Well, because she was laid up; and, to tell the truth, Judge, I didn’t know any better; I just simply done it on the impression that she wanted it.

30

By Mr. Bonnano:

Q. Then Mrs. Oneto put up all the money for the purchase of this property? A. All the money; yes, sir.

Q. Did you put in any of the money for the purchase of that property? A. No.

Q. Did you sign Mrs. Oneto’s name to this note?

40

Philip Oneto—Direct.

Mr. La Porta: I object, may it please the Court.

The Vice Chancellor: I sustain the objection.

10 Mr. Bonnano: If the Court please, on what ground—that it is leading? I am trying to show a line of fraudulent conduct by the husband with reference to the wife, to rebut any evidence of fraud on her side. I think it is material for that purpose.

The Vice Chancellor: I will let it go.

Q. Who signed that note? A. I signed it.

Q. Did you sign her name? A. Her name, yes.

20 Q. Did she know that you had signed her name?
A. No.

Q. Right after you had given the note, within a reasonable time, did you tell her that you signed her name to it? A. No.

Q. In other words, she did not know at all that you had signed her name to the note? A. No.

Q. And why did you sign her name to the note?
A. Well, I didn't know better, that is all.

30 Q. You didn't know any better? A. No.

Mr. La Porta: May I interrupt the examination for a moment, at this time, right on this point? It is very material.

The Vice Chancellor: Well, go ahead.

40 Mr. La Porta: I would like to call your Honor's attention, right at this point now, to the fact that there was a complaint in the court of common law, alleging the fact that Josephine Oneto had endorsed this note; and there is a separate answer filed in that suit, annexed to this bill of com-

Philip Oneto—Direct.

plaint (which is admitted with all the pleadings) admitting the fact that she signed and endorsed this particular promissory note; and I say, at this stage of the proceeding, that it is proper for me to call 10 your Honor's attention to it.

The Vice Chancellor: All right.

Mr. La Porta: The bill of complaint will show the pleadings there, and the admission by the pleadings, by the consent of the attorneys.

Mr. Bonnano: Well, I want to say that I do not think that is so.

The Vice Chancellor: Go ahead, and examine your witness; I do not care about that, anyway, now. 20

Q. Had you ever borrowed any other money, prior to the time she gave you the money for this property? A. Yes.

Q. From your wife? A. Yes.

Q. Do you remember exactly the amounts? A. Well, I suppose I could, pretty near.

Q. Did you promise to repay her that money?
A. Yes. 30

Q. For what purpose did you use the money you received? A. Why, to pay the license, and to pay up some bills which was due for the place.

Q. When you borrowed this money for which you gave these notes—both of them—did Mr. Peragallo ask you who owned the property? A. No.

Q. Was Mrs. Oneto in the saloon on July 5th, which is the day prior to the making of this \$2300 note? A. No. 40

Philip Oneto—Direct.

Q. Was she in there at three o'clock, or any time, that afternoon? A. No.

Q. Was she in there when Mr. Peragallo came in? A. No.

10 Q. Did you tell Mr. Peragallo that you owned the property? A. No; he didn't mention anything.

Q. Did you explain to him for what purpose you wanted to use the money? A. No; only—

Q. Only what? A. Only for the saloon there.

Q. For the saloon? A. Yes.

Q. Did you mention anything about wanting to make repairs with it? A. No, no.

20 Q. As matter of fact, was any of that money used for repairing the house? A. No.

Q. What was the money used for? A. Well, it was used for the saloon.

Q. What do you mean by "for the saloon"? A. To pay bills for the saloon; so I could get along in the saloon there.

Q. Did you give any of that money to Mrs. Oneto? A. No.

30 Q. After this transfer in 1910, after the purchase of this property, did Mrs. Oneto ever lend you any other money? A. Yes.

Q. Do you remember those amounts? A. Yes; she loaned me pretty near close to a thousand dollars from the deal at Park Ridge.

Q. What do you mean by that? A. From the auction sale at Park Ridge.

Q. Was that money she had received from that sale? A. From that sale; and I used that.

Q. She gave it all to you? A. Yes.

40 Q. And did you ever receive any other money? A. Money in gold, even.

Philip Oneto—Direct.

Q. What do you mean "in gold"? A. She had a little savings of her own, you know, in the house.

Q. Gold coins? A. Gold coin.

Q. Do you remember, approximately, or as near as possible, the amount of the loan in gold coins? 10

A. That was about close to \$600.

By the Vice Chancellor:

Q. That is, the gold coins were your property and your wife's, was it? A. That I used in the saloon, so I could get along, yes.

Q. Yes, but was not the \$600 in gold your money as well as your wife's? A. No, that was her money.

Q. Where did it come from? A. She saved it; 20 in working separate, you know. She would get the gold coin, you know; she used to keep it and put it on the side.

Q. After you were married was this money earned? A. No, that was before.

Q. When were you married? A. In 1910.

Q. 1910? A. Yes, or in 1911; I am not sure about the date.

By Mr. Bonnano: 30

Q. Were you married in 1910? Now, just think. A. Now, to tell you the truth, I cannot remember the date.

Q. You cannot get it within a number of years, even? A. I know it is about sixteen or seventeen years; in 1908, I believe it was.

Q. You say your wife had gotten this money before she was married? A. Yes.

Q. Do you know where she had gotten that 40

Philip Oneto—Direct.

money from? A. Well, from working; from her own work.

Q. And she put these pieces aside and saved them—that is what you have testified to? A. Yes.

10 Q. Did she ever make you any other loans after the purchase of this property, beside the \$1000 loan and the \$600 loan? A. Oh, yes; sometimes \$175; another time, \$140—you see they were all different.

Q. All different amounts? A. Yes; I don't recollect just what it was.

Q. What is your business now? A. Waiter.

Q. Where do you work? A. In Borough Hall in Brooklyn, at Joe's Restaurant.

20 Q. How long have you been a waiter? A. Seven years.

Q. For the last seven years? A. Yes.

Q. And you became a waiter since you closed the saloon business? A. No, I worked in the yard—I worked in the railroad for about a year or nine months.

Q. What was your average salary while you were working for the railroad? A. \$60 a month.

30 Q. And out of that amount how much did you give to your wife for the maintenance of the house? A. Well, just as much as I could.

Q. Well, how much was that? A. I gave her the check that I took in twice a month. They used to pay twice a month.

Q. What are your weekly earnings as a waiter? A. Twelve dollars.

Q. And have they been about the same amount for the last seven years? A. Seven or eight years.

Q. That is your wages? A. Yes.

40 Q. Did you receive any tips? A. Sometimes.

Q. Is there any steady amount of tips that you receive? A. No.

Philip Oneto—Cross.

Q. Prior to the time of the purchase of this property, what was your business? A. Saloon.

Q. How much were your profits from the saloon business? A. Profits? That is pretty hard to say; I think it was not even up the first few years; 10 there was no profit at all.

Q. Well, was there any time where you were making profits from that business? A. Very little.

Q. And did you give any of that money to your wife, for the maintenance of the house? A. Well, I tried to give it; sometimes I didn't give her fifty cents a day.

Q. Prior to the time of the purchase of the property did you have any money of your own, 20 of any large amounts? A. No.

Q. Or any amount at all, for that matter? A. No.

Q. You maintained a small check account, however, didn't you? A. Yes.

Q. Did you have sufficient in that account to pay for the property? A. No.

Q. You testified before that you signed Mrs. Oneto's name on this note marked Exhibit C, 9? 30 A. Yes.

Q. Did you sign this note in the presence of Mr. Peragallo? A. No.

Q. He did not see you sign that note? A. No.

Cross-examination by Mr. La Porta:

Q. Mr. Oneto, you bought this property in the year 1910, did you not—this real estate in Hoboken? A. Yes.

Q. Now, how many years prior thereto, were you in the saloon business? A. Well, about seven 40 or eight—about seven or eight years.

Philip Oneto—Cross.

Q. 7 or 8 years? A. Yes.

Q. And was that a prosperous business or a bad business? A. Well, I could just get along to make a living.

10 Q. Did you start that business yourself, or were you in partnership with somebody? A. I was in partnership.

Q. And when did you cease to be a partner?

A. A couple of years after the business was opened—about two or three.

Q. And did you quit the business, or did you buy the business out? A. I bought the business out.

Q. And you became the sole owner? A. Yes, sir.

20 Q. And how much did you pay for the business? A. \$400.

Q. \$400 down? A. Yes.

Q. How much did you buy it for? A. Well, that is what I paid.

Q. How much did you buy it for? A. \$400; and I took all of the obligations.

30 Q. Do you remember testifying in supplemental proceedings that you bought this saloon for \$1000 and paid \$400 on account? A. Well, that was that I accepted the bills to be paid, and \$400 cash.

Q. But you paid the thousand dollars? A. Well, between the whiskey and cigars and all, the property would amount to that much—that would be about a thousand dollars.

Q. Now you were heavily indebted at that time, were you not? A. Yes.

Q. That was before you bought the saloon? A. Yes.

40 Q. Heavily indebted? A. Yes.

Philip Oneto—Cross.

Q. You had a lot of notes outstanding, had you not? A. Yes.

Q. Business was very poor? A. Yes.

Q. Your wife knew that? A. Well, I don't know if she knew it.

Q. Didn't you tell your wife? A. She knows that it was very poor.

Q. Didn't you tell your wife? A. I told her it was hard times, sure.

Q. Was your wife living with you at that time? A. Yes.

Q. At what property? A. We lived at Third and Garden Streets—300.

Q. And she was running the house for you, was she not? A. Yes, sir.

Q. Did she have any children there? A. Yes.

Q. This was all before you bought the real estate in Hoboken—is that right? A. What do you mean, "before I bought the real estate"?

Q. (By the Vice Chancellor) Before you bought 708 Bloomfield St.? A. Yes. Did you ask if I had any children?

By Mr. La Porta:

Q. Yes. How many children did you have? A. I believe it was two.

Q. And they are both living? A. Both living.

Q. Now, she worked around the house, did she? A. Yes.

Q. And you worked around the saloon? A. Yes.

Q. And you supported her? A. Well, hardly.

Q. Yes, or no? A. Not right; to tell the truth.

Q. Business was entirely bad—was that it? A. Bad, yes.

Philip Oneto—Cross.

Q. Did you have any check accounts at that time? A. Yes.

Q. What banks—I am speaking of before you bought the property in Hoboken? A. Jefferson Trust. 10

Q. Jefferson Trust—what other bank? A. In the Second National Bank.

Q. And what other bank? A. In the Steneck.

Q. That is three banks—what other banks? A. You have got me—I don't think there was any other bank.

Q. The Hoboken Bank for Savings? A. No.

Q. Now you say you had check accounts in those three banks? A. Yes, because they helped me out in notes. 20

Q. Just answer the question—you had check accounts in those three banks—how much money did you have in those three banks previous to the purchase of the property at 708 Bloomfield Street? A. Very little; there was nothing left; sometimes the checks came back.

Q. Have you got those books here to show what your accounts consisted of, in amounts, with these three banks you speak of, before you bought the property, #708 Bloomfield Street?—have you got them here from the three banks? A. I don't know what became of them. 30

Q. You haven't got them here, have you? A. I haven't got them here.

Q. That is all I want to know. Now, while you were running the saloon, up to the time that you bought the house, and up to the present time, your wife was always living with you? A. Yes.

Q. Worked around the house? A. Yes.

Q. And you always worked, either in the saloon or out of the saloon, is that right? A. Yes. 40

Philip Oneto—Cross.

Q. Now, we come to the purchase of the property, 708 Bloomfield Street, Hoboken? Who was your attorney in the purchase of the property? A. Caffarato.

Q. Harry J. Caffarato? A. Harry J. Caffarato, of Hoboken. 10

Q. He is not here in court, is he? A. No, I don't see him.

Q. Now, who engaged Harry J. Caffarato to look into the property affair and the search? A. I did.

Q. Did your wife do it? A. No.

Q. Was she ever present with you? Answer "Yes" or "No"—do not shake your head. A. No. 20

Q. How long before you got the deed, did you engage Lawyer Caffarato? A. Well, I had him to draw the deed, and I knew him for a good many years previously.

Mr. La Porta: That is not the point; I move to strike it out.

The Vice Chancellor: Strike it out.

Q. (Question repeated). 30

Mr. Bonnano: I believe that is immaterial.

The Vice Chancellor: I don't think so. While I think two-thirds of this testimony in this case is immaterial, I am going to let it go.

A. Well, do you mean when I went to work and engaged him to draw the papers? 40

Philip Oneto—Cross.

By the Vice Chancellor:

Q. Didn't you have a search made? A. Yes.

Q. Well, he wants to know how long before the deed was given did you go to him? A. You mean, after I bought the property?

Q. No, before you bought the property—how long before you bought the property did you go to Lawyer Caffarato? A. Oh, many a time, because we used to belong—

Q. No, no; was it a week, or a month, or two weeks? A. That he took to draw the deed? About two weeks.

By Mr. La Porta:

20 Q. About two weeks? A. Yes.

Q. That is, two weeks before you got your deed you spoke to Mr. Caffarato to represent you—is that what you mean? A. Yes, to go ahead and do the work and draw the deed.

Q. Where did you speak to Mr. Caffarato about the matter—was it in his office, or out of his office? A. In his office.

Q. Were you there alone? A. Yes.

30 Q. Never with your wife? A. No.

Q. You spoke to your wife about buying the property, #708 Bloomfield Street, did you not? A. Yes.

Q. Did you show it to her? A. Yes, sir, she seen it, yes.

Q. And how soon before you got your deed, did you show it to her? A. Oh, it took over a year before I got the deed. He was very long on that, you know, and I never ran after him to get the deed. It was about a year after that I got the deed.

40

Philip Oneto—Cross.

Q. Well, when was it that you got Mr. Caffarato in the case—was it the same year, 1910? A. Yes.

Q. Was it March or May? A. March I believe.

Q. A month before then, now, then, how long before the month of March, 1910, was it that you took your wife along to show her the property, 708 Bloomfield Street, for purchase? A. Probably before that, I don't remember.

Q. Well, you took her around there, didn't you, before you bought the property? A. Yes.

Q. How many times did you show her this property, once or twice? A. Two or three times.

Q. At that time, did you have any children? A. Yes.

Q. How many? A. Two.

Q. You left the children in the house, did you? A. Yes.

Q. And took her along; and after you showed her the property, where did you take your wife? A. Took her back to the house.

Q. Did you take her to a lawyer's office? A. No.

Q. Did you hear your wife testify in the supplemental proceedings, that she had been to a lawyer on this case? A. Well, to sign different papers.

Mr. Bonnanno: I object to that.

Mr. La Porta: I asked him if he heard it.

A. I don't remember that; I don't remember anything on that.

Q. Do you remember how much you paid Mr. Caffarato for the search?

Mr. Bonnanno: I object to that as immaterial.

(Question allowed.)

40

Philip Oneto—Cross.

A. I don't remember.

Q. Did you pay it, or did your wife pay it? A. Well, really, I don't remember.

Q. You don't remember? A. No.

10 Q. Maybe your wife paid it—is that right? A. Maybe she did, but I am not sure.

Q. You say you got \$3000 for the purchase of this property, #708 Bloomfield Street, Hoboken, N. J.? A. Yes.

Q. That's all you got for the purchase of this property from your wife, was it? A. Yes, that was the amount.

Q. Whatever other money you might have received was after the purchase of this property? A. After and before.

20 Q. But \$3000 you say you got for this property? A. For the property, yes.

Q. Now, how did you get this \$3000—in cash or check? A. Cash.

Q. And how did you pay it—in cash or check? How did you pay it over to the seller? A. I don't remember how I paid it.

Q. You don't remember that? A. I don't remember.

30 Q. And you kept check accounts in three banks? A. I don't know because being that she—

Q. (Interrupting) You don't remember, do you? A. No; I don't remember exactly; I do not.

Q. Did she give you the \$3000 on the same day?

The Vice Chancellor: The same day, what?

Q. All at once—on the same day? A. Well, it was supposed—

40 The Vice Chancellor: Answer the question.

Philip Oneto—Cross.

A. Not on the same day.

Q. Did you receive it in installments or *in toto* on the same day? A. Oh, when I had to make a payment, I had to make up all that was required.

Q. You are not answering my question—you 10 received \$3000? A. From her.

Q. And did you receive the \$3000 in installments, or in an entire sum on the same day? A. On the same day that I paid it, I had to put it up, yes.

Q. Then you got the \$3000 from your wife in one sum, is that it? A. I had to pay that out.

Q. I say you got \$3000 in one sum from your wife? A. No, \$2800 or whatever was required. You see there was \$200 down, and whatever the amount what was required to make the total of 20 \$3000.

Q. Then you got \$200 on one occasion, and \$2800 on another occasion from your wife? A. On two occasions.

Q. In two installments? A. Well, I don't remember that.

Q. Well, you remember that when Mr. Peragallo called at your saloon, specifically, that your wife was not present? A. No. 30

Q. But the \$3000 that you paid to the seller of this property, you paid yourself, with your own hands—is that right? A. Yes.

Q. Your wife was present? A. I don't think so; I don't remember.

Q. How soon before you paid the last installment of \$2800 to the seller, did you draw it out of the bank? A. Well, she had to draw it; I couldn't answer that; I don't know when she drew it from those banks; I don't know. 40

Q. Did you pay the \$2800 at the same time that

Philip Oneto—Cross.

you drew it out of the bank, or did you hold it in your house a few days, or a week? A. I don't remember that.

10 Mr. Bonnano: I don't think that is material.

The Vice Chancellor: I am going to permit it.

Q. When you bought this house originally, it was a three family brick house, was it not—yes or no? A. It was a three family brick house, yes.

Q. And since then you have turned it into a four story brick house, is not that right? A. Yes.

20 Q. You occupy a floor, and you have three other families living there with you, haven't you? A. Yes—oh, no, two. There were two at first; there was three families when I moved in.

Q. Well, how many families have you got there now? A. Now, there are four.

Q. Then you have three families beside yourself, which makes four families—is that right? A. Yes.

30 Q. Now you made these alterations on your house, didn't you? A. Well, that was no alteration.

Q. Well, it was a three family house originally, wasn't it, when you bought it? A. Yes.

Q. Then you made an alteration, did you not, in making it into a four family house? A. For four families.

Q. Yes, you made that change for four families, did you not? A. Well, but there was no alteration to be made.

40 Q. Well, how did you make it to hold four families? A. Well, I only put in a stove, that is all.

Q. No plumbing work? A. No.

Philip Oneto—Cross.

Q. Nothing at all? A. No, only just connected the stove.

Q. When did you do that? A. Well, I don't remember.

Q. Well, was it in 1913 or 1914? A. I don't 10 remember.

Q. You don't remember the year? A. No.

Q. Was it after you had borrowed the moneys on notes from Mr. Peragallo, or before? A. I don't remember when it was.

Q. You won't answer that it was not at that time? A. No.

Q. And you won't deny that you made the alterations? A. I don't remember.

Q. What prevented you, Mr. Oneto, from transferring this property to your wife for a period of 20 twelve years?

Mr. Bonnano: I object to it as improper cross examination.

The Vice Chancellor: The objection will be overruled.

Q. For a period of twelve years—you bought this property in 1910, and you conveyed it to your wife in 1922—what prevented you? A. Because 30 I didn't have enough money to pay the fees.

Q. To pay the fees? What do you mean—for the drawing of the deeds? A. Yes.

Q. But you had been to a number of lawyers since you bought the property in 1910, had you not?

Mr. Bonnano: I object to that as being immaterial.

The Vice Chancellor: Objection over- 40 ruled.

Philip Oneto—Cross.

Q. You have, have you not? A. I don't know about lawyers.

10 Q. You had been to Lawyer Spohr in June 1915, had you not, in drawing up a mortgage between Philip Oneto and wife, and Bernard Vizetta—yes or no? A. Yes.

Q. And you had been to a lawyer on November 16, 1915, in drawing up a mortgage between Philip Oneto and wife and Bernard Vizetta—is not that right? A. Yes.

Q. And you had been to a lawyer on June 20th, 1921, Stuhr & Vogt, on a judgment had against you in the sum of \$117.65 between Antonia Keiser and yourself, is that right? A. Yes.

20 Q. Now, you had the money to draw up all those papers, had you not? A. No.

By the Vice Chancellor:

Q. Where did you get the money from? A. My wife.

Q. Those were additional moneys given by your wife outside of the \$4000? A. Yes, that was all along the line.

30 By Mr. La Porta:

Q. You say you had no lawyer fees to pay for the drawing of the deed, is that right?

Mr. Bonnano: I object; the witness has not said that.

A. I did not say that.

40 The Vice Chancellor: The witness, as I understand it, said so, but I am not certain. The question can be repeated.

Philip Oneto—Cross.

Q. (Question repeated) That is right or wrong—which is it? A. Well, I say no, because—

Q. (Interrupting) Why do you change your story now? A moment ago you told the Court—

The Vice Chancellor: Let the witness 10 answer the question.

Q. (Question repeated) A. Well, the deed, you know, during this time my wife asked for it, because it was during that time she asked me to get the property on her name.

Q. You say she asked you to turn the property over to her name? A. Why, that was my regular dessert, every day after my meals for seven years—strangling the life out of me. 20

Q. You didn't struggle very hard to turn this property over to your wife in 1922, did you? A. No, because naturally it was her money, and I didn't want to see her done an injustice. I always told her that the property belonged to her, that she took care of it and done right right along.

Q. Answer my questions, I don't want any speeches—did you ever ask a lawyer how much he would charge to draw up a deed from you to your wife to sell her back this property? A. Per- 30 haps I did; perhaps I didn't; I don't remember.

Q. Then you didn't know what the fees would be for the drawing of the deed, did you? A. No, not exactly.

Q. And you never inquired, did you? A. Well, if I did, I don't remember.

Q. Why did you delay then, ten years in turning over this property to your wife? A. That is just it—I didn't bring in enough to feed the family. 40

Philip Oneto—Cross.

Q. Why did you sell this property to Lawyer Spohr's stenographer, and not to your wife directly?

10 Mr. Bonnano: I object to that. That is not a question which he can answer.

The Vice Chancellor: He says it was put in his wife's name in payment of a debt.

Mr. La Porta: I want to know why he did not transfer it directly to his wife.

The Vice Chancellor: Oh, he wouldn't know anything about it; a lawyer would know why he did it.

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

Q. What understanding, if any, did you have with your wife, with regard to the ownership of this property, in 1910? A. That that was supposed to be her property.

Q. What do you mean that it "was supposed to be her property"? A. Naturally—she advanced the money, and I thought it was all right to put it in her name; that is a mistake I made; I didn't know any better.

30 Q. Well, when you bought the property, did you tell her that you bought the property? A. Yes.

Q. And did you tell her you had taken the property in her name? A. I didn't say anything.

Q. Never said anything at all? A. No, not particularly; I don't remember it, anyway; I don't remember that I ever said anything.

Q. You don't remember it? A. No.

40 Q. But you did remember that the property was in your name? A. Yes, that is the way I took it.

Philip Oneto—Cross.

Q. Did she consent to have the property in your name instead of her name? A. Well, that—

Q. (Interrupting) Did she consent to it? A. Well, she didn't say anything at that time.

Mr. Bonnano: I object on the ground 10 that the witness has already testified that his wife did not know about it; that he did not tell her.

The Vice Chancellor: I will overrule the objection.

Q. Did she consent to have the property in your name instead of her name? A. I don't remember of her ever saying anything; and I don't remember whether she did consent or not—I don't remember that. 20

Q. You don't remember that? A. No.

Q. Well, when was the first time you had a conversation with her about turning over the property to her? A. When we got the deed.

Q. When you got the deed from Lawyer Caffarato? A. Yes.

Q. That was the first time you told her you were going to turn over the property? A. No, she saw her name wasn't there. 30

Q. She saw that her name was not on the deed? A. Yes.

Q. And she complained about it? A. Yes.

By the Vice Chancellor:

Q. That was when the deed came back from Lawyer Caffarato that she saw her name was not on the deed? A. Yes.

Q. And that was 1911? A. Well, it took a year before I got the deed. 40

Philip Oneto—Cross.

Q. When she saw her name was not on the deed, what did she say to you? A. She said, "That is very nice; I don't see my name there, and I don't know what to do."

10 Q. Well, what else did she say to you? A. Well, she says, "Here—this property I bought with my own money, and" she says, "I want my name in this deed, and I want the property."

Q. And she waited for eleven years after that time? A. Yes, because the business went from bad to worse.

Q. She waited eleven years afterwards? A. Yes; and every now and then she would mention it.

20 Q. The property was not put in her name until you were sued by the complainant here? A. No, no; that was before that.

Q. Now, the papers show that it was not before. Before the suit in the law court was started against you the title was in your name, and shortly after the suit was started it was transferred by you to your wife? A. I don't know the date; but she was for a good many years after me for that.

30 Q. Why did you turn the property over to your wife? A. Simply that I wanted to do justice. That was money that she had.

Q. Did you want to protect her? A. Yes; and the family and the children.

Q. You were being sued by the complainant, and you wanted to put this in your wife's name so as to protect her in case the judgment was against you? A. Yes—in case anything went wrong.

40 Q. In case the judgment went against you? A. Yes.

Philip Oneto—Cross.

Mr. Bonnano: If the Court please, the transfer was made before the suit was started.

Mr. La Porta: A month before the common law action was instituted—just a month before. 10

The Vice Chancellor: Oh, was it; I thought it was after.

Mr. La Porta: No, a month before.

By Mr. La Porta:

Q. You told her you wanted to protect her against any judgment that Mr. Peragallo might get against you, didn't you? A. No.

Q. That is just what you have been telling the Judge. A. I am telling about the business before; I never mentioned that. 20

Q. You never mentioned that? A. I never mentioned anything.

Q. And you had no other reason for delaying that transfer of the property except to see that your wife would be protected? A. Yes.

Q. Didn't she trust you any more? A. Well, not very much.

Q. Didn't trust you, at all? A. Because she seen that she wasn't getting what was right for a living and all. 30

Q. When did you finally decide that you should transfer over the property? A. I decided it right along—right along I said, "The property is yours," and I says, "any time that you have got the money, and you are able to do it, go ahead; I will never stop at that."

Q. Now, you remember testifying in supplemental proceedings? Do you remember saying 40

Philip Oneto—Cross.

that after you got the real estate in Hoboken you received money from your wife, but you couldn't tell just how much—that is right, is it not? A. Yes.

10 Q. And that whatever money you got from her, after you got the real estate, you spent in drinking and for good times—is that right? A. Yes, that is just about the size of it.

Q. Is your memory better today than it was then? A. Well, I couldn't swear to that; I couldn't answer on that.

Q. Then when you spoke about receiving other sums— A. (Interrupting) At that time I was drinking whiskey; that part is all right.

20 Q. When you spoke to the court here today about receiving other sums of money after the title was bought by you, you were mistaken, were you?

Mr. Bonnano: I object to that.

A. I don't remember no more.

The Vice Chancellor: Confront the witness with what he testified.

30 Mr. Bonnano: I move that that part of the words by Mr. La Porta "you were mistaken" be stricken out.

The Vice Chancellor: That may be stricken out.

Q. By the way—you claim that the property 708 Bloomfield Street was always your wife's property—is that right? A. Yes.

Q. And what about the property in Park Ridge—was that always your wife's property? A. Yes.

40 Q. You transferred the property, on the same

Philip Oneto—Cross.

day, to your wife—is that right? A. That was all right.

Q. I say, is that right? A. Yes, yes, yes, that is right.

Q. Now, what reason did you have for transferring the property in Park Ridge to your wife? 10

Mr. Bonnano: I object to that as immaterial in this case, since it concerns property in Park Ridge.

The Vice Chancellor: Well, if he had property in Park Ridge it might have been sufficient to pay the amount that the husband says is due to her.

Mr. Bonnano: Except that it was her property. 20

A. That was her property.

Q. Well, didn't you get the deed from the father-in-law yourself? A. I might have had it in trust or something.

Q. But you had the title in your own name from the father-in-law, did you not? A. Yes.

Q. That is what you testified to in another trial? A. I had the title.

Q. And then you transferred it to your wife right at the time you transferred the Hoboken property—is not that right? A. It may be right; I don't dispute that, but I didn't own it. 30

Q. Don't you remember saying, in another proceedings, that you received it as a donation from your father-in-law?

Mr. Bonnano: I object. He should confront the witness with his previous testimony on that point. 40

Philip Oneto—Cross.

Q. Don't you recall that? A. I don't know whether it was a donation, or what it is; it may be, but I never held it.

10 By the Vice Chancellor:

Q. He is not asking you that—he is asking you if you did not say, when you were examined in supplementary proceedings, that your father-in-law gave you that as a donation—the property in Park Ridge?

Mr. Bonnano: May I ask that you explain what the word "donation" is—he is an illiterate.

20 By Mr. La Porta:

Q. Do you remember this question: "Q. Was the property given to you for nothing? A. It was a donation"? A. Donation?

Q. You used the word "donation" then, didn't you? A. I might have.

Q. (Continuing reading from transcript) "Q. A donation? A. Yes, temporarily. Q. Who donated the property? A. My father-in-law. Q. 30 Donated to whom? A. To me"—that is your testimony, is it not, and you signed this testimony? A. Yes.

Q. Now, further on: "Q. What did you do with the property? A. I sold it to my wife. Q. Do you know what it means by 'donation'? A. It was donated to me temporarily." You signed that testimony here, too.

40 Mr. La Porta: May it please the Court, I may say that there are a lot of facts in these depositions really clearing the entire record

Philip Oneto—Cross.

in this case, sworn to and signed by this witness and by his own wife. These are admissions and contradictions. For your Honor's guidance, I submit that they should be admitted in evidence. There is really no valid reason for keeping them out, at all. 10

Mr. Bonnano: Well, anything he might want to ask the witness, he is right here in front of him.

Mr. La Porta: Well, if I go on with it, it might exhaust a couple of days but I don't want to exhaust your Honor's patience.

Mr. Bonnano: It may be used to contradict the witness, but certainly is not evidence in this case.

The Vice Chancellor: I have not ruled on the offer yet; I will consider it. 20

Q. What did you buy this property for, 708 Bloomfield Street, Hoboken?

Mr. Bonnano: I object to that on the ground that it is immaterial.

(Objection overruled).

A. For how much price? 30

Q. Yes. A. I think it is \$9700.

Q. You had a purchase money mortgage in the sum of \$6700 is that right? A. Yes.

Q. And that mortgage has been cancelled—that mortgage to Oscar Pflug? A. Yes, after five years. You see he wanted his money.

Q. And three thousand dollars is what you paid in cash? A. Yes, in cash.

Q. So \$9700 is what you paid for it? A. Yes.

Q. Did you ever collect the rents of the property in Hoboken? A. No. 40

Philip Oneto—Cross.

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

Q. Insurance premiums? A. My wife took care of that house business; I didn't have nothing to do with it.

10 Q. She took charge of the bills? A. Charge of the bills, and all.

Q. What did you do with the saloon money, Mr. Oneto? A. I didn't have nothing to get along with.

Q. What did you do with it? A. Used it to get along in the business; the income was not enough to overcome the expenses.

Q. Did you give it to your wife? A. What would I give to my wife?

20 By the Vice Chancellor:

Q. Did you do it? A. The business was very poor—

Q. Did you do it—yes or no? A. Yes.

By Mr. La Porta:

Q. You did? A. Which do you mean?

30 By the Vice Chancellor:

Q. Did you give the money from the store to your wife? A. Very little.

Q. Did you give it to her? A. Yes, you know I had to give her some money to live; that is a sure thing; but the saloon didn't produce that.

By Mr. La Porta:

40 Q. At the time you borrowed the money from Mr. Peragallo you had both the house and the saloon—is that right? A. Yes.

Philip Oneto—Cross.

Q. On both occasions that you borrowed from him? A. Yes.

Q. And at that time you were heavily indebted on notes with other persons? A. Yes, sir.

Q. You had debts of \$300, \$400, \$700, \$800, and a lot of other notes? A. Yes. 10

Q. Full of debts? A. Yes.

Q. And, with that, you kept the property in your name all the while—you were borrowing all the time you had the property in your own name, and the saloon? A. Well, the saloon.

Q. And the house in your own name? A. Yes.

Q. Did your wife know you had all these debts outstanding? A. No, no.

Q. Did you wife know anything about these notes? A. No, sir. 20

Q. Nothing about these notes? A. No, sir.

Q. Never? A. No.

Q. When did you tell her about these notes being owed to Peragallo? A. I didn't tell her until he comes up and starts the suit; then is when she found it out.

Q. She knew about the other notes standing out? A. No, sir; part of it she did.

Q. Why did you have your wife go on a mortgage with you to secure the note in the sum of \$2200? A. Well, that was for the mortgage on the house. 30

Q. Well, it was on the security of the note, was it not? A. Well, that was the time that the money was paid—the old mortgage.

Q. But it was on the note, wasn't it? A. Perhaps it is, I don't remember it.

Q. Did you have any talk about this case, this pending case? 40

Philip Oneto—Cross.

Mr. Bonnano: I think that is immaterial, and I object, on that ground.

The Vice Chancellor: I will overrule the objection.

10 Q. Did you? A. Yes; she knows, certainly, when this paper comes up she wants to know all about it.

Q. Did you talk to your wife about it? A. If I did, probably I don't remember exactly any conversation; perhaps maybe I told her, and maybe not; I don't remember.

Q. Don't you remember testifying in another suit that you knew nothing about gold pieces being given to you by your wife?

20 Mr. Bonnano: I object, unless counsel lays the foundation for the question by showing him what suit it was.

The Vice Chancellor: He can ask the question, and then confront him afterwards, if he denies it.

A. I don't remember.

30 Q. Do you remember this question being asked you in the supplemental proceedings: "Q. What moneys did you borrow from your wife to buy property, and what property? A. 708, I didn't borrow; she gave it to me"? Do you remember saying that? You signed this deposition. That is your answer. A. Yes.

40 Q. "And outside of that three thousand dollars which you got from her to buy the property, did you get any other money from her? A. Sure, she gave me more money. Q. What did you borrow it for? A. Spent it for a good time. Q. What did you spend for a good time? A. I got drunk"—

Philip Oneto—Cross.

is that right? A. Well, the part of it in the saloon was, yes.

By the Vice Chancellor:

Q. The testimony you have heard read there, 10 are the statements contained there true? A. Well, no doubt. Now I am refreshed on that, it may be true.

Q. Was anyone present when you got money from your wife to buy this property in Hoboken? A. No.

Mr. La Porta: Now, I want to direct the Court's attention, at this time, to the special answer of Josephine Oneto in a common-law action, which pleading is annexed to the bill of complaint and admitted by the respective answers of these defendants. 20

The Vice Chancellor: You need not go into that until the case is closed, need you?

Mr. La Porta: I simply want it on record.

Mr. Bonnano: In that case the action was dismissed as against Mrs. Oneto, and therefore it is *res judicata*, and it is immaterial.

The Vice Chancellor: *Res judicata*, as to 30 what?

Mr. Bonnano: The case was dismissed as against her, so, therefore, any testimony on that point would be immaterial, for the judgment is the best evidence.

The Vice Chancellor: I don't know whether it is, or not.

Mr. La Porta: It says, "The defendant, Josephine Oneto" etc. "answering separately says, answering the first count, that she admits the first paragraph, except that 40

Philip Oneto—Re-direct.

she denies that there was any consideration for said note, and she denies that she received any consideration, either directly or indirectly for her endorsement thereon. Second, and she denies—

10

The Vice Chancellor: Well, I can read all that.

Mr. Bonnano: I might explain, as her attorney, that we advised her that the other defense was sufficient, and, for that reason, we only set up that one defense, and did not deny the signature; we did not think it was necessary; so, therefore, that would absolutely have no significance.

20

The Vice Chancellor: I do not know anything about that; I can only know what is in the papers.

Re-direct examination by Mr. Bonnano:

30

Q. What do you understand a "donation" to be—you testified that she gave it to you as a donation temporarily—what do you understand a "donation" to be? A. It was just temporary; he was going to go away; he was an old man (he is dead now), and he handed it to me, and he says "You keep that, and if I go away, or something, you return it to me."

Q. Did you understand it to be absolutely a gift to you? A. No, there was no gift absolutely to me; it was just in the shape that I would have to give him something for that if I have it.

Q. In other words, when you say that he gave it as a donation, did you understand "donation" to mean that you were to hold it for her? A. Perhaps I understood it that way.

40

Philip Oneto—Re-direct.

Q. Well, is that what you understood by that when you said "a donation"? A. Yes, by "donation" I meant that, you know—that I held it for her, because that is how he mean by it—see?

Q. And that was your intention? A. That was my intention when I got that. 10

Q. On cross-examination Mr. La Porta read to you part of your testimony in the supplementary proceedings, in which you said "I did not borrow, she gave it to me"—did you mean by that that she gave it to you absolutely, or was it to be a loan? A. Oh, to be a loan; naturally she wouldn't give it to me; she gave it to me to get the property; I did not borrow it for my own.

Q. In other words, you intended to return it to her? A. To return it, naturally. She was making a foundation; she wanted to have our own home. 20

Q. Now, during this eleven or twelve years between the time when you took the property in your name and when you conveyed it to her, did Mrs. Oneto ever ask you to have the property placed in her name? A. Yes.

Q. Did she ask you very often? A. Very often; that was almost my desert after a meal. 30

Q. You mean she asked you every day? A. Almost every day, yes.

Q. Why didn't you give it to her? A. I didn't have the money to do it; I says, "When you see your way clear, go ahead and take it."

Q. And, during that period, is it or is it not the fact that Mrs. Oneto was often very sick? A. Yes.

Q. Due to childbirth? A. Due to childbirth.

Q. How many children did she have during that period? A. Six, and three miscarriages. 40

Philip Oneto—Re-direct.

By the Vice Chancellor:

10 Q. Now, you say, in one instance, that this money was given to you by your wife to buy this house in her name—is that right? A. That is right, yes.

Q. And, in another instance, as I understand, you now testify that it was not a gift to you but it was a loan to you to buy the property? A. Yes, it was a loan to buy the property, yes.

Q. And were you to pay your wife back that money? A. No, I was not to pay a cent. I never paid a cent back.

20 Q. Listen: Was it your wife's intention, or was it your intention that you should pay back to her this three thousand dollars? A. Yes, that the property would be hers.

Q. But, if the property was to be hers, why should you pay back the three thousand dollars to her? A. Because that was the money that she put in, you know. I don't understand it, Judge, now. Just because I guaranteed her, because she laid out the money, it was no more than right that she would get it back in some way.

30 By Mr. Bonnano:

Q. I want to ask, what was your intention, when you received this money—that that money was to be used in the purchase of the house, and that she was to have the house? A. Yes.

Mr. Bonnano: I wish to make that plain. The witness says he does not understand the questions.

40 The Witness: Yes; I don't understand, really.

William J. Stack—Direct.

WILLIAM J. STACK, SWORN.

Direct examination by Mr. Bonnano:

Q. Where do you live? A. Hoboken, N. J.

Q. Have you a place of business there? A. On 10 Monroe Street.

Q. What kind of a business? A. Real estate.

Q. How long have you been in the real estate business? A. Five years.

Q. Will you qualify, please, as an expert?

Mr. La Porta: His qualifications are admitted.

Mr. Bonnano: The qualifications are admitted?

Mr. La Porta: They are. 20

Q. Have you seen the premises, 708 Bloomfield Street? A. Yes.

Q. Will you explain to the Court what your estimate of the value of that property is, and on what you base it?

Mr. La Porta: For what period of time—when?

The Vice Chancellor: Let him give his value, and let the other side, if they are not satisfied, cross-examine. 30

A. Why, the property stands on a lot 21 x 100. It is a three-story and basement brick, and the building is, all told, 21 feet wide and 48 feet deep, but there is 13 feet that are only two stories—an extension was built on there—and the actual three stories and basement is 21 ft. x 35 ft.; and there is a party wall there. The property is in fairly good repair. It needs a lot of painting and paper- 40

William J. Stack—Cross.

ing. The plumbing work is rather good. The building has been erected prior to 1890, from the fact that I looked it up on the assessment map of the City.

10 By the Vice Chancellor:

Q. What did you consider the value to be on September 12, 1922? A. Well, I considered the land there to be worth \$140 a front foot, which would bring the land up to \$2940; and the building to be worth \$9000, which would make it \$11,940. I base my opinion on the fact of the age of the building and the depreciation. The building must be a very old building.

20 *Cross-examination by Mr. La Porta:*

Q. That total is what? A. \$11,940.

Q. Did you ask the owners what they would sell it for? A. I did not consider that in—

Q. Never mind what you considered. A. No, no.

Q. Can you get this building for \$11,000? A. I couldn't say whether you could, or not.

30 Q. Don't you know, as a matter of fact, that the owner has refused \$18,000 for that building?
A. I do not.

By the Vice Chancellor:

Q. Do you know what the rents are? A. No, your Honor, I did not consider the rentals as to the value of the property.

By Mr. Bonnano:

40 Q. You are a Tax Assessor of Hoboken—is not that the fact? A. Yes.

William J. Stack—Cross.

Q. And, as such, you would have a knowledge of property in Hoboken? A. Yes, sir.

By Mr. La Porta:

Q. Don't you know that lot is 100 feet deep? 10
A. 100 feet, yes; I was speaking as to the depth of the building.

Mr. Bonnano: I offer in evidence copies of bank accounts of Mrs. Josephine Oneto and Josephine Aste, which was the maiden name of the defendant, Josephine Oneto.

(The same are admitted without objection, and are marked, respectively, Exhibit D 1, D 2 and D 3.) 20

Mr. Bonanno: I also offer the pass book of Mr. Oneto.

(The same is admitted without objection, and is marked Exhibit D 4.)

The Vice Chancellor: When was the date of the deed to Philip Oneto?

Mr. Bonnano: 1910; May 2, 1910. That book was offered for the purpose of showing a withdrawal by her corresponding to the date that she alleges she gave him the thousand dollars. The page is turned down, if your Honor please. 30

The Vice Chancellor: What was the amount of the deposit you speak of.

Mr. Bonnano: If your Honor will let me have the book I will show you just what deposit I mean. (Deposit book handed to counsel.) This deposit is marked with a cross there and shows the receipt by him. 40

Josephine Oneto—Direct.

which we will connect by her testimony. I also offer in evidence Pass Book on the check account of Mr. Philip Oneto, in the Second National Bank of Hoboken.

10 (The same is admitted without objection and is marked Exhibit D 5.)

JOSEPHINE ONETO, *sworn.*

Direct examination by Mr. Bonnano:

Q. When were you married to Mr. Oneto, the defendant? A. 23rd of June, 1907.

20 Q. Prior to the time of your marriage, were you employed? A. Yes, sir.

Q. As what? A. Operator on shirt waists.

Q. And in your work what was your average weekly salary? A. Around twenty and twenty-five dollars.

Q. And prior to the time of your marriage had you saved any money? A. Yes, sir.

30 Q. And did you have any money when you were married? A. Yes, I had lots of money before I got married.

Q. Where did you have that money? A. I had it in bank.

Q. Can you testify what banks they were? A. Twenty-second Street and Fourth Avenue Savings Bank; and on Spring Street—the Italian Savings Bank.

Q. Had you saved any gold coins? A. Yes, I had about \$600 in gold coin, what I saved from time to time.

40 Q. Was that all prior to the time of your marriage? A. Yes.

Josephine Oneto—Direct.

Q. And you had them at the time of your marriage? A. Yes, sir.

Q. Do you remember authorizing your husband to buy property for you, and specifying this piece of property at 708 Bloomfield Street, Hoboken. 10

Mr. La Porta: I object to that question as entirely leading and suggestive.

The Vice Chancellor: It is.

Q. Did you ever authorize your husband to buy any property for you?

Mr. La Porta: I object to the form of the question, as entirely leading and suggestive.

20 Mr. Bonnano: I do not think the second question is leading—I asked her if she asked her husband to buy any property.

The Vice Chancellor: Why not ask the witness the question, did she know anything about her husband buying this property, 708 Bloomfield Street, Hoboken.

30 Q. Did you? A. From the day I got married I told him I wanted my home, and I gave him the money—I advance him the money. From that time I tried to get money out of him, and he told me he was going to return it to me, and at last he bought the property.

Q. And did you give him several amounts of money prior to the time he purchased this property? A. Yes.

40 Q. This bank statement of the Bank for Savings in the City of New York shows a withdrawal by you on April 14, 1910, of \$1533.56—do you remember drawing that amount? A. Yes, I did draw that amount to buy the property.

Josephine Oneto—Direct.

By the Vice Chancellor:

Q. Was it by cash or check? A. Check—I took a check.

10 By Mr. Bonnano:

Q. And to whom did you give that check? A. I gave it to my husband.

Q. For what purpose? A. Of buying the property.

Q. And did you tell him at the time it was to be used to buy the property? A. I said that is why I drew it from the Bank.

20 Q. This statement from the Second National Bank of Hoboken shows withdrawals on April 11, 1910, of \$100, and on April 29, 1910, of \$480—did you withdraw those different amounts? A. Yes, sir, for the property.

Q. To whom did you give that? A. I gave it to my husband.

Q. At the time you gave him the money, did you tell him it was to be used for the purchase of the property? A. Why, certainly; I told him to buy the property before he spent all my money.

30 Q. This bank statement of the Italian Savings Bank of the City of New York shows the withdrawal on January 5th, 1910, of \$176, and on January 15, 1910, of \$528.75—now do you remember withdrawing those amounts? A. Yes, sir; at different times.

Q. Did you pay that \$176 to your husband? A. Yes.

Q. And for what purpose? A. For to buy the property.

40 Q. And did you tell him so at the time? A. Why, certainly.

Josephine Oneto—Direct.

The Vice Chancellor: What date is that.

Mr. Bonnano: That is January 5, 1910.

Q. This sum of \$528.75, according to this statement of the Second National Bank, shows that you deposited that amount in that Bank on January 15, 1910, which is exactly the same day that you withdrew it from the Italian Savings Bank—is that the fact that you did not? A. Yes, sir. 10

Mr. Bonnano: I wish to point out, at this time, to the Court, that this \$1533.00 corresponds to the date of the withdrawal.

The Vice Chancellor: I see it—the next day after. 20

Q. You testified before that you gave your husband some money in gold—did you give him that money for the similar purpose as those other payments? A. Yes, sir.

Q. For the purpose of the house? A. For the purchase of the house; yes, sir.

Q. And did you tell him so at the time? A. Yes, sir.

Q. And he agreed to use that for that purpose? A. Yes, sir, he did. 30

Q. Were you present at the time that the deed for this property was given to your husband in 1910? A. No, I was sick.

Q. And had you given any instructions to your husband relative to the use of the money? A. Yes, sir; I told him to buy the property in my name.

Q. And did he agree that he would? A. Well, he said "Yes", but when it came back, I found out, a year after, when I got the deed, I found out it was on his name. 40

Josephine Oneto—Direct.

Q. That was the first time that you knew about it? A. The first time I knew about it.

Q. After this transaction of the purchase of the property did you loan any money to your husband? A. Yes, sir.

Q. Can you state what amounts they were? A. there was a check for \$995.00.

By the Vice Chancellor:

Q. Where did that check come from? A. From a certain property that I had.

Q. Where was that property? A. Park Ridge, N. J.

Mr. Bonnano: We show a deposit of nine hundred and some odd dollars in his account; I believe it is in the other book, if the Court please.

By Mr. Bonnano:

Q. Do you remember what year that was? A. I cannot remember—it may be 1914.

Q. Had you ever loaned him any other amounts? A. From time to time.

Q. You loaned him different amounts? A. Yes, sir.

The Vice Chancellor: That draft on the Italian Savings Bank of January 15, 1910, was deposited in Josephine Oneto's account.

Mr. Bonnano: That was; and then she drew against it by separate checks. That was deposited first in her account, and then she made different withdrawals, one of \$100, and one of \$480, immediately after that.

The Vice Chancellor: I see.

Josephine Oneto—Direct.

Q. Did you have knowledge of the fact that your husband had made these two notes? A. I didn't know anything about it only until lately.

Q. What do you mean by "lately"? A. Lately—when this case came up.

Q. You mean since this suit has been started? A. Yes, sir.

Q. Do you mean by that, at the time when the Supreme Court suit was started against you? A. Yes, sir.

Q. That was the first knowledge you had of it? A. The first time.

Q. (Showing the witness note.) Is this your signature? A. No, sir.

Q. Did Mr. Peragallo, on or about September 25, 1913, have any conversation with you with reference to the loan of this money to your husband? A. I never seen him for a long, long time—never spoke to him.

Q. Will you answer my question—did he speak to you about it? A. No, sir.

The Vice Chancellor: About what?

Mr. Bonnano: About the loan of this money.

Q. Did he ask you whether you owned the property, or your husband? A. I hadn't seen him for a long time.

Q. (Last question repeated.) A. I haven't seen him; I haven't spoken to him.

Q. Did he ask you—yes or no? A. No, sir.

Q. Did he ever speak to you with reference to the loan to your husband of the sum of \$2300 on this note dated July 6, 1914? A. He never spoke to me about it, I never met him at all, at that time.

Josephine Oneto—Direct.

Q. Were you in your husband's saloon on July 5, 1914? A. No, sir.

Q. On that day did Mr. Peregallo ask you whether you owned the property, or your husband? A. No, sir.

Q. Not on that day? A. No, sir.

Q. Did he have any conversation at all with you? A. No, sir.

Q. Were you present in the saloon on July 6th, 1914, at any time during the day or night? A. No, sir.

Q. Did you see Mr. Peragallo at all that day? A. I never have seen him in the saloon at all. I was never there when he was there.

Q. Did Mr. Peragallo ever on any occasion before the dates of these notes ask you whether you owned the property or your husband? A. I never met him for a long time.

The Vice Chancellor: Why don't you answer the question.

The Witness: I never seen him at that time.

The Vice Chancellor: I don't care whether you saw him or not.

Q. (Last question repeated.) A. No, sir.

Q. Was any of the money derived from these notes given to you by your husband? A. No, sir.

Q. When you found out that this property was in your husband's name, when the deed was returned, did you then remonstrate with your husband with reference to that? A. Yes, sir.

Q. And what did you say to him? A. Well, I told him I wanted the property in my name, being that I gave the money to buy it.

Josephine Oneto—Direct.

Q. And what did he say? A. He says he will do it as soon as he can.

Q. Now, this property was not actually transferred over to you until 1922—during that period of eleven or twelve years did you ask your husband to have this property transferred to you? A. Yes, sir.

Q. Did you make any attempt, yourself, to have the property transferred to you? A. Yes; I asked Mr. Caffarato a couple of times.

Q. You went to Mr. Caffarato's office? A. Yes, sir.

Q. And why wasn't it transferred to you? A. Well, he told me to wait a little while.

Q. Did he give you any reason for it? A. No.

Q. I mean, did Mr. Caffarato give any reason to you why he didn't want to do it just then? A. He just simply told me that he wasn't quite ready yet.

Q. And finally when this property was transferred to you in 1922, was that your request? A. Yes, sir.

Q. During the period of time from 1910 until 1922 was your husband giving you any money for the support of the house? A. Very little.

Q. Well, can you specify any amount? A. About fifty cents; or a dollar a day, sometimes.

Q. That is all he would give you? A. Yes, sir.

Q. Where did you get the money with which to rent the house? A. Well, I kept on working right along; I kept doing a little sewing.

Q. What do you mean by "a little sewing"? A. When I had time.

Q. Do you mean that you sewed for outside people? A. Yes, sir.

Q. And were you paid for that? A. Yes.

Josephine Oneto—Cross.

Q. Did you collect all the rents from this property? A. Yes, sir.

Q. Did you pay all the taxes and water bills? A. Yes, sir; and many times I did not have it ready; I had to wait for it.

10 Q. And why did you pay these tax bills and water bills? A. Because I used to take care of my own property.

Q. Well, was it because you considered the property yours? A. Yes, sir.

Q. Did Mr. Oneto ever give you any money at all with which to pay for taxes, water bills and insurance premiums? A. He hardly give me enough for bread and butter for the children.

20 Q. Well, did he give you any for tax bills or water bills? A. No.

Cross-examination by Mr. La Porta:

Q. Mrs. Oneto, you stated, on direct examination, that from the time of your marriage to your husband you wanted a home? A. Yes, sir.

30 Q. That is the first time you spoke to your husband about buying a home, then, is it? It was not at that time that you gave him the money, was it? A. No, not right away.

Q. Now, you were here all the while your husband testified—you were present in the court room? A. Yes.

Q. You heard what he said, did you not? A. Yes.

Q. Did you hear him testify to the fact that he got \$200 on one occasion from you? A. Yes.

Q. For the purchase of the property? A. Yes.

40 Q. And that he got \$2800 on another occasion, from you, for the purchase of this property—you heard him say that, did you? A. Yes.

Josephine Oneto—Cross.

Q. In other words, he got three thousand dollars from you, by two installments—you heard that, didn't you?

Mr. Bonnanno: I object to that; my objection is that we have the evidence of the bank statements showing the amount. 10

The Vice Chancellor: He is confronting her with what her husband said, that is all.

Q. You heard that, didn't you? A. Yes, sir.

Q. Now, then, is it the fact that you gave him three thousand dollars by two installments, one in the sum of \$200, and the other one in the sum of \$2800? A. Yes, sir.

Q. It is the fact; and that you paid by check, did you? A. I got a check from the bank, and the other I— 20

Q. (Interrupting) Show us by your bank account where you gave him \$2800 in one lump sum, and \$200 in one lump sum on the other occasion—show it by your checks and books? A. This is part of the money, and the other was at different times (referring to the payment of \$1533.56).

Q. That is, April 15, 1920? A. 1910.

Q. And by that you show how much? A. 30 \$1533.56.

Q. That is \$1533.56—that is April 15, 1910? A. Yes.

Q. Now show us where you made up the difference of the \$2800—show me how you made up the difference? A. The difference was from different banks.

Q. Show me how you made it up—show me the dates? A. (Referring to Exhibit D, 3) This is part of the money; this is part of the money (in- 40

Josephine Oneto—Cross.

dicating an entry in the exhibit), and that is part of the money (indicating another entry).

Q. What are the dates? A. Well, the dates are here—1909—right after I was married.

10 Q. July 1909? A. And here is September, 1908 (indicating the date of a specified entry).

Q. Why, you know your husband said he got this money from you in 1910—I want to know what money you gave to him in or about the month of May, for the purchase of this property; I don't want to know anything about 1908 or 1909. A. Well, if I got money for him, if I need money that way, I make a note on the Jefferson Trust, to make up the three thousand.

20 Q. In other words, your husband is mistaken when he says he got \$2800 in a lump sum from you on one occasion, and \$200 on another occasion—is that right? A. Yes, sir.

Q. In your testimony in supplemental proceedings—you signed a written deposition, did you not (showing the witness a deposition)? A. Yes.

Q. That is your signature? A. Yes.

30 Q. Do you remember being asked the reason why the transfer of the property was delayed for a period of ten or twelve years—do you remember being asked that question? A. Yes, sir.

Q. And what is your answer to-day? A. Why, I was always sick, and had so many children.

Q. You were always sick? A. It was not because Mr. Caffarato said he would take his time, then, was it? A. Yes, sir.

Q. That was the reason for it; and what was the reason for your not going back to Caffarato, instead of going to Stuhr & Vogt in 1922?

40 Mr. Bonnano: I object to that, as immaterial.

Josephine Oneto—Cross.

The Vice Chancellor: I do not see where you are going to get very far with that.

Q. Well, you were sick all the time, you say? A. Yes, sir. 10

Q. And that prevented you from going on and getting a lawyer to have the transfer made—that is right, is it? A. Yes.

Q. Still, during all these twelve years and more you paid the taxes yourself, did you not? A. Yes, I did.

Q. You paid the water bills, did you not? A. Yes.

Q. And you had bonds and mortgages executed since, in different law offices, did you not? I will refresh your recollection, if you do not remember: You signed a bond and mortgage, with your husband, to Bernard Vizetti in the year 1915 in the sum of \$2200? A. I don't remember signing that. 20

Q. And in the month of June—June 15, 1915—you remember signing a bond and mortgage, with your husband, to the Hoboken Bank for Savings? A. Yes, I remember this.

Q. Surely; you were well enough then. And you remember, on November 16th, 1915, making a bond and mortgage to Bernard Vizetti in the sum of \$2400? A. This I don't remember. 30

Q. Now, you remember the previous year, which was June 15, 1915, you were well enough to go and sign this paper, were you not? A. My husband made that himself; I don't remember making that.

Q. Don't you know, as matter of fact, that it is a matter of record that your counsel admits that you signed that bond and mortgage in the office of Spohr? A. Yes, sir. 40

Q. Then you were well enough on many occa-

Josephine Oneto—Cross.

sions to go and see a lawyer and have the deed transferred from your husband, were you not—yes, or no—you were well enough, were you not?
A. No.

10 Q. Well, you paid all the tax bills, water bills and collected the rents? A. Yes; and I was kept busy with the children.

Q. And you had bonds and mortgages made, and defended the suit, and did everything?

By the Vice Chancellor:

Q. You collected the rents of the property, didn't you? A. Yes, sir.

Q. Do you know how much, a month, you collected, about? A. How much?

20 Q. How much did you collect in a month? A. Well, about \$100, \$112.

Q. What did you do with the money? A. I put it together to pay the taxes and bills.

Q. Did you put it in bank? A. Yes.

Q. In what bank? A. In the First National Bank.

Q. Is that here? Where is your account in the First National Bank? A. Well, I haven't got it, that book.

30 Q. Where is the book; where is it? A. The book that I have now?

Q. Yes. A. (The witness produces a book and hands the same to the Court).

The Vice Chancellor: Well, of course, this is not of any importance now.

Mr. Bonnano: That is her present bank book, may it please the Court.

The Vice Chancellor: Yes. I think we might adjourn now until two o'clock.

40

(RECESS UNTIL 2 O'CLOCK, P. M.)

Josephine Oneto—Cross.

AFTERNOON SESSION.

Hearing of the cause resumed at 2 o'clock, P. M.

JOSEPHINE ONETO, recalled.

10

Cross-examination resumed by Mr. La Porta:

Q. During the time that your husband owned this saloon, before the real estate in Hoboken was bought and after, how was the business of the saloon? A. Well, very bad.

Q. Very bad? A. Yes, sir.

Q. You knew that, did you? A. Yes, I knew, because I had to struggle very hard.

Q. How did you know that? A. I knew, because 20 he hardly gave me any money for my expenses.

Q. And he told you all about the debts he had on the business? A. Sometimes.

Q. Did he speak to you about Tony Cazzaza, Charlie Bock, Steneck Trust Company and the Second National Bank—what he owed them? A. Some of them I knew about.

Q. He spoke to you about them? A. Some of them.

Q. Do you mean to tell us he never spoke to you about owing money to Mr. Paragallo? A. I don't remember that.

30

Q. And do you mean that you never endorsed that note in the sum of \$2300, which is marked Exhibit C. 9 (showing the witness the same)? A. I never saw it before.

Q. You never saw that before?

The Vice Chancellor: Is that your signature on the back?

The Witness: No, sir.

40

Josephine Oneto—Cross.

By Mr. La Porta:

Q. It is not? A. No, sir.

Q. At the time of the making of that note dated July 6, 1914, you were living with your husband?

10 A. Yes, sir.

Q. And your husband had the saloon then? A. Yes, sir.

Q. And you had that real estate in Hoboken? A. Yes, sir.

Q. And you knew Mr. Peragallo then, did you? A. I knew him from the time before.

Q. You knew him before, too? A. Yes.

Q. He is related to you, is he not? A. No, not to me, to my sister.

20 Q. To your sister—in what manner? A. He is the brother-in-law of my sister.

Q. And he has been to your house, has he not? A. Not around that time.

Q. When? A. Sometime before the case came up.

Q. Sometime before what case came up? A. This case.

Q. What case? A. No—the other part of it.

30 Q. You mean, the common law case on the notes? A. Yes, sir; once or twice.

Q. Once or twice—what was he there for? A. He came around to see Mr. Oneto.

Q. Well, what was he there for?

Mr. Bonnano: I object; she has already answered.

Q. What did he tell you he was there for? A. That he wanted to see him.

40 Q. Did you have a talk with him? A. No.

Q. How long did he stay in the house? A. Well,

Josephine Oneto—Cross.

I don't know; I was out with the children and I don't remember that.

Q. When did you see him in the year 1914? A. I didn't see him around that time—for many years around that time.

10

Q. Didn't see him, at all? A. No, I never met him in the saloon, I never saw him there.

Q. Never saw him anywhere? A. No, sir.

Q. Never had any business with him? A. No, sir.

Q. You never told him that you were very grateful to him for having taken your husband out of a hole? A. I never spoke to him.

Q. And in raising the note from \$600 to \$2300? A. I never spoke to him in business, at all.

20

Q. Never said anything, at all? And in the common law action you had Stuhr & Voght represent you, did you not? A. Yes, sir.

Q. Did you see Messrs. Stuhr & Voght on the case before you went to the Hudson County Supreme Court? A. Yes, sir.

Q. About the case? A. Yes, sir.

Mr. Bonnano: I object to that line of testimony as immaterial.

30

The Vice Chancellor: Oh, I don't know whether it is, or not. This is a case where fraud is charged, and all kinds of evidence may be taken.

Q. And you had a talk with them about the case, did you—about the case in the Supreme Court, pending, on the notes—yes, or no? A. Yes.

Q. With whom did you talk? A. To Mr. Stuhr.

Q. Is Mr. Stuhr present in Court here? A. Yes, sir.

40

Josephine Oneto—Cross.

Q. And you spoke to him about the notes, did you—yes, or no? A. Yes.

Q. You told him all about it, did you? A. I didn't speak much about it, I let my husband do it.

10 Q. Who brought you to the office?

Mr. Bonnano: I object to that, as immaterial.

The Vice Chancellor: I will overrule the objection.

A. Myself.

Q. Yourself? A. Yes, sir.

20 Q. Was it on your husband's introduction, or your own introduction? A. Myself.

Q. Yourself—and did you introduce your husband to him? A. I don't remember.

Q. Well, did you go to Mr. Stuhr's office first, on this case in the Supreme Court, the suit on the notes, or did your husband go? A. I don't remember who went first.

Q. Well, did you engage Mr. Stuhr, or did your husband engage him? A. I did.

Q. You paid the bills, did you? A. Part of it.

30 Q. Did you pay for the defense of the Supreme Court case, on the note?

The Vice Chancellor: How does this make any particle of difference?

Mr. La Porta: Well, I want to show *scientir*. There is an absolute denial of the signature of that note, and yet there is a positive admission by counsel in the pleadings.

40 The Vice Chancellor: What difference does it make?

Josephine Oneto—Cross.

Mr. La Porta: Well, it may not make very much difference, but it tends to illuminate the subject. I will cease that line of examination.

10 Q. Now coming to the deeds of the property in Hoboken—did you engage Mr. Stuhr to draw up those deeds, too? A. Yes, sir.

Q. You did it yourself? A. Yes, sir; I fell a couple of weeks ago, and my head hurt me very bad—I fell in Washington Street in Hoboken, one night, and since then I have a pain in my head. I was laid up quite some time. I was in Washington Street, by Woolworth's store, and my head bothers me yet.

20 Q. Who spoke to Mr. Stuhr about drawing these deeds—you or your husband? A. Myself.

Q. Yourself—and when the deeds were drawn up, did you go there again with your husband? A. Yes, sir.

Q. Now, when did you speak about the transfer of the property in question at Hoboken, New Jersey, to Mr. Stuhr, when did you speak about it? A. I spoke to him eight or nine months before that.

30 Q. Eight or nine months before that? A. Before the deeds were drawn to you? A. Yes, sir.

Q. I see; and then you finally decided to have them drawn? A. Yes, sir.

Q. And that was before this suit of Louis Peragallo against you and your husband, in the Supreme Court, is that right? A. Yes, sir.

Q. Before these deeds were drawn up Mr. Peragallo had been to your house, had he not? A. I guess, once or twice.

40

Josephine Oneto—Cross.

Q. And he had been there making demands on these notes, had he not? A. Not to me.

Q. To whom? A. To my husband.

10 Q. How do you know that? A. Well, I know, I heard them talk about it.

Q. And after that talk, then you had these deeds drawn up, is not that right? A. Yes, sir.

Q. Eh? A. Yes, sir.

Q. Then, when you found Mr. Peragallo making demand for \$2300, you thought you would protect yourself against your husband, did you not, and that is why you had these deeds drawn to you? A. No, it is not; it was my money that bought the property.

20 Q. Why, is it not a fact that when Mr. Peragallo called upon you, even before you bought this property from your husband you told him that if he did not wait, you would have the property transferred to you so that he would not receive anything? A. I never spoke to Mr. Peragallo about anything.

Q. You never spoke to him at all? You say that you were rather disappointed in not seeing your name upon the deed—is that right? A. Yes.

30 Q. And you found that out a year after the deed was recorded? A. Yes, sir.

Q. Now, didn't you, as a matter of fact, engage Mr. Caffarato, an attorney in Hoboken, with your husband, on the search and the drawing up of the deed? A. The deed of the property?

Q. The deed of the Hoboken property to your husband? A. I don't remember.

40 Q. You don't remember: I show you a deposition in supplementary proceedings and ask you if that is your name signed to that? A. Yes, that is my name there; yes, sir.

Josephine Oneto—Cross.

Q. And I read this question here: "Q. Who hired him (referring to Harry J. Caffarato of Hoboken) to search the property? A. My husband and I"—now, was that right when you swore to that? A. Yes, sir. 10

Q. Then you and your husband hired Mr. Caffarato. When you and your husband hired Mr. Caffarato did you instruct Mr. Caffarato to put your name to the deed? A. I didn't say it; I just spoke to him.

Q. Did you instruct him to? A. I don't remember that.

Q. You don't remember? A. I don't remember so many things.

Q. And don't you likewise remember testifying that whatever money you had you had in several banks? A. Yes. 20

Q. How do you account for the fact that you told the Court that you had \$600 in gold there that you did not have in bank? A. Well, I kept it in the house as jewelry.

Q. Well, why didn't you tell us that on the examination? Now, did you lend Mr. Oneto, your husband, the money, or what did you do, in giving him the money? A. I gave him the money to buy the property in my name. 30

Q. You expressly told him that? A. Yes, I did; and he told me the property was not on my name, and I made him give it to me.

Q. Don't you know, as a matter of fact, that after your husband had recorded the deed, he was holding himself out to the world as the owner of this property, and that, on the strength of that, some poor innocent man might do business with him and get fooled by you taking the property over later. 40

Josephine Oneto—Cross.

Mr. Bonnano: Objected to.
The Vice Chancellor: Objection over-ruled.

10 A. I only found out lately, after that. I was sick right along.

Q. But he kept the property in his name for eleven years, didn't he? A. Yes, but I was paying the bills right along to keep my property.

Q. And you knew then that some poor innocent man might do business with him on the strength of the fact that he owned this property?

Mr. Bonnano: I object to that.
The Vice Chancellor: Objection over-ruled.

A. I didn't know it.

Q. Well, you knew the business in the saloon was bad—you knew he was heavily indebted and still you permitted him to hold the property in his name for eleven years? A. I kept on paying the bills right along.

30 Q. And you had a bank account even after the property was transferred and bought in by your husband? A. I always had it.

Q. How much money did you have, about, after the property was bought over by your husband? A. Well, I had very little in the banks.

Q. Well, how much money did you have, about? A. I can't remember.

Q. You had more than ten dollars? A. I was paying and drawing every time I needed it.

Q. Well, you had several accounts, had you not? A. No, I didn't have several accounts.

40 Q. Why, you produced them here in Court, didn't you? A. That was before marriage.

Josephine Oneto—Cross.

Q. After marriage, also? A. That was before I bought the house.

Q. Well, after marriage, too? A. Well, that was just a few dollars.

Q. And you had enough to pay the lawyer's fees for drawing up these deeds, had you not? A. 10 No, sir; there was not enough to pay the lawyer's fees for these deeds. There was very little that I had.

Q. Did your husband ever tell you that it was for lack of lawyer's fees that he did not turn over the property to you sooner than eleven years? A. Yes, sir.

Q. He did? A. Yes, sir.

Q. When? A. Several times.

Q. When was the first time? A. When I didn't 20 have enough money for bread and butter for the family.

Q. How do you come to explain the fact that the property in Park Ridge, N. J. (bearing in mind that you had no money for fees) was transferred from your husband to you at the same time the real estate in Hoboken was transferred to you—how do you account for that fact? A. Because I couldn't be present when that was given to me. 30

Q. Why, you were telling the Court, a moment ago, that you had no money, in looking over your account with the Second National Bank, I find that you had money there as late as April 18, 1921? A. Very little.

Q. But you had enough for the deed, had you not? A. Yes, for my little expenses.

Q. And that account ran from June 30th, 1909 to April 18th, 1921—that is right, is it not? A. That was for my own use. 40

Louis Peragallo—Direct.

By Mr. Bonnano:

10 Q. In answer to Mr. La Porta's question as to why you didn't have the property transferred to you during the eleven years, is it not a fact that you did attempt several times to have the property transferred? A. Yes, sir.

Q. Didn't you testify that you went to Mr. Caf-ferato's office for that purpose? A. Yes, sir.

The Vice Chancellor: Why prove it again? She has testified to it once.

THE DEFENDANT RESTS.

20

COMPLAINANT'S REBUTTAL TESTIMONY.

LOUIS PERAGALLO, recalled.

Direct examination by Mr. La Porta:

Q. Mr. Peragallo, you heard Mrs. Oneto testify that you had never been there? A. Yes.

30 Q. That you had never been to her home at any time at or about the time of the drawing of these two notes that are in evidence? A. I was one hundred times in the house.

Q. About one hundred times? A. Yes, sir.

Q. You heard her testify that she did not endorse this note? A. Yes, she endorsed it.

Q. Will you tell the Court what you have got to say about it? A. She endorsed the note, and she was present at the time I gave him the money.

40 Q. At the time you gave who the money? A. Mr. Oneto.

Louis Peragallo—Direct.

Q. You heard her testify that before you commenced suit in the Supreme Court for the collection of these notes, you never spoke to her about the collection of these notes from her? A. I was in the house and spoke to her and the husband, 10 too.

Q. How many times? A. About a dozen times.

Q. Do you recall engaging me in the case to represent you in the Supreme Court? A. Yes, sir.

Q. And in pursuance of my instructions before I started suit, did you not go to Mrs. Oneto's house to see if you could get a mortgage to secure your loan? A. Sure; I was there several times.

Q. And was Mrs. Oneto there? A. Yes, sir.

20 Q. Tell us what you said, and what they said to you? A. Well, Mr. Oneto says, "Well, wait a couple of months now." I waited a couple of months, and I tried to get the money, the best I could to get it, fifty dollars a month, twenty dollars a month; and finally he says, "If I feel like giving it to you I will give it to you; if I don't feel like giving it to you, I won't give it to you." That is the time I came to see you.

Q. And that conversation took place before I started suit? A. Yes, sir. 30

Q. And before September 12, 1922, when the property was transferred to the wife? A. Yes, sir; about a week before.

Q. She also says that you never asked her if her husband owned the property? A. I asked her many times.

The Vice Chancellor: Well, he has testified to that once before. 40

*Louis Peragallo—Cross.**Cross-examination by Mr. Bonnano:*

Q. You say you went to her house about one hundred times, eh? A. Yes, sir.

10 Q. I understood you to say that when you asked her about this note you went to her home and spoke to her about it—is that right? A. Yes, sir—one evening.

Q. And was Mr. Oneto present? A. Yes, sir.

Q. Was anybody else present at the time? A. No.

Q. Were her children present? A. No, the children were sleeping; it was about between nine and ten o'clock.

20 Q. This was when—the day before you gave her the money? A. When do you mean?

Q. The day before you gave her the money was when you spoke to her about this note? A. The time I spoke about getting the money back, no—when I went to speak to her about who owned the property—

30 The Vice Chancellor: You are confused in your dates. He is talking about before that note was made, and you are talking about the time when he went down to see her and ask who owned the property.

Mr. Bonnano: That is right—just prior to the time of making this note.

40 Q. Just prior to the time you made this note, you testified that you went down to ask her whether her husband owned the property, or whether she did? A. Yes; and Mr. Oneto said he owned the property, and the wife said he owned the property.

Louis Peragallo—Re-direct.

Q. The wife said who owned the property? A. He owned it.

Q. That Mr. Oneto owned it? A. Yes, sir.

Q. And this was the night before you gave the money? A. Yes, sir, one day before. 10

Q. You say there was nobody present—the children were all asleep? A. Yes. That time I gave the money I was in the saloon; I made a mistake.

Q. Then didn't you mean this—you said before that you went there one night and asked her, in the presence of her husband, whether her husband owned the property—is that right? A. Well, that was one afternoon, I told you before.

Q. One afternoon—then you did not go there that night? A. No. 20

Q. You spoke to her only once about whether her husband owned the property or not? A. Well, I asked her on the first note, and the second note.

Q. This note is dated July 6 (referring to note Exhibit C, 9), and you say you spoke to her on July 5th—is that right? A. Well, that is all right—just one day before.

Q. And you did not speak to her any more about it? A. No; not after I gave the money. 30

Re-direct examination by Mr. La Porta:

Q. But you had seen her about the payment of this money? A. Sure.

Q. After the execution of this note, had you not? A. Sure; I seen her many times afterwards.

THE COMPLAINANT RESTS.

Argument of Counsel.

Mr. Bonnano: We intended to have Mr. Cafferrato here. I called his office about a dozen times. We did not subpoena him because he agreed to come without a subpoena. The purpose for which
 10 we were going to offer him was to corroborate her story that she had been to him several times in reference to having this property turned over to her; and also we expected him to have the contract with him and we wanted to offer it in evidence.

Mr. La Porta: To save time, I admit that, your Honor.

Mr. Bonnano: It is stipulated that Mrs. Oneto did visit Mr. Harry Cafferato for the purpose of having the title of this property transferred into
 20 her name, a number of times, from the period in 1911 when she found it out, or, rather, when the deed was returned, until 1922.

Mr. La Porta: I won't say 1922, Counsellor.

Mr. Bonnano: Well, we will make it 1920.

Mr. La Porta: Well, yes; it don't mean anything in particular.

The Vice Chancellor: How much money was paid by the wife to the husband, and when was it paid? I find, on April 14, \$1533.56 paid by her to
 30 him—that is at the time when the conveyance was made to the husband; on April 11, there was \$100 paid—that was before the conveyance to the husband; there was \$480 paid on April 29, which was after the conveyance—

Mr. Bonnano: The conveyance was made on May 2d, 1910, so it would be before the conveyance, just three days before the conveyance.

The Vice Chancellor: I see. Well, then, there was \$600 in gold; there was one payment of
 40 \$955.46 on June 11, 1915—now, that could not have entered into the consideration at that time?

Argument of Counsel.

Mr. Bonnano: No, sir.

The Vice Chancellor: That would make \$2711.56 she paid him before the conveyance.

Mr. Bonnano: There was another one of \$176, if the Court please, taken from the Italian Sav-
 10 ings Bank.

The Vice Chancellor: That was January 5, 1910. What I want to get at is where he got the \$3000 to pay.

Mr. Bonnano: Well, that is just about the \$3000.

The Vice Chancellor: Yes, but that last amount was given in January; she did not turn it over to him then.

Mr. Bonnano: It required several months to
 20 make the search.

The Vice Chancellor: It might be important to know when this contract was made.

Mr. Bonnano: Well, I will ask the witnesses if they remember. I don't know whether they do, or not, it is so long ago. If your Honor wishes me to, I will ask the witnesses if they remember. She has testified that she gave him that \$176 for the purpose of buying the property.

Mr. La Porta: Of course, I do not know on what
 30 theory your Honor is proceeding, but, under the case of *Besson vs. Eveland*, I claim that we are entitled to priority over the wife.

The Vice Chancellor: (After argument of counsel) Let me have your authorities, gentlemen, and your exhibits.

Mr. Bonnano: Would your Honor like to have briefs on these points? I would rather submit a brief on it.

Mr. La Porta: We stand or fall on the equitable
 40 estoppel.

Argument of Counsel.

Mr. Bonnano: There are plenty of decisions in point, and I would like to present those decisions.

The Vice Chancellor: You might send me your cases within a week.

10 (Case held for briefs and transcript of testimony.)

Exhibit "C-1".

It is stipulated by counsel that Exhibit "C-1" is a true copy of a writ of execution issued out of the Supreme Court of New Jersey, on May 20 28th, 1923, directed to the Sheriff of Hudson County, commanding him to make from the goods and chattels of the defendant, Philip Oneto, the sum of \$2,184.34, to satisfy a judgment in favor of Louis Peragallo, in that amount.

It is further stipulated that said copy shows a return by Joseph Buckley, Under-sheriff, stating that said writ was returned to the court, unsatisfied, on July 27th, 1923.

30

Exhibit "C-2".

It is stipulated between counsel that Exhibit "C-2" is an abstract of the title to the premises in question, showing that on August 23rd, 1923, the title to the premises in question was vested in Josephine Oneto, subject to the following:— Mortgage for \$4,500.00; Mortgage for \$2,400.00; and a judgment against Philip Oneto.

40

Exhibit "C-3".

It is stipulated between counsel that Exhibit "C-3" is a full covenant warranty deed, dated September 12th, 1922, between Philip Oneto and Josephine Oneto, his wife, grantors, and Mary Dillon, grantee, in consideration of the sum of \$1.00 and other valuable consideration. Conveys all the property in question.

10

Said deed has an endorsement showing that it was recorded in the office of the Register of Hudson County, on September 12th, 1922, at 2:34 o'clock in the afternoon, in Book 1457 of Deeds for said County, on page 35, etc.

20

Exhibit "C-4".

It is stipulated between counsel that Exhibit "C-4" is a bargain and sale deed, dated September 12th, 1922, in which Mary Dillon, single, reconveyed to Josephine Oneto, in consideration of the sum of \$1.00 and other valuable consideration, the same premises conveyed to her by deed marked "Exhibit C-3".

30

Said deed has an endorsement showing that it was recorded in the office of the Register of Hudson County, on September 12th, 1922, at 2:34 o'clock in the afternoon, in Book 1457 of Deeds for said County, on page 37.

40

Exhibit "C-5".

10 It is stipulated between counsel that Exhibit "C-5" is a mortgage dated May 2nd, 1910, between Philip Oneto, party of the first part, to Oscar Pflug, party of the second part, in the sum of \$6,700.00, on the premises in question.

It is further agreed that said exhibit shows a cancellation of recorded, dated June 15th, 1915.

Exhibit "C-6".

20 It is stipulated between counsel that Exhibit "C-6" is the bond accompanying the mortgage set forth in "Exhibit C-5", made by Philip Oneto to Oscar Pflug.

It is further stipulated that the seal was torn from the said bond, showing that it was paid.

Exhibit "C-7".

30 It is stipulated between counsel that there was no Exhibit "C-7".

Exhibit "C-8".

\$600.00 September 25, 1913
Six months after date promise to pay to the order of Luigi Peragallo, Six Hundred Dollars, at 338 Bloomfield St., Hoboken, N. J.

Value received.

40 No. Due. (signed) PHILIP ONETO

Exhibit "C-9".

\$2,300.00 July 6, 1914
Six months after date promise to pay to the order of Louis Peragallo, Twenty-three hundreds 00/100 Dollars at 708 Bloomfield St., Hoboken.

10

Value received

No. Due (signed) PHILIP ONETO

Endorsements:

Philip Oneto
Josephine Oneto
Philip Oneto

Exhibit "D-1".

20

ACCOUNT No. 955327

DR. THE BANK FOR SAVINGS IN THE CITY OF NEW YORK,

In Account with JOSEPHINE ONETO, CR.

280 Fourth Avenue.

1908	Deposit	1910	Draft	
Jul. 24	\$1,445.12	Apr. 14	\$1,533.56	30
1910				
Jan. 1	Interest to date	88.44		
		<u>1,533.56</u>	<u>1,533.56</u>	

The Bank for Savings in the City of New York.
280 Fourth Ave.
October 23, 1924
E. L. MACKEY
Bookkeeper.

40

Exhibit "D-2".

TRANSCRIPT OF THE ACCOUNT OF
JOSEPHINE ONETO

In Account with SECOND NATIONAL BANK,
Hoboken, N. J.

10

<i>Date</i>	<i>Deposited</i>	<i>Withdrawn</i>	<i>Balance</i>
June 30, 1909			\$21.20
Sept. 30/09	\$30.00		51.20
Int. Jan. 1/10	.72		51.92
Jan. 13/	8.00		59.92
“ 15/	528.75		588.67
Apr. 11		\$100.00	488.67
“ 29		480.00	8.67

20

30

40

Exhibit "D-3".

JOSEPHINE ASTE
In Account with

ITALIAN SAVINGS BANK of the City of New York.

10

The following is a correct transcript
from our Ledger.

Account No. 16229

<i>Date</i>	<i>Drafts</i>	<i>Deposits and Interest</i>
Jan. 2, 1906		\$600.00
Jan. 8, 1906		35.00
Mar. 13, 1906		115.00
April 3, 1906		50.00
June 22, 1906		70.00
1908 Int. July		14.35
Aug. 1, 1906	\$14.35	
1907 Int. Jan.		17.40
1907 Int. July		17.70
1908 Int. Jan.		18.10
1908 Int. July		16.15
Sept. 3, 1908	139.00	
1909 Int. Jan.		16.00
1909 Int. July		16.30
July 3, 1909	140.00	
1910 Int. Jan.		12.10
Jan. 5, 1910	176.00	
Jan. 15, 1910	528.75	
	998.10	998.10

20

30

40

ITALIAN SAVINGS BANK
of the City of New York.

G. ZAMPARITO,
Asst. Secretary.

Exhibit "D-4".

By stipulation of counsel for the respective parties, it is agreed that Exhibit "D-4" is a bank-book of the check account of Philip Oneto, one of the defendants, in the Jefferson Trust Company of Hoboken, New Jersey, and that it shows a deposit on April 15th, 1910, of the sum of \$1,533.56.

Exhibit "D-5".

By agreement of counsel, Exhibit "D-5" has been omitted, since it has no material bearing on the case.

The foregoing stipulations and abridgments of Exhibits are hereby consented to.

STUHR & VOGT,
Attorneys for Defendants-Appellants.

ANTHONY P. LA PORTA,
Attorney for Complainant-Appellee.

New Jersey Court of Errors and Appeals.

Between

LOUIS PERAGALLO,
Complainant-Appellee,

and

PHILIP ONETO and JOSEPHINE
ONETO,
Defendants-Appellants.

On Appeal from
the Court of
Chancery.

BRIEF FOR DEFENDANTS-APPELLANTS.**Statement of Facts.**

The bill in this cause was filed to set aside as fraudulent and void a conveyance made by Philip Oneto, the defendant, to his wife, Josephine Oneto, the other defendant, through an intermediary named Mary Dillon, by deeds, all of which deeds were dated and recorded September 12th, 1922.

The premises in question were acquired by Philip Oneto from one Oscar Pflugh, on May 2nd, 1910. The purchase price was \$9,700.00, which was paid by giving a purchase money mortgage for \$6,700.00, and the balance \$3,000.00 in cash. Philip Oneto retained title until the conveyances above mentioned, which vested the title in his wife, Josephine Oneto, were made.

The complainant on September 25th, 1913, loaned to the defendant, Philip Oneto, \$600.00, and took his promissory note for that amount, payable six months after date. On July 6th, 1914, the last mentioned note being unpaid, the complainant

took another note of \$2,300.00, payable six months after date, which included the \$600.00 note above mentioned, and complainant alleged that he then and there loaned \$1,700.00 in cash to Philip Oneto. This note bore the endorsement of Philip Oneto and his wife, Josephine Oneto. Josephine Oneto, however, denied that she ever endorsed said note, and if her name was on said note, it was a forgery.

On or about October 16th, A. D., 1922, complainant commenced a suit at law in the Supreme Court against Philip Oneto and Josephine Oneto on the last mentioned note, which resulted in the dismissal of the suit against Josephine Oneto and a judgment against Philip Oneto on April 28th, A. D., 1923, in the sum of \$2,084.34, together with interest and costs of suit, and execution was issued and a levy made on the premises in question. On September 12th, 1922, and prior to the commencement of the said suit at law, defendants made the above mentioned conveyance by which the title was vested in Josephine Oneto.

The complainant then filed the bill in Chancery to set aside the said conveyances.

At the trial in the Chancery Court, Josephine Oneto testified that in 1910, when Pflugh conveyed to Philip Oneto, the entire \$3,000.00 used for the purchase of said property was advanced by her, and that it was the intention of the parties that the title should be taken in her name (see pp. 107-108-109 of State of Case). Josephine Oneto was unable to attend the title closing on said matter by reason of illness (p. 109), and Philip Oneto, contrary to the agreement with his wife, had the property conveyed to him in his own name. The assertion by Mrs. Oneto, that the \$3,000.00 purchase money was advanced by her, was substantiated by the bank records produced at the trial, which show withdrawals from various bank ac-

counts which she then had, and payments to her husband, which in the aggregate amount to substantially \$3,000.00 (see Exhibits D-1, D-2, D-3 and D-4), and the court found as a matter of fact that part of the purchase money, at least, was paid by her.

The defendant, Josephine Oneto, did not learn that the title had been placed in her husband's name until about one year after the title closing (p. 109), and it was admitted by counsel for the complainant by stipulation that Mrs. Oneto had visited the office of Harry J. Cafferata, the lawyer who handled the original title closing, a number of times during the period from 1911, when she got the information, until 1920, for the purpose of having the title to this property transferred to her name as it should have been in the first instance (p. 132).

POINT I.

There existed a resulting trust in said property in favor of the wife, Josephine Oneto.

There is very little doubt, from the testimony in this case, that the entire amount of the cash advanced for the purchase of the property in question, was paid with funds of the wife. The court found, as a fact, that one payment of \$1,533.56 was paid by the wife to the husband, to be used in the purchase of the property (p. 30). The court also found that there were other amounts drawn from the wife's account at the time the said property was purchased, and paid to the husband, which all totalled would substantially equal the amount paid in cash for the purchase of said property (pp. 132-133).

It has been held, in a long line of decisions in the courts of New Jersey, that where one person purchases property for another, and the purchase money is paid by that other person, or out of his funds, although title is taken in the name of the person making the purchase, a trust results and the land is held in trust for the person whose money is paid.

- Pinkinson vs. Pinkinson*, 117 Atl. 48;
Asam vs. Asam, 86 Atl. 871;
Thomas vs. Thomas, et al., 79 N. J. Eq. 461;
Baker vs. Baker, 75 N. J. Eq. 305;
Mershon vs. Duer, 40 N. J. Eq. 333;
Shroser vs. Isaacs, 28 N. J. Eq. 320;
Cutler vs. Tuttle, 19 N. J. Eq. 549;
Johnson vs. Dougherty, 18 N. J. Eq., 406;
Howell vs. Howell, 15 N. J. Eq. 75;
DePeyster vs. Gould, 3 N. J. Eq. 474.

This well established principle has often been applied in cases where a husband buys property in his own name, the entire purchase price being paid from the wife's separate estate. In such cases, it has uniformly been held a resulting trust would arise in favor of the wife.

- Shotwell vs. Sickie*, 90 Atl. 246;
Mayer vs. Kane, 69 N. J. Eq. 733;
Small vs. Pryor, 69 N. J. Eq. 606;
Irick vs. Clement, 49 N. J. Eq. 59;
Krauth vs. Thiele, 45 N. J. Eq. 407;
Gogherty vs. Bennett, 37 N. J. Eq. 87;
Tresch vs. Wirtz, 34 N. J. Eq. 124.

The reason for the wife not being present at the time of closing to take title in her own name, is very well explained by her by stating that she

was ill at the time (p. 109). There is the additional undisputed testimony that from the time the husband took title, the wife always controlled the property, receiving the rents and paying the taxes, water bills and all other expenses necessary for the upkeep of said property, from her own separate estate (p. 114). She did not account to the husband nor did he ever call upon her to account, or claim the right to do so. We also have the testimony of the wife that she did not become aware of the fact that title to said property had been taken in her husband's name and not in her own, until one year after the transaction, and that after that time until the time when she actually took title in her own name, she went to a lawyer's office several times to have the title transferred to her own name, but was told by the attorney to wait until some other time (p. 113).

The case of *Mayer v. Kane*, cited above, is the leading case in New Jersey on this point, and is very similar to the case at bar. The facts in that case were that the defendant wife had given the money for the purchase of the property to the husband with instructions to him to have title taken in her name; that the husband, contrary to such instructions, took title in his own name, and that the wife did not become aware of that fact until some time later; that she had always collected the rents and had paid the taxes, insurance and other expenses incidental to the upkeep of the house; that she, later, had the property transferred to her by her husband. The court held that the wife was entitled to have a resulting trust in the property declared in her favor, as against the creditors of her husband. The court also held that where the wife did not know that her husband had taken title to the property for which she furnished the purchase money, in his name instead

of in hers, she is not estopped to assert title as against his creditors.

In *Small vs. Pryor*, 69 N. J. Eq. 606, (on page 608), the court, in dealing with the question of resulting trusts, laid down the following rule: "If the entire purchase money was paid from the wife's separate estate, a resulting trust in her favor would arise in the absence of proof that a gift or a loan was intended, and the legal title would be considered to have been taken in trust for the wife, whether the title to the husband was taken intentionally or by mistake. If a trust is satisfactorily established by the proofs, it may be decreed under a general prayer for relief on the cross-bill, even though the charge of mistake is not proved."

In *Gogherty vs. Bennett*, cited above, the court held that where, without her husband's knowledge and against his will, the wife took in her own name the title to lands for which he paid the purchase money and all the taxes, assessments and costs of improvements, and did continuously occupy the property, a trust resulted in his favor.

The facts in the case at bar contain all the elements of resulting trust, and the citations set out above are sufficient authority to warrant a finding of such resulting trust.

POINT II.

There is no estoppel against the wife.

At the trial below, complainant urged and the court held that the defendant, Josephine Oneto, was estopped from setting up the claim of a resulting trust in her favor, and cited in support of their theory, the case of *Besson vs. Eveland*, 26 N. J. Eq. 468.

That case may readily be distinguished from the case at bar, because of the wide divergence in the respective proven facts. In the cited case, the defendants failed to rebut the presumption of fraud which arose by reason of the conveyance. The testimony of the defendant, as a whole, was very unsatisfactory. The wife did not take the stand at all and there was practically no evidence to substantiate the claim of the defendants that the property had been purchased with the wife's money, and the court found, as a conclusion of fact, that the conveyance was made for the purpose of defrauding creditors, and it is intimated that it did not believe the wife's money had been used in the purchase of the property.

There was an additional fact, in the cited case, that the wife had full knowledge of the fact that title to the lands in question had been taken in the husband's name, and that she authorized and consented thereto and continued to consent to have the title kept in her husband's name during the whole period of time in which he held it. It can readily be seen from the study of the opinion rendered in that case that the basis of the court's decision was the fact that the proofs on the part of the defendants were so unsatisfactory.

In the case at bar, however, the facts constituting the resulting trust are very clear, concise and un rebutted. It was clearly and conclusively proven by means of the copies of the bank accounts of the wife, that she had provided the purchase money. Said testimony was un rebutted. It was also proven by the undisputed testimony of both husband and wife that the wife not only failed to consent to the taking of the title in the husband's name, but actually ordered the husband to have title taken in her (the wife's) name, and further that the wife did not have any knowledge

of the fact that title had been taken in the husband's name until one year after the date of the execution of the deed, when the deed was returned to the husband by the lawyer who had represented him at the title closing, (p. 109); that upon learning that title had not been taken in her name, she immediately insisted that the title be placed in her name and continually asked her husband to do so, and made several attempts, herself, to have same done. It was admitted by stipulation of counsel for the complainant (p. 132), that the wife went to the office of Harry J. Cafferata, a lawyer in Hoboken, several times, during the period when the husband had held the title, for the purpose of having said title transferred to herself, and that on each occasion the lawyer advised her to wait.

Complainant himself admitted (p. 45) that he had not made inquiry as to the ownership of the lands in question at the time he made the first loan of \$600.00, so that by his own admission, complainant started the line of credit, not relying on the apparent ownership of the property by the husband. Complainant testified (p. 46) that he had made inquiry as to the ownership of the property only when he received the subsequent note which was made to renew the previous note of \$600.00. This testimony was rebutted by the testimony of both husband and wife, who denied that such inquiry had ever been made of either of them. The friendly relationship then existing between the complainant and the husband, and the fact that they were related to each other and had known each other for many years prior to the time of the loan, would seem to substantiate the defendants' contention that no inquiry as to ownership of the property had ever been made of either of the

defendants, and that the money had been loaned merely out of friendship.

As was heretofore stated, the case of *Mayer vs. Kane*, cited above, holds that where the wife did not know that her husband had taken title to the property, she is not estopped to assert title as against his creditors.

POINT III.

The court should have declared a resulting trust in the nature of a mortgage to the extent of the money actually advanced.

Even if the Chancery Court had sufficient grounds for refusing to declare an absolute resulting trust in said property in favor of the wife, it should at least have declared a resulting trust in the nature of a mortgage to the extent of the money actually advanced by the wife for the purchase of the property, which mortgage should have been decreed to be prior to the judgment of the complainant.

This principle has been long established in this State. The leading case on the point is *Adoue vs. Spencer*, 62 N. J. Eq. 782. This case holds that where the wife furnished a part or all of the purchase money out of her own separate estate, with which the husband purchases property and later conveys the property to her through an intermediary, to secure her for the said money so paid to him, the said conveyance will be decreed to be a mortgage and good as against creditors to the extent of the amount of money so received by the husband, with interest thereon from the date of

delivery of such deed. The court in that case (at p. 785) said, "To the extent that he (the husband) received such funds, I think he could, and, indeed, in law and morals should, secure her as he did by the conveyance of September 6th, 1896. Whatever that amount may be should also be decreed to be a prior lien to that of the complainants." This case has been cited with approval in the case of *Knickerbocker Trust Company vs. Carhart*, 71 N. J. Eq. 495, and in *Reed vs. Tilton*, 90 N. J. Eq. 42. A further citation of authorities on this point would be merely cumulative.

POINT IV.

The findings of the court are contrary to the weight of the evidence.

The court as a basis for the estoppel against the wife, found that she permitted the title to remain in her husband's name (p. 33). Although it is true that the title to the property was not actually transferred to the name of the wife until 1922, yet as was admitted by the stipulation of counsel for the complainant, the wife went to the office of the lawyer who closed title in said matter, several times, to have the title to said property transferred to her name, from the time she was informed that she did not have title to the property until the actual transfer (p. 132). This rebuts any presumption that the wife passively permitted title to remain in her husband's name, since the purpose of said visits was to have the title transferred.

The court also found (p. 32) that Mrs. Oneto told the complainant that her husband was the

owner of the property. This was denied by the wife (p. 112) and also by the husband (p. 72). The probability that the complainant did not ask who was the owner of the property is borne out by the fact that the complainant and the defendant husband were very friendly and in fact were related (pp. 44-45). Then, as stated before, there is also the additional fact that the complainant himself admits that at the time of the first loan of \$600.00, he made no inquiry as to who was the owner of the property, so that by the testimony of the complainant himself, it is proven that the line of credit was started without relying on the apparent ownership of the property by the husband. There is testimony that the complainant had been in the custom of staying in the defendant's saloon nearly every night for many years back, and it is more probable that the complainant gave the credit relying on friendship and not on security of the house.

We do, therefore, submit that the said decree of the lower court should be reversed, set aside and for nothing holden.

STUHR AND VOGT,
Counsel for defendants-appellants.

New Jersey Court of Errors and Appeals

Between

LOUIS PERAGALLO,
Complainant-Appellee,

and

PHILIP ONETO and JOSEPHINE
ONETO,
Defendants-Appellants.

On Appeal
from the
Court of
Chancery.

**BRIEF OF ANTHONY P. LA PORTA,
IN BEHALF OF THE COMPLAIN-
ANT-APPELLEE, LOUIS PERA-
GALLO.**

Statement of Facts.

This is a suit under P. L. 1919, page 500, by the above named complainant-appellee to set aside the conveyance to premises 708 Bloomfield Street, Hoboken, New Jersey, as fraudulent; the defendants to the suit are husband and wife; the property in question was conveyed by the husband to his wife thru an intermediary.

THE BILL OF COMPLAINT ALLEGES BRIEFLY THAT:

(1) Complainant sued the defendants October 16, 1922, at law on the pleadings annexed to the

Bill and recovered judgment thereon against the defendant, Philip Oneto on the 25th day of April, 1923, in the sum of \$2,130.00 with interest from January 6th, 1915, and was non-suited as to the defendant, Josephine Oneto. That execution was on the 28th day of May, 1923, issued and returned unsatisfied. These allegations are admitted by the respective answers of the defendants except the execution, which however was also admitted by counsel at the trial:

(2) The bill alleges also that:

On May 2nd, 1910 the defendant, Philip Oneto, became the owner to premises in question, which on September 12th, 1922, he conveyed to his wife thru Mary Dillon an intermediary. These allegations are admitted by the pleadings of the respective defendants.

(3) The bill alleges also that:

The value of the property in question is worth about \$18,000. This is denied; defendants' answers fix it at \$11,000, the proof shows it at \$17,000.

(4) That the property is encumbered as follows:

(a) By mortgage in the sum of \$4,500 made by the defendants June 15, 1915.

(b) By mortgage in the sum of \$2,400 made by both defendants November 16, 1915.

(c) By a judgment in the sum of \$117.65 against the defendant, Philip Oneto.

These allegations are admitted by both defendants.

(5) The pleadings at law annexed to the bill of complaint and made a part thereof are admitted in this suit.

The complaint at law alleges briefly in the first count in paragraph one that:

On July 6th, 1914, Philip Oneto made and delivered to the complainant a note for \$2,300 which was endorsed by the defendant, Josephine Oneto. This paragraph is admitted by the defendant, Josephine Oneto; see her separate answer at law annexed to this pending bill.

(6) The bill of complaint is supplemented by a special replication setting forth equitable estoppel for the iniquitous conduct on the part of the defendant's wife, a co-defendant.

THE SEPARATE ANSWERS OF THE DEFENDANTS EACH ALLEGES BRIEFLY THE RELATIONSHIP OF DEBTOR AND CREDITOR.

Josephine Oneto's answer says: "he was indebted to her in the sum of \$4,000, and upwards for cash moneys loaned and advanced by her and for his benefit."

Philip Oneto's answer says: "he was indebted to his wife, in the sum of \$4,000 and upwards, for cash moneys loaned and advanced from time to time by her to him and for his benefit and were actually used by him in the purchase of the property in question."

This common defense setting forth the relationship of debtor and creditor was alleged but was repudiated by each defendant at the trial. They each contended for the relationship of trustee and cestui qui trust, hence they are out of court as they have no pleadings to stand by.

The state of case shows that complainant loaned to Philip Oneto \$600 on September 25th, 1913, which was evidenced by his promissory note bearing that date; *that this note was raised to the sum*

of \$2,300 on July 6th, 1914, and was evidenced by a promissory note bearing that date, made by Philip Oneto and endorsed by his wife, Josephine Oneto. This note became due on January 6th, 1915, the principal was reduced to the sum of \$2,130. That on October 16th, 1922, a suit at law was instituted for the collection of the balance of said note, which resulted with a judgment against Philip Oneto in the sum of \$2,130 with interest from January 6th, 1915, and a non-suit as against his wife, Josephine Oneto.

At the time each of the loans were made by complainant to defendant, Philip Oneto, he owned premises 708 Bloomfield Street, Hoboken, New Jersey, and also a saloon in Hoboken aforesaid. It appears that the saloon business was poor and hardly made expenses, that he was heavily indebted; that his wife knew all this.

The title to premises 708 Bloomfield Street was taken in the name of Philip Oneto on May 2nd, 1910, and the cash consideration of the purchase price \$9,700 to wit: \$3,000 was advanced by Mr. Oneto's wife with the full understanding that the title should be in her name, but instead Mr. Oneto without his wife's knowledge and consent violated her instruction and took title in his own name. Mr. Oneto never contributed any money whatsoever towards the purchase price, nor did he receive any rents, or claim any interest in said property as against his wife, all the expenses, tax bills, water bills, rents and insurance premiums were paid by his wife, Mrs. Oneto.

Argument.

This situation undoubtedly created a resultant trust the legal title in her husband and the equitable title in the wife. If Oneto's wife had filed a

bill to compel her husband to transfer the legal title to her, there could be no question at all, about it, that this Honorable Court would unhesitatingly so decree.

See

Andreas v. Andreas, 84 N. J. E., 415 (94 A., 415).

ON THE QUESTION OF TITLE PHILIP ONETO TESTIFIED ON PAGES 68-69 (State of Case), AS FOLLOWS:

By Mr. Bonanno:

Q. State the conversation with your wife in reference to in whose name the title to this property should be taken? A. It was to be taken on her name.

Q. And what was the conversation with her about it? A. I told her that it was all right, that everything will be on her name.

By the Vice Chancellor:

Q. Then, as I understand it, your wife expected that you were going to take the title in her name? A. Yes.

Q. Why did you take the title in your own name? A. She was laid up.

By the Vice Chancellor:

Q. I asked you why did you not take the deed in your wife's name? A. Well, because she was laid up; and, to tell the truth Judge, I didn't know any better; I just simply done it on the impression that she wanted it.

By Mr. Bonanno:

Q. Then Mrs. Oneto put up all the money for the purchase of this property? A. All the money, yes, sir.

Q. Did you put in any of the money for the purchase of that property? A. No.

ON THE QUESTION OF TITLE JOSEPHINE ONETO TESTIFIED ON PAGES 109, 110, AS FOLLOWS:

By Mr. Bonanno:

Q. And had you given any instructions to your husband relative to the use of the money?

A. Yes, sir, I told him to buy the property in my name.

Q. And did he agree that he would? A. Well, he said, "Yes", but when it came back, *I found out, a year after, when I got the deed, I found out it was on his name.*

Q. That was the first time that you knew about? A. The first time I knew about.

From the foregoing testimony it is plain that Mrs. Oneto was the equitable owner of the property from the very inception of the purchase. As such owner it became her duty, when she ascertained the fact that the legal recorded title was not in her name to forthwith compel her husband to transfer the legal title to her so that prospective creditors dealing with her husband might not extend business or financial credit to him on the strength of the apparent ownership of the property in question. This she failed to do until the complainant threatened her husband with suit. *She not only held out her husband to be the apparent owner of the property by allowing the deed to be recorded in his name but she went a step further and apprised the complainant upon inquiry (her husband doing likewise) that her husband was the sole and exclusive owner of the property in question. These assertions and representations were made to the complainant before he made the two loans amounting to \$2,300.*

The fact is she knew all the while that her husband had the title in his own name, the city official testified that all the tax bills were written up by him and made in the name of Philip Oneto and were paid by her and then you have her testimony to the effect that *she paid in person all tax bills, water bills etc.*, and that her husband had nothing to do with the property. She says that she found a year later after the deed to her husband was recorded that her name did not appear on the deed. *This brings knowledge to her in the year 1911 bearing in mind that the deed to her husband was made and recorded May 2nd, 1910. The complainant's first loan was made September 25th, 1913, for \$600, and the second loan by raising the \$600 to \$2,300 on July 6th, 1914, so that on the first loan she had a period of two years and on the second loan a period of three years, to change the ownership or at least inform the complainant as to her being the equitable owner of the property and thereby avoid this suit.*

The law does not require the prospective creditor to ask the apparent owner if his recorded title is a legal one without an equitable title outstanding. It is the equitable owner's duty to stamp his interest in the recorded deed so that the business world may not be deceived. And one who neglects to so stamp his deed with the trust imposed but permits the deed absolute on its face to be so recorded is estopped to claim and assert his equitable interest or title against an innocent purchaser, mortgagee or creditor of the legal title owner.

Defendants not only permitted the deed, absolute on its face, to be and remain recorded in the name of defendant, (husband) but also announced that fact to complainant on inquiry. Now she claims priority to the extent of the moneys ad-

vanced on the purchase price over the complainant as against her husband. How can she prevail? She does not come into court with clean hands. He who seeks equity must do equity. *It must be remembered that she herself made the complainant a preferred creditor by her endorsing the note in the sum of \$2,300 made by her husband to complainant.* It must also be remembered that the conveyance by her husband to her through the intermediary was not upon the relationship of debtor and creditor. It was upon the trust relationship—Trustee and cestui qui trust. He was already bound to convey the title to the property to his wife as she advanced the purchase price with the mutual understanding that the title should be in her name. Here we have a resulting trust.

It is without question true that a judgment debtor may prefer his wife as creditor. *Engelhard v. Schroeder*, 92 N. J. E., 663, 116 A. 717. But in all these cases there was no estoppel and the legal title was in the judgment debtor without any outstanding equitable title (equitable owner). There was no resulting trust involved as in this case. In our case the husband was merely the apparent owner, he was never the real owner; the real owner was the wife from the very inception and receipt of the deed by the husband; no execution in equity could be issued to attach his interest as the real owner is the wife. But it may be said how are you going to attack her title (equitable) if he never in reality and as a matter of equity, owned this property in question. The answer is, you do it on the theory of estoppel. By reason of her representations and misconduct and upon that theory only, because he has no interest in the property (except a nominal interest) he put no money of his own into the property. Now then the hus-

band being merely nominally interested it stands to reason that we must stand or fall upon the theory of estoppel,—she now being prohibited to assert her rights under the resulting trust.

To make my point a little clearer, suppose the legal title to premises 708 Bloomfield Street was still in Philip Oneto's name, and suppose the sheriff under the execution had seized the property, couldn't Mrs. Oneto then come into this court and restrain the complainant and the sheriff from selling the property because she is the real owner (equitable) her husband having taken title to the property in his own name instead of his wife's name? Of course, this court would undoubtedly restrain the sale, and take jurisdiction of the entire subject matter.

Now, then, assuming this court to have restrained the complainant and the sheriff from going ahead with the sale; how can the complainant prevail on this injunction? He can prevail only on the theory of estoppel as against the wife because of her foolish misrepresentation and misconduct in permitting her husband to hold himself out as the apparent owner of the property and thereby secure credit for him and financial standing.

The estoppel arose upon the making of the loans by the complainant (with the holding out as to the apparent ownership). The deed to this property was then in the debtor's name, and, "Equity regards that as done which ought to be done" and for the purpose of this case and the disposition of it, *Mr. Oneto will be regarded as the sole and exclusive owner both legal and equitable*, as of the time of the making of the loans and his wife by reason of the interposed estoppel (which is a vested right) cannot assert any financial interest or title

therein, as the money advanced by her was converted into realty and as against the complainant she is estopped to now say that it is her realty. Hence, the sale in so far as she is concerned is sold free and clear of any debts, demands or interest or title that she may have against her husband, all because of operation of the doctrine of estoppel.

Law in Reply to Point II.

This case can only be decided on the doctrine of estoppel laid down in the case of Besson v. Eveland, 26 E., 468 upon which we rely.

The court said at page 471 Besson's case as to knowledge on part of the wife:

"In the case under consideration both deeds, made to the husband, were recorded soon after their execution and if the husband can be believed, his wife knew they were made to him, and that she was permitting him to hold himself out to the world, constantly, as the absolute owner of the lands, and to incur debts on the credit which such ownership gave him."

AND AS TO CREDITOR'S RELIANCE AT PAGE 471:

"It is clear, *the debt*, the complainants are seeking to recover *was contracted, in part* at least, on the credit which the debtor obtained as the apparent owner of these lands."

AS TO THE INJUSTICE IF NO ESTOPPEL IS APPLIED, BESSON'S CASE.

"Having constantly consented he should hold himself out to the world as the owner of

this property and contract debts on the credit of it, up to the very hour of his disaster, it would be against the plainest principles of justice, and utterly subversive of everything like fair dealing, to permit her to step in now and withdraw from the process of the law, put in motion by his creditors, *the very property she had permitted him year after year, to represent to be his*, and the apparent ownership of which had given him his business and standing."

NEGLIGENCE ON WIFE'S PART NO DEFENSE TO ESTOPPEL, BESSON CASE, PAGE 472:

"A wife who is herself the instrument of deception, or who, contributes to its success by countenancing it may, with justice, be charged with the consequences of her conduct"—"the rule thus stated is simply a reasonable application of that great maxim of justice, which declares that he who is silent when conscience requires him to speak, shall not be permitted to speak when conscience requires him to be silent, but every transaction falls fairly within its operation where an innocent person, exercising reasonable ~~operation~~ prudence has been misled to his injury by false lights or appearances held out with the consent or knowledge of the person subsequently alleging that the true state of affairs was totally different from what it seemed."

It therefore follows that we are not here concerned with what sums of money may be owing to the wife by her husband as an action between them-

selves will settle that question; we are solely concerned by reason of the trust transaction (resulting trust) and title to deed in the husband, with the doctrine of estoppel.

Law in Reply to Point III.

The court should declare a resulting trust, but not in the nature of a mortgage to the extent of the money actually advanced by Mrs. Oneto to her husband. The court in the case of *Mayer v. Kane*, 69 E., 733, at page 737 said:

"There is not, therefore, present in this case the element of participation on the part of the wife which causes the application of the principle illustrated in the cases cited in the case of Mertens v. Schlemme, 68 N. J. Eq., 544 (Vice Chancellor Garrison, 1905). These cases all rest upon a finding of fact that the wife permitted her property to stand in the name of her husband, and by that fact is estopped to deny, as against his creditors who trusted him upon the faith of his apparent ownership, that he was the owner.

Since there is no occasion to apply the doctrine of estoppel to the wife in this suit, then the equities of the creditors of the husband and the equities of the wife must be adjusted with respect to each other."

In our case there is occasion to apply the doctrine of estoppel.

In conclusion we therefore submit that the decree appealed from should be affirmed in toto with costs.

February Term 1926.

Respectfully submitted,

ANTHONY P. LA PORTA,
Solicitor for and of Counsel
with Complainant-Appellee.

[43526]