

## INDEX

	Page
Bill of Complaint .....	1
Schedule A .....	6
Schedule B .....	8
Robert G. Beck's Will .....	11
Chancery Subpoena .....	13
Answer of Defendant, George D. Beck .....	17
Answer of Defendant, Louise C. Gallagher ..	19
Replication to Answer of Defendant, George D. Beck, Executor, Etc. ....	22
Replication to Answer of Defendant, Louise C. Gallagher .....	23
Order of Reference .....	24
Order of Designation .....	25
Order of Continuance .....	27
Letter of Maja Leon Berry, V. C. ....	28
Final Decree .....	30
Notice of Appeal .....	32
Petition of Appeal .....	33
Stipulation .....	35
Proceedings Before Maja Leon Berry, V. C.	37
Bill of Complaint .....	69
Petition .....	73
Order to Show Cause .....	81
Answering Affidavit .....	84
Answer .....	93
Replication .....	98
Order of Reference .....	99

	Page
Subpoena to Answer .....	101
Subpoena ad Respondum .....	104
Designation .....	105
Conclusions .....	107
Final Decree .....	116
Clerk's Certificate .....	118

## WITNESSES

*Complainant's:*

Helen M. Beck,		
Direct .....		55
C. Henry Craig,		
Direct .....		56
Cross .....		60
Clarence McGill,		
Direct .....		61
Francis J. Judd,		
Direct .....		63
Elizabeth W. Steele,		
Direct .....		65
Cross .....		66

## EXHIBITS.

	Offered Page
Exhibit C-1—Bank book of the account of Beck & Beck at the First Nat'l Bank of Spring Lake .....	56
Exhibit C-2—Loose leaf ledger sheets and signature card .....	56
Exhibit C-3—Checks in handwriting of Robert Beck .....	56

	Offered Page	Printed Page
Exhibit C-4—Bound book of check stubs .....	58	
Exhibit C-5—Another bound book of check stubs .....	58	
Exhibit C-6—Letter dated Feb. 20, 1926, in Mr. Beck's handwriting ..	58	
Exhibit C-7—Deposit slips in Mr. Beck's handwriting .....	59	
Exhibit C-8—Checks in Mr. Beck's handwriting, designated in Schedule B of proof of claim .....	60	
Exhibit C-9—Certified copy of deed of Morris Ave. property .....	62	
Exhibit C-10—Proof of Claim of Helen M. Beck against the Estate of Robert G. Beck .....	62	118

Exhibit 10-4 - Horns Book of Robert  
 ...  
 Exhibit 10-3 - Another Horns Book of  
 ...  
 Exhibit 10-2 - Letter dated 1/20/1930  
 1930 in Mr. Beck's handwriting ... 58  
 Exhibit 10-1 - Document filed in N.J.  
 Beck's handwriting ... 59  
 Exhibit 10-2 - (Same as Mr. Beck's  
 handwriting designated in Exhibit  
 B of proof of claim ... 60  
 Exhibit 10-3 - Certified copy of deed of  
 ...  
 Exhibit 10-4 - Proof of Claim of Helen  
 M. Beck against the Estate of Rob-  
 ert G. Beck ... 62, 118

New Jersey State Library

# New Jersey Court of Errors and Appeals

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## BILL OF COMPLAINT.

(Filed August 23, 1928)

10

### IN CHANCERY OF NEW JERSEY

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

The complainant, Helen M. Beck, residing in the Borough of Spring Lake, in the County of Monmouth and State of New Jersey, says that: 20

(1) Complainant is the widow of Robert G. Beck who died on November 25th, 1926, leaving a Last Will and Testament, which was duly probated on December 23rd, 1926, by the Surrogate of the County of Monmouth.

(2) George D. Beck, the executor named in said Will duly qualified and has been and still is acting in such capacity.

(3) Prior to the entry of any rule barring creditors of the said Robert G. Beck, deceased, and on May 24th, 1928, service was duly acknowledged of a proof of the claims made by complainant and hereinafter specifically designated and described. 30

(4) On June 2nd, 1928, due notice was given by the said executor of the dispute of the said claims.

(5) Complainant and the said Robert G. Beck were married on June 26th, 1906, and remained 40

*Bill of Complaint*

husband and wife during the time hereinafter mentioned until his death.

10 (6) In October, 1921, the said Robert G. Beck was desirous of purchasing certain premises in the Borough of Spring Lake, Monmouth County, New Jersey, and to that end induced complainant, out of her separate estate and by way of a loan to her husband, to advance to the owner thereof, a deposit of Four Hundred Dollars (\$400.00), and thereafter, on November 21st, 1921, when title to said premises was taken in the name of the said Robert G. Beck, complainant, at the request of her husband, advanced to the owner, out of her  
20 separate estate and by way of a loan to her husband, the sum of Two Thousand Fifty-three Dollars and fifty cents (\$2,053.50).

(7) The premises aforementioned are more particularly described as follows:

30 All those lands and premises, situate lying and being in Wall Township, in the County of Monmouth and State of New Jersey, known and designated as Lot No. 6 in Block 39 on a plan of lots of Spring Lake duly filed in the office of the Clerk of said County on the 16th day of May, 1878, bounded and described as follows:

40 BEGINNING at a point in the northerly side or line of Morris Avenue, distant 250 feet westerly from the intersection of the northerly side or line of Morris Avenue with the westerly side or line of Third Avenue; thence (1) westerly along the northerly side or line of said Morris Avenue fifty

*Bill of Complaint*

feet; thence (2) northerly at right angles to the first course one hundred and fifty feet; thence (3) easterly parallel with the first course fifty feet; thence (4) southerly again at right angles to the first course one hundred and fifty feet to the point or place of beginning. 10

Being the same premises described in a deed from Clarence Megill and Hattie E. Megill, his wife, to Robert G. Beck, bearing date the 21st day of November, 1921, and recorded in the Monmouth County Clerk's Office in Book 1162 of Deeds, on pages 451, etc. 20

(8) Subsequent to said purchase, the complainant, out of her separate estate and by way of a loan to her husband, advanced, at his request, and for the uses and purposes relating to said premises, as are more particularly set forth in a schedule annexed hereto, and marked Schedule A, the sums of moneys therein set forth aggregating, inclusive of the two sums first aforementioned, the sum of Five Thousand Two Hundred Thirty-four Dollars and eighty cents (\$5,234.80), which amount has not been repaid to complainant, nor has any part thereof. 30

(9) Complainant is informed and verily believes that said premises have been sold by said executor by virtue of the power in him vested by the Last Will and Testament of the said Robert G. Beck, deceased, a copy of which is annexed hereto, and that the money derived from said sale paid to said executor who now has the custody of the same. 40

*Bill of Complaint*

(10) Prior to the marriage of the complainant with the said Robert G. Beck, complainant was engaged in the general novelty and sportswear business, conducting the same for a time in Atlantic City, and thereafter at Spring Lake, New Jersey.

(11) While at Spring Lake, complainant's husband aided her in keeping the books of account of said business and also in making deposits.

(12) Subsequent to the death of her said husband, complainant discovered that he had, unknown to her, cashed divers checks of complainant's customers, and withheld cash paid by customers, which checks and cash aggregate Two Thousand Four Hundred Thirty-three Dollars and sixty-two cents (\$2,433.62), and are more particularly described in Schedule B annexed hereto.

(13) As more particularly appears by the Will of the said Robert G. Beck, hereunto annexed, his sister, Louise C. Gallagher is named as a devisee and legatee together with complainant, there being named in said Will no other beneficiaries.

Complainant is without adequate remedy in the Courts of Law, and therefore prays:

(1) That George D. Beck, executor of the Last Will and Testament of Robert G. Beck, deceased, and Louise C. Gallagher, who are the defendants to this suit, may answer this Bill of Complaint and each statement therein made.

*Bill of Complaint*

(2) That an account may be taken of the amount due to complainant from the Estate of the said Robert G. Beck, deceased, and that the executor thereof may be ordered and decreed to pay to complainant the moneys which may be found owing to her on such accounting. 10

(3) That a Writ of Subpoena may issue commanding said defendants to answer this Bill of Complaint and to abide by such decree as this Court may make in the premises.

(4) That complainant may have such other and further relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience. 20

APPLEGATE, STEVENS, FOSTER,  
LEONARD & REUSSILLE,  
Solicitors of Complainant.

Lester C. Leonard,  
Of Counsel.

30

40

*Bill of Complaint—Schedule A*

## SCHEDULE A.

	Oct. 19, 1921	#1354	C. Megill	\$ 400.00
	Nov. 21, "	1366	C. Megill	2,053.50
	Nov. 21, "	1367	L. Newman, Int. on Mort.	45.00
	Dec. 14, "	1380	P. C. Brown, Insurance	31.19
10	Dec. 14, "	1381	H. H. Moore, Inc., Insurance	30.38,
	Jan. 10, 1922	1400	B. B. Pearce	30.50
	Jan. 20, "	1404	W. W. Harrington	30.00
	Jan. 27, "	1409	Cash, Wages	50.00
	Feb. 4, "	1411	Cash Wages	50.00
	Feb. 4, "	1412	Miller & Mitchell	50.00
	Feb. 11, "	1413	" " "	50.00
	Feb. 11, "	1414	" " "	50.00
	Feb. 18, "	1417	Cash	50.00
20	Feb. 20, "	1419	Mitchell	350.00
		1422	H. H. Moore, Insurance	65.52
		1426	Lewis Lbr. Co.	13.50
		1430	H. R. Todd	75.00
	May 10, "	1441	L. Newman, Interest	45.00
	May 31, "	1446	W. W. Trout, Tax	22.00
	June 12, "	1458	F. Scammetillo	93.00
	July 19, "	1479	P. C. Brown	21.77
	Dec. 30, 1924	1959	H. H. Moore, Inc., Insurance	53.11
	Aug. 7, "	1878	W. W. Trout	18.50
30	May 31, "	1825	" " "	22.40
	May 10, "	1820	L. Newman, Interest	45.00
	Nov. 9, 1923	1759	" " "	45.00
	Nov. 10, 1924	1930	" " "	45.00
	Dec. 20, 1924	1961	P. C. Brown	51.92
	May 4, 1925	2002	H. H. Moore, Inc.	17.75
	May 12, "	2004	L. Newman	45.00
	Mar. 1, 1922	*1423	T. E. Alger	125.00
	Mar. 22, "	1427	Cash	50.00
40	Apr. 15, "	1434	Lewis Lumber Co.	19.21
	June 6, "	*1455	H. R. Todd	40.00

*Bill of Complaint—Schedule A*

July 10, “	1468	Newark News	3.24	
July 20, “	1480	S. M. Bennett	9.45	
Aug. 4, “	1491	H. R. Todd	5.50	
Aug. 31, “	1524	Sheet Metal Shop	6.50	
Sept. 27, “	1547	Coast Gas piping	22.00	
Oct. 17, 1922	1562	R. A. Algor	104.09	10
Oct. 17, “	1563	Coast gas	15.00	
Oct. 31, “	1572	Boro. of Sp. Lake, Water	19.50	
Nov. 2, “	1576	C. Megill	3.25	
Nov. 10, “	1580	L. Newman	45.00	
Nov. 18, “	1587	H. G. Clayton	38.90	
Nov. 29, “	1591	W. W. Trout, taxes	22.00	
Jan. 20, 1923	1638	C. Megill	82.43	
May 10, “	1645	L. Newman	45.00	
June 6, “	1650	H. R. Todd	40.00	20
May 31, “	1651	Boro. of Sp. Lake, Taxes	22.00	
July 17, “	1689	Boro. of Sp. Lake, Water	12.50	
July 10, “	1686	Newark News	1.62	
July 17, “	1688	Newark News, rental	1.62	
Aug. 3, “	*1701	C. Rhodes	10.00	
Oct. 23, “	1751	Boro. of Sp. Lake, ext.	2.00	
Nov. 30, “	1771	W. W. Trout, taxes	22.00	
July 1, 1924	1846	T. E. Algor	30.00	
Aug. 23, “	1890	H. Longman	200.00	
Aug. 7, “	1876	E. Rolle, refund on rent	25.00	30
Oct. 4, “	1914	T. E. Bennett	14.00	
Dec. 1, “	1939	W. W. Trout, taxes	22.40	
Dec. 10, “	*1950	T. E. Algor	17.50	
Dec. 30, “	*1959	H. H. Moore	56.96	
June 1, 1925	2009	Boro. of Sp. Lake	28.84	
June 20, “	2018	H. H. Moore, Inc.	56.95	
July 31, “	2034	Boro. of Sp. Lake	21.80	
Feb. 20, “	1981	H. H. Moore, Inc.	43.50	
			\$5,234.80	40

*Bill of Complaint—Schedule B*

## SCHEDULE B.

## CHECKS CASHED AND CASH RETAINED.

	Nov. 21, 1921	Campion	\$10.55*
		Stumer	19.00*
10		E. Eliot, Jr.	32.50*
	Jan. 11, 1923	Griffen	4.50
		Margaret Davison	22.50
		Mrs. Clifford Hemphill	34.95§
	Nov. 21, 1922	Bowman	14.75§
		Folwell	3.60
	Aug. 21,	Sara F. Hillman	1.70
		Kate McCrane	15.00
		Lucy S. Maxwell	18.00
20		Alice Sperling, J. C. P. & L. Co.	37.50
	Aug. 15,	Pearl S. Pethgrew	23.00
		Joanna I. Devoll	23.00
	Aug. 15, 1922	Mrs. Arthur C. Diamond	55.00
	Sept. 18, 1922	Phyllis Dixon	3.00
		Mrs. Cross	4.90
		Mrs. A. W. Moreau, Free- hold	14.25
		Alice E. Hoff	20.75
30		Mrs. R. C. Maxwell	88.00
		Mrs. C. N. Lindley	64.75
	Dec. 28, 1922	Bills—	20.00
		McCormick	97.00
		Chesebrough	83.50
	July 17, 1922	Whittendale	2.95
		Campion	6.35
	Dec. 9, 1922	A. Leiber	15.75
		Miss Gillig	13.50
40		“	9.00

*Bill of Complaint—Schedule B*

Dec. 12, 1922	Stockton	.65	
	Micholson	8.25	
	Mrs. Griffen	9.85	
Nov. 24, 1922	J. G. Conyngtain	40.00	
	Florence Webber	35.00	
	Alice E. Hoff	15.00	10
No date	Ellis	3.15	
	Maria Allen	50.94	
July 6, 1922	Borden	22.00	
Nov. 16, 1921	B. W. Leigh	4.25	
	J. Connell Murraray	5.65	
	Mrs. W. J. J. Bowman	6.00	
	Mrs. Dixon	10.05	
	Mrs. W. E. Balken	28.50	
	Mrs. Thos. Morrison	32.95	20
Nov. 23, 1921	McGee	7.75	
	Mrs. G. H. Miles	9.75	
	O'Sullivan	10.70	
	S. J. Cawley, Jr.	13.25	
Nov. 26,	Miss Morrison	9.78	
Nov. 28,	Miss E. Bowman	21.70	
Nov. 30, 1921	Gen. E. C. Murray	2.95	
	Florence C. Justice	10.45	
Sept. 28, 1921	Robinson	18.00	
Sept. 28,	Teal	6.25	30
	Holin	5.00	
	Bowman	1.00	
Sept. 27, 1921	Miss Leigh	2.75	
	Cunningham	10.00	
	F. W. Harper	30.00	
	Beck & Beck	7.00	
	Pennies	.25	
Sept. 30,	Hicks	51.25	
	Miss Champion	2.10	40

*Bill of Complaint—Schedule B*

	Sept. 24,	Bills	88.00
		Holin	2.00
		Gannor	26.00
		Scammell	27.65
		Day	37.00
10		Payson	70.00
	Sept. 3, 1925	Elz. G. Morrison	15.20
		Mary Regis Hetzler	16.25
	Oct. 14,	Campion	1.25
		Havely	4.10
		Potts	6.25
		Agnes	12.00
		McC. Brace	23.25
		Fitch	23.20
20		Leigh	30.75
	Oct. 18, 1921	A. Sadler	1.05
		C. C. Kerr	2.30
		F. H. Allen	58.50
	Oct. 22, 192?	Cash	7.00
		Etzenbach	3.75
		Mrs. Wm. Green	4.75
		T. C. Jenkins	6.15
		Holin	10.00
		"	25.00
30		Humes	44.00
	Oct. 30, 1921	Davis	5.85
	Nov. 6, "	Lieber	13.75
		Hemphill	12.10
		Krementz	3.25
	Oct. 5, "	Hillman	4.10
		Nan Stengel	18.50
		Holin	10.00
		Moss	28.50
40		J. B. Edwards	35.00

*Bill of Complaint—Will of Robert G. Beck*

	Mr. Geo. D. Clews	35.00	
	Miss A. S. Weber	21.75	
	Cash Bill	50.00	
Oct. 8, “	F. D. Ramsey	12.00	
	C. C. Baldwin	14.55	
	E. M. Marshall	18.00	10
	M. M. Johnson	57.00	
	C. H. Sellon	59.30	
Oct. 28, “	Krementz	3.25	
	Holin	5.00	
	Hemphill	12.10	
	Holin	15.00	
Oct. 28, 1921	Kendall	33.00	
	Kendall	40.00	
	C. L. Taylor	50.80	20
	Gail Maxwell	79.00	
		<hr/>	
		2,433.62	

Note: Items with a star (\*) have a cross (X) mark. Between the two items with a section (§) mark there is an arrow, also in red ink.

---

“Robert G. Beck’s Will

30

## COPY OF WILL

IN THE NAME OF GOD, AMEN, I, Robert G. Beck, of sound mind, memory and understanding, and mindful of the uncertainties of life, do hereby ordain the following instrument as and for my last will and testament as follows:

40

*Bill of Complaint—Will of Robert G. Beck*

FIRST: It is my will and I do direct that all my just debts and expenses, including funeral expenses, be paid as soon as may be convenient after my decease.

10 SECOND: All the rest, residue and remainder of my property of every nature and description whatsoever, I hereby give, devise and bequeath unto my wife, Helen McC. Beck and my sister, Louise C. Gallagher, in the following proportion, to wit:

One-third of the same to my wife, Helen McC. Beck, and two-thirds of the same to my sister, Louise C. Gallagher.

20 THIRD: I further ordain and direct that my executor hereinafter named, as soon as may be convenient after my decease, shall sell all of my real estate and personal property, of every nature and description whatsoever, and divide the proceeds thereof between my wife, Helen McC. Beck and my sister, Louise C. Gallagher, in the proportions which I have bequeathed and devised to them respectively herein.

30 FOURTH: I hereby nominate and appoint my brother, George D. Beck, of Bradley Beach, New Jersey, executor of this my last will and testament, to serve without bond for the faithful performance of his duties. In case my brother, George D. Beck, should depart this life before I do, then and in that event I hereby constitute and appoint the Asbury Park Trust Company of Asbury Park, New Jersey, executor of this my last  
40 will and testament.

*Chancery Subpoena*

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 28th day of September, A. D. 1926.

ROBERT G. BECK (L. S.)

Signed, sealed, published and declared by the said Robert G. Beck as and for his last Will and Testament, in the presence of us, who, in the presence of each other and of the testator, and at his request, subscribed our names as witnesses thereto. 10

HELEN MESSLER, Bradley Beach, N. J.  
WARD KREMER, Asbury Park, N. J." 20

A true copy.  
Ferd Garretson.

---

**CHANCERY SUBPOENA.**

(Filed September 26, 1928)

New Jersey, to wit, The State of New Jersey, to George D. Beck, Executor of the Last Will and Testament of Robert G. Beck, deceased, and Louise C. Gallagher. 30

GREETING: WHEREAS a bill of complaint has lately been exhibited against you in our Court of Chancery by Helen M. Beck to be relieved touching the matters therein contained.

40

*Chancery Subpoena*

THEREFORE, we command you, if you intend to make a defense, that you file an answer to said bill in the office of the Clerk of our said court at Trenton, on or before the expiration of twenty days from and after the Fourth day of September 1928, and in default thereof such order or decree will be made against you as the Court shall think equitable and just.

WITNESS, his Honor, Edwin Robert Walker, our Chancellor, at Trenton, the Twenty-fourth day of August, in the year of our Lord one thousand nine hundred and twenty-eight.

20

APPLEGATE, STEVENS, FOSTER,  
LEONARD & REUSSILLE,  
Sol'r.

THOMAS BARBER,  
Clerk.

*Chancery Subpoena*

(Endorsed on back):

70-60

## IN CHANCERY OF NEW JERSEY

Between		10
HELEN BECK	) Compl't, Sub. and ad GEORGE D. BECK, Executor, &c., Resp. et al., Def't.	

Ret'ble Sept. 24th A. D. 1928. 20

APPLEGATE, STEVENS, FOSTER,  
LEONARD & REUSSILLE,  
Sol'r.

Filed Sept. 26, 1928

August 27, 1928

I hereby deputize and appoint

Ira W. Boyce

for me and in my name to serve this writ. 30

Witness my hand and seal the day and year above written.

HARRY N. JOHNSON (L. S.)  
Sheriff of Monmouth County.  
By John A. Butler,  
Under Sheriff.

NOTE—Strike out the words "Under Sheriff"  
where deputization is made by sheriff personally. 40  
Sheriff's fees \$5.38.

*Chancery Subpoena*

Received in Monmouth County Sheriff's Office,

August 25, 1928

at 8:30 o'clock a. m. 1928.

10

HARRY N. JOHNSON,  
Sheriff.

I do hereby depute and appoint Ira W. Boyce, my Special Deputy to serve and execute the within writ.

Witness my hand this 27th day of August, A. D. 1928.

HARRY N. JOHNSON,  
Sheriff.

20

## RETURN

Duly and personally served a true copy of the within Chancery subpoena on George D. Beck, Executor of the Last Will and Testament of Robert G. Beck, deceased, August 29, 1928 at his usual place of abode, 311 Fifth Avenue Bradley Beach, New Jersey.

HARRY N. JOHNSON, Sheriff.

30

Per Ira W. Boyce—Special Deputy.

40

**ANSWER OF DEFENDANT, GEORGE D. BECK.**

(Filed September 21, 1928)

**IN CHANCERY OF NEW JERSEY**

Between HELEN M. BECK,  Complainant, and GEORGE D. BECK, executor, etc., and LOUISE C. GALLAGHER, Defendants.	}	On Bill, etc., Answer of Defendant, George D. Beck, Execu- tor of the Estate of Robert Beck, deceased.	10
--	---	--	----

The defendant, George D. Beck, executor of the last Will and Testament of Robert Beck, answering the complainant, Helen M. Beck, in the above entitled cause, says that: 20

1. Paragraph One is admitted.
2. Paragraph Two is admitted.
3. Paragraph Three is admitted.
4. Paragraph Four is admitted.
5. Paragraph Five is admitted. 30
6. Paragraph Six is denied.
7. Paragraph Seven is admitted.
8. Paragraph Eight is denied.
9. Paragraph Nine is admitted.

10. As to the allegations in Paragraph Ten this defendant has no knowledge or information sufficient to form a belief and leaves the complainant to her proofs. 40

*Answer of Defendant, George D. Beck*

11. Paragraph Eleven is denied and this defendant says that the deceased, Robert G. Beck, was engaged in business with the complainant as a partner at Spring Lake, Monmouth County, New Jersey.

10

12. Paragraph Twelve is denied.

13. Paragraph Thirteen is admitted.

14. This defendant denies that Robert G. Beck at the time of his death was indebted to the complainant in any way.

15. This defendant denies that the complainant had at any time or has now any interest whatever  
20 in the property of the said Robert G. Beck referred to in Paragraph Seven of the complaint.

16. This defendant denies that any moneys are due to the complainant out of the proceeds of the sale of the said property.

Wherefore this defendant prays to be hence dismissed and to have his costs in that behalf most wrongfully sustained.

30

## FIRST DEFENSE

This defendant will move to dismiss the bill of complaint in the above entitled cause at the final hearing thereof on the ground that the complainant has a complete and adequate remedy at law.

## SECOND DEFENSE

This defendant will move to dismiss the bill of  
40 complaint in the above entitled cause at the final

*Answer of Defendant, Louise C. Gallagher*

hearing thereof on the ground that all the matters in controversy between Robert G. Beck, deceased, and Helen M. Beck, complainant herein, were completely adjudicated in a cause in this Court wherein Robert G. Beck was complainant and Helen M. Beck, defendant.

10

WARD KREMER,  
Solicitor of Defendant,  
George D. Beck, executor of the Estate of Robert Beck, deceased.

A true copy.

Ferd Garretson,  
Clerk.

20

---

**ANSWER OF DEFENDANT, LOUISE C. GALLAGHER.**

(Filed September 29, 1928)

IN CHANCERY OF NEW JERSEY

Between

HELEN M. BECK,

Complainant,

and

GEORGE D. BECK, executor, etc.,  
and LOUISE C. GALLAGHER,

Defendants.

30

On Bill, etc.

The defendant, Louise C. Gallagher, residing in the Borough of Bradley Beach, County of Mon-

40

*Answer of Defendant, Louise C. Gallagher*

mouth and State of New Jersey, answering the complaint in the above entitled cause, says that:

1. Paragraph One is admitted.
2. Paragraph Two is admitted.
- 10 3. Paragraph Three is admitted.
4. Paragraph Four is admitted.
5. Paragraph Five is admitted.
6. As to the allegations in Paragraph Six this defendant has no knowledge or information sufficient to form a belief and leaves the complainant to her proofs.
- 20 7. Paragraph Seven is admitted.
8. As to the allegations contained in Paragraph Eight this defendant has no knowledge or information sufficient to form a belief and leaves the complainant to her proofs.
9. Paragraph Nine is admitted.
10. As to the allegations contained in Paragraph Ten this defendant has no knowledge or in-  
30 formation sufficient to form a belief and leaves the complainant to her proofs.
11. As to the allegations contained in Paragraph Eleven this defendant has no knowledge or information sufficient to form a belief and leaves the complainant to her proofs.
12. As to the allegations contained in Paragraph Twelve this defendant has no knowledge or  
40 information sufficient to form a belief and leaves the complainant to her proofs.

*Answer of Defendant, Louise C. Gallagher*

13. Paragraph Thirteen is admitted.

Wherefore this defendant prays to be hence dismissed and to have her costs in that behalf most wrongfully sustained.

## FIRST DEFENSE

10

This defendant will move to dismiss the bill of complaint in the above entitled cause at the final hearing thereof on the ground that the bill of complaint does not state any ground of relief nor any cause of action against this defendant.

## SECOND DEFENSE

This defendant will move to dismiss the bill of complaint in the above entitled cause at the final hearing thereof on the ground that the complainant has a complete and adequate remedy at law. 20

## THIRD DEFENSE

This defendant will move to dismiss the bill of complaint in the above entitled cause at the final hearing thereof on the ground that all the matters in controversy between Robert G. Beck, deceased, and Helen M. Beck, complainant herein, were completely adjudicated in a cause in this Court wherein Robert G. Beck was complainant and Helen M. Beck, defendant. 30

WARD KREMER,  
Solicitor of Defendant,  
Louise C. Gallagher.

A true copy.  
Ferd Garretson,  
Clerk.

40

REPLICATION TO ANSWER OF DEFENDANT,  
GEORGE D. BECK, EXECUTOR, ETC.

(Filed October 2, 1928)

70-60

19 IN CHANCERY OF NEW JERSEY

Between

HELEN M. BECK,

Complainant,

and

20 GEORGE D. BECK, Executor of the  
Estate of Robert G. Beck,  
deceased, and LOUISE C. GAL-  
LAGHER,

Defendants.

On Bill, etc.

The complainant joins issue on the Answer of  
the defendant, George D. Beck, Executor of the  
Estate of Robert G. Beck, deceased.

30 APPLEGATE, STEVENS, FOSTER,  
LEONARD & REUSSILLE,  
Solicitors of Complainant.

A true copy.  
Ferd Garretson,  
Clerk.

REPLICATION TO ANSWER OF DEFENDANT,  
LOUISE C. GALLAGHER.

(Filed October 2, 1928)

70-60

IN CHANCERY OF NEW JERSEY

10

Between HELEN M. BECK, <p style="text-align: right;">Complainant,</p> and GEORGE D. BECK, Executor of the Estate of Robert G. Beck, deceased, and LOUISE C. GAL- LAGHER, <p style="text-align: right;">Defendants.</p>	}	On Bill, etc. <p style="text-align: right;">20</p>
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The complainant joins issue on the Answer of  
the defendant, Louise C. Gallagher.

APPLEGATE, STEVENS, FOSTER,  
LEONARD & REUSSILLE,  
Solicitors of Complainant. 30

A true copy.  
Ferd Garreetsen,  
Clerk.

## ORDER OF REFERENCE.

(Filed October 10, 1928)

70-60

## IN CHANCERY OF NEW JERSEY

10

Between

HELEN M. BECK,

Complainant,

and

GEORGE D. BECK, Executor etc.,  
*et al.*,

Defendants.

On Bill, etc.

20

This matter being opened to the court by Lester C. Leonard, of the firm of Applegate, Stevens, Foster, Leonard and Reussille, solicitors of the complainant, and it appearing that Ward Kremer, solicitor for the defendants, has consented hereto:

30 It is, on this 10th day of October nineteen hundred and twenty-eight, on motion of Lester C. Leonard, of the firm of Applegate, Stevens, Foster, Leonard and Reussille, solicitors of the complainant, ORDERED that the above entitled cause be referred to Hon. M. L. Berry one of the Vice Chancellors of this court, to hear the same for the Chancellor, and to report thereon to him and to advise what order or decree should be made therein.

40

E. R. WALKER,  
C.

*Order of Designation*

I hereby consent to the entry of the foregoing Order.

WARD KREMER,  
Solicitor of Defendants.

A true copy.

Ferd Garretson,  
Clerk.

10

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**ORDER OF DESIGNATION.**

(Filed October 22, 1928)

70-60

20

IN CHANCERY OF NEW JERSEY

Between

HELEN M. BECK,

Complainant,

and

GEORGE D. BECK, Executor, etc.,  
*et al.*,

Defendants.

On Bills, etc.

30

Upon application of Lester C. Leonard, of the firm of Applegate, Stevens, Foster, Leonard and Reussille, solicitors for the complainant, it appearing that the above entitled cause was on the tenth day of October, nineteen hundred and twenty-eight, referred to Honorable M. L. Berry, 40

*Order of Designation*

one of the Vice Chancellors, to hear the same for the Chancellor, and advise what order or decree should be made therein, and the solicitors of the respective parties in said cause having consented to the entering of this order;

19

It is, on this twenty-second day of November, nineteen hundred and twenty-eight, ORDERED that the above entitled cause be heard at the Chancery Chambers in the City of Long Branch, on the eleventh day of April, nineteen hundred and twenty-nine, at ten o'clock in the forenoon.

MAJA LEON BERRY,  
V. C.

20

Consent is herewith given to the entry of the above order.

WARD KREMER,  
Solicitor of Defendants.

A true copy.  
Ferd Garretson,  
Clerk.

ORDER OF CONTINUANCE.

(Filed May 2, 1929)

70-60

IN CHANCERY OF NEW JERSEY

10

Between	}	On Bill, etc.,
HELEN M. BECK,		
Complainant,		
and		
GEORGE D. BECK, Executor, etc.,	}	20
<i>et al,</i>		
Defendants.		

On Bill, etc.,

20

It appearing that the solicitors of the respective parties in the above entitled cause, having consented hereto;

It is on this second day of May, 1929, ORDERED That the final hearing in said cause be and the same is hereby continued to the 24th day of October 1929, at the Chancery Chambers in the City of Long Branch at ten o'clock in the forenoon.

30

M. L. BERRY,  
V. C.

A true copy.  
Ferd Garretson,  
Clerk.

40

LETTER OF MAJA LEON BERRY, VICE  
CHANCELLOR.

COURT OF CHANCERY OF NEW JERSEY

Chambers of  
Maja Leon Berry  
10 Vice Chancellor

Toms River, N. J.  
May 21, 1930.

Hon. Ward Kremer  
Asbury Park, N. J.  
Lester C. Leonard, Esq.  
Red Bank, N. J.

Dear Sirs:  
20

In the matter of Beck v. Beck, I have received and considered the briefs filed by counsel in connection with the defendant's motion to dismiss the bill of complaint on the ground that the matters in issue in this suit are *res adjudicata* in the former suit of George D. Beck v. Helen M. Beck, also on the ground of laches. I have a very distinct recollection of the former suit and some  
30 of the facts brought out at the trial are still clear in my memory and I am of the opinion that the matters in issue in the present suit are *res adjudicata* by the decree in the former suit. This is certainly so with respect to the attempt to impress a trust upon the proceeds of the sale of the real estate described in the present bill. All of the facts which have been presented to the court in this suit in connection with that property were  
40 presented to the court in the former suit, or if not, were within the knowledge of the complain-

*Letter of Maja Leon Berry, Vice Chancellor*

ant and could have been there presented. If my memory serves me rightly, in my opinion in the former suit, although I do not have a copy of it before me, I commented on the fact that George D. Beck had received out of the present complainant's business considerable sums of money which he had invested in real estate and which would, in some measure, at least, compensate him for his services to Mrs. Beck in that business. There is no doubt in my mind but that had the present complainant been minded to do so, she could have sought and obtained an accounting by her husband in that suit and a decree impressing a trust upon the land involved, had she been entitled thereto. She did not seek that relief then and under the *res adjudicata* rule, as I understand it, she is precluded from seeking it now.

Counsel for the complainant states in his brief that at the conclusion of the hearing in the present cause the defendant's motion was confined to the single point of *res adjudicata*. The record is not before me, but I assume that that statement is correct, as my recollection is that I stated that the delay forming the basis of the charge of laches might be explained if complainant were given an opportunity to do so. I therefore at this time express no opinion upon the question of laches except to say that it would require very strong evidence on the part of the complainant to excuse her delay in prosecuting this action until after the death of her husband.

I have not overlooked the comment of counsel for complainant on the items in Schedule B

*Final Decree*

attached to the bill of complaint, but there is no doubt that these items could have been turned up upon an accounting between the parties at the time of the former suit, and they are, therefore, *res adjudicata* also; but if not, the complainant  
 10 would have an adequate remedy at law in an action against the estate for the items in that schedule.

I will, therefore, advise a decree dismissing the bill of complaint.

Very truly yours,

MAJA LEON BERRY.

20

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**FINAL DECREE.**

(Filed June 12, 1930)

IN CHANCERY OF NEW JERSEY

30	Between HELEN M. BECK,  and GEORGE D. BECK, Executor, etc., <i>et al</i> ,  Defendants.	}	On Bill, etc.,
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This cause coming on to be heard in the presence of Applegate, Stevens, Foster, Leonard &  
 40 Reussille, solicitors for the complainant, and

*Final Decree*

Ward Kremer, solicitor for the defendants, and the Court having examined the pleadings and having taken proofs orally and in open Court and having heard and considered the argument of counsel thereon; and it appearing to the satisfaction of the Court that the complainant is not entitled to the relief prayed for in the bill of complaint: 10

It is on this 12th day of June A. D. 1930, ORDERED that the bill of complaint filed herein be and the same is hereby dismissed.

And it is further ordered that the complainant pay to the defendants their costs to be taxed, and also pay to the defendants, or to their solicitor, 20 Ward Kremer, a counsel fee of Two Hundred fifty dollars; and that in the event of failure thereof execution issue therefor according to the practice of this Court.

Respectfully advised.

Maja Leon Berry

V. C.

E. R. WALKER,

C.

A true copy.

Ferd Garretson,

Clerk.

30

40

## NOTICE OF APPEAL.

(Filed August 8, 1930)

70-60

## IN CHANCERY OF NEW JERSEY

10

Between HELEN M. BECK,  Complainant,  and GEORGE D. BECK, Executor etc., <i>et al,</i>  Defendants.	}	On Bill, etc.
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20

The complainant, Helen M. Beck, hereby appeals from the Final Decree made in the above entitled cause by the Chancellor on the advice of Vice-Chancellor Maja Leon Berry on June 12, 1930, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in All Causes.

Dated, August 7, 1930.

30

APPLEGATE, STEVENS, FOSTER  
 & REUSSILLE,  
 Solicitors for and of Counsel  
 with Complainant.

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

LESTER C. LEONARD,  
 Of Counsel with Complainant.

40 A true copy.

Ferd Garretson,  
 Clerk.

## PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND  
APPEALS

HELEN M. BECK,	}	On Appeal	10
Complainant-Appellant,			
vs.			
GEORGE D. BECK, Executor etc., <i>et al</i> ,			
Defendants-Appellees.			

*To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:* 20

The petition of Helen M. Beck, the appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds herself aggrieved by a Final Decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date June 12, 1930, in a certain cause in said Court of Chancery wherein the said Helen M. Beck was complainant, and the said George D. Beck, Executor of the Last Will and Testament of Robert G. Beck, deceased, and Louise C. Gallagher, were defendants, in this respect, to wit, that in said decree complainant's Bill of Complaint was dismissed. 30

And petitioner appeals from the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in that complainant proved a cause of action, the subject matter of which had not been adjudicated in a former suit. 40

*Petition of Appeal*

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 shall seem proper.

10

APPLEGATE, STEVENS, FOSTER  
& REUSSILLE,  
Solicitors for and of Counsel  
with Appellant.

Service of the within Petition of Appeal is hereby acknowledged this 13th day of August, 1930.

20

WARD KREMER,  
Solicitor of Defendants-Appellees.

## STIPULATION.

NEW JERSEY COURT OF ERRORS AND  
APPEALS

HELEN M. BECK, Complainant-Appellant, vs. GEORGE D. BECK, Executor, etc., <i>et al</i> , Defendants-Respondents.	}	On Appeal from the Court of Chancery.	10
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WHEREAS the Honorable Maja Leon Berry, the Vice Chancellor to whom the above entitled cause was duly referred, disposed of the same on defendants' motion reserved in their Answer that a prior suit between Robert G. Beck and Helen M. Beck was *res adjudicata* of the issues raised by the pleadings in said suit and accordingly entered in a decree in favor of the defendant dismissing the bill therein; 20

AND WHEREAS Helen M. Beck, complainant, has appealed from said decree, and in order to lessen the size and costs of the printed record in said appeal; 30

It is hereby stipulated and agreed by and between the solicitors of the respective parties that the printing of the following exhibits may be omitted:

Exhibit C-1—a bank book of the account of Beck & Beck in the First National Bank of Spring Lake.

Exhibit C-2—loose leaf ledger sheets and signature card of bank relating to said account. 40

*Stipulation*

Exhibit C-3—package of checks in handwriting of Robert Beck.

Exhibit C-4—bound book of check stubs.

10 Exhibit C-5—second bound book of check stubs.  
Exhibit C-7—package of deposit slips containing notations.

Exhibit C-8—cancelled checks relating to Schedule 'B' in proof of claim.

20 Exhibit C-9—certified copy of deed from Clarence Megill *et ux* to Robert G. Beck dated November 21st, 1921 and recorded in the Monmouth County Clerk's Office November 22nd, 1921 in Book 1162 of deeds, pages 451 etc.

Exhibit C-6—letter from Robert Beck to Helen Beck dated February 20th, 1926.

APPLEGATE, STEVENS, FOSTER  
& REUSSILLE,  
Solicitors of Complainant-Appellant.

30 WARD KREMER,  
Solicitor of Defendants-Respondents.

40

PROCEEDINGS BEFORE MAJA LEON BERRY,  
VICE CHANCELLOR.

NEW JERSEY COURT OF ERRORS AND  
APPEALS

Between HELEN M. BECK, Complainant-Appellant, and GEORGE D. BECK, as Executor, etc., <i>et als.</i> , Defendants-Respondents.	}	On Bill, &c. On Appeal From Court of Chancery.	10
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Transcript of shorthand notes of proceedings 20  
 taken in the above entitled cause before HON.  
 MAJA LEON BERRY, Vice Chancellor, at the Chan-  
 cery Chambers, Long Branch, New Jersey, on  
 Thursday, the fourteenth day of November, 1929.

Appearances:

Messrs. Applegate, Stevens, Foster & Reussille,  
 Lester C. Leonard, Esq., present, Solicitors for  
 Complainant. 30

Ward Kremer, Esq., Solicitor for Defendants.

The Court: What is this case all about?

Mr. Leonard: This is a bill for an accounting  
 for moneys expended by the husband of the com-  
 plainant, the late Robert Beck, out of her separ-  
 ate estate, she having conducted a sports wear  
 business at Spring Lake, New Jersey.

In 1925 a bill was filed by Mr. Beck against his 40  
 wife for an accounting and to have a partnership

*Proceedings Before Maja Leon Berry, Vice  
Chancellor*

declared, and your Honor denied that there was a partnership and allowed no accounting.

10 The first schedule in the claim is for moneys taken out of Mrs. Beck's business, some with her knowledge and some without her knowledge and used by her husband for the purchase of a piece of property in Spring Lake, checks showing that, and then for a period of two or three years, money taken from her business by her husband to be used in the improvement of that property. It was not until some years after those deductions were made that Mrs. Beck discovered that they  
20 were made, the check books and books of account being in the possession of her husband, he more or less transacting the affairs. Mrs. Beck all the time being under the impression that the rents derived from these properties, being deposited in the account of Beck & Beck, as it was called, were being used to pay for the improvements which she knew were being made.

30 A short time prior to her husband's death, and this brought about their temporary separation, she learned that he had been drawing out of her account the money that he had put in, derived from the rents, and moreover, had been deducting from her account moneys represented by checks for the improvements on this property.

40 The second schedule has to do with checks that he obtained while he was in Mrs. Beck's store from her customers and which he cashed and never deposited. Fortunately he left a very exact record of what he did, all set forth on little

*Proceedings Before Maja Leon Berry, Vice  
Chancellor*

deposit slips. In the main he took the money and deposited it in the account, but in these specific instances he cashed the checks and the money never got into the account, and he so indicates it in his own handwriting. 10

The third schedule has to do with moneys that he drew out from time to time from the account of Beck & Beck, partly with Mrs. Beck's knowledge, and in some instances, without her knowledge.

The first schedule as to the improvements and benefits for the house includes items exceeding five thousand dollars. The schedule secondly mentioned, the cashing of checks of Mrs. Beck's customers, amounts to some two thousand dollars, and the third schedule amounts to some five thousand dollars. 20

Now, although we embodied that third schedule in our claim, namely, for five thousand dollars that he had drawn out for personal use and the like, I did not embody that claim in the bill, for the reason that between the time of the filing of the proof of claim and the filing of the bill, I sent for a copy of your Honor's conclusions in the partnership case, during that interim it having come to my attention that such a suit had been brought, and I noticed a remark in your Honor's conclusions indicating that from time to time Mr. Beck would take from that account moneys for his personal use, incidentals and the like. Under those circumstances, whether in so far as those claims amounting to five thousand dollars are con- 30 40

*Discussion*

cerned, it would be unfair to claim a return of that money, some of those items having been deducted with Mrs. Beck's knowledge, was a question that I thought might very properly be resolved in favor of the estate, and therefore I made  
10 no claim in the bill.

The Court (Examining the file): There must be something wrong here. This bill of complaint appears to have been dismissed without prejudice.

Mr. Leonard: Mr. Brinley was the solicitor of record in the partnership case, and therefore Mr. Brinley filed a bill encompassing the matter in this present suit. Rather than amend that bill, when the firm of Applegate, Stevens, Foster and  
20 others was substituted as solicitors, it was agreed that the first suit be dismissed without prejudice and thereafter the present bill was filed.

The Court: The order dismissing the bill then is filed in the wrong suit. The order dismissing the bill is in this suit here, and there is only one bill of complaint. There is no bill of complaint here.

Mr. Leonard: Your Honor will find that the  
30 bill of complaint filed is dated after the entry of the order. It must be.

The Court: No, the order dismissing the bill is not advised by me; it is signed by the Chancellor alone. It is dated the 28th day of August, and the bill of complaint in this cause is filed August 23rd.

Mr. Leonard: Of the same year?

The Court: The same year.

40 Mr. Leonard: The year afterwards?

*Discussion*

The Court: No; the order dismissing the bill is dated August 28, 1928. The bill is filed August 23rd, 1928, five days before.

Mr. Leonard: I guess we did not get it up there in time. That was the general idea, to dismiss the other suit. 10

The Court: The only difficulty is that this is filed by you under your matter, the same docket number as this bill.

Mr. Leonard: To place responsibility upon us for a mistake in the Clerk's office is somewhat unfortunate. However, there is in the Chancery Clerk's record, I think Mr. Brinley, or Wilson & Smock, were the solicitors of record. There was a substitution of solicitors in the suit. It was agreed between Judge Kremer and myself in behalf of my firm that the other bill should be dismissed, and it was. 20

The Court: Then it is placed in the other file.

Mr. Leonard: In the other file, is that right?

Mr. Kremer: I have no recollection of it now, but I won't dispute that.

The Court: The title of the cause seems to be different. One is Helen M. Beck and George D. Beck, and the other is Helen M. Beck and Louise C. Gallagher. Have you the docket number on the other one? 30

I am wondering why you are here, anyway, Mr. Leonard, in this matter. You spoke of having filed a claim with the executor and I suppose that has been disputed, but if you can file a claim, unless you are seeking to impress a trust on something— 40

*Discussion*

Mr. Leonard: Moreover, the equitable jurisdiction would be obtained by reason of the relationship between the complainant and the deceased, she, by reason of being his wife, not being able to go into a court of law.

10 The Court: Well, I will dispose of that when I come to it. Maybe I may—

Mr. Leonard: I will find a copy of that other bill of Mr. Brinley's.

Mr. Kremer: If your Honor please, our defenses to this suit are principally legal. As Mr. Leonard has stated to your Honor, in 1925, in December, Robert Beck filed a bill of complaint in this Court against his wife asking that a partnership be declared in the case of Beck and Beck. Your Honor heard that cause in January, 1926, and in the answering affidavits in the application for the appointment of a receiver, temporary application, Mrs. Beck, the complainant in the present suit, made this statement—I have her affidavit before me.

30 Mr. Leonard: Pardon me one minute. So as to avoid any misunderstanding which later might develop in the case—I have no objection, of course, and cannot object to anything she may have said by affidavit, or may have said in the former suit. However, it is my understanding it opens the door, and if they want to we are perfectly willing that they do it. Whether they open the door by reading testimony or whether they do it in the suit I suppose makes no particular difference.

40 The Court: He is talking about an affidavit made by Mrs. Beck —

*Discussion*

Mr. Leonard: It is my understanding it opens the door.

Mr. Kremer: What Mr. Leonard is seeking to do, your Honor will recall, no doubt, that it appeared that Mr. Beck had bought himself a house in Spring Lake at a price of about fifteen thousand dollars with money that came out of the business, I believe, and your Honor indicated that in so far as he was entitled to any participation in the profits of the business, that he had been well paid by the house that he had purchased out of the partnership funds, and that that took care of him, and your Honor denied his application to have a partnership relationship declared, and in that suit was filed this statement under oath by Mrs. Beck. She said: 10 20

“In the year 1921, with my permission, I permitted my husband in his own name to purchase a property located on Morris Avenue in Spring Lake with funds out of the business. That property stands in his name today and is a valuable piece of property, being worth fifteen thousand dollars.”

In that suit she filed no counterclaim, no set-off; she did not set up any matters pending between them. All of these checks, according to the bill of complaint in this suit, run back to 1921, 1922 and as far back as 1918. Everything that had to do with the business relationship between them was within her cognizance; all of these records and all that information was susceptible of being ascertained by her. She did not set any of it up. All she said was in effect he is not en- 30 40

*Discussion*

titled to be declared a partner with me because he has had some money. That was in 1925. Your Honor denied any relief in 1926; I believe some-time in 1926 he died. She then waits until the summer of 1928, two years after his death, when  
10 his mouth is stopped, so that as to the payments of all these small matters he is forever barred, we cannot hear what he has to say about that, and now she comes into court and she asks in the face of her own sworn statement to have herself declared to be the owner of this property, to say that he took it and bought it without her knowl-  
edge, that he took funds from the partnership and bought this property and that she did not  
20 know it. She wants your Honor to declare that all of these disbursements were made by him without her knowledge.

The Court: I have not examined the pleadings very carefully, but have you pleaded the former decision in this suit?

Mr. Kremer: That is why I said to your Honor that our defense is largely legal. We say the matter is *res adjudicata*; we say that if there ever  
30 was a case for the intervention of the rule of laches, this is it, because obviously Mr. Beck cannot come into Court now and explain to the Court how it was the checks were drawn in the particular transaction involved. In the bill of complaint your Honor will find a schedule of checks beginning in October, 1921—

The Court: There has not been any motion to dismiss, has there?

40 Mr. Kremer: No, because we would be deemed, as I understand it, to take the bill as a verity.

*Discussion*

The Court: Well, that is probably true, but I did not know whether these matters had been urged before or not.

Mr. Kremer: They were only urged in this way: They were urged once previously when we were before your Honor, but the case had to go off at that time. These matters were outlined and your Honor indicated that the question of laches was a very serious one. In fact, as I recall your Honor's—I don't recall exactly what you said to Mr. Leonard, but it was something to the effect that there was a serious difficulty; that you didn't think that there was much to the case—

Mr. Leonard: That is where my client got the idea. You must have told her—

Mr. Kremer: I must have told her? I never have seen her before today.

Mr. Leonard: Maybe your client told her. I never heard the Vice Chancellor make that remark.

The Court: I have no recollection about it all, but when Mr. Leonard recited his grounds of action it occurred to me that this was a matter where, if there is any relief, I should think he would have perfect relief at law. Have you a copy of my opinion in the other case?

Mr. Kremer: Yes, sir (handing same to Court).

The Court: Well, I don't remember about the other matter, but if these matters have been disposed of—

Mr. Kremer: As I said to your Honor, the schedule shows checks running back from 1921

*Discussion*

through 1925. Our query is why didn't Mrs. Beck urge these matters when the case was before your Honor. It was her duty—

The Court: What is the rule of *res adjudicata*? Isn't it that any controversy between the parties  
 10 to a suit which was or could have been adjudicated in the matter before the Court is *res adjudicata*? Isn't that correct?

Mr. Kremer: That is so, where the same subject matter and the same parties, and not only that, it is provided by the set-off statute—that I can get for your Honor in a moment—that wherever any party has any set-off or counter-claim or otherwise, at law or in equity that they  
 20 have or could have ascertained, that they must advance it or be forever barred, and in addition to that, I have a line of authorities to the effect that where the mouth of one litigant is stopped or might be stopped, that that is the underlying reason for the rule of laches, that a case should not be instituted after such time as a party who might have testified, or a person who might have testified, is no longer available or is dead. I can  
 30 conceive of no case in which the rule is more viciously offended than in this case.

The Court: Suppose I refresh my recollection by reading my conclusions in the other case. They appear to have been delivered orally from the bench (reading the conclusions). I cannot see any comment here about the house.

Mr. Kremer: If your Honor please, the matter was before your Honor. I have a copy of the  
 40 testimony here, also an account of the fact that it is in this affidavit. I am sure I can turn to the

*Discussion*

reference. As a matter of fact, on *res adjudicata* I have a line of cases. The principal case, which I have set forth at length, is less than a page, that is the opinion of Vice Chancellor Van Fleet in the case of *Peterson v. Baker*, 51 Eq., page 49, which, I think, is dispositive of this question. Will your Honor permit me to read some extracts from his opinion? 10

The Court: Yes, if it is necessary, but I am just wondering if there is sufficient now before the Court to dispose of the case, or rather to dispose of your defense of *res adjudicata*. There ought to be a record of facts upon which a decision either for or against your defense should be based, so that whichever way it goes, either side has his relief in the Court of Errors and Appeals, whichever side is offended, if they are offended. 20

Mr. Kremer: My only purpose was to shorten it.

The Court: I think that question ought to be disposed of now, but what have we upon the record upon which a decision can be based?

Mr. Kremer: We have the bill.

The Court: How about the other file? The file in the other case, is it here? 30

Mr. Kremer: No, sir; I have not ordered it. I must confess that. I have a transcript of the testimony in the other case and your Honor's conclusions.

The Court: Of course, the transcript of the testimony is not the material thing. The issues which were raised or could have been raised will be determined by the pleadings, not by the testimony which was put in. May it, for the purpose 40

*Discussion*

of this motion, or rather, for this argument, be considered that that file is in evidence, Mr. Leonard?

Mr. Leonard: Well, of course—

10 The Court: I am not asking you to consent to anything that is going to prejudice your rights—

Mr. Leonard: I think it would, decidedly. However, I don't want to take the time of the Court if the matter is going to be resolved into a question of law and have the record go in at this time, and that under the Fourth Section of the Evidence Act would involve admissions which would be somewhat prejudicial to us. I am be-  
20 tween those two positions.

The Court: How is it prejudicial to you? Here is an answer, both answers, answers filed by both defendants, pleading *res adjudicata*.

Mr. Leonard: If your Honor please, this complaint, I have a copy, I got it last night from Mr. Smock, a copy of the final decree in that suit and also a copy of the bill.

Mr. Kremer: Of our bill, and you have copies  
30 of your answers?

Mr. Leonard: I don't think I have a copy of the answer.

The Court: I suppose there can be no dispute as to these facts, that there was a bill filed and the case went to trial and it was disposed of by the entry of a decree dismissing the bill and that decree was based upon the conclusions that I have just read, and that the decree was entered some-  
40 time in 1925. What was the date?

Mr. Kremer: January, 1926.

*Discussion*

The Court: January, 1926, and the bill in this cause was filed August 23, 1928.

Mr. Leonard: I think your Honor should recognize the fact that the bill was filed by Wilson & Smock, the former solicitors, and that it was simply an agreement between Judge Kremer and our firm that in lieu of an amended bill, we thought we would have a cleaner record if it were dismissed. 10

The Court: When was the bill filed, how long before?

Mr. Leonard: A very short time before his death.

Mr. Kremer: No, a year before his death.

The Court: How long after his death, he died when? 20

Mr. Leonard: In November, 1926, the day after Thanksgiving.

The Court: November, 1926?

Mr. Kremer: If your Honor will permit me, I will get the exact date of his death from his brother.

Mr. Leonard: November 25, 1926. Of course, all this should have been brought up by the answer in lieu of a plea. As I see it, to bring it up at this time— 30

The Court: Well, the question may still be raised again, if it is raised by the answer, as to whether or not the other case was dispositive of the issues here, and if it was dispositive of the issues here, certainly we oughtn't to take up the time of taking your testimony.

Mr. Leonard: Oh, no. 40

*Discussion*

The Court: I don't think, under the circumstances, that we ought to waste any time in taking testimony. I have plenty of work that I can do more profitably to the bar and other litigants than to sit here and hear testimony which may be of  
10 no use after all.

Mr. Leonard: If your Honor feels that the motion can be decided in the absence of testimony—

The Court: Here is the situation as I see it. There cannot be any question that the checks which have been drawn and for which you claim an accounting, for the purposes of the motion I should say that might be considered, or for the  
20 purpose of considering this defense, I should say we might consider that those checks had been drawn and those moneys had been drawn by the decedent from the account of the complainant. Now, with that admission on the record, for the purpose of considering this defense, what is there more that you need to protect your rights?

Mr. Leonard: Well, I don't suppose that I need anything more, but just what the nature of this motion is and its general character, coming at this  
30 time, I am somewhat at a loss to know. Now, I don't want to be misunderstood as urging that the testimony go on, if the testimony is not going to shed any light upon the allegations in the bill. Now, if this be a motion to strike upon the ground or the doctrine of *res adjudicata*, I suppose that is the motion, although there was no notice—

The Court: There is a reservation in the answer.  
40

*Discussion*

Mr. Leonard: As I was going to say, whether there is a notice of motion or not, if this be a motion to strike my bill upon the ground of *res adjudicata*, then—

The Court: I think that may be considered as the motion which has been made, because in the third defense the defendant says: "This defendant will move to dismiss the bill of complaint in the above entitled cause at final hearing thereof upon the grounds that all matters in controversy between Robert G. Beck, deceased, and Helen M. Beck, complainant herein, were completely adjudicated in a cause in this Court wherein Robert G. Beck was complainant and Helen M. Beck defendant." Of course, it is conceded that there was such a suit and that I sat in it and disposed of it.

Now, as to the other defense, I think there is sufficient before the Court to perhaps authorize, I was going to say, the defense of laches. Maybe there is not enough before the Court, because laches, or what apparently was laches, may be explained, of course, but I am very strongly of the opinion that the matters in controversy here have already been adjudicated, or at least, that the plea of *res adjudicata* is sustained or should be sustained here, but I am not going to foreclose you on that point without giving you an opportunity to argue it in brief form or any other way that you want to. That was my impression as soon as I saw the bill or as soon as you explained what it was all about.

Mr. Leonard: The only effect of that is to foreclose one of their defenses, namely, that this

*Discussion*

was a partnership. How the doctrine of *res adjudicata* can go beyond the confines of the bill and the decree, and it seems it must if it is going to affect this suit, because the sole question before this Court under their bill was the determination of the status between these two parties. The accounting was incidental to the creation or determination of that status. He alleges in his bill that he and his wife, Helen M. Beck, were partners. It turned out that your Honor held that they were not partners. Now, my understanding of the doctrine of *res adjudicata* is that after the filing of a decree dismissing that bill forever after any litigated party is barred from setting up that Robert G. Beck and Helen M. Beck, his wife, were partners.

The Court: There is no doubt but what it goes that far.

Mr. Leonard: Now, how can it go any further?

The Court: Why, because the policy of the Courts is to settle in one controversy all matters between the parties which were or may be drawn in issue, over the subject matter of that suit. Now, the subject matter of that suit was at least in part the very subject matter which is mentioned in this suit, namely, the use of the funds of this partnership, so-called, by the complainant in that suit. I held that it was not a partnership. Apparently from my conclusions, many of these checks which are the subject matter of this controversy, were considered there, because I mention the fact that he drew these funds pretty much as he chose, with her permission.

*Discussion*

Mr. Leonard: Your Honor will recall that at the very outset of our opening, when I read those conclusions I had before me a claim filed with the estate containing those three schedules, and when I saw the words in this conclusion to the effect that he drew from time to time checks, personal warrants and the like, I eliminated five thousand dollars worth of checks for his personal allowance, which was already set forth in a separate and distinct schedule. I eliminated bodily that schedule, that was based upon withdrawals, not so much upon the idea that the doctrine of *res adjudicata* should have anything to do with it, but because the Court having based its decision somewhat upon the fact that he from time to time was permitted to and did in fact draw for his personal wants, and he cannot be heard to say that he was a partner, and that it would be unconscionable to come into Court and then make a claim for Schedule C, as we describe it. The other two claims before this Court, I think with propriety this accounting might be made. ( I don't know whether it should be on the record or off the record.) Schedule 2 here, the subject matter of schedule 2 was discovered very shortly—either a little before or immediately after his death. Now, clearly this woman should not be foreclosed as to rights of which she did not know at the time of this other suit.

The Court: Well, that is a pretty broad statement. If she could have found out, as no doubt she could, by an examination of the records and accounts, there is no reason why the knowledge should not have been imputed to her.

*Discussion*

Mr. Leonard: That comes under the doctrine of laches, doesn't it?

10 The Court: Yes. Let me tell you what I think about this case. I am going to give you an opportunity to argue and brief these questions of *res adjudicata*. I have a very strong impression that it would be highly inequitable, aside from the question of *res adjudicata* to permit this woman to come in here now after the man is gone and seek to recover from his estate what she might have recovered from him during his lifetime if she had been so minded, but there is no definite rule which says what is and what is not laches. It all depends on circumstances. Of course, her  
20 delay may be subject to explanation, but I am going to first consider the question as to whether or not the former suit is *res adjudicata* here, and if I decide that it is not, then I will permit you to take testimony in this cause, which is apparently one of an accounting, before a Master and then I will consider the other legal questions at that time, after the coming in of the Master's report, but I am not going to waste time now in taking  
30 testimony.

Mr. Leonard: If I may be permitted to make a counter-suggestion—our proof in this case will take about ten minutes and we rest. That is all the time our proof will take. We have twice had the cashier of the Spring Lake bank, Mr. Cause, of the Asbury Park Trust Company, with the records, as well as a woman from New York, and it won't take any longer than ten minutes.

40 The Court: If it won't take any longer than that, I will hear it now.

*Helen M. Beck—Direct*

Mr. Kremer: I have no disposition to protract the matter. I think your Honor's suggestion is the proper one. Our proof will take a great deal longer than ten minutes.

The Court: You may go ahead with your proof. If it is going to take but a very short time I will hear your proof. If it is necessary to hear yours afterwards, why, I will hear yours. 10

Mr. Kremer: The same day or later?

The Court: No, later. The taking of the complainant's proof now will at least put us in this position so that there can be no question of the right to consider the question of *res adjudicata* and the one of laches, also.

You may proceed. 20

HELEN M. BECK, the complainant, called as a witness in her own behalf, being first duly sworn according to law on her oath says:

Direct-examination by Mr. Leonard:

Q. You are the complainant in this action, are you not? A. Yes, sir.

Q. You are engaged at Spring Lake in the sports wear and novelty business under the name of Beck and Beck, are you not? A. Yes. 30

Q. For how long have you been engaged in that business? A. Since 1909, I believe, started at Atlantic City.

Q. Did you have any bank account in the name of Beck & Beck? A. Yes.

Q. I show you a bank book and ask you if you recognize that? A. Yes. 40

*C. Henry Craig—Direct*

Q. Is that the bank book of the account of Beck & Beck at the First National Bank in Spring Lake? A. Yes, sir.

10 Mr. Leonard: I offer it in evidence.  
(Marked Exhibit C-1.)

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C. HENRY CRAIG, called as a witness in behalf of the complainant, being first duly sworn according to law, on his oath says:

Direct-examination by Mr. Leonard:

20 Q. You are connected in some capacity with the First National Bank of Spring Lake, are you not?  
A. Vice president.

Q. How long have you been vice president? A. Five or six years.

Q. You were subpoenaed to produce the records of your institution of the account of Beck & Beck, have you done so? A. Yes, sir.

Q. I show you Exhibit C-1 and ask you if you recognize that. A. Yes.

30 Q. As what? A. The bank book, account of Beck & Beck.

Q. And have you the records of the bank supplementing this bank book, marked Exhibit C-1? A. Yes, sir.

Q. Are they the original records? A. Yes, sir (witness produces what purports to be loose leaf ledger sheets and also a signature card).

40 Mr. Leonard: I offer them in evidence.  
(Marked Exhibit C-2.)

*C. Henry Craig—Direct*

The Court: In the event that it becomes necessary to consider this record, a copy may be used instead of the original, the copy to be furnished by the bank.

Q. Mr. Craig, did you know Robert Beck, the husband of Helen M. Beck, during his lifetime? 10

A. Yes, sir.

Q. How long had you known him? A. I should say, off-hand, about fifteen years.

Q. Did you know his handwriting? A. Yes, sir.

Q. I show you a number of checks and ask you if you can tell us whether those checks have any relation to the ledger account that you have just offered and which was marked? 20

Mr. Kremer: I object to that unless it is a matter that would be within his own knowledge.

Q. If it would be within your own knowledge?

A. Yes, it is; they have reference to this account.

Q. And do you recognize the handwriting on those checks?

Mr. Kremer: If the Court please, we may be able to admit that for Mr. Leonard, that they are all checks signed by Robert Beck. If I might look at them I probably would. 30

A. They are all checks of Robert Beck.

Mr. Leonard: I offer them in evidence.

The Court: Have you examined them, Mr. Leonard? 40

*C. Henry Craig—Direct*

Mr. Leonard: Every one of them.

The Court: They are all in the same handwriting?

10 Mr. Leonard: Yes, sir; and they correspond also to the schedule of them set forth in the matter.

The Court: These are the checks mentioned in what schedule?

Mr. Leonard: In the first schedule. Schedule No. 1, relating just to the property, the Morris Avenue property.

The Court: All right.

20 Mr. Kremer: We will admit those checks to be all in the handwriting of Robert Beck.

(Marked Exhibit C-3.)

Q. I show you a bound book of check stubs and ask you if you recognize the handwriting in which they were made? A. Mr. Beck's handwriting.

Mr. Leonard: I offer that in evidence.  
(Marked Exhibit C-4.)

30 Q. I show you another book of bound check stubs and ask you if you recognize the handwriting in it? A. Mr. Beck's.

Mr. Leonard: I offer that in evidence.  
(Marked Exhibit C-5.)

Q. I show you a letter dated February 20, 1926, and ask you if you recognize that handwriting? A. Mr. Beck's.

40 Mr. Leonard: I offer that in evidence.  
(Marked Exhibit C-6.)

*C. Henry Craig—Direct*

Mr. Kremer: I don't think the contents of that letter are at all material to this issue, but I certainly don't object to its going in.

Q. I show you a number of loose papers containing the name of the First National Bank of Spring Lake and ask you if you recognize the handwriting on those papers? A. Mr. Beck's. 10

Q. Are they deposit slips that went through your bank? A. No, sir.

Mr. Leonard: I offer them in evidence.

The Court: What are they?

Mr. Leonard: Papers in the handwriting of Robert Beck. These are the little papers I described to your Honor in the opening, the blank deposit slips. 20

The Court: You mean made by Mr. Beck in relation to this account?

Mr. Leonard: No, in relation to the number of checks which he did not deposit, but which he cashed.

Mr. Kremer: That calls for a conclusion, I think. These papers appear to be notations of disbursements and memoranda, all matters that may or may not have been in the regular course of business. 30

Mr. Leonard: Please do not disarrange those; I just spent one hour in getting those in chronological order.

The Court: You may offer them. Of course, if Judge Kremer desires he can make any examination in reference to them later that he wants to. 40

(Marked Exhibit C-7.)

*C. Henry Craig—Cross*

Mr. Leonard: Perhaps by consent I might offer in evidence a number of checks in the handwriting of Robert Beck, which are itemized in my proof of claim, designated and marked as Schedule "B."

10

Mr. Kremer: I will consent, if your Honor please, to the authenticity of all of these checks and all of these papers, without consenting to their materiality to this issue.

Mr. Leonard: I offer the checks in evidence.

(Marked Exhibit C-8.)

20

Mr. Leonard: They will be marked as checks outlined in Schedule B of the proof of claim.

## CROSS-EXAMINATION by Mr. Kremer:

Q. Mr. Craig, in regard to those slips written on deposit slips of the Spring Lake Bank, of course you know the handwriting of Mr. Beck; you don't know anything about the contents of those papers, do you? A. No, sir.

30

Q. You have no acquaintance with the affairs of the firm of Beck & Beck? A. No, sir.

Q. And in regard to the first batch of checks that you examined and that you said were in his handwriting, you don't know what they were for? A. No.

Q. You don't know anything about them? A. Only that they passed through the bank, that is all.

40

*Clarence McGill—Direct*

CLARENCE MCGILL, a witness called in behalf of the complainant, being first duly sworn according to law, on his oath says:

Direct-examination by Mr. Leonard:

Q. Mr. McGill, you live where? A. Spring 10  
Lake.

Q. How long have you lived there? A. Thirty years.

Q. Ever own any property? A. Yes, sir.

Q. I show you a certified copy of a deed recorded in the Monmouth County Clerk's office in Book 1162 of Deeds, page 451, and ask you if that described property which you once owned?  
A. Yes. 20

The Court: Is there any question about it?

Mr. Kremer: None whatever.

The Court: Let's get it on the record, what it is. You mentioned a certified copy of a deed, you did not say who it is from or anything else. Is that the deed for the Morris Avenue property that you have mentioned? 30

Mr. Leonard: Yes, sir.

The Court: There is no dispute about it, but that Mr. Beck took a conveyance of that as shown by the deed, is there?

Mr. Kremer: None whatever.

Q. I take a check from the bundle, marked Exhibit C-3, being check No. 1354, and ask you if that check contains your signature? A. It does.

Q. I take from the same bundle check No. 1366 40

*Clarence McGill—Direct*

and ask you if that check contains your signature? A. It does.

10 Mr. Leonard: I now offer the certified copy of the deed of the Morris Avenue property.

(Marked Exhibit C-9.)

The Court: You did not ask the witness, Mr. Leonard, I assume you want to show by it that those two checks which he said bore his signature were received by him in payment of the property conveyed by that deed, is that correct?

20 Mr. Leonard: That is my object, and it appears on the check stub.

The Court: That does not help us any. You called his attention to two checks which bore his name. Is there any dispute about that?

Mr. Kremer: May I look at the two checks? I did not see them.

The Court: We might as well have the record straight.

30 Mr. Kremer (After examining the checks): There is no dispute about them.

The Court: All right.

Mr. Leonard: I offer in evidence the proof of claim filed with the executor of the estate.

(Marked Exhibit C-10.)

*Francis J. Judd—Direct*

FRANCIS J. JUDD, called as a witness in behalf of the complainant, being first duly sworn according to law, on his oath says:

Direct-examination by Mr. Leonard:

Q. Where do you live, Mr. Judd? A. Spring 10  
Lake.

Q. How long have you lived there? A. About  
seventeen years.

Q. In what business are you now engaged? A.  
Real estate and insurance.

Q. How long have you been engaged in that  
business? A. Ten years.

Q. Did you know Robert Beck during his life-  
time? A. I did. 20

Q. Were you ever associated with him in a  
business way? A. I took care of his insurance  
matters.

Q. Upon what property? A. Upon the Mor-  
ris Avenue property and their store, on Third  
Avenue in Spring Lake and other properties at  
Sea Girt.

Q. Did you ever insure property in Bradley  
Beach? A. No, I did not.

Q. Did you ever have any conversation relat- 30  
ing to that property? A. I asked him if he was  
going to let us insure it for him and he said no,  
that the matter was being taken care of.

Q. Did he say anything else in regard to it?  
A. He asked me not to mention the matter to  
Mr. Beck as he was buying the house for his  
brother.

Mr. Kremer: I don't think there is any-  
thing in the bill which would indicate the 40

*Discussion*

purpose of this testimony in relation to Bradley Beach property.

The Court: I don't know. Is the Bradley Beach property involved in the bill?

10

Mr. Leonard: No, sir.

The Court: What is the object of the testimony?

Mr. Leonard: To establish that this extraction of money was secretive.

20

The Court: There is no question, as I understand it, about any extraction of money in relation to Bradley Beach property. If there is not, no testimony concerning the Bradley Beach property is proper.

30

Mr. Leonard: Of course, I did not allege anything about the Bradley Beach property, but if a man said to an insurance broker, "Don't say anything about what I am doing," it would show that in at least one regard he did not want some of his business activities to be known to his wife, and we have checks showing certain payments of premiums, that it might have that implication. That is all I had in mind.

The Court: Well, it is in. I don't think it amounts to much. It certainly would not have much influence with me.

40

*Elizabeth W. Steele—Direct*

ELIZABETH W. STEELE, a witness called in behalf of the complainant, being first duly sworn according to law, on her oath says:

Direct-examination by Mr. Leonard:

Q. Where do you live? A. New York City. 10

Q. Do you know the complainant, Mrs. Beck?

A. Yes.

Q. How long have you known her? A. Four years.

Q. How long did you know her husband, Robert Beck? A. Five months before he passed on.

Q. You were living with Mr. and Mrs. Beck over their store, or over the store in Spring Lake, were you not, in the summer of 1926? A. I was. 20

Q. Were you there every day? A. Every day.

Q. While you were there did you ever overhear any conversation between Mr. and Mrs. Beck relating to any of these matters? A. Very often.

Q. Can you recall any of those conversations?

A. Yes, I do recall many times he was crying there, and he would say, "Oh, I am so sorry I did it, but I will straighten it out if you will only forgive me."

Q. Was that ever repeated? A. Almost every 30 day.

Q. Or words to that effect? A. Almost every day until one day I was sewing there right opposite him and he sat looking into space for an hour and he would wring his hands and say, "Oh, I am so sorry I did it," that I could not work any longer, and I went downstairs and I saw Mrs. Beck and I told her.

Mr. Kremer: I object to that. 40

*Elizabeth W. Steele—Cross*

Q. When did you see him staring into space for an hour? A. I saw him several times.

Q. You say you heard him cry? A. Crying, yes.

10 Q. Didn't he appear well to you? A. Not at all.

Q. You were there during that summer? A. The entire summer.

Q. Slept there every night? A. Slept there every night.

Q. That was a one-floor apartment over the store? A. Yes.

## CROSS-EXAMINATION by Mr. Kremer:

20 Q. Miss Steele, you say that you knew him during the last five months before he died? A. Before he died.

Q. Do you say he was living with his wife during that time? A. Yes.

Q. He was living there at Spring Lake? A. Spring Lake.

Q. You are sure of that? A. Yes.

30 Q. Weren't they, in fact, separated at that time? A. Not when I was there. I only met Mr. and Mrs. Beck in June of that year because my work brought me down there.

Q. You say he was in bad health? A. He seemed to be very ill.

Q. He was also very much in love with his wife, was he not? A. Yes, he always said she was so kind and loving to him.

40 Q. He was endeavoring very hard to get her to make up with him during these remaining months? A. Apparently so.

*Elizabeth W. Steele—Cross*

Q. And she would not do it? A. Yes, she was perfectly lovely to him. She sould say, "Don't bother, Bob, you are not feeling well today, don't cry."

Mr. Leonard: That is our case. 10

The Court: Now, with the introduction of the file in evidence, which I will ask you gentlemen to direct the Clerk in Chancery to send to me at Toms River, there is certainly sufficient on the record now to dispose of the legal questions, and I will consider those and if they are disposed of adversely to the defense, then I will hear the testimony of the defense. If they are disposed of in favor of the defense, why, then, of course, there will be no necessity of going any further in it. 20

Mr. Kremer: Does your Honor wish a brief to be filed, or oral argument?

The Court: I would prefer that you file a memorandum with me.

Mr. Leonard: We will have an opportunity to reply to it?

The Court: Certainly.

Mr. Leonard: You will serve a copy on us? 30

Mr. Kremer: As I understand it, if your Honor please, we will now argue the question of laches as well.

The Court: Yes.

Mr. Leonard: If the Court please, I omitted to ask one question of Mrs. Beck. I should like to ask one question, if I may.

The Court: What is the question you want to ask her? 40

*Discussion*

Mr. Leonard: Whether or not she were living with her husband at the time of his death, and whether a conversation took place between him and her after his return subsequent to the separation.

10 Mr. Kremer: I would object to the conversation.

Mr. Leonard: Then I will not ask it, but may it, for the purpose of the record, be considered that that question has been put and that you objected to it, under the fourth section of the Evidence Act? That is understood, is it not?

Mr. Kremer: If such a question were asked, I certainly would object to it.

20 Mr. Leonard: For the purpose of the record may it be considered such a question was put and objection made?

The Court: Suppose it is?

Mr. Leonard: Seriously, what I mean, wherein objection was made to her testifying to any statement made by decedent.

The Court: I have no objection to that record being made if you want to.

30

40

**TRANSCRIPT OF PROCEEDINGS OFFERED IN  
EVIDENCE.**

**Bill of Complaint.**

*To the Honorable Edwin Robert Walker, Chan-  
cellor of the State of New Jersey:*

The complainant, Robert G. Beck of the Bor-  
ough of Spring Lake, County of Monmouth and  
State of New Jersey, respectfully shows that: 10

1. In the year 1913 the complainant and the  
defendant, Helen M. Beck, who is the wife of the  
complainant entered into business in the Borough  
of Spring Lake in the County and State aforesaid  
and proceeded to engage in the business of selling  
at retail women's sport apparel and women's 20  
specialties.

2. At the time and place aforesaid, complainant  
and defendant entered into business as partners  
under the firm name and style of Beck & Beck and  
from that time up until the present have conducted  
their business as such partners as 1111½ and 1113  
Third Avenue in the Borough of Spring Lake  
aforesaid.

3. Complainant and defendant were equal 30  
co-partners in the said business and shared jointly  
and equally, share and share alike, in the profits  
and losses of the said partnership business and  
gave their sole time and attention thereto and  
conducted the business in all respects as partners;  
and it was mutually agreed and understood by  
and between complainant and defendant that the  
costs of operation and all charges incident to the  
business and all losses and profits were to be 40

*Transcript of Proceedings Offered in Evidence—  
Bill of Complaint*

borne and divided equally by and between complainants and defendant and that both complainant and defendant were to devote their entire time to the said partnership business.

10

4. Complainant and defendant conducted the said business together as partners from the year 1913 up until October, 1925, to their joint benefit and advantage.

5. Complainant further says that during the month of October, 1925 the defendant, without

#2

any cause whatsoever, evicted the complainant from any participation in the said partnership business and proceeded to close the store operated and conducted by complainant and defendant, to board the same up and to put a lock upon the same; and defendant excluded complainant from access to the apartment in the store which complainant and defendant have occupied heretofore as man and wife.

20

6. Complainant further says that the assets of the said partnership consist of a stock of goods and merchandise worth approximately \$4,500.00 which stock consists of women's wearing apparel, novelties and antique furniture which complainant and defendant have sold in their partnership business; of fixtures valued at approximately \$500.00; of cash in the bank in the amount of about \$600.00; and of accounts receivable to the amount of about \$600.00.

30

7. Complainant further says that at present the defendant has sole access to the stock of goods

40

*Transcript of Proceedings Offered in Evidence—  
Bill of Complaint*

and is collecting the outstanding accounts and receiving the moneys due to the partnership and that the complainant has no participation therein; and that the defendant may sell the goods and appropriate the proceeds thereof to her own use and may collect the outstanding book accounts and appropriate the proceeds thereof to her own use and benefit. 10

8. Complainant further says that he has at all times given his sole time and attention to the said partnership business and diligently applied himself thereto and has conducted the business in all respects as a partner and that the actions and doings of the defendant in excluding him from the co-partnership business are without any justification or cause whatsoever. 20

9. Complainant further says that the defendant has failed to account to the complainant for any of the moneys collected from the said business or for his share of the goods and merchandise or accounts receivable or cash in bank of the said business, or the profits thereof, although complainant has demanded an accounting of the receipts of the said business during the continuance of the partnership and an accounting for 30

#3

the amounts withdrawn from the said partnership business during the time complainant and defendant have been engaged. #

Complainant is without adequate remedy in the Courts of law and therefore prays: 40

(1) That Helen M. Beck, who is defendant to this suit, may answer this Bill of Complaint and each statement made therein.

*Transcript of Proceedings Offered in Evidence—  
Bill of Complaint*

(2) That the said Helen M. Beck, defendant, May be ordered and decreed to make a full and true discovery and disclosure of the receipts and profits or losses of the said partnership business  
10 conducted by complainant and defendant from the first day of January, 1925 up until the 20th day of October, 1925; of all receipts and expenditures by her on account of said business and of the condition of the business as of October 20, 1925.

(3) That the defendant, Helen M. Beck, may be ordered and decreed to pay to the complainant any moneys or sums of money due to the complainant as profits therefrom and that the said Helen  
20 M. Beck may be ordered or decreed to pay to the complainant his just and proper share of all moneys collected from outstanding accounts receivable and his just share of all moneys or cash in hand or in any bank in the name of the said partnership.

(4) That defendant may be compelled or decreed to account to the complainant for his just and proper share of the stock of goods and merchandise on hand or the proceeds of any sale of  
30 any part thereof.

(5) That a Writ of Subpoena may issue commanding the said defendant to answer this Bill of Complaint and to abide by such decree as this Court may make in the premises.

(6) That this complainant may have such other and further relief as to the Court shall seem meet.  
40

WARD KREMER,  
Solicitor and of counsel  
with complainant.

*Transcript of Proceedings Offered in Evidence—  
Petition*

*Endorsed on back:*

59-296

Chancery 99

IN CHANCERY OF NEW JERSEY

10

Between

ROBERT G. BECK,

Complainant,

and

HELEN M. BECK,

Defendant. 20

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On Bill for Accounting  
BILL OF COMPLAINT.

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Ward Kremer, Esq., Solicitor.  
of Complainant,  
Asbury Park, N. J.

Filed Oct. 26, 1925.

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**Petition.**

IN CHANCERY OF NEW JERSEY

*To the Honorable Edwin Robert Walker, Chan-  
cellor of the State of New Jersey:*

The petition of Robert G. Beck of the Borough 40  
of Spring Lake, County of Monmouth and State  
of New Jersey, respectfully shows that:

*Transcript of Proceedings Offered in Evidence—  
Petition*

1. Petitioner is the complainant in the Bill of Complaint filed herein, which was filed by complainant as a partner of the defendant, Helen M. Beck, to compel the said defendant, Helen M. Beck, to account for the profits and incomes of the partnership business conducted by petitioner and defendant and to wind up the affairs of the said partnership and to prevent the transfer of any of the said partnership property by the defendant.

2. In the year 1913 the petitioner and the defendant, Helen M. Beck, who is the wife of the petitioner, entered into business in the Borough of Spring Lake in the County and State aforesaid and proceeded to engage in the business of selling at retail women's sport apparel and women's specialties.

3. At the time and place aforesaid, petitioner and defendant entered into business as partners under the firm name and style of Beck & Beck and from that time up until the present have conducted their business as such partners at 1111½ and 1113 Third Avenue in the Borough of Spring Lake aforesaid.

4. Petitioner and defendant were equal co-partners in the said business and shared jointly and equally, share and share alike, in the profits and losses of the said partnership business and gave their sole time and attention thereto and conducted the business in all respects as partners; and it was mutually agreed and understood by and between petitioner and defendant that the costs

*Transcript of Proceedings Offered in Evidence—  
Petition*

of operation and all charges incident to the business and all losses and profits were to be borne and divided equally by and between petitioner and defendant and that both petitioner and defendant

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were to devote their entire time to the said partnership business.

5. Petitioner and defendant conducted the said business together as partners from the year 1913 up until October, 1925, to their joint benefit and advantage.

6. Petitioner further says that during the month of October, 1925 the defendant, without any cause whatsoever, evicted the petitioner from any participation in the said partnership business and proceeded to close the store operated and conducted by petitioner and defendant, to board the same up and to put a lock upon the same; and defendant excluded petitioner from access to the apartment in the store which petitioner and defendant have occupied heretofore as man and wife.

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7. Petitioner further says that the assets of the said partnership consist of a stock of goods and merchandise worth approximately \$4,500.00 which stock consists of women's wearing apparel, novelties and antique furniture which petitioner and defendant have sold in their partnership business; of fixtures valued at approximately \$500.00; of cash in the bank in the amount of about \$600.00; and of accounts receivable to the amount of about \$600.00.

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*Transcript of Proceedings Offered in Evidence—  
Petition*

10 8. Petitioner further says that at present the defendant has sole access to the stock of goods and is collecting the outstanding accounts and receiving the moneys due to the partnership and that the petitioner has no participation therein; and that the defendant may sell the goods and appropriate the proceeds thereof to her own use and may collect the outstanding book accounts and appropriate the proceeds thereof to her own use and benefit.

20 9. Petitioner further says that he has at all times given his sole time and attention to the said partnership business and diligently applied himself thereto and has conducted the business in all respects as a partner and that the actions and doings of the defendant in excluding him from the co-partnership business are without any justification or cause whatsoever.

10. Petitioner further says that the defendant

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30 has failed to account to the petitioner for any of the moneys collected from the said business or for his share of the goods and merchandise or accounts receivable or cash in bank of the said business, or the profits thereof, although petitioner has demanded an accounting of the receipts of the said business during the continuance of the partnership and an accounting for the amounts withdrawn from the said partnership business during the time petitioner and defendant have been engaged.

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

*Transcript of Proceedings Offered in Evidence—  
Petition*

(1) That the said partnership may be dissolved and an accounting taken of the assets and condition of said partnership as of October 23, 1925.

(2) That an accounting may be taken of the receipts and expenses of said partnership since October 23, 1925. 10

(3) That the defendant, Helen M. Beck, may be directed on the taking of such accounting, to pay over to your petitioner his full and lawful share of the assets and properties of the said partnership.

(4) That a receiver may be appointed by this Court to forthwith and immediately take charge of running said partnership property and business for the purpose of winding it up and dissolving it and for the proper distribution of its assets among its creditors and those lawfully entitled thereto. 20

(5) That an order to show cause may issue directing the said Helen M. Beck to answer this petition on its merits on making a motion addressed to the petition. 30

(6) That your petitioner may have such other and further relief as to the Court shall seem meet.

WARD KREMER,  
Solicitor and of counsel  
with Petitioner.

*Transcript of Proceedings Offered in Evidence—  
Petition*

State of New Jersey, }  
County of Monmouth. } ss:

10 Robert G. Beck, of full age, being duly sworn according to law upon his oath, deposes and says:

I reside in the Borough of Spring Lake, County of Monmouth and State of New Jersey. My wife is Helen M. Beck. In about 1913 we went into business in partnership under the name of Beck & Beck, since which time we have been continuously engaged in the women's wearing apparel, sport apparel and specialty business. Our place of business is located at 1111½ and 1113 Third  
20 Avenue, Spring Lake. We both gave our time to the business and conducted the same successfully up until the present year. My wife did most of the buying although I did some of it and I attended to the business and the financial end of the business and was on duty at the store regularly with her. Our partnership bank account was in the name of Beck & Beck in the First National Bank of Spring Lake and is still there. In  
30 the course of our business I signed checks for the business, although Mrs. Beck had power to do so. We divided the profits of the business and I would deduct from the business what sums were necessary for the running of our household business and would give Mrs. Beck, at the end of the season, such sums as represented her share of the profits which would be deposited in her name. The business has been conducted in all respects  
40 as a partnership and is in fact a partnership business. At present the principal assets are the stock in trade which is on the shelves and is worth

*Transcript of Proceedings Offered in Evidence—  
Petition*

approximately \$4,500.00. This consists of women's wearing apparel, novelties and some antique furniture. The fixtures of the business amount to about \$500.00 in value; the bank balance in the name of the partnership is approximately \$600.00 and the accounts receivable about \$600.00; making a total of about \$6,200.00 of assets. The business owes about \$350.00 in indebtedness. During

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the month of October, 1925 Mrs. Beck has refused me any admission to the business whatever. She has excluded me from the building in which the business is located and title to which is in her name. My money has gone into the purchase of this building but I placed the same in her name and I lived in the building. She has now locked me out of the apartment upstairs, but in addition, has locked up the business, boarded up the store and placed a padlock on the same. I am denied access thereto and have been for the past two weeks. Mrs. Beck also, according to the best of my information and belief, is proceeding to collect the outstanding accounts of the business and is making no accounting to me whatever. She is in a position to draw upon the bank account and is also in a position to sell out the stock of goods in the business to my damage, and to appropriate the money therefrom to her own use. She has not given me any accounting either of the assets of the business or of my share of the profits or of the money which is in the bank. It is important that a receiver be appointed to wind up the affairs of the business, sell the stock and divide the proceeds of the sale and of the accounts which

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*Transcript of Proceedings Offered in Evidence—  
Petition*

are collected, between the defendant, Helen M. Beck and myself.

ROBERT G. BECK.

10 Subscribed and sworn to before  
me this 23rd day of October, 1925.  
(LS) Helen Messler,  
Notary Public of N. J.

*Endorsed on back:*

Chancery 99

59-286

20 IN CHANCERY OF NEW JERSEY

Between  
ROBERT G. BECK,

Complainant,

and

HELEN M. BECK,

Defendant.

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30 On Bill for Accounting  
PETITION.

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Ward Kremer, Esq., Solicitor.  
of Complainant,  
Asbury Park, N. J.

Filed Oct. 30, 1925.

## Order to Show Cause.

## IN CHANCERY OF NEW JERSEY

Between ROBERT G. BECK,  Complainant,  and  HELEN M. BECK,  Defendant.	}	On Petition etc.,	10
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Upon reading and filing the petition and affidavit thereto attached of Robert G. Beck and on motion of Ward Kremer, solicitor for the petitioner: 20

It is on this 30th day of October, 1925, ORDERED that the said defendant, Helen M. Beck, be required on the Sixth day of October, 1925 at the Chancery Chambers in the City Hall, Long Branch, New Jersey, at ten o'clock in the forenoon or as soon thereafter as the matter can be attended to, to answer the petition filed herein upon the merits or make a motion addressed to the pleadings, and in case of her failure so to do, 30 then a decree *pro confesso* may be taken against her and the cause proceed and such order or decree may be made as to the Chancellor shall seem proper; that if a motion is made addressed to the pleadings, the Court, upon the return day of the order, may proceed forthwith to dispose of such motion and may direct the said respondent to file an answer upon the merits within such time as the Court may, by its order, direct, and 40

*Transcript of Proceedings Offered in Evidence—  
Order to Show Cause*

in case of the failure of the said respondent to file an answer on the merits within such time as the Court may, by order, prescribe, a decree *pro confesso* may be entered against her and the cause  
10 may proceed and such decree may be made as to the Chancellor shall seem equitable and just; that in case an answer be filed upon the merits on or before the return day hereof, or on or before such other day as may be fixed by the Court, if a motion be made addressed to the pleadings, then the Court may proceed forthwith, either upon the return day hereof or upon such other day as the Court may fix, to a final hearing upon the merits.

20 And it is further ordered that the respondent, Helen M. Beck, do show cause before this Court, at the time and place above mentioned, why a receiver should not be appointed to take charge of the assets of said business and wind up said partnership business.

And it is further ordered that true, but uncertified, copies of this order, together with the petition and affidavit herein, be served upon the said  
30 Helen M. Beck within three days from the date hereof.

It is further ordered that the said Helen M. Beck be and she is hereby restrained from drawing against the funds of the said partnership of Helen M. Beck and Robert G. Beck in any bank account, or selling any goods, or stock of the said partnership business or in any way disposing of  
40 the same, or of collecting or receiving any moneys due to the said partnership until the return of

*Transcript of Proceedings Offered in Evidence—  
Order to Show Cause*

this order to show cause and pending the argument of the same, or until the further order of this court.

Respectfully Advised 10

Maja Leon Berry  
V. C.

E. R. WALKER,  
C.

*Endorsed on back:*

59/296

Chancery 99 20

IN CHANCERY OF NEW JERSEY

Between

ROBERT G. BECK,

Complainant,

and

HELEN M. BECK,

Defendant.

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On Petition etc.,  
ORDER TO SHOW CAUSE

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Ward Kremer, Esq., Solicitor.  
Sol'r of Compl't.,  
Asbury Park, N. J.

Filed Oct. 30, 1925.

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## Answering Affidavit.

## IN CHANCERY OF NEW JERSEY

10	Between ROBERT G. BECK,  Complainant, and HELEN M. BECK,  Defendant.	}	On Petition, etc.
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State of New Jersey, }  
 County of Monmouth. } ss:

20 Helen M. Beck, being duly sworn according to law on her oath deposes and says:

1. I am the defendant in the above entitled cause. I reside at 1107 Third Avenue, in the Borough of Spring Lake, Monmouth County, New Jersey. I was married to the petitioner in 1906, he then being a desk clerk in a hotel for approximately three months. Immediately after our marriage, he gave up this position and has had no employment other than in assisting me in the  
 30 conduct of the business now located at 1107 Third Avenue in Spring Lake. He had no money whatsoever when I married him and I have supported him from that time to the present.

2. For some years prior to our marriage I had been conducting a business under my own name, as a children's novelty shop at Atlantic City. In view of the fact that my husband had no means  
 40 of support, and that I was obliged to maintain the family, I had him assist me in the business and

*Transcript of Proceedings Offered in Evidence—  
Answering Affidavit*

he took charge of the books, and I did all the buying and selling.

#2 3. In 1913 I bought a place with my own funds on Third Avenue in Spring Lake where the busi- 10  
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ness is now situated. After the marriage in order to give my husband standing and prestige, I changed the name of the business from Helen M. Beck to Beck and Beck, and it has continued under that style and title up to the present time. Our personal living expenses have been paid from the bank account used in connection with the business. This bank account remained in the name of Helen M. Beck until June 1918, when it was 20  
then changed to Beck and Beck. Practically all of the household necessities were paid for by business checks. These checks could be signed either by the petitioner or by me, but as a matter of fact they were almost universally signed by the petitioner. Either had the right to draw money from the business account or deposit money in it, because I had implicit faith in the honesty and integrity of my husband. 30

4. In the year 1921 with my permission I permitted my husband in his own name to purchase property located on Morris Avenue, in Spring Lake with funds from the business account. That property stands to-day in his name, and is a valuable business property, being worth at least \$15,000. I authorized my husband, however, to pay only the purchase price from the business account, and without my knowledge or consent I 40

*Transcript of Proceedings Offered in Evidence—  
Answering Affidavit*

10 have now learned for the first time, from examination of the books and checks that in addition to this, he has made extensive repairs and improvements to this property and paid for the same with funds from the business, and that in addition to this he has collected rents since the purchase amounting from \$800 to \$1,000 per year, and put these funds in his own pocket, and used them for his own personal benefit and advantage, claiming however, that these rents were deposited in the business account and therefore regularly drawn

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from the business account such amounts as represented the rent which should have been deposited there, but which was not. In addition to this without my knowledge or consent, he has withdrawn large sums of money from the bank account for checks made payable to cash and endorsed by him and placed this money, together with other large sums taking cash from the business in an amount unknown to me and placed the same to his own personal credit in an account which he opened in the Asbury Park Trust Company, and in the spring of this year, purchased with said funds, a valuable residence property at Bradley Beach, which is now occupied by his relatives, no knowledge or information of this purchase having come to my attention until at least a month after the title was taken, which was taken in the name of John and Louise Gallagher and rented.

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5. From the time the business was located, as at present on Third Avenue in Spring Lake in

*Transcript of Proceedings Offered in Evidence—  
Answering Affidavit*

1913 to the present, petitioner took entire charge of the bookkeeping end of the business, made all deposits and signed all checks, and I never even questioned the petitioner about these matters nor even looked at the accounts or the check book to know what sums were spent or for what purposes they were spent, my mind being entirely occupied and engaged in the actual purchasing goods and the making of sales to customers. The business at Spring Lake has always been what is known as a summer or season business. The store is opened each year in the month of May according to weather conditions and the number of summer residents who have occupied their homes at Spring Lake, and closes each year in the month of October, the exact date being determined by the falling off of business. The store would then be boarded up for the winter and locked. The apartment in the store occupied by the petitioner and myself was maintained for our joint use.

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During the winter months the petitioner and myself would make occasional trips south and elsewhere and would live on the profits realized from the summer business, the expenses being met by withdrawals of funds by check from the business account. From time to time the petitioner would report to me that the business bank account was low and needed replenishing and I would then make a check to the order of Beck and Beck, which would be deposited in the business account and used ostensibly for the payment of bills in connection with the operation of the business. I

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*Transcript of Proceedings Offered in Evidence—  
Answering Affidavit*

10 never questioned my husband as to why funds  
were in need because many of the accounts of  
the business ran for long periods, sometimes for  
a year before they were paid, the customers being  
conservative and reliable, and were never dunned  
for the amount due. This would put me off my  
guard and cause me to assume that large pur-  
chases had to be met and that payments by cus-  
tomers at the time in question were not sufficiently  
large to meet the demands. These checks given  
by me to bolster up the Beck and Beck account  
would be taken from my personal account into  
20 which had been placed income from other prop-  
erties owned by me, and purchased by me with  
funds which had no relation whatever to the busi-  
ness then being conducted on Third Avenue.

30 6. From the time of the marriage of the peti-  
tioner and myself I have never used any of the  
business funds for my own personal benefit and  
advantage or withdrew any of the funds for de-  
posit in any personal account of my own. The  
Beck and Beck account was in reality a family  
account as well as a business account from which  
both the petitioner and myself lived.

40 7. In the year 1921, I purchased from my sis-  
ter an automobile paying therefor the sum of ap-  
proximately \$500. The ownership of the auto-  
#5 mobile in some mysterious way was placed in the  
name of the petitioner and the license for the  
same taken out by him. It was a car used ex-  
clusively for pleasure. Later I learned to operate  
the car and on demand of the same from the pe-

*Transcript of Proceedings Offered in Evidence—  
Answering Affidavit*

titioner, he refused to deliver it to me and instead removed it to the garage of the Bradley Beach property, where it now is being used by the petitioner and the members of his family.

8. For many years a safe deposit box has been maintained in the Asbury Park and Ocean Grove Bank for all valuable papers relating both to the business and to the private affairs of myself. The rent for this has been paid always from the business account, but I just learned that the box was taken out in the name of Robert G. Beck, individually. After the box was first acquired the petitioner took one key and placed the other in his chifferonier for my use and informed me where it was. I have never had occasion to enter this box and recently when I looked for the key I found that it was missing. I have been denied admission to this box. In the box are many of my own personal papers, such as deeds, insurance policies and even my own will.

I further aver that the business now being conducted under the name of Beck and Beck is my own sole and exclusive business, in which I frankly admit that my husband has aided by taking care of the books and the banking, but that he has done this as my husband and as a method of helping in the maintenance and support of our household and ourselves, and not in any sense as a business partner. The merchandise and stock in the store are worth not over, \$2,500, fixtures worth not more than \$250, bank account approximately \$600, and the accounts receivable not known to

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*Transcript of Proceedings Offered in Evidence—  
Answering Affidavit*

me. These are the only assets which form a part or have anything to do with the business now conducted under the name of Beck and Beck.

10 I further aver that since the filing of the petition in this cause no moneys have been collected  
#6 #  
by me nor any goods sold or withdrawn by me.

9. The business block where the Beck and Beck store is situated, which I have hereinbefore said, is owned by me and was bought with my own personal funds, consists of a two story brick building, a store on the first floor and a living  
20 apartment on the second floor. This I purchased about 1918 after I had rented the property from Simon Cooper for a number of years previous thereto.

In the fall of 1923 I built on a thirteen foot strip of land which adjoins the store in question a smaller store which was rented by me during the summer of 1924. In the fall of 1923 I purchased with my own personal funds certain antique furniture which I stored in the little store  
30 until the spring of 1924 when I rented same for the summer and moved out the furniture, placing some of it in the Beck and Beck store where the Beck and Beck business was conducted and some of it in the Morris Avenue garage, standing in the name of the petitioner.

In the fall of 1924 after the tenant had vacated the property I again moved the furniture back  
40 into the little store where it remained until the

*Transcript of Proceedings Offered in Evidence—  
Answering Affidavit*

spring of 1925, when it was again removed in order to allow the tenant to occupy same for the summer of 1925. After the tenant vacated the premises in the early fall of 1925 I again moved the furniture back into the little store, except that there are some pieces now in the garage on the Morris Avenue property belonging to the petitioner and some in the Beck and Beck store. This furniture has nothing whatsoever to do with the Beck and Beck business. It was bought with my own personal check and when any of it was sold, the check was made payable to me in person and deposited in my own personal bank account. 10 20

#7 #

The petitioner has never made any accounting to me of the sums which he has secretly, improperly and fraudulently withdrawn from the Beck and Beck account for his own personal real estate, adventures and other purposes, and I do not know at the present time how much this amounts to.

HELEN McC BECK 30

Sworn and subscribed to before me  
this twelfth day of November, A. D. 1925.

Meta A. von Glahn,  
Notary Public of New Jersey.

*Transcript of Proceedings Offered in Evidence—  
Answering Affidavit*

*Endorsed on back:*

59-296

10 IN CHANCERY OF NEW JERSEY

Between

ROBERT G. BECK,

Complainant,

and

HELEN M. BECK,

Defendant.

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On Petition, &c.  
ANSWERING AFFIDAVIT

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WILSON & SMOCK,  
Solrs. of Deft.,  
10 East Front St.,  
Red Bank, N. J.

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Filed November 13, 1925.

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## Answer.

## IN CHANCERY OF NEW JERSEY.

Between ROBERT G. BECK,  and HELEN M. BECK,  	}	Complainant,  Defendant.  On Bill, &c.	10
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#1 #

The defendant, Helen M. Beck, who resides at Spring Lake, Monmouth County, New Jersey, answering the bill of complaint respectfully shows that: 20

1. The defendant denies the first paragraph, and avers that in the year 1913 and for many years prior thereto, she was engaged in a business conducted and owned solely by her for the sale of toys and women's apparel.

2. The defendant denies the second paragraph and avers that the complainant and defendant were married in 1906 and that at that time she was conducting a business in Atlantic City for the sale of children's toys and novelties; that after the marriage she accepted the aid of her husband in the conduct of the business which was moved to Spring Lake in the same building now occupied and owned by her, but in 1913 under lease to her, namely 1111½ Third Avenue. 30

3. The defendant denies the third paragraph and avers that at no time was the complainant a 40

*Transcript of Proceedings Offered in Evidence—  
Answer*

10 partner with her in the business conducted at  
Spring Lake or elsewhere. All the money used  
in the business was her own funds and all losses  
and profits of the business were hers, and that  
the complainant merely aided her as bookkeeper  
because he had no other occupation and she was  
obliged to support the family from the profits of  
the business.

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4. The defendant denies the fourth paragraph.

20 5. The defendant denies that in October 1925  
she evicted the complainant from the store, but on  
the contrary avers that the business conducted at  
Spring Lake was a summer business opening each  
year in the month of May and closing in the month  
of October, and that in accordance with her usual  
custom she closed the business in October 1925  
when the summer residents, who were her pat-  
rons, had returned to the city for the winter  
months. Defendant admits that she excluded the  
complainant from the apartment over the store  
which they had heretofore jointly occupied, the  
30 store property in question being owned by her  
and purchased with her own personal funds.

40 6. The defendant denies the sixth paragraph  
and avers that the merchandise is worth not over  
\$2,500, the fixtures not over \$250. As to the bank  
accounts and accounts receivable at this time she  
has no knowledge or information sufficient to form  
a belief. The defendant denies that there is any  
antique furniture which forms a part of the stock  
of trade of the business conducted on Third Ave-  
nue in Spring Lake.

*Transcript of Proceedings Offered in Evidence—  
Answer*

7. The defendant admits that she has sole access to the stock of goods, but denies that she is collecting any outstanding accounts or receiving any money whatsoever from the business, and further denies that she has sold or will sell any of the stock or appropriate any of the proceeds thereof to her own benefit and advantage. 10

8. The defendant denies the eighth paragraph, but admits that the complainant did take charge of the book accounts and the banking of the business conducted under the name of Beck and Beck at Spring Lake.

9. The defendant denies the ninth paragraph 20  
#3 #  
and avers that she is under no duty whatsoever to account to the complainant for any matter or transaction relating to the said business of Beck and Beck, because the business is her sole property and that her husband has no partnership interest in it whatsoever. Defendant also avers during all the time the business was being conducted at Spring Lake, the complainant had the books under his charge and the bank accounts and knew exactly the financial condition of the business and that she knew nothing whatsoever of these matters, having turned this feature of the business over entirely to the complainant, because she had confidence in him that as her husband he would deal honestly and fairly with her, and she gave no further concern to this matter. 30

10. The defendant also avers that with her knowledge and permission she permitted the complainant to purchase a business property on 40

*Transcript of Proceedings Offered in Evidence—  
Answer*

10 Morris Avenue in Spring Lake with funds which represented profits of the Beck and Beck business and to take the property in his own name; that in addition to this purchase of property, which is worth at least \$15,000, the complainant without her knowledge and consent has spent large sums of money on the repair and permanent improvement of the same using the funds of the Beck and Beck business. Complainant has also kept the rents derived from the Morris Avenue property, and in addition to that has drawn regularly from the Beck and Beck account amounts which represent the rents received by him from the tenant of the Morris Avenue property reaping thereby a double profit. Defendant further avers that the complainant has withdrawn other large sums of money from the Beck and Beck account by check

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#4 #

or cash and placed these to his own individual credit in the Asbury Park Trust Company and with said money purchased a valuable residence property at Bradley Beach, which he took in the name of a near relative, all without the knowledge or consent of the defendant.

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40 11. Defendant avers that at no time since the marriage to the complainant did she withdraw any funds from the said business for her own personal use but used other sources of income therefor and that in addition from time to time at the request of the complainant she delivered to him checks in large amounts for funds which he claimed were necessary in order to meet the financial requirements of the business conducted as Beck and Beck.

*Transcript of Proceedings Offered in Evidence—  
Answer*

12. The defendant avers that for many years there has been maintained at the Asbury Park and Ocean Grove Bank a safe deposit box in which were placed all her valuable papers, such as deeds, insurance policies and her will. She has no key to this box, and avers that the complainant has a key to this box and has denied her access to it. 10

13. The defendant avers that the complainant has taken possession of an automobile which she purchased with her own personal funds and has denied her the privilege of using the same having removed the said automobile to the Bradley Beach property occupied by his relatives.

WILSON and SMOCK,  
Solicitors of Defendant. 20

*Endorsed on back:*

59-296

IN CHANCERY OF NEW JERSEY

Between

ROBERT G. BECK,

Complainant, 30

and

HELEN M. BECK,

Defendant.

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On Bill, &c.  
ANSWER

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Wilson & Smock, Solicitor. 40  
Solrs. of Deft.,  
10 E. Front St.,  
Red Bank, N. J.  
Filed November 19, 1925.

## Replication.

## IN CHANCERY OF NEW JERSEY

10	Between ROBERT G. BECK,  Complainant,  and  HELEN M. BECK,  Defendant.	}	On Bill &c.
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The complainant, residing in the Borough of Spring Lake, County of Monmouth, and State of New Jersey, replying to the answer of the defendant in the above entitled cause, says that:

20 1. The matters and things therein contained are denied.

WARD KREMER,  
Solicitor for Complainant.

*Endorsed on back:*

59-296

## IN CHANCERY OF NEW JERSEY

30	Between ROBERT G. BECK,   and  HELEN M. BECK,      	}	Complainant,       Defendant.
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On Bill, &c.  
REPLICATION.

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Ward Kremer, Esq., Solicitor.  
for Complainant,  
Asbury Park, N. J.  
Filed Nov. 21, 1925.

Order of Reference.

IN CHANCERY OF NEW JERSEY

Between ROBERT G. BECK,  Complainant, and HELEN M. BECK,  Defendant.	}	On Bill, &c.	10
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It is on this 30th day of November, 1925, on motion of Ward Kremer, solicitor for the complainant, ordered that the above stated cause be referred to Hon. M. L. Berry, one of the Vice Chancellors, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein.

E. R. WALKER,  
C.

We consent to the making, entry and filing of the above order.

WARD KREMER,                   3C  
Solicitor of Complainant,  
WILSON and SMOCK,  
Solicitors of Defendant.

*Transcript of Proceedings Offered in Evidence—  
Order of Reference*

*Endorsed on back:*

59-296

10 IN CHANCERY OF NEW JERSEY

Between  
ROBERT G. BECK,  
  
Complainant,  
and  
HELEN M. BECK,  
  
Defendant.

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20 On Bill, &c.  
ORDER OF REFERENCE.

---

Ward Kremer, Esq., Solicitor.  
of Complainant,  
Asbury Park, N. J.  
Filed Dec. 1, 1925.

**Subpoena to Answer.**

New Jersey, to wit: The State of New Jersey to  
Helen M. Beck

(LS)

GREETING: Whereas a bill of complaint has  
lately been exhibited against you in our Court of 10  
Chancery by Robert G. Beck to be relieved touch-  
ing the matters therein contained:

THEREFORE WE COMMAND YOU, if you intend  
to make a defense, that you file an answer to said  
bill in the office of the Clerk of our said Court  
at Trenton, on or before the expiration of twenty  
days from and after the 9th day of December 1925,  
and in default thereof such order or decree will 20  
be made against you as the Court shall think equit-  
able and just.

WITNESS, his Honor, Edwin Robert Walker,  
Chancellor of our said State, at Trenton, the 17th  
day of November, in the year of our Lord, One  
Thousand Nine Hundred and twenty-five.  
Ward Kremer—Sol'r.

THOMAS BARBER—Clerk.

*Endorsed on back:*

30

IN CHANCERY OF NEW JERSEY

Between  
ROBERT G. BECK,

Compl't

and

HELEN M. BECK,

Def't. 40

*Transcript of Proceedings Offered in Evidence—  
Subpoena to Answer*

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SUBPOENA TO ANSWER.

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Ret'ble Dec. 9th, A. D. 1925.

10 Ward Kremer, Esq., Sol'r.

County of Monmouth, }  
State of New Jersey, } ss:

John H. Van Mater, Sheriff of the County of Monmouth, being duly sworn, according to law, on his oath says, that he has duly inquired for Helen M. Beck, the defendant named in the within process for the purpose of serving her therewith, and had not been able to find her in his county, and this deponent is creditably informed and verily believes that the said Helen M. Beck is out of this State, and that she resides at 308 W. 97th St., New York City, c/o Mrs. McCrane.

20

JOHN H. VAN MATER,  
Sheriff.

Sworn and subscribed at Freehold  
30 this 2nd day of December, A. D.  
1925, before me.

William R. O'Brien,  
Notary Public of N. J.

My Commission Expires Dec. 31, 1928.

## Subpoena.

New Jersey, to wit, The State of New Jersey, to  
Helen M. Beck

(SEAL)

GREETING: WHEREAS a bill of complaint has  
lately been exhibited against you in our Court of 10  
Chancery by Robert G. Beck, to be relieved touch-  
ing the matters therein contained.

THEREFORE, we command you, if you intend to  
make a defense, that you file an answer to said  
bill in the office of the Clerk of our said court at  
Trenton, on or before the expiration of twenty  
days from and after the 23rd day of November  
1925, and in default thereof such order or decree 20  
will be made against you as the Court shall think  
equitable and just.

WITNESS, his Honor, Edwin Robert Walker, our  
Chancellor, at Trenton, the 17th day of November,  
in the year of our Lord one thousand nine hundred  
and twenty-five.

THOMAS BARBER,  
Clerk.

Ward, Kremer, Sol'r.

Received in Monmouth County 30  
Sheriff's Office  
Nov. 18, 1925  
at 8:15 o'clock a. m. 1925

John H. Van Mater, Sheriff.

Defendant not found in my county.

John H. Van Mater  
Sheriff.

Sheriff's fees \$1.50 10

*Transcript of Proceedings Offered in Evidence—  
Subpoena*

*Endorsed on back:*

59-296

10 IN CHANCERY OF NEW JERSEY

Between ROBERT G. BECK,  and HELEN M. BECK.	Compl't,   Def't.	}   } Sub. ad Resp.
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20

Ret'ble November 23, A. D. 1925  
Ward Kremer, Sol'r.  
Filed Dec. 5, 1925.

, 192 .

I hereby deputize and appoint

for me and in my name to serve this writ.

30 Witness my hand and seal the day and year  
above written.

Sheriff of

(L. S.)  
County.

By

Under Sheriff.

Note—Strike out the words “Under Sheriff”  
where deputization is made by sheriff personally.

40

## Designation.

## IN CHANCERY OF NEW JERSEY

Between ROBERT G. BECK,  Complainant,  and  HELEN M. BECK,  Defendant.	}	On Bill, &c.	10
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Application having been made to fix a time and place for the hearing in the above entitled cause, it is ordered that Friday, the 11th day of December, 1925, at the hour of ten o'clock in the forenoon, at the Chancery Chambers, City Hall, Long Branch, New Jersey, be and the same is hereby designated as the time and place for the hearing of said cause. 20

Dated December 8th, 1925.

MAJA LEON BERRY,  
V. C. 30

We consent to the making, entry and filing of the above designation.

WARD KREMER,  
Solicitor of Complainant.  
WILSON and SMOCK,  
Solicitors of Defendant.

*Transcript of Proceedings Offered in Evidence—  
Designation*

*Endorsed on back:*

59-296

10

IN CHANCERY OF NEW JERSEY

Between

ROBERT G. BECK,

Complainant,

and

HELEN M. BECK,

Defendant.

20

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On Bill, &c.  
DESIGNATION.

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Ward Kremer, Esq., Solicitor.  
of Complainant,  
Asbury Park, N. J.

Filed Dec. 8, 1925.

Conclusions.

*(Not to be Printed in the Official or Unofficial Reports.)*

IN CHANCERY OF NEW JERSEY

Between ROBERT G. BECK, <div style="text-align: right; padding-right: 20px;">Complainant,</div> and HELEN M. BECK, <div style="text-align: right; padding-right: 20px;">Defendant.</div>	}	On Bill, &c.	10
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Mr. Ward Kremer for Complainant. . 20

Mr. Henry D. Brinley, for Defendant.

BERRY, V. C. (Orally)

This hearing this morning was for the purpose of determining whether or not there was a partnership, and the question as to whether or not there should be an accounting. A reference to a Master to take an account would depend upon my finding as to whether or not there was a part- 30  
 nership. There isn't any question in my mind as to what the exact factual situation is and has been here for a number of years. I think originally the complainant had no business. He was not a business man in the generally accepted sense of the term. He was employed at a moderate salary at the time he was married. Previous to the marriage the defendant had been engaged in the busi-  
 #2 # 40  
 ness of selling novelties. She had a certain

*Transcript of Proceedings Offered in Evidence—  
Conclusions*

10 amount of stock, how much I don't know, on hand  
at the time of the marriage, and she moved to  
Watch Hill, Rhode Island, and remained there  
continuing her business until the fall of that year,  
and then went to New Hampshire. She continued  
her business under her own maiden name until  
some time in 1909. I think perhaps during this  
period she may have had some assistance from her  
husband in the conduct of that business. What  
it was does not appear. It appears from her own  
testimony, however, and this is not seriously con-  
20 tradicted, that she furnished the funds for the  
living expenses at least up to 1909, when the busi-  
ness was first conducted under the name of Beck  
& Beck. The defendant satisfactorily explains to  
me the use of the name Beck & Beck—that it was  
a mere trade name, the idea of using the name  
having been obtained from her previous associa-  
tion with some firm of the name of Peck & Peck.  
I have no doubt but that the use of this name  
began as she said it did, and for the reasons  
explained by her, and those reasons only. I  
30 further have no doubt whatever but that the origi-  
nal capital of this business was all contributed  
by the defendant.

It appears that the business was conducted af-  
ter 1909, ostensibly as Beck & Beck, although the  
bank account for some years after that was car-  
ried in the name of Robert G. Beck, but this may  
have been without the knowledge of the defend-

40 #3 #  
ant. I think it makes very little difference  
whether it was with her knowledge or whether it

*Transcript of Proceedings Offered in Evidence—  
Conclusions*

was not. The testimony convinces me that it was the business account in whatever name it was conducted up until some time, perhaps in 1914 or 1915, when they began business in Spring Lake. Then, or about then, the account was changed to Beck & Beck. Evidently Mrs. Beck had the utmost confidence in her husband and permitted him to use the funds of that account pretty much as he pleased, just so long as the business debts were taken care of and there was sufficient for them to get along upon. 10

I may as well say at this point that I find as a fact that there was no partnership, and I feel that the testimony entirely justifies that finding, not only the testimony offered by the defendant, but the testimony of the complainant himself. On my examination of the complainant, in reply to questions which I put to him, he stated that there never was any agreement of partnership, either verbal or written, that there never was any understanding as to the division of profits, except in his own mind; that there never was any specific agreement as to how the profits of the business should be divided, and it appears that there never was any division of profits. The profits were never arrived at by any systematic bookkeeping account. Apparently at the close of the year, 20 30

#4 #  
after the bills were paid, according to the complainant's own testimony, if there was a balance in the bank, he drew whatever Mrs. Beck wanted from that account, to her order, and deposited it in Mrs. Beck's personal account. He never drew 40

*Transcript of Proceedings Offered in Evidence—  
Conclusions*

10 anything for himself at the close of the year. The  
only thing he ever took from the account was  
during the year for living expenses or personal  
expenses, and undoubtedly many of the withdraw-  
als for his personal account were without the  
knowledge and without the express approval of  
the defendant. I think that she cannot complain,  
however, of the withdrawals which were made for  
his personal account, because she permitted them.  
Now I think there is a wide distinction between a  
partnership as between the parties, and a partner-  
ship as to the outside world. There was prob-  
ably sufficient here to have made a partnership  
20 as to third persons, if they dealt with the supposed  
firm of Beck & Beck with the understanding that  
there was a firm composed of more than one per-  
son. There has been nothing shown to indicate  
that any business name or certificate of business  
name was ever filed by them, but nevertheless it  
may have been that their conduct would have held  
them both personally liable to the creditors of the  
firm, if the creditors had been obliged to seek  
30 redress from either of the individuals. But that  
is a partnership merely by a "holding-out", as I  
understand it, and it may not be a partnership  
as between the parties themselves. The test of  
#5 #  
partnership, as I understand it, and in this I may  
be wrong, is not merely the sharing of profits, but  
there must be a joint ownership coupled with a  
sharing of the profits and losses, as I understand  
40 the law.

*Transcript of Proceedings Offered in Evidence—  
Conclusions*

But I find, as I said before, as a fact, that there was no partnership here as between the parties. I think both parties contributed all their time to the business. I think the business, however, was that of the defendant, the business which she began before her marriage, and continued and developed, perhaps with the help of her husband; but nevertheless her business, and developed by her after the marriage, and I think his reward for his services was exactly what he expected when he was married. As I view this matter Mr. Beck was a not very important cog in the wheel. I would consider him more in the nature of a "Prince Charming," perhaps. I think the business was Mrs. Beck's, and that is my finding, and I shall therefore refuse to direct any account.

Judge Kremer: In view of the fact that your Honor has held there is no partnership here, my own humble opinion is that the partnership is predicated upon the agreement to share profits and losses in the joint enterprise.

Court: There was no such agreement.

Judge Kremer: Of course it is fundamental that agreement need not arise by writing. It may arise by a specific verbal understanding, or by a tacit agreement. That is the gist of Mrs. Beck's own testimony, that he had as much right to draw out of the business as she did.

Court: That was only because she permitted it. There can be no agreement unless there be a meeting of the minds. He himself testified there was no written agreement. He also testified they

*Transcript of Proceedings Offered in Evidence—  
Conclusions*

10 never sat down and agreed there should be any partnership or any proportionate division of the property between them; that the idea of partnership was one which he had formed in his own mind. Evidently from her testimony she had formed an entirely different idea of the arrangement. There could be no partnership, either verbal, tacit or otherwise without a meeting of the minds.

Judge Kremer: Mr. Beck was about to correct that testimony. He was to say they were to share half and half.

20 Court: That wouldn't have made any difference with me. He answered my own examination that there was no agreement.

Judge Kremer: It seems to me from the facts and circumstances in this case that it might just

#7 #

30 as well be said that this business was the business of Robert G. Beck. The banking and all of those arrangements were just as much within his control as they were within hers. It is a conceded fact, whatever his right to share may have been, he says he has never drawn any money, and she says he never withdrew any at the end of the season. He finds himself entitled to any relief which your Honor may find it possible to accord to him, that after participating in the business and not receiving any compensation, he is now excluded from any participation in the business, and it is conceded that he had some right to the withdrawals of 1925. He is not given any share in the  
40 accounts receivable, or assets of the business

*Transcript of Proceedings Offered in Evidence—  
Conclusions*

whatever, but the whole is given to his wife, who claims on very meagre evidence that it is entirely hers—that he was in the guise of the “Prince Charming.” It seems to me that the efforts of a man over a period of twelve years—the use of his name in that business, participation in it, and his drawing customers and patrons in the community to the business, all of which must have happened in spite of her saying that he knew not a soul,—it seems to me it is grossly inequitable that he should be excluded from a single dollar or a single

#8 #

cent in that business, even though your Honor may conclude—and I realize the evidence is sufficient to go either way—even though your Honor may conclude it is not a specific partnership, this man has equitable rights which are not definable at law.

This defendant, I may say to your Honor—I am mindful it is hardly proper to bring before a Court of Chancery, but I don’t know whether your Honor has seen in New York a play called “Craig’s Wife,” in which a woman has taken to herself everything of her husband’s and then turned him out.

Court: You filed the bill here on the theory that there was a partnership existing between these two. That was the only theory of your bill. The burden of proof was upon you. You have not sustained that burden, and I have found as a fact that there was no partnership. I don’t think it is necessary for you to argue any further nor for me to explain any of my decision any further.

*Transcript of Proceedings Offered in Evidence—  
Conclusions*

10 Judge Kremer: Our bill was for an accounting,  
based on the theory of a partnership. Naturally  
a partnership might exist which would be  
conducted upon much more lax lines by virtue of  
relationship, but if it be there were no partner-

#9 #  
ship I am asking leave now to pray for an account-  
ing for the share to which this man would be  
entitled out of the profits of the business.

20 Court: If I thought you were going to be able  
to satisfy me that he was entitled to any share  
other than that which he has already gotten, I  
would permit you to re-open the case and to amend  
your bill of complaint, but I think the testimony  
which the complainant has already offered  
precludes any possibility of proving any partic-  
ular share in the business. It is all left in the air.  
He hasn't any idea what was his or hers, accord-  
ing to his own testimony. There was never any  
specific agreement and there is not any question  
in my mind but what the business originally was  
hers and it has always continued to be hers. In  
30 other words, I think she was the moving spirit in  
the whole affair. I don't see any necessity of  
taking up any more time with it.

Not to be printed in the official or unofficial  
reports.

*Transcript of Proceedings Offered in Evidence—  
Conclusions*

*Endorsed on back:*

59-296

IN CHANCERY OF NEW JERSEY 10

Between  
ROBERT G. BECK,  
  
Complainant,  
and  
HELEN M. BECK,  
  
Defendant.

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On Bill, &c. 20  
BERRY V. C. CONCLUSIONS

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Not to be printed in the official or unofficial reports.

Filed Dec. 18, 1925.

## Final Decree.

## IN CHANCERY OF NEW JERSEY

10	Between ROBERT C. BECK,  and HELEN M. BECK,  Complainant,  Defendant.	}	On Bill, &c.
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20 This cause coming on to be heard before the Chancellor at the Chancery Chambers, in the City of Long Branch, in the presence of Ward Kremer, of counsel with the complainant, and Wilson and Smock, of counsel with the defendant, and the pleadings and proofs having been read and the arguments of the respective counsel having been heard and considered and the Court having duly considered said pleadings and proofs and arguments;

30 AND IT APPEARING to the Court that the complainant is not entitled to the relief sought for and provided for in the bill of complaint;

It is on this eighteenth day of December, 1925, by Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED that the complainant's bill be, and the same is hereby dismissed without costs to either party.

Respectfully advised,

40 Maja Leon Berry,  
V. C.

E. R. WALKER,  
C.

*Transcript of Proceedings Offered in Evidence—  
Final Decree*

I hereby consent to the entry of the above  
Decree.

WARD KREMER,  
Solicitor of Complainant.

10

*Endorsed on back:*

59-296

IN CHANCERY OF NEW JERSEY

Between

ROBERT G. BECK,

Complainant, 20

and

HELEN M. BECK,

Defendant.

---

On Bill, &c.  
FINAL DECREE

---

Wilson & Smock, Solicitor.

Sols. of Compl.,

30

10 E. Front St.,

Red Bank, N. J.

Filed December 12, 1925.

40

## Clerk's Certificate.

(Seal)

10 I, Ferd Garretson, Clerk of the Court of Chancery of the State of New Jersey, the same being a Court of Record, do hereby certify that the foregoing is a true transcript of All Proceedings in the cause wherein Robert G. Beck is Complainant and Helen M. Beck is defendant, now on the files of my office.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the seal of said Court, at Trenton, this 11th day of September, A. D. Nineteen hundred and thirty.

20 FERD GARRETSON,  
Clerk.

---

**EXHIBIT C-10.**
**PROOF OF CLAIM**

To George D. Beck, Executor of the Estate of Robert G. Beck, deceased.

30 Sir:

Please be advised that Helen M. Beck hereby makes claim against the estate of Robert G. Beck, deceased, in the sum of Twelve Thousand Seven Hundred dollars and twelve cents (\$12,700.12), together with interest thereon from the respective dates appearing in the schedules annexed hereto, which schedules are more particularly described as follows:

40

*Exhibit C-10*

## Schedule A

Money loaned by claimant to Robert G. Beck, deceased, and represented by checks appearing therein, together with other money likewise represented by checks of Beck & Beck, the name under which claimant conducted a business, signed by the said Robert G. Beck and the funds realized thereon used by him without the consent of claimant. Said moneys, amounting to Five Thousand two hundred thirty-four dollars and eighty cents (\$5,234.80), were used by the said Robert G. Beck in the purchase, repairs and improvements of and to certain premises purchased by him, and situate, lying and being in the Borough of Spring Lake, in the County of Monmouth and State of New Jersey, and known and designated as lot number six in Block Thirty-nine on a plan of lots of Spring Lake, said premises being on Morris Avenue in said borough. 10 20

## Schedule B

Money loaned by claimant to Robert G. Beck, deceased, and represented by checks appearing therein, together with other money likewise represented by checks of Beck & Beck, the name under which claimant conducted a business, signed by the said Robert G. Beck and the funds realized thereon used by him without the consent of claimant, amounting to Five Thousand thirty-one dollars and seventy cents (\$5,031.70). 30

## Schedule C

This schedule contains a list of checks of claimant's customers, cashed by the said Robert G. 40

*Exhibit C-10*

Beck without claimant's knowledge and consent, and the funds realized thereby were used by the said Robert G. Beck without claimant's knowledge and consent. The moneys thus appropriated amount to Two Thousand four hundred thirty-

10 three dollars and sixty-two cents (\$2,433.62).

HELEN M. BECK,  
Claimant.

Applegate, Stevens,  
Foster, Leonard & Reussille,  
Attorneys for Claimant.

State of New Jersey, }  
County of Monmouth. } ss:

20 Helen M. Beck, being duly sworn according to law, on her oath says, that the moneys amounting to Twelve Thousand seven hundred dollars and twelve cents (\$12,700.12), more particularly described in Schedules A, B and C annexed hereto, were either loaned to Robert G. Beck, deceased, by deponent or misappropriated by the said Robert G. Beck in his lifetime.

30 Deponent further says that no part of the foregoing claim, amounting to Twelve Thousand seven hundred dollars and twelve cents (\$12,700.12), has been paid but that the whole sum, including interest, stated in said claim is justly due and owing to her from the estate of the said Robert G. Beck.

HELEN M. BECK.

Subscribed and sworn to  
before me, this 29th

40 day of March, 1928.

J. Adele Presley,  
Notary Public of New Jersey.

(Seal)

## Exhibit C-10

## SCHEDULE A.

Oct. 19, 1921	#1354	C. Megill	\$ 400.00	
Nov. 21, "	1366	C. Megill	2,053.50	
Nov. 21, "	1367	L. Newman, Int. on Mort.	45.00	
Dec. 14, "	1380	P. C. Brown, Insurance	31.19	
Dec. 14, "	1381	H. H. Moore, Inc., Insurance	30.38	10
Jan. 10, 1922	1400	B. B. Pearce	30.50	
Jan. 20, "	1404	W. W. Harrington	30.00	
Jan. 27, "	1409	Cash, Wages	50.00	
Feb. 4, "	1411	Cash Wages	50.00	
Feb. 4, "	1412	Miller & Mitchell	50.00	
Feb. 11, "	1413	" " "	50.00	
Feb. 11, "	1414	" " "	50.00	
Feb. 18, "	1417	Cash	50.00	
Feb. 20, "	1419	Mitchell	350.00	20
	1422	H. H. Moore, Insurance	65.52	
	1426	Lewis Lbr. Co.	13.50	
	1430	H. R. Todd	75.00	
May 10, "	1441	L. Newman, Interest	45.00	
May 31, "	1446	W. W. Trout, Tax	22.00	
June 12, "	1458	F. Scammetillo	93.00	
July 19, "	1479	P. C. Brown	21.77	
Dec. 30, 1924	1959	H. H. Moore, Inc., Insurance	53.11	
Aug. 7, "	1878	W. W. Trout	18.50	
May 31, "	1825	" " "	22.40	30
May 10, "	1820	L. Newman, Interest	45.00	
Nov. 9, 1923	1759	" " "	45.00	
Nov. 10, 1924	1930	" " "	45.00	
Dec. 20, 1924	1961	P. C. Brown	51.92	
May 4, 1925	2002	H. H. Moore, Inc.	17.75	
May 12, "	2004	L. Newman	45.00	
Mar. 1, 1922	1423	T. E. Alger	125.00	
Mar. 22, "	1427	Cash	50.00	
Apr. 15, "	1434	Lewis Lumber Co.	19.21	40
June 6, "	1455	H. R. Todd	40.00	

*Exhibit C-10*

	July 10, "	1468	Newark News	3.24
	July 20, "	1480	S. M. Bennett	9.45
	Aug. 4, "	1491	H. R. Todd	5.50
	Aug. 31, "	1524	Sheet Metal Shop	6.50
	Sept. 27, "	1547	Coast Gas piping	22.00
10	Oct. 17, 1922	1562	R. A. Algor	104.09
	Oct. 17, "	1563	Coast gas	15.00
	Oct. 31, "	1572	Boro. of Sp. Lake, Water	19.50
	Nov. 2, "	1576	C. Megill	3.25
	Nov. 10, "	1580	L. Newman	45.00
	Nov. 18, "	1587	H. G. Clayton	38.90
	Nov. 29, "	1591	W. W. Trout, taxes	22.00
	Jan. 20, 1923	1638	C. Megill	82.43
	May 10, "	1645	L. Newman	45.00
20	June 6, "	1650	H. R. Todd	40.00
	May 31, "	1651	Boro. of Sp. Lake, Taxes	22.00
	July 17, "	1689	Boro. of Sp. Lake, Water	12.50
	July 10, "	1686	Newark News	1.62
	July 17, "	1688	Newark News, rental	1.62
	Aug. 3, "	1701	C. Rhodes	10.00
	Oct. 23, "	1751	Boro. of Sp. Lake, ext.	2.00
	Nov. 30, "	1771	W. W. Trout, taxes	22.00
	July 1, 1924	1846	T. E. Algor	30.00
	Aug. 23, "	1890	H. Longman	200.00
30	Aug. 7, "	1876	E. Rolle, refund on rent	25.00
	Oct. 4, "	1914	T. E. Bennett	14.00
	Dec. 1, "	1939	W. W. Trout, taxes	22.40
	Dec. 10, "	1950	T. E. Algor	17.50
	Dec. 30, "	1959	H. H. Moore	56.96
	June 1, 1925	2009	Boro. of Sp. Lake	28.84
	June 20, "	2018	H. H. Moore, Inc.	56.95
	July 31, "	2034	Boro. of Sp. Lake	21.80
	Feb. 20, "	1981	H. H. Moore, Inc.	43.50
40				<hr/> \$5,234.80

## Exhibit C-10

## SCHEDULE B.

Jan. 30, 1923	#1620	J. A. Gallagher	\$ 100.00	
Aug. 15, "	1713	Robert G. Beck	400.00	
Oct. 8, "	1745	L. C. Gallagher	20.00	
Nov. 14, "	1760	Cash	50.00	
Nov. 19, "	1763	Robert G. Beck	600.00	10
Dec. 21, "	1783	L. C. Gallagher	10.00	
Dec. 21, "	1784	J. A. Gallagher	5.00	
Jan. 15, 1924	1797	Wm. J. Erbe	5.35	
Mar. 7, "	1806	J. A. Gallagher	50.00	
Jan. 18, "	1803	Rogers Peet & Co.	150.00	
Apr. 12, "	1814	Cash	50.00	
May 10, "	1819	Cash	25.00	
Sept. 13, "	1903	Cash	100.00	
Oct. 16, "	1920	Cash	50.00	20
Dec. 8, "	1947	Asbury Park & Ocean Grove Bk.	3.00	
Dec. 22, "	1955	L. C. Gallagher	20.00	
Dec. 22, "	1956	J. A. Gallagher	5.00	
Jan. 15, 1925	1967	Cash	25.00	
Jan. 21, "	1968	Cash	25.00	
Jan. 31, "	1977	Beck & Beck	50.00	
Feb. 10, "	1979	Jos. H. Bryan, M. D.	6.00	
Feb. 19, "	1980	Cash	50.00	
Feb. 20, "	1981	H. H. Moore, Inc.	89.35	
Feb. 24, "	1984	Coll. of U. S. Internal Revenue	7.50	30
Mar. 9, "	1989	Cash	50.00	
Mar. 16, "	1991	Cash	50.00	
Mar. 23, "	1995	Cash	50.00	
Apr. 18, "	1997	Cash	25.00	
Apr. 24, "	1998	Cash	50.00	
May 19, "	2006	Cash	25.00	
Jul. 25, "	2029	Robert G. Beck	200.00	
May 21, "	2468	Robert G. Beck	200.00	
Oct. 21, 1922	1355	J. A. Gallagher	150.00	40
Dec. 22, "	1388	" " "	5.00	
Dec. 22, "	1389	L. C. Gallagher	10.00	
	1392	Cash	60.00	

*Exhibit C-10*

	Jan. 12, 1923	1402	As. Pk. & Ocean Grove Bank	3.00
	Mar. 23, "	1427	Cash	50.00
	Apr. 26, "	1435	Cash	25.00
	May 6, "	1436	Cash	25.00
	May 29, "	1444	Cash	25.00
10	May 6, 1922	1436	Cash	25.00
	June 18, 1922	1665	A. P. & O. G.	3.00
	Jan. 5, 1921	1195	Heardrum	5.00
	Sept. 27, "	1339	Cash	7.00
	10, 1921	1301	Better Sox	3.00
	May 31, 1924	1839	Dr. Stillwell	10.00
	Sept. 13, 1922	1535	Better Sox	2.70
	Aug. 9, "	1505	R. G. Beck	500.00
	Aug. 17, "	1509	R. G. Beck	100.00
20	Dec. 19, "	1607	L. C. Gallagher	10.00
	Dec. 19, "	1608	J. A. Gallagher	5.00
	Jan. 9, 1923	1615	A. P. & O. G.	3.00
	Jan. 11, "	1619	Cash	150.00
	Feb. 21, "	1623	R. G. Beck	150.00
	Mar. 17, "	1627	Rogers-Peet	28.00
	May 26, "	1648	Cash	35.00
	Jan. 18, "	1665	A. P. & O. G.	3.00
	July 11, "	1686	Newark News	1.62
	July 17, "	1688	Newark News	1.62
30	July 24, "	1695	W. J. Erbe	15.60
	July 27, 1921	1285	H. Height	55.96
	Feb. 2, 1924	1804	Boro Sp. Lake	4.00
	Jan. 6, 1921	1196	R. G. Beck (Loan to G. D. Beck)	300.00
	Mar. 15, 1920	1033	Rogers-Peet	45.00
	Dec. 15, 1920	1182	L. C. Gallagher	10.00
	Dec. 15, "	1183	J. A. Gallagher	5.00
	Dec. 15, "	1184	Mrs. Gallagher	5.00
	Jan. 12, 1921	1199	Cash	140.00
40	Feb. 23, "	1202	R. G. Beck	500.00
	Jan. 8, "	1229	J. Ward	9.00

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 \$5,031.70

*Exhibit C-10*

## SCHEDULE C.

## CHECKS CASHED.

Nov. 21, 1921	Campion	\$10.55	
	Stumer	19.00	
	E. Eliot, Jr.	32.50	10
Jan. 11, 1923	Griffen	4.50	
	Margaret Davison	22.50	
	Mrs. Clifford Hemphill	34.95	
Nov. 21, 1922	Bowman	14.75	
	Folwell	3.60	
Aug. 21,	Sara F. Hillman	1.70	
	Kate McCrane	15.00	
	Lucy S. Maxwell	18.00	
	Alice Sperling, J. C. P. & L. Co.	37.50	20
Aug. 15,	Pearl S. Pethgrew	23.00	
	Joanna I. Devoll	23.00	
Aug. 15, 1922	Mrs. Arthur C. Diamond	55.00	
Sept. 18, 1922	Phyllis Dixon	3.00	
	Mrs. Cross	4.90	
	Mrs. A. W. Moreau, Free- hold	14.25	
	Alice E. Hoff	20.75	
	Mrs. R. C. Maxwell	88.00	30
	Mrs. C. N. Lindley	64.75	
Dec. 28, 1922	Bills—	20.00	
	McCormick	97.00	
	Chesebrough	83.50	
July 17, 1922	Whittendale	2.95	
	Campion	6.35	
Dec. 9, 1922	A. Leiber	15.75	
	Miss Gillig	13.50	
	“	9.00	40

*Exhibit C-10*

	Dec. 12, 1922	Stockton	.65
		Micholson	8.25
		Mrs. Griffen	9.85
	Nov. 24, 1922	J. G. Conyngtain	40.00
		Florence Webber	35.00
10		Alice E. Hoff	15.00
	No date	Ellis	3.15
		Maria Allen	50.94
	July 6, 1922	Borden	22.00
	Nov. 16, 1921	B. W. Leigh	4.25
		J. Connell Murraray	5.65
		Mrs. W. J. J. Bowman	6.00
		Mrs. Dixon	10.05
		Mrs. W. E. Balken	28.50
20		Mrs. Thos. Morrison	32.95
	Nov. 23, 1921	McGee	7.75
		Mrs. G. H. Miles	9.75
		O'Sullivan	10.70
		S. J. Cawley, Jr.	13.25
	Nov. 26,	Miss Morrison	9.78
	Nov. 28,	Miss E. Bowman	21.70
	Nov. 30, 1921	Gen. E. C. Murray	2.95
		Florence C. Justice	10.45
	Sept. 28, 1921	Robinson	18.00
30	Sept. 28,	Teal	6.25
		Holin	5.00
		Bowman	1.00
	Sept. 27, 1921	Miss Leigh	2.75
		Cunningham	10.00
		F. W. Harper	30.00
		Beck & Beck	7.00
		Pennies	.25
	Sept. 30,	Hicks	51.25
40		Miss Campion	2.10

*Exhibit C-10*

Sept. 24,	Bills	88.00	
	Holin	2.00	
	Gannor	26.00	
	Scammell	27.65	
	Day	37.00	
	Payson	70.00	10
Sept. 3, 1925	Elz. G. Morrison	15.20	
	Mary Regis Hetzler	16.25	
Oct. 14,	Campion	1.25	
	Havely	4.10	
	Potts	6.25	
	Agnes	12.00	
	McC. Brace	23.25	
	Fitch	23.20	
	Leigh	30.75	20
Oct. 18, 1921	A. Sadler	1.05	
	C. C. Kerr	2.30	
	F. H. Allen	58.50	
Oct. 22, 192?	Cash	7.00	
	Katzenbach	3.75	
	Mrs. Wm. Green	4.75	
	T. C. Jenkins	6.15	
	Holin	10.00	
	"	25.00	
	Humes	44.00	30
Oct. 30, 1921	Davis	5.85	
Nov. 6, "	Lieber	13.75	
	Hemphill	12.10	
	Krementz	3.25	
Oct. 5, "	Hillman	4.10	
	Nan Stengel	18.50	
	Holin	10.00	
	Moss	28.50	
	J. B. Edwards	35.00	40

*Exhibit C-10*

		Mr. Geo. D. Clews	35.00
		Miss A. S. Weber	21.75
		Cash Bill	50.00
	Oct. 8, "	F. D. Ramsey	12.00
		C. C. Baldwin	14.55
10		E. M. Marshall	18.00
		M. M. Johnson	57.00
		C. H. Sellon	59.30
	Oct. 28, "	Krementz	3.25
		Holin	5.00
		Hemphill	12.10
		Holin	15.00
		Kendall	33.00
		Kendall	40.00
20		C. L. Taylor	50.80
		Gail Maxwell	79.00
			<hr/>
			2,433.62

*Endorsed on back:*

PROOF OF CLAIM

Of

HELEN M. BECK

30

Against

THE ESTATE OF ROBERT G. BECK,  
Deceased.

Service acknowledged May 24, 1928

WARD KREMER,

Attorney for Geo. D. Beck,  
Executor of Rob't. G. Beck, deceased.

40

## New Jersey Court of Errors and Appeals.

Between—

HELEN M. BECK,  
Complainant-Appellant,

AND

GEORGE D. BECK, Executor, &c., *et al.*,  
Defendants-Appellees.

On Appeal from the  
Court of Chancery.

### BRIEF OF APPELLANT.

#### Preliminary Statement.

This is an appeal from a final decree of the Court of Chancery dismissing the Bill of Complaint of Helen M. Beck, the present appellant, upon the ground that the subject matter thereof had been adjudicated in a prior suit wherein Robert Beck, her husband, sought to have himself declared her partner in a business which for many years had been conducted by his wife.

The defense of *res adjudicata* was raised in the Answers of defendants who are the executor of the estate of Robert Beck, deceased, and his sister, one of the legatees named in his Will.

On final hearing the point of law was raised at the outset, and the court was of the opinion the question should be decided upon receiving the

file of the former suit and without taking any testimony, the motion being deemed a motion to strike out the Bill of Complaint upon the ground reserved in the Answer.

In an effort briefly to show that the subject matter of the present bill was entirely different from the issue raised and decided in the former suit, complainant's counsel was permitted to introduce testimony (P. 54, line 40). At the close of this testimony and without hearing the defense, it was directed that the question of law would first be disposed of before any proof was received from the defense (p. 67). After receiving Briefs the learned Vice-Chancellor concluded that the matters in issue in the present suit were adjudicated by the decree in the former suit and accordingly advised a dismissal of the Bill of Complaint herein.

#### **Statement of Facts.**

For many years Helen M. Beck had been engaged in the business of selling women's sports wear at a small store in Spring Lake, New Jersey. Robert Beck, her husband, kept the books of the business and made deposits in the Spring Lake National Bank, where the business account was in the trade name of Beck & Beck. It had been Robert Beck's habit, sometimes with his wife's knowledge and sometimes without, to draw from the bank and often the cash drawer, money for his wearing apparel and incidental personal needs. Between 1921 and 1925 he preserved records of

withdrawals for such uses amounting to \$5,031.70 (see Schedule B, p. 123 annexed to claim against estate). In the fall of 1925 Beck separated from his wife and filed a Bill in Chancery alleging that he and his wife were partners and praying that by reason of that relationship there should be an accounting of the profits. The complete copy of the Chancery file of this suit is set forth in the record (pp. 69-118). The suit proceeded to final hearing and resulted in the Court's finding no partnership existed and consequently no accounting was ordered.

In the opinion advising a dismissal of Robert Beck's Bill the Vice-Chancellor among other things said (p. 111, line 17):

"As I view this matter Mr. Beck was a not very important cog in the wheel. I would consider him more in the nature of a 'Prince Charming,' perhaps. I think the business was Mrs. Beck's, and that is my finding, and I shall therefore refuse to direct any account."

In the same opinion the Court further observed (p. 110):

"The only thing he ever took from the account was during the year for living expenses or personal expenses, and undoubtedly many of the withdrawals for his personal account were without the knowledge and without the express approval of the defendant. I think that she cannot complain, how-

ever, of the withdrawals which were made for his personal account, because she permitted them."

After the unsuccessful termination of his suit Beck returned to his wife a sick man.

Either during the suit, or a short time thereafter, at all events before her husband's death in November 1926, Mrs. Beck gained access to the records kept in the handwriting of her husband and found he had taken in addition to the \$5,031.70, the sum of \$2,433.62 cash. This was evidenced by memoranda in his handwriting indicating that customers had paid in cash various sums which he did not deposit (p. 11; p. 59, Ex. C-7).

She also learned the exact amount he had withdrawn and used for the purchase and upkeep of a house and lot on Morris Avenue, Spring Lake, standing in his name. It was \$5,234.80 according to the records he kept (p. 58, Ex. C-3). She knew of his withdrawal of the moneys in part payment of the Morris Avenue property while the suit against her was pending and in her answer (p. 93) she alleged that her husband had complete charge of her books and bank accounts and that she knew nothing of their contents, but that she did know she permitted him to take in his own name the Morris Avenue property, but that without her knowledge he had spent large sums in the repair and improvement of it. She did not allege that the moneys thus taken by him were a gift, neither did she seek to recover them on a Counterclaim. Why she made no effort to

bring about a return of the money or to obtain some security for its return can be explained. Her husband was seriously ill and was in no condition to discuss money matters. He frequently cried. Mrs. Steele, who lived with the Becks during the five months immediately preceding his death, often heard him say he was sorry for what he did and that he would straighten everything out if his wife would only forgive him (p. 65). His death revealed a Will under which he left two-thirds of his property to his sister and the remaining one-third to his wife, his estate including the Morris Avenue property. What else it included, if anything, the record does not reveal and it was not considered whether the amount thus bequeathed should be deemed a part payment of the sum now claimed.

In the present Bill of Complaint Mrs. Beck alleges that the sums withdrawn by her husband and used in the purchase of the Morris Avenue property were loans and that in the same category was the \$2,433.62 in cash which, unknown to her, had been withheld by her husband from deposit (p. 59, Ex. C-7).

It will be noted that no claim is made for the return of the \$5,031.70 (p. 39; p. 123), which Robert Beck withdrew by check and used for his personal expenses. The omission of this claim was prompted by the opinion in the first suit.

These withdrawals for clothing and other incidental expenses were mentioned in the first suit

but were deemed more or less in payment of the services rendered by Beck. The same could not be said of his withdrawal of substantially all the remaining money the business earned. For Mrs. Beck to seek a return of her money which her husband's illness prevented her from demanding before his death, is not an unusual or unconscionable demand. In this case her claim was not characterized. The question of whether under the circumstances the money was a loan or a gift was not considered. All the plaintiff now asks is a reversal of the decree so that the question of gift or loan may be determined. That the question should have been determined in this suit is enforced by the fact that the question was not determined in the prior suit and indeed could not have been there determined in the absence of a partnership first being declared.

As this appeal raises a question of law and not a question of fact defendants' solicitor kindly consented to waive the printing of the voluminous exhibits offered by complaint (see Stipulation, p. 35).

### Argument.

In defendant's Answer to the present Bill of Complaint appears the following notice:

"This defendant will move to dismiss the bill of complaint in the above entitled cause at the final hearing thereof on the ground that all the matters in controversy between Robert G. Beck, deceased, and Helen M. Beck, complainant herein, were completely adjudicated in a cause in this Court wherein Robert G. Beck was complainant and Helen M. Beck, defendant."

On this notice defendants predicated their motion to dismiss the bill. Their motion was made to rest upon two grounds: First, that the matters now in controversy were actually and completely adjudicated in the suit between Robert Beck and the present complainant and, secondly, if not therein directly adjudicated, the matters were inferentially adjudicated by complainant's failure in the first suit to allege the subject-matter of her present bill by way of set-off under a statute appearing in *Revision of 1877, 4 C. S. 4836*. These two contentions will be considered in their order.

## POINT I.

That the issues raised in the present suit were not raised and determined in the former suit.

The bill filed by Robert Beck in his lifetime, naming his wife as defendant, was merely one for the determination of an alleged status, *i. e.*, a partnership. If that status were proved, then as an incident thereof, an accounting became in order. If the status were not proved, an accounting was not in order. It was decreed that *a partnership did not exist*. There was thus decided only that single issue of partnership and the raising and consideration of any other issue was conditional on a partnership being found. No other issue being considered, there was no other found.

The issues now tendered were not before the court in the first suit, but even assuming they were, the issues were not decided. It is one thing to decide whether two people are partners, but it is quite another to decide whether one of them owes the other money. Whether or not Robert Beck owed his wife money may not have been triable matter in the first suit, even though the question of partnership had been decided, for a partnership accounting is supposed to reveal what the members of the firm owe the partnership fund and what the partnership fund owes to the members.

As said by Vice-Chancellor Backes in *Nagle v. Conard*, 96 N. J. Eq. 61 at 64:

“The principle is authoritatively settled that a decree or judgment on a matter outside of the issues raised by the pleading is a nullity and is nowhere entitled to the least respect as a judicial sentence. *Jones v. Davenport*, 45 N. J. Eq. 77. In a second suit between the same parties for the same cause of action all triable matters within the issues are *res judicata*. In a second suit between the same parties for a different cause of action only those matters within the issues actually litigated and determined as *res judicata*. 15 R. C. L. Judgments, 429, 438, 450, 452. Whether this motion be regarded as within the first or second propositions—I think it comes within the second—the result is the same. The issues here tendered were not presented.”

The only thing the former decree should stand for is the absence of a partnership. The validity of complainant's present claim is in nowise dependent upon a partnership, on the contrary, it presupposes exactly what the first suit determined, *i. e.*, the absence of that status.

## POINT II.

That complainant is not now precluded by her failure to set-off in the first suit her present claim.

As their second ground, defendants retreat to the view that even though the claim now made by Mrs. Beck were not the subject-matter of the first suit, she was nevertheless obliged to have her claim adjudicated in that suit and her failure so to do must now preclude her claim. This position is based solely on an old statute appearing in the *Revision of 1877, 4 C. S. 4836*. It does not appear that the statute was ever designed to apply in equity. Equity has never needed the aid of any statutes to justify a set-off. The doctrine of equitable set-off has long afforded such relief. Not so in law. Under the Common Law there could be no set-off. *24 Cyc. 626*. Statutory aid was needed and as a consequence England passed an act permitting set-off where there was mutual indebtedness for sums *certain*. New Jersey likewise adopted an Act to bring about the same situation. It was passed in 1722, *Goodkin v. Bailey, 74 N. J. L. 655-656*. This historical analysis seems sufficient to preclude the application of the Set-off Act, which was designed wholly to change the Common Law and not to enlarge or even affect equitable principles. That the *Act of 1877* should be thus confined, is further enforced by *Rule 28*

of the Court of Chancery which says that the defendant *may* counter-claim or set-off. The rule does not say that the defendant *must* counter-claim or set-off. Indeed, if the counter-claim or set-off cannot be conveniently disposed of in the main action, the court under this rule is permitted to strike it out. This lack of mandatory direction and the wide discretion expressly conferred, can hardly be said to render the failure to counter-claim, equivalent to an adjudication in those matters which might properly have been the subject of set-off or counter-claim.

The very definition of set-off precludes its application. It presupposes the admission of the whole or part of the plaintiff's claim for a sum certain. It must arise out of a transaction extrinsic to the plaintiff's cause of action, *34 Cyc. 625*. Where the claim arises out of the same transaction, recoupment is the proper term for the claim. The title of the Act confines its application to set-off.

Still a further reason opposes the defendant's present contention. It cannot be argued that anyone charged with being a partner of another is obliged to set up in the same equitable suit any claim he might have against the person so charging him. In other words, had the parties been unmarried, Mrs. Beck, in the absence of a partnership being found, could not have obtained a money decree on a counterclaim. Being under no marital disability her remedy at law would have been entirely adequate. Is the force of defendant's present argument to rest solely upon

the fact that the parties were husband and wife? The right to set-off would then depend not upon the character of the complainant's claim, or upon the character of the defendant's claim, but solely upon Mrs. Beck having a right against her husband for which a court of law gave no remedy because of the marital relationship.

At the close of the Vice Chancellor's opinion dismissing the present bill (p. 30) the observation is made that if the former decree is not *res adjudicata* as to complainant's claim for the \$2,433.62, representing cash withheld from deposit, complainant's remedy at law in an action against the estate would be adequate. An examination of the New Jersey precedents has not revealed any decision which holds that the common law disability of a spouse is removed by death so as to permit the surviving spouse to sue at law the representative of the deceased spouse. If such cases are reported they might be offered as illustrations of equity's concurrent jurisdiction if read in light of the cases in Chancery standing for the proposition that equity has jurisdiction to adjudicate a claim by a spouse against the representative of the estate of the deceased spouse. See *Elmer v. Trenton Trust and Safe Deposit Company, administrator, &c.*, 76 N. J. Eq. 452, and cases therein cited.

If it be found that complainant has such a remedy at law as would prevent equitable jurisdiction, then by the same token must it be said that equity would have been without jurisdiction

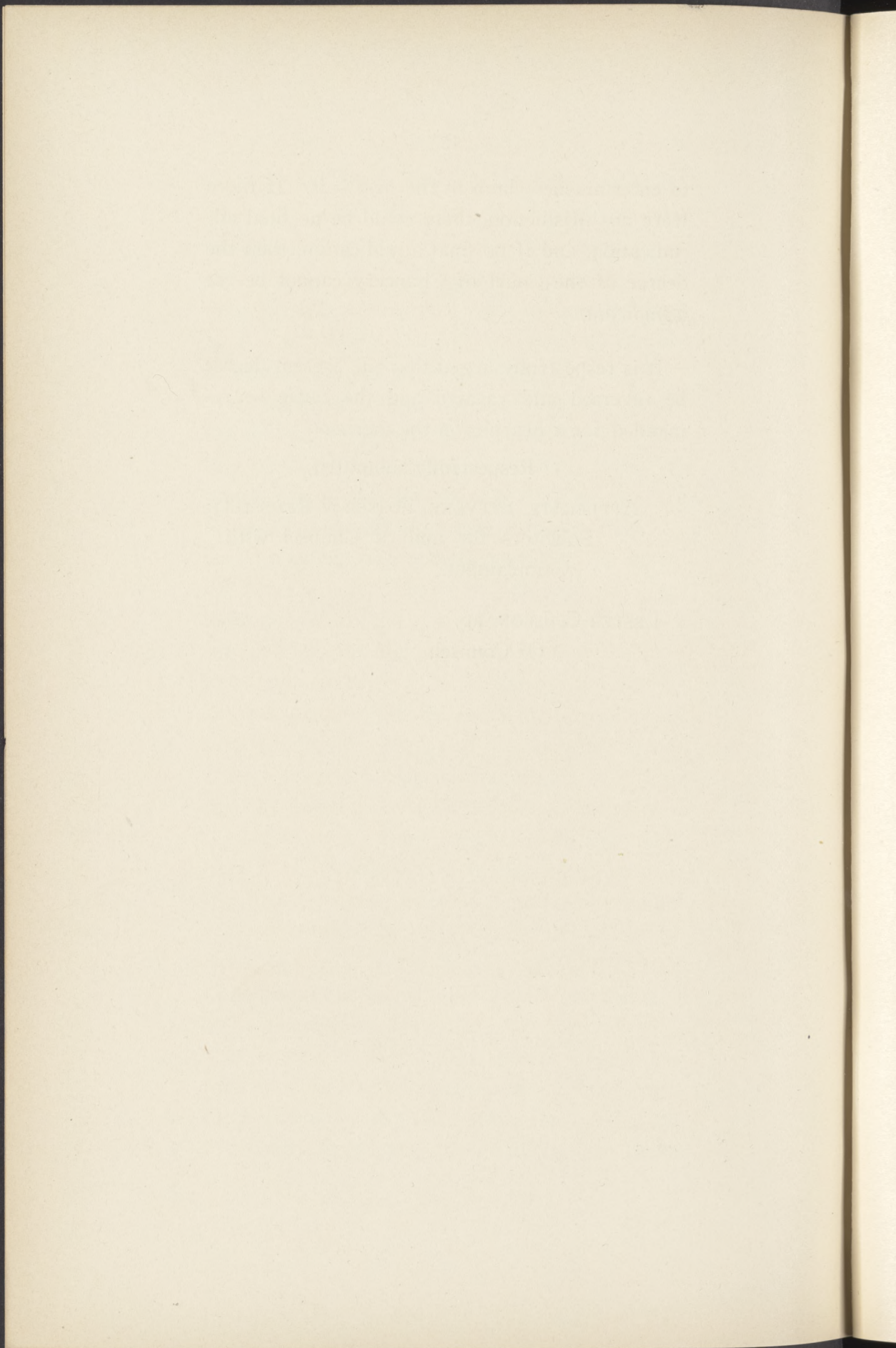
to entertain her claim in the first suit. If there were no jurisdiction, there could be no final adjudication, and if no final adjudication, then the decree of the Court of Chancery cannot be *res adjudicata*.

It is respectfully urged that the present decree be reversed and vacated and the cause be remanded for a hearing on the merits.

Respectfully submitted,

APPLEGATE, STEVENS, FOSTER & REUSSILLE,  
Solicitors for and of Counsel with  
Complainant.

LESTER C. LEONARD,  
Of Counsel.



## NEW JERSEY COURT OF ERRORS AND APPEALS

<p style="text-align: center;"><i>Between</i></p> <p>HELEN M. BECK, Complainant-Appellant, and GEORGE D. BECK, Executor, &amp;c., et al, Defendants-Appellees.</p>	} ON APPEAL FROM THE COURT OF CHANCERY	10
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## BRIEF OF APPELLEES

This is an appeal from a final Decree of the Court of Chancery dismissing the bill of complaint of appellant upon the ground that the subject matter thereof was adjudicated in a prior suit for an accounting, in which Robert Beck, appellant's husband, was the complainant, and the appellant was the defendant. 20

## I.

## PREFATORY

In October, 1925, Robert Beck filed a bill of complaint in the Court of Chancery against his wife, Helen M. Beck, the appellant, in this action, claiming the existence of a partnership between them, and demanding an accounting (P. 69). A petition praying for the appointment of a receiver was also filed (P. 73), and Mrs. Beck, the complainant-appellant in this action, filed an answering affidavit on November 12, 1925 (P. 84). In Helen M. Beck's answer, filed in that case, she referred to the purchase of the property by her husband, thus: 40

10 "10. The defendant also avers that with her knowledge, and permission she permitted the complainant to purchase a business property on Morris Avenue in Spring Lake with funds which represented profits of the Beck and Beck business and to take the property in his own name; that in addition to this purchase of property, which is worth at least \$15,000, the complainant without her knowledge and consent has spent large sums of money on the repair and permanent improvement of the same using the funds of the Beck and Beck business. Complainant has also kept the rents derived from the Morris Avenue property, and in addition to that has drawn regularly from the Beck and Beck account amounts which represent the rents received by him from the tenant of the Morris Avenue property reaping thereby a double profit. Defendant further avers that the complainant has withdrawn other large sums of money from the Beck and Beck account by check or cash and placed these to his own individual credit in the Asbury Park Trust Company and with said money purchased a valuable residence property at Bradley Beach, which he took in the name of a near relative, all without the knowledge or consent of the defendant." (P. 95, L. 39, to P. 96, L. 30).

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And in Helen M. Beck's answering affidavit to the petition, she made the following statement:

40 "4. In the year 1921, with my permission, I permitted my husband in his own name to purchase property located on Morris Avenue in Spring Lake with funds from the business account. That property stands today in his name and is a valuable business property, being worth at least \$15,000 (P. 85, L. 30)."

Further on in the same paragraph, the said Helen M. Beck stated:

“I have now learned for the first time, from examination of the books and checks that in addition to this, he has made extensive repairs and improvements to this property and paid for the same with funds from the business. \* \* \* \* \*” (P. 85, L. 40).

The Court passed upon the facts in the case at the time and dismissed the bill of Robert Beck. 10

In the opinion advising a dismissal of Robert Beck's bill the Vice-Chancellor, among other things, said: (P. 111, L. 9)

“I think the business, however, was that of the defendant, the business which she began before her marriage, and continued and developed, perhaps with the help of her husband; but nevertheless her business and developed by her after the marriage, and I think his reward for his services was exactly what he expected when he was married.” 20

And further in reply to the solicitor for Robert Beck the Vice-Chancellor said: (P. 114, L. 16)

“If I thought you were going to be able to satisfy me that he was entitled to any share other than that which he has already gotten, I would permit you to re-open the case and to amend your bill of complaint, but I think the testimony which the complainant has already offered precludes any possibility of proving any particular share in the business.” 30

It is clear from the above opinion of the Vice-Chancellor that he based his conclusion not only upon his failure to find the existence of a partnership between the parties, but also because he found 40

that the complainant, Robert Beck, had received all the money to which he was entitled for his services in the business.

Therefore, it is respectfully submitted that the decree in the former suit determined not merely a status, but also Robert Beck's right to both moneys received and claimed.

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## II.

THE ISSUES RAISED IN THE PRESENT SUIT  
WERE ADJUDICATED IN THE FORMER  
SUIT.

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All the facts which are now presented by the present appellant, Helen M. Beck, were presented to the court in the former suit, or if not, were within the knowledge of the appellant and could easily have been presented.

The principle of *res judicata* has been clearly defined by this court in *re Walsh Estate* (1909) 80 N. J. Eq. 565, at page 569, wherein it is said:

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“The doctrine of *res adjudicata* has been clearly defined in this state, and it is the law ‘that the judgment of a court of competent jurisdiction on a question of law or fact, or on a question of mixed law and fact, once litigated and determined, is, so long as it remains unreversed, conclusive upon the parties and their privies, not only as to the particular property involved in the suit in which it is pronounced, but as to all future litigation between the same parties or their privies, touching the subject-matter, though the property involved in the subsequent litigation is different from that which was involved in the first’. ‘All that is required in cases where the prior

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and subsequent litigations involve different things, to render the judgment in the first conclusive upon the parties in the subsequent, is that there shall be substantial identity in the subject-matter of the two, and that must always be the case, as is obvious where the judgment in the first rests on a decision of the same question substantially which is presented for decision by the subsequent.' *City of Paterson v. Baker*, 51 N. J. Eq. (6 Dick.) 57. 10  
*All that is necessary is that the right to relief in the one suit shall rest upon the same point or question which, in essence and substance, was litigated and determined in the first suit, and in such a case the parties and those in privity with them are concluded, 'not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. Ibid., 51 N. J. Eq. (6 Dick.) 53; Cromwell v. Sac County, 94 U. S. 351, 352; 24 L. Ed. 195.'* \* \* \* \* \*

"The judgment is final between the parties as to all defences which were or could have been set up in the earlier suit. *Thompson v. Williamson*, 67 N. J. Eq. (1 Robb.) 212, 214. 'It is not necessary that the action in which the judgment is found, and that in which it is relied on as an estoppel, should be of the same kind, or for the same cause of action'." *Sawyer v. Woodbury*, 7 (Gray) Mass. 502, 66 Am. Dec. 518; *City of Paterson v. Baker*, 51 N. J. Eq. 6 (Dick) 54. (The italics are ours). 30

Upon the authority of the above case, it is respectfully urged that the matter is *res adjudicata*. The same subject matter was in controversy in both suits. Helen M. Beck, then defendant and complain- 40

ant now, by her own affidavit admitted that she was in possession of all the facts relating to the transactions such as records, check-books, etc., at the time of the former suit. Her answer set up that her husband had purchased a home and had made improvements thereon from the funds of the business. Moreover, the conduct of business of Beck & Beck, and the purchase of the properties by Robert Beck were the matters under examination in the former suit and are the matters under examination in this case. As the issues tendered in the instant case were presented to the court in the former suit, it is submitted that the case of *Nagle vs. Conard*, 96 N. J. Eq. 61, cited by counsel for appellant is not applicable to the present situation.

It is respectfully submitted that as all of the above matters having been adjudicated in the former suit, and all of them having been in controversy, the former decree is final and conclusive as between the parties in respect to every fact which was properly considered in reaching a judicial determination, as those points relate directly to the cause of action now in litigation and affect the same subject matter then before the Court.

### III.

#### 30 COMPLAINTANT'S FAILURE TO SET-OFF HER CLAIM IN THE FORMER SUIT IS A BAR TO THIS ACTION.

As related above, all the facts which are now presented by the complainant-appellant were either before the court in the former suit, or could readily have been presented. All the facts which Mrs. Beck now presents were then available. In fact, the complainant-appellant filed an answer setting forth the very matters she raises at this time. It is respectfully

urged that it was her duty at that time to prove against her husband any claims she had against him. She referred specifically to the matters in controversy, but did not demand an accounting. If she desired an accounting, she should have demanded it by a cross-bill.

Our statute (4 C. S. 4836) relating to set off governs the matter, and provides as follows:

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“If any two or more persons be indebted to each other, such debts or demands not being for unliquidated damages, may be set off against each other; and if one of such debtors, or his executors or administrators, shall commence an action against the other, his executors or administrators, *in any court of this state*, it shall be lawful for the defendant at the trial to set-off as against the plaintiff, the debts or demands which may be due and owing to him as aforesaid; and any defendant failing to set-off such debts or demands, shall thereafter be precluded from bringing any action for such debt or demand which might have been set-off by virtue of this act.” (The italics are ours).

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The statute, in its application, makes no distinction between legal and equitable actions. It is designed to apply to a certain fact situation, *viz.* where two persons are indebted to each other. The facts of the instant case present that situation, and therefore come within the scope of the statute.

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The practice in our courts has been well settled in regard to set-offs. The failure to interpose an available claim, by way of set-off, counterclaim, or cross petition in a prior action will bar a recovery on the claim in an independent suit. *Henry v. Milham* (Sup. Ct. 1832) 13 N. J. L. 266; *Dey v. Jackson*

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(*Sup. Ct. 1877*) 39 N. J. L. 535; *Links v. Marlowe*  
(*Sup. Ct. 1912*) 83 N. J. L. 389.

In the case of *Schenck v. Schenck* (*Sup. Ct. 1829*)  
reported in 10 N. J. L. 276, Chief Justice Ewing,  
speaking for the court, said:

10           “The matters stated in this plea being ad-  
mitted by the demurrer to be true, the ques-  
tion arises whether an action having been pre-  
viously commenced, in which the matters  
claimed in the present suit may be made the  
subject of set-off, the defendants in that ac-  
tion, now the plaintiffs, could lawfully insti-  
tute this suit. The solution of this question is  
found in our statute ‘concerning obligations,  
and to enable mutual dealers to discount.’  
Rev. Laws 305. In the eleventh section it is  
enacted, that if any two or more dealing to-  
20           gether, or having dealt together, be indebted  
to each other upon bonds \* \* \* \* \*  
accounts, or the like, and one of them \* \* \*  
\* \* \* commence an action against the other  
\* \* \* \* \* if the defendant cannot gainsay  
the contract upon which he is sued, it shall be  
lawful for such defendant to plead payment  
of all or any part of the sum demanded \* \*  
\* \* \* \* \*, or else be precluded from bring-  
30           ing any action for that which he might or  
ought to have pleaded and given in evidence.  
By the provisions of this section, the defend-  
ant is compelled, when an action is brought  
against him in which a set-off may be made,  
to offer his demands by way of set-off; and  
failing to do so is prohibited from making  
them the subject of an action. An action be-  
ing instituted against him he is required to  
claim a set-off in it, and is precluded from  
bringing an action for such demands as he  
40           might set-off.”

Furthermore, since an action for an accounting is designed to adjust the respective demands of the parties, a claim which might have been asserted by the defendant in such action cannot be made the subject of a subsequent action by him. See note, 8 A. L. R. 733, and cases cited therein. This is the rule even in those states which, contrary to New Jersey, do not regard a failure to set-off a claim as a bar to a subsequent action. *Free v. Beatly*, 95 Mich. 426, 54 N. W. 910; *Weiser v. Weiser*, 5 N. Y. Anno. Cas. 196, 53 N. Y. Supp. 578, affirmed in 38 App. Div. 266, 57 N. Y. Supp. 48. 10

In *Smith v. Johnson* 15 East 213, 104 Eng. Reprint 824, 13 Revised Rep. 449, 3 Eng. Rul. Cas. 508, the defendant attempted to claim in set-off the amount of a claim which he failed to assert in a former reference to settle all matters of account between the parties. The court held that as it appeared from the subject in respect of which the deduction was claimed was a matter in difference at the time of the reference, the defendant should have asserted it at that time, and that therefore he was bound as to every matter included within the subject of the reference. 20

It is therefore respectfully urged that under the above decisions, the statute relating to set-offs, referred to above, is a complete bar to the present action.

We respectfully submit that the decree dismissing the present bill be affirmed. 30

WARD KREMER,

Solicitor for and of Counsel  
with Defendants-Appellees.

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