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BILL OF COMPLAINT.
71-496.

IN CHANCERY OF NEW JERSEY.

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

Complainant, Somers L. Doughty, residing in Atlantic City, New Jersey, respectfully shows that:

1. On December 30, 1922, and prior thereto, complainant owned and held a legal and record title to two certain tracts of land situate in the City of Atlantic City, County of Atlantic and State of New Jersey, described separately as follows:

Description No. 1.

TRACT No. 1.

BEGINNING in the Westerly line of New Jersey Avenue at point distant 65 feet Northwardly from the Northerly line of Baltic Avenue; thence (1) Westwardly, parallel with Baltic Avenue, 65 feet; thence (2) Northwardly, parallel with New Jersey Avenue, 35 feet; thence (3) Eastwardly, parallel with Baltic Avenue, 65 feet to the Westerly line of New Jersey Avenue; thence (4) Southwardly, along the Westerly line of New Jersey Avenue, 35 feet to the place of beginning.

Description No. 2.

TRACT No. 2.

BEGINNING at the intersection of the Northerly line of Baltic Avenue and the Westerly line of New Jersey Avenue and extending; thence (1) North-

wardly, along the Westerly line of New Jersey Avenue, 65 feet; thence (2) Westwardly, and parallel with Baltic Avenue, 65 feet; thence (3) Northwardly, and parallel with New Jersey Avenue, 35 feet; thence (4) Westwardly, and parallel with Baltic Avenue, 85 feet; thence (5) Southwardly, and parallel with New Jersey Avenue, 100 feet to the Northerly line of Baltic Avenue; thence (6) Eastwardly, and along the said Northerly line of Baltic Avenue, 150 feet to the place of beginning.

2. On December 30, 1922, and on September 19, 1925, complainant, by deeds bearing dates on the days mentioned above, and thereafter duly recorded in the office of the clerk of Atlantic County, conveyed said two tracts of land in fee unto one Isabel Dobbin, she being the child of the deceased wife of complainant by a former husband, and of full age, and having continued to live in the household of complainant after the death of her mother. Although said deed expresses on its face a money consideration of one hundred ($100.00) dollars and natural love and affection, and declares said conveyance to be for the use of the said grantee, her heirs and assigns, no pecuniary consideration whatever was paid therefor, said conveyance having been made by complainant to his said stepdaughter, the grantee, and intended by him as a pure gift to her of the land so conveyed and hereinabove described.

3. At the time of said conveyance or shortly thereafter, the said Isabel Dobbin, grantee by said deeds, desired to improve said lands and render the

same income-producing and profitable by erecting thereon apartment buildings and remodeling old structures then existing upon the said lands, but lacking the necessary financial resources or credit with which to make such improvements, she approached complainant and sought his assistance and active aid and participation therein, which assistance and aid complainant consented to render; whereupon it was agreed, without writing, between complainant and the said Isabel Dobbin that he, complainant, would advance money to pay for the erection of two separate apartment buildings and the remodeling of the third building upon said land, the buildings or apartments to be known as "the Savoy;" that the money so advanced to pay for said contribution for said construction and remodeling should be repaid after the erection and completion of the remodeling of said buildings from the proceeds of mortgage loans to be created thereon, and from the rents and incomes to be realized from said three apartment houses, when the same should be rented to tenants and become income-producing.

4. Complainant agreed to render his aid and assistance in said building operations and thereafter advanced money from time to time for the erection, construction and remodeling thereof until all the structures were fully completed. The money so advanced by complainant amounted in the aggregate sum to one hundred thirty-six thousand ($136,000.00) dollars.

5. Thereafter said Isabel Dobbin, in accordance with her promise and the agreement and under-

standing of the said parties, borrowed from the Trident Building and Loan Association of Atlantic City, New Jersey, secured by a mortgage bearing date July 15, 1927, upon said lands or part thereof, the sum of twenty-four thousand four hundred fifty-one dollars and fifty cents ($24,451.50); and borrowed from the Atlantic City Building and Loan Association of Atlantic City, New Jersey, secured by two mortgages, one bearing date April 22nd, 1926, on said lands or part thereof, the sum of thirty-three thousand six hundred seventeen dollars and forty-eight cents ($33,617.48), and one bearing date October 15th, 1927, upon said lands or part thereof, for the sum of thirty-three thousand eight hundred twenty-six dollars and seventy-five cents ($33,826.75). The aggregate sum of said three loans was ninety-one thousand eight hundred ninety-five dollars and seventy-three cents ($91,895.73), and was paid to and received by the said complainant under said agreement and understanding and was applied by him as a credit upon and in reduction of the monies so aforesaid advanced and paid for the erection, construction and remodeling of said buildings upon said lands; and the further sum of two hundred fifty ($250.00) dollars in cash to be credited on account of the money advanced for the erection of the Savoy Apartments which amounts have been credited accordingly, leaving a balance of unpaid payments made by the complainant for the cost of erecting and completing said three apartment buildings upon said land of forty-four thousand three hundred fifty-four dollars and twenty-seven cents ($44,354.27), without interest having been computed thereon.

6. The said Isabel Dobbin has refused to make further payments on account of the monies advanced by complainant as aforesaid; has refused to create mortgages upon said lands and buildings for complainant's benefit; has refused to apply the income and rents of said buildings by payment of said monies to complainant, and otherwise has utterly repudiated said agreement and now insists that she cannot be compelled, by law, to make further payments to complainant on account of said monies so advanced, and denies that he has any valid or enforceable claim thereto.

7. In addition to the said unpaid balance of forty-four thousand three hundred fifty-four dollars and twenty-seven cents ($44,354.27), due the complainant from the said Isabel Dobbin, complainant has incurred a contingent liability as endorser of a promissory note for the sum of eight thousand ($8,000.00) dollars, by her in financing the erection, completion and remodeling of said buildings. Said defendant has declared that she does not intend to pay the amount of said note and complainant believes, and, therefore, alleges that to protect his credit, he will be compelled to pay said note when due, whereupon the amount due him as aforesaid for his advancements, payments and disbursements for the erection, construction and remodeling and completion of said buildings, will be increased to the extent of eight thousand ($8,000.00) dollars which is the amount of said note. This contingent liability arose in the following manner: The defendant, Isabel Dobbin, mortgaged the third apartment house that was remodeled for thirty-five thousand ($35,000.00)

dollars. The cost of the remodeling of the third apartment house had been thirty-six thousand ($36,000.00) dollars. The proceeds of the mortgage last mentioned was received and credited to the account of Isabel Dobbin by complainant. Thereafter complainant and the defendant, Isabel Dobbin, borrowed, through the use of complainant's credit, the sum of thirty thousand ($30,000.00) dollars which said sum was used in payment of the thirty-five thousand ($35,000.00) dollars mortgage last mentioned. One-half of the sum of thirty thousand ($30,000.00) dollars was borrowed from the Marine Trust Company, to wit, the sum of fifteen thousand ($15,000.00) dollars and this has been fully paid by the defendant. The other half, or, to wit, the sum of fifteen thousand ($15,000.00) dollars was borrowed from the Guarantee Trust Company. This sum is represented by the eight thousand ($8,000.00) dollars note upon which the complainant is contingently liable.

8. Complainant expressly alleges that by reason of the improvements upon said land and the monies advanced and expended by him in making the same, the value of said premises was greatly enhanced so that the same are now worth upwards of two hundred twenty-five thousand ($225,000.00) dollars, because of said improvements. Wherefore, complainant avers and charges that he is entitled to an equitable lien for said sum of forty-four thousand three hundred fifty-four dollars and twenty-seven cents ($44,354.27) and for said eight thousand ($8,000.00) dollars contingent liability to have the same charged upon the said lands and premises in the nature of an equitable mortgage lien thereon.

Or to have such other relief touching security for complainant's loan and advancements and the payment thereof as is or may be accordant with the principles and practice of equity.

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

1. That Isabel Dobbin, who is the defendant to this suit, may answer this bill of complaint, without oath, and each statement therein made.

2. That an account be taken and settled of the transactions between the complainant and the defendant touching the land and buildings described in the bill of complaint, and specifically touching the cost of the erection, remodeling and construction of said buildings; of the monies advanced or disbursed or paid by the complainant on account of the erection, construction and remodeling and completion thereof; of the monies repaid to or received by the complainant in repayment or the reimbursement; and that the balance found to be due complainant be ascertained and determined and the defendant be decreed to pay complainant the amount so ascertained and determined.

3. That in default of the payment of the sum or balance so found and decreed to be due complainant, the same be decreed to be a lien and charge on the said land and premises described in the bill of complaint in the nature of an equitable mortgage thereon; and that the rents and income thereof be

sequestered for the benefit of and paid to the complainant in discharge or reduction of his said lien.

4. That complainant have such further or other relief as the circumstances of the case may render appropriate, just and equitable.

5. That a writ of subpoena may issue commanding the defendant to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

JOHN C. REED,
Solicitor for and of Counsel with Complainant.

ANSWER.
71-496

IN CHANCERY OF NEW JERSEY.

Between
SOMERS L. DOUGHTY,
Complainant,
and
ISABEL DOBBIN,
Defendant.

On Bill, &c.
Answer.

Isabel Dobbin Naame (formerly Dobbin), defendant, of Atlantic City, N. J., answering the bill of complaint, says:

1. Paragraph one is admitted.

2. Paragraph two is admitted.

3. Paragraph three is denied. The fact is that complainant approached defendant and suggested to her that she should improve the buildings upon the land described in the bill and promised to give her such an amount as would be necessary to make such improvements. She expressly denies that the money of complainant was an advance to her or that it was to be repaid out of the proceeds of mort-

gage loans to be placed on the premises, and further that any rents or income therefrom should be applied in repayment of any sum paid by complainant.

4. Defendant denies that complainant advanced any money to her and says that he gave her sums of money which she used in making improvements on her land. The exact amount she is not able to state and prays that complainant prove same, if necessary.

5. She admits the averments in paragraph five, save as they are denied. She denies that the moneys borrowed from the respective building and loan associations was a result of any promise or agreement upon her part to do so or that the proceeds were to be paid by her to him under said agreement or was applied as a credit, as alleged. She denies that she paid him $250 in cash, or any other sum, to be credited on account of moneys advanced by him. She repeats that any moneys which passed to her from complainant were a gift, but as to the amounts she cannot state and asks proof.

6. She denies that she has refused to make further payments on account of the moneys alleged to have been advanced, or that she has refused to make a mortgage or mortgages, or has refused to apply the income and rents of said buildings by payment of said moneys to complainant, and avers the truth to be that no request has ever been made by complainant to make payment on account, to create a mortgage, or to apply income and rents. She denies that she has repudiated the alleged agreement and

says that she cannot repudiate it because she never knew that complainant was claiming any such agreement until the filing of the bill in this cause.

7. Defendant denies there is any unpaid balance due from her to the complainant, for the reason stated in the foregoing paragraphs. She admits that the complainant is an endorser for her on a note of $8,000, and that the proceeds of that note were used in improving the property. She denies that she does not intend to pay said note or that she has ever so declared.

8. Defendant admits that the improvements upon the premises described have enhanced their value, but she denies that complainant is entitled to an equitable lien thereon for the sums alleged or for any other sum.

Further answering the bill, by way of a plea, defendant says that the contract alleged is one that involves an interest in real estate, is within the Statute of Frauds and required to be in writing.

Taking to be true all the averments in the bill, complainant is not entitled to have his alleged debt impressed as a lien upon the lands and premises described, and has an adequate remedy at law for any debt due him that he can legally establish.

PAUL M. SALSBURG,
COLE & COLE,
Solicitors of Defendant.

BILL OF COMPLAINT.
72-154

IN CHANCERY OF NEW JERSEY.

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

The complainant, Somers L. Doughty, residing in Atlantic City, County of Atlantic and State of New Jersey, respectfully shows that:

1. On or about March 19, 1927, the Guarantee Trust Company, a corporation of New Jersey, by deed bearing date on that day and duly recorded, for an expressed consideration of $30,000.00, conveyed to complainant in fee, a lot or tract of land situate in the City of Atlantic City, County of Atlantic and State of New Jersey, bounded and described as follows:

BEGINNING at a point in the Westerly side of Ohio Avenue, 275 feet Northwardly from the Northerly line of Atlantic Avenue; thence (1) Westwardly, parallel with Atlantic Avenue, 175 feet; thence (2) Northwardly, parallel with Ohio Avenue, 50 feet; thence (3) Eastwardly, parallel with Atlantic Avenue, 175 feet to the Westerly line of Ohio Avenue; thence (4) Southwardly, along the Westerly line of Ohio Avenue 50 feet to the place of beginning. Subject to the rights, if any, of the City of Atlantic City and the general public in any

portion of the rear of said premises falling with the bounds of Adams Place.

2. The said consideration of $30,000.00 expressed in said deed was paid and secured in the manner following, to wit: $15,000.00 thereof by the creation of a purchase money mortgage encumbrance of that amount upon the land conveyed and $15,000.00 in cash paid at the time of delivery of said deed, of which cash payment the sum of $7500.00 was furnished and paid by complainant and the sum of $7500.00 was furnished and paid by Isabel Dobbin, the defendant hereinafter named, so that at the time of said conveyance the legal title to the land so conveyed was taken and held by complainant for his own use and benefit, as to the equal undivided one-half part thereof, and as to the other equal undivided one-half part thereof, in trust for the use and benefit of said Isabel Dobbin.

3. The said Isabel Dobbin is the stepdaughter of complainant, being the child of his wife now deceased, and has for a number of years been an inmate of complainant's household and regarded and treated as a member of his family. At the time of said conveyance of said land to her, hereinafter mentioned, she was about the age of 28 years.

4. On or about March 19, 1927, aforesaid, and coincident to the execution and delivery of the aforesaid deed conveying legal title to said land to complainant, he, complainant, conveyed the same land by deed bearing date the year and day last mentioned and duly recorded to the said Isabel Dobbin,

which deed recites a pecuniary consideration as having been paid therefor, although no such consideration was, in fact, paid, and also contains a declaration to the use of said grantee, her heirs and assigns, without any reservation of estate or declaration of trust in said land whatsoever.

5. The conveyance of said land set forth in the 4th paragraph hereof was intended to be a gift by complainant to his said stepchild of his said equal undivided one-half part of and his whole interest in said land, and coincident with said conveyance and with the conveyance to complainant set forth in the first paragraph hereof, and at the same time, to wit, on or about March 19, 1927, and as a part of the same transaction, complainant, desiring to assist her, the said Isabel Dobbin, and at her request to improve said land in such a way as to render the same income-producing and profitable and she being without the necessary money and credit to bear the cost of such improvement, it was thereupon agreed by and between complainant and said Isabel Dobbin that an apartment building should be erected upon said land, the cost of which erection should be advanced and paid in the first instance by complainant and that repayment to him and reimbursement of the money so to be advanced and paid and disbursed should be from the proceeds of a mortgage loan of $75,000.00 secured upon the completed structure and land to be negotiated by complainant, and as to any unpaid balance of said cost of construction remaining after the application thereto of the proceeds of said mortgage loan that the same should be repaid by the application there-

to of the rents and income thereafter arising out of and collected from the said completed apartment building or structure.

6. According to and agreeably with the agreement above mentioned, complainant advanced and paid money to the said Isabel Dobbin to the amount of $104,617.24, which sum was necessary to defray the cost of erecting an apartment house structure on the said land and was used for that purpose; it was part of the agreement for the improvement of said land and for the reimbursement of complainant of the money to be advanced by him in payment of the cost thereof, that upon completion of said apartment house building complainant should procure a loan of $75,000.00, to be secured by a mortgage thereon, which mortgage the said Isabel Dobbin would execute and deliver to the lender of the mortgage money; and that the proceeds of said loan, after satisfying thereout the then existing mortgage of $15,000.00 on said land, should be applied in the reduction of the above mentioned sum of $104,617.24, advanced and paid by the complainant for the cost of the construction of said building and improvements; and that the balance due complainant of the sum so advanced, after the application thereto of the mortgage loan money aforesaid, should be repaid out of the rents and net income thereafter realized from said apartment house, which rents and net income the said Isabel Dobbin agreed to pay over to complainant from time to time, as and when the same should be received by her.

7. Said apartment house building on said land was completed on or about November 4, 1927, and

New Jersey State Library

complainant, having heretofore and in contemplation of such completion, procured one willing to lend the sum of $75,000.00, to be secured by a mortgage upon said apartment house and land wherein same stands, requested said Isabel Dobbin to make and deliver such mortgage, but she refused to execute the same or any other mortgage on said premises and still refuses so to do.

8. From the time of the completion of said building to the present time, the said Isabel Dobbin has collected and received the rents, issues and profits of said premises and has applied the same to her own use and has refused and still refuses to pay the same or any part thereof to complainant in payment and reduction of the monies advanced and paid for the construction of said building; that said rents amount to $1,760.00 monthly and up to the present time said Isabel Dobbin has received as rentals of said premises the sum of $26,500.00, no part of which, excepting $250.00, has been paid by her to complainant, and contrary to her agreement as aforesaid so to do.

9. Complainant has repeatedly requested the said Isabel Dobbin, to repay the said monies advanced by him or to execute a mortgage on the said premises for the benefit and reimbursement of complainant and to pay to him the rents and income realized from said premises according to her agreement so to do, but said requests have always been refused and still are refused.

10. Complainant has no security whatsoever for the monies so as aforesaid due to him, that the value

of the said land has been greatly enhanced by reason of the improvements erected thereon and paid with his money as aforesaid, which money he is in danger of losing, wherefore complainant charges that he is entitled in equity to have his said debt impressed as a lien upon said land and premises for his security and payment.

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

1. That Isabel Dobbin, who is the defendant in this suit, may answer this bill of complaint without oath and each statement therein contained.

2. That an account be taken of the transactions and dealings between complainant and defendant touching the erection of any improvements upon the land above described; of the monies paid or expended by complainant in the construction of said improvements, and of the monies paid to or received by him and the balance due complainant, if anything, ascertained and determined; and the amount of monies paid to the defendant as rentals of said premises may be ascertained and determined.

3. That defendant be decreed to pay to complainant whatever sum shall be ascertained and determined and decreed to be due from her to complainant; and that such sum so decreed to be due complainant be a lien and charge on the said land and premises; and that the rents and income thereof be sequestered for the benefit of and paid to the complainant in discharge or reduction of his said lien.

4. That complainant have such further or other relief as may be appropriate, equitable and just.

5. That a writ of subpoena may issue commanding the defendant to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

JOHN C. REED,
Solicitor for and of Counsel with Complainant.

ANSWER.
72-154.

IN CHANCERY OF NEW JERSEY.

Between
SOMERS L. DOUGHTY,
Complainant,
and
ISABEL DOBBIN,
Defendant.

On Bill, &c.
Answer.

Isabel Dobbin Naame (formerly Dobbin), defendant, of Atlantic City, N. J., answering the bill of complaint says:

1. Paragraph one is admitted.

2. Paragraph two is admitted.

3. Paragraph three is admitted.

4. It is admitted that the conveyance set forth in paragraph four was a gift from complainant.

5. Defendant denies that she requested complainant to improve the land in such a way as to render the same income-producing and profitable, and says the truth is that the complainant approached her and suggested that she should improve the property and that he would give her the necessary money for that purpose. She denies that she was to repay or reimburse him for the money so given to her; and she denies that she was to create a mortgage loan for $75,000, or any other sum, or ever agreed to repay him the amount given out of the proceeds of any mortgage loan. She denies that she agreed that any balance that might remain due to complainant, as alleged, was to be paid by the application of the rents and income arising out of and collected from the apartment building.

6. Complainant did give to her, for the purpose of paying for the construction of an apartment house, a large sum of money, but she cannot state the exact amount and leaves complainant to his proof. But she denies that any sum so given was agreed to be repaid to him. She denies that she agreed that complainant should procure a loan of $75,000, to be secured by a mortgage on the land, or that she would execute and deliver such, and that the proceeds of said loan, after satisfying an existing mortgage of $15,000, should be applied in reduction of the amount given by complainant to her.

She also denies that any part of the rents and income were to be applied in repayment of the gifts made by complainant to her.

7. Paragraph seven is admitted except as qualified. Defendant has no knowledge sufficient to form a belief, and, therefore, can neither admit nor deny that complainant procured one willing to loan the sum of $75,000 on a mortgage. She denies that she refused to execute a mortgage, and says that she was never requested to do so.

8. She admits the averments in paragraph eight, except as to the amount of rent collected monthly and the total as stated, and also denies that she ever paid to the complainant the sum of $250.

9. Paragraph nine is denied. She avers that complainant never requested her to execute a mortgage on the premises.

10. Paragraph ten is denied as to facts and legal implications.

Further answering the bill, by way of a plea, defendant says that the contract alleged is one that involves an interest in real estate, is within the Statute of Frauds and required to be in writing.

Taking to be true all the averments in the bill, complainant is not entitled to have his alleged debt impressed as a lien upon the lands and premises described, and has an adequate remedy at law for any debt due him that he can legally establish.

PAUL M. SALSBURG,
COLE & COLE,
Solicitors for Defendant.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between
SOMERS L. DOUGHTY,
Complainant,
and
ISABEL DOBBIN, now ISABEL NAAME,
Defendant.

On Bill, &c.
Final Hearing.

Atlantic City, N. J., September 12, 1929.

TESTIMONY.

Before HON. R. H. INGERSOLL, Vice-Chancellor.

APPEARANCES:

For the complainant, JOHN C. REED, ESQ., and EMERSON L. RICHARDS, ESQ.

For the defendant, PAUL M. SALSBURG and C. L. COLE, ESQ.

SOMERS L. DOUGHTY, sworn.

Direct examination.

By Mr. Richards:

Q. Mr. Doughty, you live in Atlantic City?
A. I do.
Q. How long have you lived here?
A. About forty years.
Q. Have you been more or less active in the purchase and sale of real estate during that time?
A. I have.
Q. Have you acquired in your own name considerable of real estate?
A. Yes, sir.
Q. Now, you were married?
A. Yes, sir.
Q. To whom were you married?
A. Isabel Dobbin.
Q. Did she have a daughter?
A. Yes, sir.
Q. What is her name?
A. Isabel Dobbin.
Q. Is she the defendant in this suit?
A. She is.
Q. Is Isabel Dobbin, the defendant, your daughter?
A. No, sir.
Q. She was then your stepdaughter?
A. Yes, sir.
Q. Now, has your wife died since?
A. Yes, sir.

Q. When did she die?

A. In 1917-1918.

Q. After the death of your wife did your stepdaughter continue to live with you?

A. Yes, sir.

Q. Until when?

A. Until February the sixth, 1929.

Q. 1929?

A. 1929.

Q. Did you own a parcel of property in the vicinity of Delaware and Baltic Avenues?

A. Yes, sir.

Q. How much did you own there?

A. 150 feet by 100.

Q. Did you convey any of that land to your stepdaughter?

A. Yes, sir.

Q. Will you tell the Court what you conveyed to your stepdaughter and how you come to do it?

A. Well, after her mother died she was all the time pleading that she didn't want to go out and go to work in case, I was getting old and if I should pass away she might probably have to go in the five and ten and go to work and she didn't want to disgrace herself to do that and she would like for me to make her a present of this property so she would have something in case I passed away, and in 1922 I give her a deed for the corner property, which was about 65 or 85 feet on Baltic Avenue, the corner of New Jersey and Baltic.

Q. That deed appears to be dated December 30, 1922, is that about the date?

A. About that time, yes, sir.

Q. Was there any buildings upon that property?

A. There was.

Q. What were they?

A. Well, there was a corner building with a saloon and two living apartments next door; it was all one building.

Q. Now, that was rented?

A. Yes, sir.

Q. What became of the rents after you deeded the property to your daughter?

A. I got them; they were collected by Adams and Company.

Q. You retained the rents?

A. Yes, sir. That was the understanding when I give it to her.

Q. How long did you continue to collect rents and keep them?

A. Until the alteration was made in about January or February, '26.

Q. Now did you, at a later time, give her any other part of this tract?

A. There was two apartments—four apartments on the rear facing New Jersey Avenue of this property.

Q. Did you give those to her?

A. Yes, sir.

Q. What became of the rents of those premises?

A. They were collected by G. Adams and Company for me.

Q. Did you keep the rents for those?

A. I got the rents for those.

Q. Up until when?

A. Up until after she was married, when she stopped them. I got them up until, if I remember, in February, 1929, this year.

Q. And she permitted you to collect those rents?

A. Yes, sir. That was our understanding when I give her the property.

Q. Now then there was a piece of land adjoining the corner property that you owned, was there not?

A. Yes, sir.

Q. How big a piece of land was that?

A. About 82 feet by 100.

Q. Was that an improved or was that a vacant piece of land?

A. Vacant piece of land.

Q. Did your daughter ever ask you to give her that land?

A. Yes, sir.

Q. Did you?

A. I did.

Q. About when did you give her that, do you know?

A. I don't remember the dates exactly, but some time after I give her the other, probably about a year—no, it was longer than that, after I give that to her, the other was in 1922, I don't think I give her this land until long about '24 or '5.

Q. There appears a deed for this land from Somers L. Doughty to Isabel Dobbin, dated September 18, 1925, would that probably be the deed?

A. Probably about the date, yes, sir.

Q. Now, did your daughter become interested in the improvement of this second piece of property?

A. Yes, sir.

Q. Just how did that come about, Mr. Doughty?

A. Why I belong to a building association and I was on the committee out appraising properties and amongst one of the properties were some properties

on Baltic Avenue adjoining this piece of land where I formerly owned, that I had sold, and I think there were five apartment houses built in there belonging to the Robinson Company, which consisted of Ost and Robinson, and they wanted to get a loan and she was driving the car.

Q. Your daughter, you mean?

A. Yes, she heard the conversation and after we got home we were talking over about this loan and I thought it was a very good proposition, those houses, to grant the loan for the building association, and I think we granted the loan and then she started in on me immediately to improve this land for her.

Q. May I interrupt you there, you speak about these apartment houses; what was the character of those apartment houses you speak of?

A. They are three-story brick consisting of thirty-nine apartments, thirteen to a floor.

Q. What I mean is, to what class of people are they rented and under what conditions?

A. Colored people rented by the week.

Q. Furnished?

A. Yes, sir.

Q. Is there a rather high or is there a low margin of profit in these apartment houses?

A. Well, I think there is a very good profit, myself.

Q. From apartment investment, or at least it was in 1925 and 1926?

A. Yes, sir.

Q. Now, you say that she spoke to you about improving this piece of land and building this type of apartment house there, is that correct?

A. Yes, sir.

Q. What arrangement did she make with you about your building those apartments there?

Mr. Cole: May it please your Honor, if this question is to lead to proof of the allegation that the woman was to give a mortgage to repay the loan or loans or to repay the loan on the property, we object. It must be established by writing in view of the Statute of Frauds, an interest in the land.

The Court: The Statute of Frauds has been pleaded. I will, however, hear the testimony and rule upon it later.

Mr. Reed: Your Honor please, that plea or answer was stricken, an order striking that part of the answer.

Mr. Cole: Don't make any difference if it is.

The Court: I will admit the testimony.

(Question repeated.)

A. Well, she asked me to build the apartments. I said "why you wouldn't want to attend to them, would you?" "Oh, yes," she says "I want something to do. I want to go to work." I said "supposing they are not successful, paying rent, how could you pay me for them?" "Oh," she said, "I get an income from my father's estate," but never would tell me what it was. I asked her several times but she would never tell me what that was, so finally,

after talking on me a long while she says "You can finance those buildings any way however that suits you and I will see that you are paid, if you loan me the money, you can put a mortgage on them, building association, any way that you think best." I built them for her and created the mortgages after a long while, then they were furnished, I thought she had her furniture paid for, she paid for the furniture by me going security with Lit Brothers.

Q. How did she say she would pay you back?

A. From the rents.

Q. Now, with that understanding, did you proceed to build the apartment houses?

A. I did.

Q. Did you make a contract with anybody for the building of them?

A. I did.

Q. With whom?

A. With Joe Naame.

Q. In your own name?

A. Yes, sir.

Q. Did he build the apartment houses for you?

A. He did.

Q. I show you what seems to be a set of plans and which is inscribed, "39 one room, bath and kitchenette apartment house for Somers L. Doughty, 711, 13, 15, 17 Baltic Avenue, Atlantic City, New Jersey, Joseph S. Naame, designer and builder." Is this the plans of the apartment house that he built for you?

A. It is.

Q. And were they built according to those plans?

A. They were.

Q. How much did you pay him for the apartment house?

A. For the two?

Q. Yes.

A. A hundred thousand dollars.

Q. How much apiece? I show you a statement or bill on the billhead of J. S. Naame Company, Engineers and Builders, Mr. Somers Doughty, 12 South Indiana Avenue, Atlantic City, Building Number one and two, contract $100,000, received $96,000, balance $4,000. Does that represent the contracts that you just testified to?

A. Yes, sir.

Q. How did you pay Mr. Naame?

A. Checks.

Q. In cash?

A. Checks.

Q. I mean it was a cash transaction?

A. Cash transaction, yes, sir; no notes.

Q. I show you a series of checks drawn to the order of Joseph S. Naame, the first one dated December 22, 1926, for two thousand dollars; another one dated December 11, 1926, for $1,000; another one September 20, 1926, $2,000; August 27, for $3,000; August 20, for $1,000; one August 6, for $2,000; one July 9th for $2,500; another one July 9th for $2,500; another one of June 25th for $1,000; one of June tenth for $2,000; one of May twenty-first for $3,000; one of April thirtieth for $15,000; one of April twenty-eighth for $5,000; one of April 26, for $5,000; one of March 6 for $5,000; one February twenty-seventh for $1,000; one February 26 for $2,000; one February 11 for $5,000; one January 30, $7,000; one January 23, $6,000; one of December 18, 1925, for $6,000; one for December 12, 1925, for $3,500; one November 28, 1925, for $3,500; one of Oc-

tober 24, 1925, for $14,000; one October 17, 1925, for $7,000; October third, 1925, $6,000; September 25, $5,000; December 23, 1926, for $1,000. All of those checks are on the Marine Trust Company, the Guarantee Trust Company and the Boardwalk National Bank, and all of them appear to be endorsed Joseph S. Naame. Now, what do those checks represent?

A. Payment of these apartments on Baltic Avenue.

Mr. Richards: I offer them.

(Checks admitted and marked Exhibits C1 and 2.)

Q. Now after you paid Mr. Naame and these buildings were completed, did you get any of this money back?

A. Did I get any of it back?

Q. Yes.

A. Through the mortgages that were created on the property and $250 in cash from her check.

Q. Now, Mr. Doughty, what did you proceed to do, first of all, by way of creating a mortgage on this apartment house?

A. I saw Mr. Slape of the—what is the name of that building association he represents?

Mr. Reed: Atlantic City Loan and Building Association.

A. Atlantic City Loan and Building Association.

Q. Of which Mr. Slape was an officer?

A. President of the Company.

Q. Did you procure from him a loan upon one of these apartment houses?

A. Yes, sir.

Q. Building and Loan?

A. Yes, sir.

Q. How much did you procure?

A. $35,000.

Q. Did you make all the arrangements for that?

A. With Mr. Slape?

Q. Yes.

A. Yes, sir.

Q. Did your stepdaughter make the bond and mortgage to the Atlantic City Loan and Building Association?

A. Signed the application, yes, sir.

Q. Upon your request?

A. Yes, sir.

Q. There appears to be of record a mortgage in the sum of $35,000 from Isabel Dobbin to the Atlantic City Loan and Building Association dated October fifteenth, 1927; is that the mortgage to which you refer?

A. At that time, yes, sir.

Q. Was that money turned over to your daughter, the proceeds of it?

A. Yes, sir.

Q. What did she do with it?

A. Turned it over to me.

Q. So you got that $35,000?

A. Yes, sir.

Q. That was on one of the two apartment houses?

A. Yes, sir.

Q. Did you raise a loan on the other apartment house?

A. Yes, sir.

Q. With whom did you negotiate for that?

A. The Trident Building and Loan Association.

Q. How much did you get?

A. $25,000.

Q. Can you explain why you didn't get as much as you did on the twin apartment?

A. Didn't need it.

Q. There appears to be of record a mortgage from Isabel Dobbin to the Trident Building and Loan Association of Atlantic City dated July 15, 1927, to secure $25,000; is that the mortgage to which you refer?

A. Yes, sir.

Q. Now, what became of—was that money paid to your stepdaughter by the Building and Loan Association?

A. Yes, sir.

Q. What did she do with it?

A. Gave me a check for it.

Q. That means apparently that out of the $100,000 that you paid to Mr. Naame for those buildings you got back $60,000?

A. Yes, sir.

Q. Leaving a balance of $40,000. Now, have you ever received any payment on account of the $40,000?

A. Yes, sir.

Q. How much did you get?

A. $250.

Q. How did you get that?

A. In a check.

Q. From your daughter?
A. Yes, sir.
Q. About when did you get that check?
A. About December 14, or 15, 1929—this year.

Mr. Richards: This year? December, 1929, hasn't arrived yet.

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A. 1928 I should say.
Q. Does that check purport to be a payment of principal, on account of the principal?
A. That check was made out for $500, $250 each on account of the Savoy Apartments and $250 on account of the Ohio Apartments, which made $500 all in one check.

Mr. Richards: I call upon counsel to produce check dated on or about December 14th or 15th, 1928. 20

Mr. Cole: The client says she can't locate that check.

Mr. Richards: Are we to understand that she denies there is such a check or can't locate it?

Mr. Cole: I don't know.

Q. Outside of this $250 have you received any part 30 of the $40,000?
A. No, sir.
Q. Now, have you or did you at any time request your daughter to repay to you the $40,000?
A. Yes, sir.
Q. When?

A. Well, it has been so many times I couldn't tell you, several times; the last time was on December fourteenth or fifteenth, 1928.

Q. Now, on these occasions when you asked your daughter to repay this money to you, what reply did she make?

A. "I have no money; I have no money. I do no business; I have no money. I have other use for it."

Q. Did she explain what she was doing with the income from the apartment houses?

A. No, sir.

Q. Well, did you, as a matter of fact, know what she was doing with some or part of it?

A. No, I did not. I didn't know, but I had a little suspicion what she was doing with it.

Q. Did she ever tell you that she was paying off on the building and loan?

A. I knew that. Yes, she told me that.

Q. Did she ever tell you that she was paying the taxes on the property?

A. Yes.

Q. As I understand it, these apartments were rented furnished? Did she make arrangements to buy the furniture for them?

A. She did.

Q. Did you make any arrangements to guarantee the payment?

A. I did.

Q. Who did you guarantee the payment with?

A. Lit Brothers.

Q. Do you know whether she has diverted any part of the income from the property to the payment for the furniture?

A. She did. She paid for all the furniture out-

side of five hundred dollars that I had to pay for the contract; they wouldn't make the contract unless they got a check from me and I would guarantee the payment of it and I give them my check for $500.

Q. Now, did she at any time prior to December fourteenth ever tell you that she wasn't going to repay you?

A. Yes, sir.

Q. When did she first tell you that?

A. In October last.

Q. As I understood it, she was to repay you out of the rents?

A. Yes, sir.

Q. Well, now, before October of 1928, when you asked her for money, what did she tell you?

A. You want the exact words?

Q. Yes.

A. She says "you old son of a bitch, I have paid you the last dollar I ever expect to pay you and I will never pay you any more."

Q. Now, prior to that time, when you asked her for money, did she tell you that she wouldn't pay you?

A. Yes, sir.

Mr. Cole: If your Honor please, I object. The questions are leading. Ask what she said.

The Court: Yes.

Q. On these previous occasions when you asked her for money, what did she say to you?

A. She had no money, she had bills to meet, she had her building association to pay, she always had

an excuse that she had use for the money and she had none for me.

Q. What I am getting at is did she, before this incident in October, ever tell you that she wouldn't pay you?

A. Not before then, no, sir.

Q. Up until that time she had acknowledged her indebtedness to you?

A. Yes, sir.

Mr. Cole: I object.

The Court: Sustain the objection.

Q. What I am getting at is this, up to that time had you any suspicion that she did not intend to pay you?

A. No, sir, not up to that time.

Mr. Cole: Just a moment, I object to the suspicion.

The Court: I will permit that.

Q. Had she ever said or led you to believe, up until that time, that she wouldn't pay you?

A. No, sir.

Q. Just in October she made this declaration in which she said that she wouldn't pay you any more money?

A. Yes, sir.

Q. Let's get on to the next transaction. As I understand it, shortly after you built these two apartments your daughter talked to you concerning

the improvement on the corner property that you had originally given to her; did she not?

A. Yes, sir.

Q. What was that conversation?

A. Why, she thought that the fact that I had built her that building pretty nicely and the corner property, the four houses, she thought if that was remodeled and turned into apartments it would be a better paying investment for her and she insisted upon my making the alteration, which I did, saw Mr. Naame, made a contract with him to make the alteration.

Q. Now, how much was—did you make the contract yourself?

A. Yes, sir.

Q. I show you what purports to be a building contract and ask you if that is your signature?

A. Yes, sir.

Q. And Mr. Naame's signature?

A. Yes, sir.

Q. This contract appears to be dated January 28, 1926, and is in the sum of $35,000; is that for the improvement of the corner properties?

A. Yes, sir.

(Contract offered, received in evidence and marked Exhibit C3.)

Q. How much did you pay Mr. Naame on that contract?

A. Paid it all to him.

Q. What?

A. Paid it all to him with a thousand dollars extra, which made $36,000, one thousand extra.

Q. The checks that I read to you some time ago, did they include the moneys that you paid Mr. Naame on this apartment as well as the other two?

A. They did.

The Court: If you had asked that question before it would have saved me a lot of figuring.

Mr. Richards: I hadn't gotten to this one yet. I had the question in my mind to ask him.

Q. Now, what was the understanding with your daughter concerning the repayment to you of that money?

A. She was to pay me out of the rentals or I could mortgage it, finance it in any way suited me.

Q. Now, did you raise a mortgage on that property?

A. Yes, sir.

Q. How much did you raise on that?

A. $35,000.

Q. $35,000?

A. Yes, sir.

Q. Where did that mortgage come from?

A. Same building association.

Q. Which one?

A. The Atlantic City is that?

Q. Atlantic City Loan and Building Association?

A. Yes, sir.

Q. Did your daughter comply with your request and make the mortgage?

A. She did.

Q. I show you what purports to be the settlement certificate of the South Jersey Title and Finance

Company as of April 22, 1926; does that show the proceeds of the mortgage?

A. It does.

Q. That shows here "balance due mortgagor paid to Isabel Dobbin, $33,617.46;" was it paid to her?

A. Yes, sir.

Q. What did she do with it?

A. She gave it to me, gave me a check for it.

Q. Now, date on this mortgage was cancelled, was it not?

A. Yes, sir.

Q. By the way, is this the check to which you refer?

A. That is the check, my signature on the back of it.

(Check of South Jersey Title and Finance Company offered, received in evidence and marked Exhibit C4.)

Q. I am going to ask you, Mr. Doughty, was that mortgage subsequently paid off?

A. Yes, sir.

Q. How was it paid off?

A. She gave me two fifteen thousand dollar notes. I have one discounted in the Marine Bank and the other one in my friend, Cole's, bank, Guarantee, and she paid the one off in the Marine Bank but the one in the Guarantee Bank she didn't pay off, only $7,000 on it and I had to take the balance of $8,000 out of the Guarantee Bank.

Q. Where is that note?

A. I think I have got it. I did have it. There it is.

Q. I have in my hand here a check dated 2/29/28

on the Marine Trust Company, pay to the order of the Atlantic City Loan and Building Association $29,989.75, signed Somers L. Doughty and cancelled as paid; is that the check with which you paid off the Building and Loan Association?

A. Yes, sir.

Q. Now, as I understand it, your daughter paid off the one $15,000 note?

A. She did.

Q. Had she already paid something on the building and loan association mortgage to reduce it from $35,000 to around $30,000?

A. Yes, her monthly dues.

Q. And the second note in the Guarantee Trust Company was reduced from time to time?

A. Yes, sir.

Q. Until but $8,000 remained, is that right?

A. Yes, sir.

Q. Now, I show you a note dated October 29, 1928, $8,000, four months after date I promise to pay to the order of Somers L. Doughty, at the Guarantee Trust Company, $8,000, signed Isabel Dobbin, and endorsed Somers L. Doughty and paid and there is pinned to it a waiver of notice of protest signed Somers L. Doughty; is that the note to which you refer?

A. Yes, sir.

Q. Now, did your daughter pay that note?

A. This note you got in your hands?

Q. Yes.

A. No, sir.

Q. Did you take it up at the bank?

A. I did.

Q. So that apparently she owes you $8,000 on this note?

A. She does.

Q. And one thousand dollars that you didn't get at the time you raised the $35,000 on the property?

A. Yes, sir.

Q. So that on the corner property she owes you $9,000?

A. Yes, sir.

(Note offered, received in evidence and marked Exhibit C5.)

(Check offered, received and marked Exhibit C6.)

Q. Now, did you guarantee payment of these notes in writing, Mr. Doughty?

A. Yes, sir.

Q. I show you a paper dated December fifth, 1927, which appears to be a guarantee signed by you to the Marine Trust Company of a note of Isabel Dobbin dated December 5, 1927, at demand for $15,000, payable at the Marine Trust Company and credited to the account of the Savoy Apartment, Somers L. Doughty, and there is stamped across it, "cancelled January 12, 1929, Marine Trust Company, Atlantic City, New Jersey." Is that the guarantee that you gave to the bank?

A. For that fifteen thousand dollar note, yes, sir.

(Paper offered, admitted and marked Exhibit C7.)

Q. When you paid Mr. Naame for the work that

he did originally, did you get a release of liens from him?

A. Yes, sir.

Q. Is this the release of liens?

A. Yes, sir. They are the releases of liens.

(Two releases offered, received and marked Exhibits C8 and 9.)

Q. Have you asked your daughter to repay you the amount due on this note?

A. No, sir.

Q. You haven't asked her to pay it?

A. No, sir.

Q. Why not?

A. I haven't talked with her.

Q. You mean since the note became due?

A. No, sir.

Q. Now, Mr. Doughty, I show you two settlement certificates for the South Jersey Title and Finance Company, one apparently relating to the $25,000 mortgage and the other to the $35,000 mortgage, are those the certificates?

A. Yes, sir.

(Certificates offered, received in evidence and marked Exhibits C10 and 11.)

Q. Now, Mr. Doughty, that apparently cleans up the uptown proposition. Did you make an arrangement to build another apartment house for your daughter downtown?

A. Yes, sir.

Q. Where was that located?

A. 20 and 22 North Ohio Avenue.

Q. And was that subsequently called the Ohio Apartments?

A. Yes, sir.

Q. Now, how was the land obtained for that?

A. The land was bought off the Guarantee Trust Company, belonged to an estate, I bought it off of Mr. Sypherd.

Q. For how much was it purchased?

A. Beg pardon?

Q. How much was the purchase price?

A. Thirty thousand.

Q. How was that paid for?

A. By, I furnished the money for it.

Q. All of it?

A. Yes, sir.

Q. How much money did you pay in cash to the Guarantee Trust Company?

A. Thirty thousand—or fifteen thousand.

Q. In cash?

A. Yes, sir.

Q. How was the total consideration paid?

A. Fifteen thousand, three-year mortgage for fifteen thousand.

Q. Who gave the mortgage?

A. Miss Dobbin; I give the mortgage.

Q. You gave the mortgage?

A. Yes, sir, on the bond.

Q. And you are on the bond?

A. Yes, sir.

Q. Of the fifteen thousand in cash did you subsequently get any of that back from your stepdaughter?

A. She paid off fifty-fifty.

Q. How much did she pay?

A. $7500.

Q. Did you then convey to her the title to that land?

A. I did.

Q. Was that—was there any understanding or was that a gift?

A. No, sir.

Q. No, sir, doesn't mean anything?

A. Which land was a gift? You mean the land?

Q. Yes.

A. Yes, that was a gift.

Q. So far as the conveyance of the land was concerned, that was a gift?

A. Yes, sir.

Q. Well, who was to assume the mortgage?

A. She was.

Q. The fifteen-thousand-dollar mortgage?

A. Yes, sir.

Q. So that really what you gave her was $7500?

A. Yes, sir.

Q. About when was that purchased, do you know?

A. Why, I couldn't give you the exact date, but it was along in March, 1927, March or April.

Q. I show you the South Jersey Title and Finance Company statement of settlement as of March 19, 1927; is that about the date of the transaction?

A. That is about the date.

Q. And the consideration appears to be thirty thousand and $35.14 is that the amount of the settlement?

A. Yes, sir.

Q. And you paid this money?

A. Yes, sir.

(Settlement certificate offered, received and marked Exhibit C12.)

Q. Now, at the time you bought the property, had you made any agreement with your daughter about improving it?

A. When I bought the property?

Q. Yes.

A. Yes, sir.

Q. As a matter of fact you had bought this property in lieu of another property that you had contemplated——

Mr. Cole: Objected to.

Mr. Richards: Possibly it is. I was just trying to short-circuit it.

Q. In any event you agreed that you would build an apartment house for her on this property?

A. Yes, sir.

Q. A colored apartment house of the same general description as these others?

A. The same as the other.

Q. How was she to, or was she to repay you for the money you advanced?

A. She was.

Q. How was she to repay you?

A. Same as the other apartments.

Mr. Cole: Offer the same objection, please your Honor, that this testimony comes with the Statute of Frauds.

The Court: I will permit it.

Q. You better tell us in detail again, Mr. Doughty, what conversation you had with your stepdaughter concerning this particular deal?

A. Why, the conversation was after I was going to build for her on a property at Maryland and Drexel Avenues but when Mr. Naame bought to build on Indiana Avenue near Atlantic I said to her, "what is the use of building out there, apartment at Drexel and Maryland Avenue will never pay with this big apartment house on Indiana Avenue near Atlantic," because Harris had built one on Tennessee Avenue out near Sewell that was apparently vacant, and I says "if you want another apartment house" and she said she did "I had better buy the Smith Estate off the Guarantee Bank on Ohio Avenue and build you an apartment there instead of giving you this lot at Maryland and Drexel Avenue." "All right," she says "Father, I think that would be a good idea and I think an apartment would pay there, so you can build it and you can put a mortgage on there and I will collect the rents and pay you back."

Q. So that, with the understanding that she would pay you back out of the rents, you proceeded to build this apartment house, to procure this land and build this apartment house?

A. Yes, sir.

Q. And so far as what money you put in the land, that was a gift?

A. Yes, sir.

Q. In fact in all of these cases you gave her the land, there is no question about that at all?

A. I did; no question about it.

Q. Did you make a contract with, or was there a contract made with, Mr. Naame to build this apartment house?

A. I made an agreement, I couldn't say that there was a contract signed, but I made an agreement with Joseph Naame to build this apartment house for about $102,000.

Q. Was that agreement in writing?

A. Sir?

Q. Was the agreement in writing?

A. No, sir.

Q. Do you know whether your daughter ever entered into an agreement in writing?

A. I do not.

Q. Did—could you give us any of the details concerning this contract?

A. Nothing more than she says "Father, you have built these houses uptown for me and have had the contract in your name and I would like to build this one now in my name, and she had Mr. Naame to draw the plans in her name. When Mr. Naame brought the plans around to me he had them in her name instead of mine, but, of course, I let them go out that way to satisfy her.

Q. So you don't know whether or not she ever actually signed a contract for the erection of this building?

A. No, sir, I don't. I don't think she did.

Q. But the plans were in her name?

A. Yes, sir.

Q. How much did the building actually cost?

A. About $104,000; there was in the neighborhood of about $2,400 extras.

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Q. I show you a sheet containing figures of various kinds, the sheet is headed "recapitulation sheet 57 family apartment—in brackets Isabel Dobbin—location 20-22 North Ohio Avenue, J. S. Naame, Architect and Engineer, dated 12/17/27." Is that the estimate sheet?

A. Yes, sir; that is the estimate sheet with the extras on the back.

Q. The estimate sheet seems to total $102,132.24; is that correct?

A. Yes, sir.

Q. On the back in red ink is marked "Extra work amounting to $2,485" is that the extra work?

A. Yes, sir.

Q. Now, who paid for this?

A. I furnished the money.

Q. How did you pay for it, Mr. Doughty?

A. I gave Isabel Dobbin my checks for the money up to around about sixty some thousand dollars and she paid Mr. Naame. He always consulted me when he wanted a check before he would ask her and I would tell her to give him a check. She would sometimes say "I haven't got the money" and I would say "give him a check and I will give you one."

Q. Now, I show you a series of checks all made to the order of Isabel Dobbin, signed S. L. Doughty, drawn on either the Guarantee or the Marine Trust Company, one dated January 7, 1928, $10,000; June 10, 1927, $2,500; June 20, 1927, $1,000; June 24, 1927, $5,000; July 1, 1927, $10,000; July 25, 1927, $2,500; September 30, 1927, $1,000; September 30, 1927, $2,000; October 5, 1927, $10,000; November 23, 1927, $1,000; November 28, 1927, $1,000; December 23, 1927, $2,500. Now, all of these checks are endorsed

on the back Isabel Dobbin, Savoy Apartments, with the exception of one check. Now, what do these checks represent, Mr. Doughty?

A. Payment of the Ohio Apartment.

Q. You paid the money to her and she paid it to Mr. Naame?

A. Yes, sir.

(Checks offered, received and marked Exhibit C13.)

Q. Was the money that these checks represent given to her in pursuance to that agreement with her?

A. Yes, sir.

Q. Were they, the money given as a loan?

A. Yes, sir.

Q. Or were they, as contended by the defendant, a gift?

A. I loaned her the money. I never gave her nothing to build that. I gave her the property.

Q. That accounts for some sixty odd thousand dollars of the full amount. How was part of the rest of the money obtained?

A. The rest of the money was obtained one of those loans, mortgages got on the Baltic Avenue property, balance of the money.

Q. Was that the $35,000 loan on 713 and 15 Baltic Avenue?

A. Yes, sir. $35,000 loan, got $33,826.75; that money went to help pay the balance of the Ohio Apartment.

Q. Now, a while ago, of course, you told me that you had been paid down to within $40,000——

A. Forty some thousand.

Q. ——by means of these various mortgages, but, as a matter of fact, while you were so paid, you never actually did get the proceeds of this $35,000 mortgage, did you?

A. No, sir.

Q. Now, what did you do with that money?

A. I let her keep that money to go on to pay Naame for building the Ohio Apartments and credited her with that, but didn't want her to give it to me, but just let her to use it to put it to her bank account.

Q. So far as you know she paid Naame up to the amount of the proceeds of this mortgage, isn't that the fact?

A. As far as I know.

Q. And the money or the full amount of the money that you advanced should be credited to the Ohio Apartment?

A. Yes, sir.

Q. Now, we are short just ten thousand dollars?

A. Yes, sir.

Q. Can you account for that?

A. The only—I have no checks for it but the only way I can account for it, she had full access to my desk and the checks are missing and she burned them up. She burned up a lot of stuff of mine one Sunday morning before she left me; she burned up a lot of her own checks that she didn't want to show, her checks, and stood guard over the trash barrel while they were burning. My maid came to me—I was busy——

Q. You can't tell now what your maid said.

A. Well, she can tell it; she is here.

Q. In any case some of your checks are missing?
A. My checks are missing, yes, sir.
Q. But you did pay or did advance the money by which she paid all of the $104,000 dollars on that apartment?
A. I did.

Mr. Richards: I want to offer this recapitulation sheet in evidence.

(Sheet admitted and marked Exhibit C14.)

(Settlement sheet offered, received and marked Exhibit C15.)

Q. Now, did your daughter ever pay you back any of the $104,000 that you advanced?
A. No, sir. $250.
Q. That was part of the $500 check that you referred to?
A. On December, 1928, 14th or 15th.
Q. Was there anything written on that check that indicated that it was a payment upon the principal, do you remember?
A. Yes, sir.
Q. What was on it?
A. On account of the Savoy and Ohio Apartments.
Q. Has she ever paid you anything else?
A. No, sir.
Q. Did there come a time when you wanted to put a mortgage on that property?
A. Yes, sir.
Q. Did you negotiate with anybody for a mortgage?

A. Yes, sir.

Q. With whom?

A. The Trident Building and Loan.

Q. Did they agree to loan you some money on that?

A. Yes, sir.

Q. How much?

A. $75,000.

Q. Did you ask your daughter to execute a mortgage for the $75,000?

A. I did.

Q. When was that?

A. I couldn't give you the date but it was in the month of last November.

Q. November, 1928?

A. Yes, sir.

Q. What reply did she make to you?

A. That she wouldn't place a mortgage on that. What was I trying to do, get the property away from her? And she absolutely refused to create the mortgage.

Q. Has she ever paid to you any of the rents from this property?

A. No, sir.

Q. Do you know what she has done with the rents from it?

A. No, sir.

Q. Did you—this was in November—how much would you say the rents aggregate a month in this apartment house?

A. One we are talking about now?

Q. Yes.

A. The first year it was open she took in, in there, in the neighborhood of about $27,000 from, I think

the apartment was opened November, along about the fourth of November, in the month of November anyway, 1928, and in about a year she took in, in one year, she took in in the neighborhood of about $27,000. I got $250 of it.

Q. Coming to that November you applied, you asked her to sign the mortgage, the same as she had in the case of the other apartment houses, that is correct, is it?

A. Yes, sir.

Q. And she refused to do it?

A. Yes, sir.

Q. Now, did you continue to request her to execute this mortgage?

A. Yes, sir.

Q. What did she say to that?

A. She refused; she said she wouldn't do it?

Q. Now, when was it that she gave you this check?

A. December the fourteenth or fifteenth, I don't remember that, it is 1928.

Q. That was after she had refused to make the mortgage?

A. Yes, sir.

Q. Now, how did she give you the check?

A. She left it, she give it to the maid to give to me, gave it to the maid and the maid gave to me after I left her, after I asked her for it.

Q. What happened to the check?

A. Why, the maid give it to me, when I came home, and I looked at it and laughed, laid it down on the desk and walked out and left that laying there, such a small amount.

Q. How long did you leave it lay there?

A. Three or four days.

Q. Then what did you finally do about it?

A. What did I do with it?

Q. Yes.

A. I took it and deposited it.

Q. And it was paid?

A. Yes.

Q. And have you told us what was on this check? Do you remember whether there were any other words on the check than merely on account of the Savoy and Ohio Apartments? Were there any other words to indicate what the payment was for, if you recall?

A. Payment on account——

Q. Yes?

A. ——of the Ohio and Savoy Apartments."

Q. Was there anywhere that you recall?

A. I don't recall, no.

Q. I show you a check November 12, 1925, Lit Brothers, $500; what is that check?

A. That was a bargain check, to close a bargain, a contract, to close a contract for furniture for the apartment built at the corner of Baltic and New Jersey Avenue, twenty-four apartments.

Q. Now, have you been repaid that $500?

A. No, sir.

Q. Was that a gift or was it to be repaid to you?

A. To be repaid.

Q. I show you a letter from Lit Brothers, contract department, April 22, 1926, is that the contract that you stood for?

A. Yes, sir.

(Letter offered, received in evidence and marked Exhibit C16.)

Q. That your stepdaughter paid?
A. Yes, sir.
Q. With the exception of the $500?
A. Yes, sir.
Q. Now, was there any time when your stepdaughter did not pay her building and loan association dues?
A. Yes, sir.
Q. I show you a check dated January 25, 1928, to Atlantic City Loan and Building Association $815, S. L. Doughty, what was that for?
A. I paid her building and loan dues for her.
Q. Was that a gift?
A. No, sir.
Q. Was that to be repaid?
A. Yes, sir.

(Check offered in evidence.)

Mr. Cole: I don't see how that check can be offered in evidence, apparently an ordinary action at law, Court of Law can take care of this; not a part of this case at all.

The Court: I will permit it, a part of the res gestae.

(Check admitted and marked Exhibit C17.)

Cross-examination.

By Mr. Cole:

Q. How old are you?
A. 63.
Q. How much are you worth?
A. That is hard to tell, Judge. I cannot state that.
Q. Give us your best judgment?
A. My judgment is pretty poor on that.
Q. Is your judgment any better than your memory or poorer than your memory?
A. That is hard to say, but——
Q. You haven't any idea how much you are worth?
A. No, sir; you know real estate, most of my wealth is in real estate, that has depreciated terribly.
Q. Got any idea at all?
A. No, sir.
Q. Are you worth a hundred thousand dollars?
A. I hope so.
Q. Are you worth $500,000?
A. I don't think so.
Q. What?
A. I don't think so.
Q. More or less?
A. Less.
Q. How much less?
A. I couldn't answer.
Q. When did your stepdaughter come to live at your home?
A. When did she? I couldn't give you the exact date, around the neighborhood of 1913 or 1914.
Q. When did she leave your home?

A. This year, February the sixth.

Q. And she lived with you continuously from the time she lived with you in 1913 until she left in 1929?

A. She did.

Q. When were you married?

A. When were I married? I beg pardon; I didn't get that.

Q. When were you married?

A. In 1914.

Q. And your wife died when?

A. 1917 or—1918.

Q. Who cared for the house and did the cooking after your wife died?

A. Why, I kept a maid to do the cooking and I took care of the house, principally, looked after the house.

Q. Stepdaughter do anything about the house?

A. Not much.

Q. Did she do anything?

A. Very little. Done no cooking; took care of herself.

Q. Is that all she did?

A. About all.

Q. If you can remember will you tell us what she did about the house?

A. About the house?

Q. About the house.

A. Made her own bed, that is about all.

Q. Did no cooking?

A. No, sir.

Q. Didn't keep the house clean?

A. No; I always kept a maid for that.

Q. All she did about the house was to keep, to take care of her own room, is that correct?

A. About all.

Q. Were you fond of her?

A. Yes, sir.

Q. All the time she was living there?

A. Yes, sir.

Q. Did there come a time when you ceased to be fond of her?

Mr. Richards: I object, if your Honor please. I don't think it has any relevancy.

The Court: I think I will permit it. These transactions followed up pretty nearly all the time she was there; I will permit it.

(Question repeated.)

A. Yes, sir.

Q. When was that?

A. When she got running Naame, running with Joe Naame and coming home drunk.

Q. Fix the date of that?

A. It began the first of September a year ago.

Q. That will be September, 1928?

A. Yes, sir.

Q. Did you object to her marrying him?

A. Yes, sir.

Q. But she did marry him?

A. Yes, sir.

Q. Did you—in whose hand, that is, whose attorney's hand did you place this claim?

Mr. Richards: I think this is very far afield. I object.

The Court: No objections being made to it, I can't rule.

Mr. Richards: I object now.

The Court: I will sustain the objection.

Mr. Cole: I want to show, please your Honor, no demand was ever made by whoever the attorney was, for the payment of this claim.

The Court: I will sustain the objection.

Q. Do you know whether your attorney ever made a demand on Mrs. Naame, your stepdaughter, for the payment of this money?

A. Do I know whether he did or not? I do not.

Q. Did you ask him to?

A. I don't remember that I did.

Q. Do you know that the papers in this case were served on her on the day of her wedding?

A. I do.

Q. Had that been arranged between you and your attorney to have it done on that day?

A. No, sir, just happened.

Q. Just a coincidence?

A. Just happened to come that way, just dropped in that morning.

Q. Now, your counsel in opening this case to his Honor said that the agreement was that you would be paid out of the profits, was that the agreement?

A. The profits?

Mr. Cole: Please don't give the intimation—I

don't know—Mr. Reed seemed to be shaking his head, I don't know whether that is nervousness or what, I don't know.

Mr. Reed: You can't stop me shaking my head, if I want to, I am going to shake it.

Mr. Richards: I am quite certain I didn't use that word—if the stenographer took my opening, I want to object, I didn't use the word "profit." I wish that the stenographer would refer to my opening.

(Part of counsel's opening read as follows:
——"His agreement with his daughter was that he should advance the money initially and that he should be permitted to finance the improvement in any way that he saw fit and that she should repay him for the moneys so advanced out of the profits of the apartment houses. After the houses were erected, in pursuance of this agreement, Mr. Doughty procured two building and loan association mortgages upon the two apartment houses."——)

(Question admitted and repeated.)

A. No, sir. I was to be paid out of——
Q. You said "no;" that is the answer.
A. All right.

Mr. Richards: Now, if your Honor please, I wish an opportunity now to amend that opening and change that word "profits" to "rents," the word I intended.

Mr. Cole: I never heard of that before, but I object to amending the opening.

The Court: I will permit the record to remain with the statement of counsel.

Q. Did you tell your attorney, when you laid the facts before him for the purpose of bringing this suit, what your agreement with your stepdaughter was?

A. Did I tell him?

Q. Yes.

A. Certainly.

Q. What did you tell him?

Mr. Richards: I object to that, if your Honor please. I don't think that is proper.

The Court: Sustain the objection.

Q. What was the talk you had with her about her having an income from her father's estate?

A. Yes, she said she had an income from her father's estate.

Q. How did she come to say that?

A. Well, her father had died since she lived with me and she knew that I knew that he left her something.

Q. What had that to do with these improvements?

A. What did it have to do with it?

Q. Yes.

A. I was interested to see how much she was going to get from her father's estate about paying me

for these improvements I had loaned her the money for.

Q. When was that?

A. I couldn't give you the date.

Q. Was it before or after the improvements?

A. What, that I talked with her about it?

Q. That is what I am talking about.

A. After the improvements.

Q. After they were all made?

A. While they were being made.

Q. Now, which was it, was it while they were being made?

A. While they were being made; that is when it was.

Q. You were interested to know how you were going to get your money back?

A. Sure.

Q. And you knew she was getting an income from her father's estate?

A. Yes, sir.

Q. Therefore, you wanted to know how much it was so to be sure you had some way to get your money back, is that so?

A. No.

Q. What did you say to her about this estate of her father?

A. You wanted to know why I wanted to know—ask me that again?

Q. Beg pardon; I will ask you that after a while. I asked you that just now, if you will answer that now.

A. All right, sir.

(Question repeated: "What did you say to her about this estate of her father?")

A. I asked him if she was getting enough from her father's estate to pay me for these buildings after I built them. She says ——

Q. What buildings had you in mind?

A. The two first ones that I built on Baltic Avenue.

Q. Did you know how much they were going to cost?

A. Did I know how much they were going to cost?

Q. Yes.

A. I did, yes.

Q. What did she tell you?

A. She said she had an income enough with the rentals to take care of it, to pay me.

Q. To pay you back?

A. Yes, sir.

Q. And you accepted that as being true?

A. Sir?

Q. Did you accept that as being true?

A. I did.

Q. You believed her, didn't you?

A. Yes, sir.

Q. Now, I understand you to say that the agreement was that she was to pay you from the rental, is that correct?

A. No.

Q. That is not right?

A. No, you misunderstood, from mortgages created.

Mr. Cole: Will your Honor strike that? The answer was "no," and that is responsive.

The Court: Yes.

Q. Now, before you ceased to be fond of her were you interested in providing a source of income for her?

A. Did I provide this income from the buildings, you mean?

(Question repeated.)

A. Yes, sir.

Q. Had you promised your wife, when she was on her death-bed, that you would make provision financially for her daughter, your stepdaughter?

A. No, sir.

Q. Nothing like that ever occurred?

A. No, sir.

Q. Did you ever tell anybody that you had given her these improvements?

A. No, sir.

Q. No one?

A. I referred to the land.

Q. Pardon me?

A. I referred to the land.

(Question repeated.)

A. No, sir.

Q. Well, did you tell some people you had given her the land?

A. Oh, yes.

Q. Why did you do that?

A. She had told them that.

Q. Why did you tell people that you had given her the land?

A. It was in her presence.

Q. Why did you do it? How did you come to tell them you had given her the land?

A. She asked me, "Father, didn't you give it to me?" and I said, "Yes."

Q. How did the conversation come up about the gift that you had made to her, how did it come about?

A. Oh, I couldn't tell you that, how the conversation started, wasn't interested.

Q. The land you gave on Ohio Avenue, of course, was barren, wasn't it, nothing on it?

A. Yes, five houses on it.

Q. You mean after they were built. I am talking about the time the deed was made to Ohio Avenue.

A. Yes, five old houses on it.

Q. What became of them?

A. Tore them down.

Q. Did you think that this land you were giving her where the buildings were on was of sufficient income to take care of her?

A. No.

Q. You thought she would have to have some more income, didn't you?

A. The buildings were no good.

Q. What?

A. The buildings were worthless.

Q. And you wanted to see she got more income, didn't you?

A. Yes, sir.

Q. Willing to assist her to that end, were you?

A. That was the agreement when I bought it.

Q. Did you keep any books with this transaction?

A. I had a memorandum book.

Q. Where are your memorandas?

A. The memoranda book I had was burned up with my other stuff.

Q. Did you keep books at all?

A. No, sir.

Q. Never keep books?

A. No, sir. I did when I was in business.

Q. When did you cease to be in business?

A. About fifteen years ago.

Q. Keep no books since?

A. No, sir.

Q. Had no business since?

A. No, sir.

Q. Now, you say you did have a book in the transaction with the stepdaughter?

A. Yes, sir.

Q. What kind of a book was it?

A. A memorandum book. A particular book kept days and dates and loans and little transactions that occurred, money loaned.

Q. When did you last see that?

A. Along about December last year, in December last year.

Q. Do you say that she burned that up?

A. I didn't say she burned it. She was burning up a lot of stuff that day and I seen my checks and one thing another and I never seen them since.

Q. Haven't seen the book since?

A. No, sir.

Q. Did you personally make the notes in the book?

A. Yes, sir.

Q. From time to time as these things happened?

A. Yes, sir.

Q. Did you ever take a note from her for the money she owed you?

A. No, sir.

Q. Why didn't you?

A. Never offered me any.

Q. Did you ever ask her for one?

A. Sure.

Q. When did you ask her for a note?

A. I couldn't give you the date; it was last year, last of last year.

Q. How long was it after all these transactions were closed that you first asked her for a note?

A. I couldn't tell you.

Q. Have you no idea about that at all?

A. Sir?

Q. Have you no idea about that date?

A. After the building was finished, in November, some two or three months, I started to ask her for money but she always had an excuse that she had use for it.

Q. Which year had you in mind?

A. 1928.

Q. 1928?

A. 1927 and the Ohio apartment, the Ohio apartment was finished in 1927.

Q. Then in 1927, when all the buildings were completed, you began to ask her for a note, is that correct?

A. No, ask for money.

Q. A little while ago didn't you say you asked for a note?

A. Afterwards, yes, sir.

Q. When was it you first asked for a note?

A. Couldn't give you the date.

Q. How much did you ask her to give you a note for?

A. Any amount she liked.

Q. How much was that?

A. Any amount suited her.

Q. What?

A. Whatever she could spare.

Q. On a note?

A. No. For money I am talking about now.

Q. I am not talking about that. You said you asked her for a note?

A. Five thousand dollars.

Q. On account that was?

A. Yes.

Q. And she wouldn't give it to you?

A. No, sir.

Q. Tell you why?

A. No.

Q. Did you need the money?

A. Yes.

Q. How do you manage to know what your income is, and outgo, if you don't keep any books?

Mr. Richards: I object, if your Honor please, immaterial.

Mr. Cole: I think it is quite material.

The Court: I will permit it on cross-examination.

Mr. Richards: If your Honor please, how can it be, whether he knows what his income is?

The Court: May have more weight on his testimony as to these facts and figures.

Mr. Richards: They are all documentary proof, isn't any question about that and I don't think it is disputed even.

The Court: I will permit it.

Mr. Richards: I don't think it is. The answer says that they do not deny getting the money, the sole question is whether it was a loan or gift, that is all, and they ask us to prove how much.

Mr. Cole: I understand the question has been allowed.

(Question repeated.)

A. I can remember all of my incomes and outgoes.
Q. Now, you are a stockholder in various institutions, aren't you?
A. Yes, sir.
Q. Receive dividends from various institutions?
A. Yes, sir.
Q. How many do you suppose, roughly?
A. I couldn't say.
Q. Half a dozen?
A. You know the institutions notify you when the year is up, what they pay you, you know that as a director.

(Question repeated.)

A. About.
Q. Dozen?
A. No.
Q. Own real estate?
A. Yes.
Q. Collect rents from them?
A. Yes.
Q. How many different pieces of real estate do you own from which you receive rents?
A. Seven.
Q. How many tenants have you?
A. Seven.
Q. Seven tenants or seven properties, which is it?
A. Seven tenants.
Q. How do they pay the rent, weekly?
A. By the month.
Q. Don't keep any books with them?
A. Sure.
Q. Where are the books?
A. Down home.
Q. I thought you said you didn't keep any books?
A. That was in regards to the Dobbins matter, was it not?
Q. No, my question whether you kept any books at all?
A. I keep my rents in my check book, I deposit my checks, I can tell my rentals by the leases.
Q. The books you said you kept a while ago is your check book?
A. Yes.
Q. Why did you guarantee the payment of Lit's bill for furniture which went in these apartments?

A. Because they wouldn't sell it to her without my guarantee.

Q. But you were interested enough in her to guarantee the payment of the bill for the furniture that went into the apartments?

A. Yes, sir.

Q. Now, you said that you received some rents from some of these properties after you made the deed to her, is that correct?

A. Yes, sir.

Q. Is there a record of those rents?

A. Is there a record?

Q. Yes.

A. I suppose there is.

Q. Where is it?

A. In I. G. Adams—Adams' office.

Q. They collected for you?

A. Yes, sir.

Q. You didn't do that yourself?

A. No, sir.

Q. Now, you said there was a $500 check of hers to you which you saw and deposited, correct?

A. Yes, sir.

Q. What did you say that was for?

A. On account, payment on account of the Savoy and Ohio Apartments.

Q. Is the Savoy and Ohio one and the same?

A. No.

Q. Where is the Savoy?

A. New Jersey and Baltic.

Q. Then the Savoy and Ohio are separate apartments?

A. Oh, sure.

Q. When did you last see that check?

A. When I deposited it.

Q. Did you make a copy of it?

A. Did I make a copy of it? Yes, sure.

Q. Didn't you understand that question at the time?

A. No, I didn't. I can't hear you sitting over there. Come over closer.

Q. What did you do with the copy of the check that you made?

A. Give it to my attorney.

Mr. Cole: Will you produce it, please?

Q. Why didn't you—you even had a photostatic copy made of it, didn't you?

A. Yes.

Q. Is that it?

A. That is it.

(Copy marked D1 for identification.)

Q. Why did you make a photostatic copy of that check?

A. I thought I might want to use it.

Q. Why did you think you might want to use it?

A. Because she wasn't paying me.

Q. Well, you had other checks of hers before this, hadn't you?

A. No, very few. I don't know as I ever had any.

Q. Had you had any other checks of hers before this date?

A. Not on payment of property.

Q. I didn't ask you that?

A. Yes.

Q. There appear to be eleven checks of Isabel Dobbin to your order; I ask you to look at them and say whether they are her checks and whether you got the money on them?

A. Yes, sir; I must have got the money, endorsed them.

Q. Didn't have a copy made of those checks, did you?

A. No.

(Eleven checks marked D2 for identification.)

Q. When did you have that photostatic copy made?

A. Couldn't tell you, Judge.

Q. Was it before or after you deposited the check?

A. I couldn't tell you that.

Q. Did you go to the Marine Trust Company and did they let you use that check to have the photograph made after you had been credited with the amount?

A. I don't think so. I can't remember.

Q. You have said, in answer to counsel's question when you first saw the original check you laughed because it was so small?

A. Yes, sir.

Q. Was that the reason you laughed or did you laugh because you thought you could catch her by having a copy of that check made?

A. No, sir.

Q. Who made that photostatic copy?

A. Fred Hess.

Q. Who?

A. Hess, I think.

Mr. Richards: Judge, may I interrupt, you keep calling this a photostatic copy. It is not. It is a photograph.

Q. Was that before you deposited the check?
A. Yes, sir, to the best of my knowledge.
Q. Now, did you record as a credit anywhere this $500 check of Mrs. Naame?
A. Did I give her credit?
Q. Yes.
A. Yes, sir.
Q. Where did you give her the credit?
A. My attorney gave her credit.
Q. I am talking about did you anywhere?
A. $250 on each apartment.
Q. Where is your record of that credit?
A. No record of it.
Q. What? Now, then you say that you made these improvements because she pleaded with you to do it?
A. Yes, sir.
Q. In one place you said she insisted upon your making the alterations.
A. Yes, sir.
Q. And because of her plea and her insistence you did it?
A. Yes, sir.
Q. Did you see her burn up a lot of your checks?
A. No, sir.
Q. Did you say that she did?
A. I did not.
Q. What?
A. I said she was burning up a lot of checks, I didn't say they were mine; I thought they were.

Q. Do you know whose cehcks they were?

A. Some of hers. Nobody else had any checks around the house.

Q. She burn some of yours?

A. They disappeared; I didn't say that she burned them. They disappeared at that time.

Q. She ever loan you any money?

A. Yes, we used to loan each other money.

Q. Did she ever loan you any money?

A. Yes.

Q. You exchanged checks didn't you?

A. Yes. Always paid her back.

Q. You were very friendly?

A. Yes.

Q. You were fond of her?

A. Yes.

Q. Your relations were very intimate?

A. Yes.

Q. And you were willing to help her?

A. At that time.

Q. To get an income?

A. Yes.

Q. At that time?

A. Yes.

Q. Now, can you fix the time in the year and month when you reached the conclusion that you didn't want to help her any longer?

A. Well, Judge, I always helped her as long as she needed that help; she didn't want any more help.

Q. When did the time come she didn't want any more help?

A. Sir?

Q. When did the time come she didn't want any more help?

A. About a year ago this month.

Q. Now, you said that she was to pay you back from the rentals? Was she to pay you back from the gross rentals or the net rentals?

A. From the gross rentals.

Q. From the gross rentals?

A. Yes.

Q. Sure? Was that word used when you made the agreement, she said "gross?"

A. No, that word wasn't used.

Q. Now, you also made a deed to her for another property that hasn't been mentioned, didn't you?

A. Yes, sir.

Q. Where is that property?

A. Maryland Avenue and Drexel and Maryland.

Q. When was that deed made?

A. I couldn't give you the date of it.

Q. Well, you remember making it, don't you?

A. Having drawn the deed?

Q. Yes.

A. Yes, sir.

Q. And you acknowledged it, didn't you?

A. Sir?

Q. You signed it, didn't you?

A. Yes, sir.

Q. And acknowledged it?

A. Yes, sir.

Q. Was that a gift?

A. No, sir; I didn't give it to her.

Q. You didn't?

A. No, sir.

Q. Well, you made the deed?

A. I made the deed.

Q. Where did you—before whom did you acknowledge it?

A. I think it was Lucius Wright.

Q. After you had signed it and acknowledged it, what did you do with it?

A. Took it home.

Q. Where did you put it?

A. In a drawer.

Q. What did you intend to do with it?

A. Intended to give it to her if we built on that property.

Q. Intended to give it to her if you built?

A. Yes.

Q. That is, you mean built on that property?

A. On that property.

Q. Did you intend to give it to her after you had built on it or before?

A. After we built on it.

Q. You intended that the title to that property should go to her after you had built on it?

A. Yes, sir.

Q. You intended to build on it?

A. At one time.

Q. So that, having in mind that you at one time were going to build on this piece of ground, you made a deed to her and intended to deliver it to her after the building was completed?

A. Yes.

Q. Did you ever make a will?

A. No, sir.

Q. Never had one?

A. No, sir. Afraid of them.

Q. You have no children?

A. Sir?
Q. You have no children?
A. No, sir.
Q. Who are your closest relatives?
A. Brothers.
Q. Are you friendly with them?
A. Yes, sir.
Q. Not unfriendly with either of them?
A. Not unfriendly?
Q. Yes.
A. No, sir.
Q. They live in Philadelphia, don't they?
A. Yes, sir.
Q. You were present overseeing this work of improvement both uptown and downtown, weren't you?
A. Yes, sir.
Q. There almost daily?
A. Yes, sir.
Q. Giving instructions?
A. Yes, sir.
Q. Supervising?
A. Yes, sir.
Q. Finding fault, I suppose?
A. No, sir. The builder wasn't there much. I couldn't give much instruction.

Re-direct examination.

By Mr. Richards:

Q. Why wouldn't you tell Judge Cole the approximate amount of your wealth?
A. Well, all of my wealth is in real estate and I

don't know what real estate is worth these days, at least I don't.

Q. Because of your inability to sell your real estate?

A. The properties that a year or two ago were worth a hundred thousand dollars, in my own mind, today ain't worth fifty.

Q. That is why you are not in a position to give an estimate to satisfy the Judge's curiosity?

A. Yes, sir.

Q. Now, why was it that you wanted to know how much your stepdaughter was getting from her father, out of his estate?

Mr. Cole: I object to that. He was asked about that on direct examination and I cross-examined him.

The Court: Yes; I am inclined to think that was true.

Mr. Richards: If your Honor please, that is the very question the Judge wouldn't let him answer.

The Court: Question was objected to.

Mr. Richards: No, the Judge asked it to be stricken.

The Court: He attempted to qualify the answer and the Judge asked to be stricken. You will be permitted ——

(Question repeated.)

A. Why did I want to know? I wanted to know because if these apartments wasn't successful in the rentals that she was getting enough out of her father's estate to pay me.

Q. Did you make that inquiry before you made the agreement to finance the apartments or after you made the agreement?

A. Before I made the agreement.

Q. When these checks and books were burned, about what time was this?

A. The date or the day?

Q. The date?

A. It was, as near as I remember, it was some time in January of this year.

Q. How long before your daughter left your house?

A. That they were burned?

Q. Yes.

A. About a month, three weeks to a month.

Q. Now, I show you this photograph of the five hundred dollar check and ask you is that an exact reproduction of the face of that check as it was when you received it?

A. Yes, sir.

Q. Who made the photograph?

A. Fred Hess.

Q. At whose suggestion did you have the check photographed?

A. Somers Doughty.

Q. Your own suggestion?

A. Yes, sir.

Q. After looking at the check, does it refresh your memory now as to what was written on the check other than what you told me when I inquired?

A. No, sir; I didn't read the check then.

Q. Well, read it.

A. $500, Savoy and Ohio Apartments to Somers Doughty, principal.

Q. Now, then was there written on there in addition to Savoy and Ohio Apartments to Somers Doughty the word "principal?"

A. Yes, sir.

Q. That is after the printed words "for account of?"

A. Yes, sir.

Mr. Richards: I want to offer—I will again repeat my demand for the original of this check, and I presume that you haven't it, and I offer the photograph copy in evidence.

(Copy admitted and marked Exhibit C17.)

Q. You spoke about a deed that you had executed and which you intended to give to your stepdaughter; why was it that you did not give her that deed?

A. Because we didn't build on the property. I suggested to her instead of building up there I had better go down and buy the property on Ohio Avenue and build there instead of building at Drexel and Maryland.

Q. Was the Ohio Avenue deal in lieu of the Drexel Avenue deal?

A. Yes.

Q. Judge Cole showed you some checks of Isabel Dobbin to you and I note there is one here October

15, 1927, for $15,000, can you tell me what that check is for?

A. No, I cannot.

Q. I show you one July twentieth for $2500.

A. To the best of my knowledge that is a check for the money that was borrowed on the Savoy Apartment from the Trident Building and Loan.

The Court: What is the date of that?

Mr. Richards: July 20, 1927.

Q. I think you testified, didn't you, that the proceeds of the money was paid over to you by Miss Dobbins, in your direct examination?

A. Yes, sir.

Q. And isn't this check for it?

A. Yes, sir.

Q. That follows five days after settlement?

A. Yes, sir.

Q. Now, this $15,000 check, does that relate to the mortgages up there?

A. That relates ——

Mr. Salsburg: Is that the one he said he didn't know about? Is that the same check?

Mr. Richards: Yes.

A. This relates to the fifteen thousand note that was discounted.

Q. This is the note transaction?

A. Yes.

Q. Of which you have testified in general on your examination and this is the check for it.

A. Yes.

The Court: What is the date of that, please?

Mr. Richards: That is October 15, 1927.

Q. That was the time that you cancelled the building and loan and took out the notes in its place?

A. Yes, sir.

Q. Now, here is a check on March 25, 1927, for $5,000 on the Marine Trust. Do you know what that is about?

A. No, sir, I don't.

Q. There is another one October 6, 1926, for $7,000; do you know what that is for?

A. No, sir.

Q. Another one January 4, 1926, for $1,125?

A. I can't recall that either.

Re-cross examination.

By Mr. Cole:

Q. You said that you couldn't tell how much you were worth because all your wealth is in real estate; is that correct?

A. Mostly, yes, sir.

Q. What?

A. Mostly.

Q. You said all; now, do you want to qualify that?

A. Yes.

Q. Now, eliminating your real estate and not giving it any value, what do you say you are worth?

A. Fifty thousand dollars.

Q. How much?

A. Fifty.

Q. How do you manage to keep your records straight without records, if you please, with checks here for $1,125, $7,000, $5,000 $5 and $14, $368.33, $250, all of which were cashed by you? How do you manage to keep things straight?

A. I suppose money I loaned her and when I got it back I reimbursed it in my pocket.

Q. Suppose? Is there anything to show that you loaned her the money represented by those checks?

A. No, sir.

Q. Now, you felt pretty good when you saw written on this check with something stated about "principal," didn't you?

A. No, I don't know as I did.

Q. Did you think that you needed a copy of that for evidence?

A. I suppose I did.

Q. Didn't you have any other evidence except that she owed you money?

A. I thought I did.

Q. What did you think you had?

A. I thought creating these mortgages was evidence, my thought.

Q. Well, if you thought that was all right, why did you have this check photographed?

A. I wanted more evidence, we all do when we are trying a case.

Q. Did you anticipate this suit when you made a copy and photograph of this check?

A. Yes, sir.

Q. You had quarrelled then, hadn't you?

A. Yes, sir.

Q. Your quarrelling began about what time?

A. About November.

Q. Had you thought of bringing a suit before November?

A. No.

Q. What brought it about in November?

A. What brought it about? What brought it about? She was out one night with Joe Naame and Mr. Kuehnle sitting there and came home so drunk she could hardly get upstairs. They were down to a woman's house; down by the name of—we will get her name out after a while, I can't remember. She was so drunk, vomited all over the bath room and everything. I says, "My God, has she come to this? I guess I better begin to get my account in."

Q. Then you concluded to sue her?

A. Sure.

Q. Of course, you were very much disgusted with her then?

A. Sure. Who wouldn't be?

Q. Did you ask her to leave?

A. Sir?

Q. Did you ask her to leave?

A. No, sir.

Q. Stayed there until February following?

A. Yes.

Q. Ate at your table?

A. Yes, sir.

Q. It wasn't until after the marriage that she left?

A. No, sir; she left before she was married.

Q. How long before?

A. About two or three hours.

Q. So she stayed there within two or three hours of the marriage?

A. Yes, sir.

Q. And you didn't send her away?

A. No, sir.

Q. But you were totally disgusted with her?

A. That is what she wanted to do; she wanted me to send her away and I wouldn't; threatened me every day.

Q. Why did you think she wanted you to send her away?

A. Because she had told Joe, a witness will be on the stand there, "I wish he would put me out; I am ready to go any night."

Q. Did she say why she wanted to be put out?

A. No.

Q. So you didn't want to accommodate her?

A. No, didn't want to accommodate her; that is right.

(Recess taken to 1:15 P. M.)

AFTERNOON SESSION.

(Trial of the cause resumed at 1:15 P. M.)

ERNEST A. LORD, sworn.

Direct examination.

By Mr. Richards:

Q. Mr. Lord, do you sustain any relationship with the Trident Building and Loan Association?

A. Yes, sir.

Q. What is that?

A. I am president.

Q. Do you remember whether or not Mr. Somers Doughty ever came to you about obtaining a loan on the Ohio Apartments?

A. About paying a loan?

Q. No, about obtaining a loan?

A. Oh, excuse me. Yes.

Q. How much of a loan did he want on the apartment?

A. $75,000.

Q. Did the building and loan agree to loan the $75,000?

A. Yes, sir.

Q. About when was that?

A. I guess that was in the early spring, I guess; it has been several months ago.

Q. Of last year?

A. I wouldn't remember whether it was last year or this year but it has been a long time ago. I am rather inclined to think it was last fall or last winter.

Q. Now, did you, in fact, make a loan of that amount or any amount on the Ohio Apartment?

A. No.

Q. But you were willing to make the loan?

A. Oh, yes.

Q. Who made the negotiations?

A. Well, it was during an informal meeting of a lot of them connected with the association and we were speaking about the fact that we hadn't very many applications for loans such as we would accept and that we had close to a couple of hundred thousand dollars surplus that we didn't seem to be able to invest and Mr. Doughty said would the building association loan him $75,000 on his Ohio Avenue apartment and they agreed that they would.

Q. You knew that the title to the apartment was in Miss Dobbin, didn't you?

A. Yes.

Cross-examination.

By Mr. Cole:

Q. How old is the Trident Building and Loan?

A. The Trident Building and Loan? I think it is three years last January.

Q. Was there a minute made of the authority to make that loan?

A. No, sir; I think not. I haven't looked but as I say ——

Q. Your recollection is the directors never passed on it at any formal meeting?

A. No, I think it was merely an informal meeting after the meeting of the directors of the Marine Trust Company.

Q. In other words, this loan was never brought officially to the attention of the Board of Directors of the Trident Building and Loan?

A. Not according to my recollection, so that there could be a minute made of it.

Q. Well, had anybody reported the value of this property when you say that they agreed to make a loan of $75,000?

A. Why, there had been no committee sent out to make an appraisement of the property. My recollection is that it wasn't quite completed or something of that kind and that the majority of those present knew the value of the land and knew the value of the building that was going up.

Q. Did Mr. Doughty make a report as to his opinion of the value?

A. If I recollect he said he had paid $30,000 for the land or thirty-five, thirty or thirty-five, and that the building was costing about a hundred thousand dollars.

Q. And he referred to it as his property, did he?

A. I don't know that he came right out and said that "This was my property," he said that he wanted to borrow $75,000 on his apartment house on Ohio Avenue.

Q. He referred to it as his apartment?

A. Yes, if I recall correctly.

Q. He didn't tell you it belonged to Mrs. Naame or to Miss Dobbin, his stepdaughter?

A. No.

Q. Was her name mentioned at all, do you remember?

A. Was her name mentioned at that time?

Q. Yes.

A. I don't remember, Judge. We were so pleased to think that we were going to get rid of the $75,000.

By Mr. Richards:

Q. Subsequently did Mr. Doughty mention Miss Dobbin's name connecting with the loan?

A. I don't recall that he ever mentioned her name as connected with the loan.

Q. Do you know whether some of the members of the valuation committee were present at the time?

A. Oh, yes.

Q. And did they discuss the question of whether that was a proper loan for the building and loan?

A. Oh, yes.

By Mr. Cole:

Q. Who discussed it?

A. Mr. Burkard, Mr. Hugh Riddle, Mr. John O'Neill.

Q. What did they say the property was worth?

A. I think Mr. Burkard made the expression to them it was a fifty per cent loan.

Q. William L. Burkard?

A. Yes.

By Mr. Richards:

Q. Mr. Beaumont was also there, do you remember?

A. I think Beaumont was there, too.

WILLIAM M. POLLARD, sworn.

Direct examination.

By Mr. Richards:

Q. Mr. Pollard, are you connected with the Guarantee Trust Company?

A. Yes, sir.

Q. What capacity?

A. Note teller.

Q. I show you a note marked Exhibit C5 and ask you if you have seen this note before?

A. Yes, sir.

Q. Now, who paid this note at maturity?

A. Mr. Doughty paid it.

Q. And it was delivered to him?

A. Yes, sir.

Q. Was this a renewal of another note?

A. Yes, sir.

Q. How much was the original note?

A. $15,000.

Q. Who paid the difference between the $15,000 and the $8,000?

A. Well, so far as I recall it was Mr. Doughty but I wouldn't swear to that.

Q. You don't know?

A. To the best of my recollection Mr. Doughty.

Q. You don't know whether Isabel Dobbin paid it or whether he paid it?

A. I don't recall, but I think it was a Marine Trust Company check of Mr. Doughty at the time that was renewed.

Cross-examination.

By Mr. Cole:

Q. When was that $8,000 note paid?

A. That was paid the day after it was due.

Q. What is the due date?

A. March first it was paid; it was due February twenty-eighth.

Q. Of this year?

A. This year, yes.

Mr. Salsburg: 1929?

A. 1929, yes.

LEMUEL E. CONOVER, sworn.

Direct examination.

By Mr. Richards:

Q. Mr. Conover, with whom are you employed?

A. C. J. Adams Company.

Q. Did you have anything to do with the collection of rents from the property 701, etc., Baltic Avenue?

A. Yes, sir.

Q. And did you also have anything to do with the collection of rents of the properties around on New Jersey Avenue?

A. Yes, sir.

Q. Did you collect rents for the properties on New Jersey Avenue during the years 1925 and 1926?

A. For several years, I don't know, several years back.

Q. To whom did you pay those rents?

A. To Mr. Doughty.

Q. Mr. Somers Doughty?

A. He got a check at the end of every month.

Q. What properties did you collect from? I mean did you make the collections yourself?

A. Yes.

Q. What properties did you collect from?

A. These last two or three years it has been just 206 and 208 North New Jersey.

Q. Before that what did you collect from?

A. Collected them all except the two new buildings that were put up recently.

Q. Now, there was on the corner a saloon and apartments, that was an old building, wasn't it?

A. Yes.

Q. Did you collect the rents from that?

A. Not the saloon; Mr. Doughty, I think, collected that.

Q. Well, from the apartments, did you collect the rents?

A. Yes.

Q. Did you collect any rents after they were improved?

A. No.

Q. You ceased to collect after they were improved?

A. That is right.

Q. To whom did you pay those rents?

A. Mr. Doughty.

Q. Mr. Doughty?

A. Yes.

Cross-examination.

By Mr. Cole:

Q. Mr. Conover, you say you personally collected some of the rents from uptown, the Savoy Apartments?

A. How is that?

Q. Did you say that you personally collected the rents?

A. Yes.

Q. You get checks or cash?

A. Check.

Q. And that went into the Adams Company bank account, didn't it?

A. Yes.

Q. Now, did you turn over personally the checks of Adams Company to the order of Mr. Doughty?

A. No, the check always drawn and I always mailed it to Mr. Doughty at the end of every month.

Q. You personally mailed a check?

A. Yes, sir.

Q. Now, when did you begin to collect the rents?

A. Well, it has been several years back; I couldn't tell you.

Q. Do you remember when you ceased collecting rents?

A. Yes.

Q. When?

A. I collected up to March first last.

Q. Up to March first, 1929?

A. Yes.

Q. You mean now, all the properties up there?

A. How?

Q. You mean all the property?

A. No, just these two on New Jersey Avenue, 206 and 208 North New Jersey.

Q. How many different properties were there, two or three?

A. Well, I think there was a double one on New Jersey Avenue and there was, I think, there were the saloon on the corner and two apartments next to the saloon, all under one roof.

Q. Now, did you collect rents from all those buildings?

A. Not since they were altered and made into small apartments I didn't, only on New Jersey Avenue.

Q. Now, do you know who collected the rents after the improvements were made with the exception of the one you name?

A. I think Miss Dobson.

Q. Miss Dobbin?

A. Yes.

Q. That is your understanding?

A. Yes.

Q. After the improvements were made she collected the rents?

A. Yes.

FRANK E. SINGER, sworn.

Direct examination.

By Mr. Richards:

Q. Mr. Singer, you are employed by the Marine Trust Company?

A. Yes, sir.

Q. What capacity?

A. Bookkeeper.

Q. Have you got the Doughty and Dobbin's accounts with you?

A. Yes, sir; I have them right here, not the Doughty accounts, the Savoy, Ohio and Isabel Dobbin.

Q. Can you trace from those accounts whether or not a sum of $25,000 was placed in one of those accounts around July 20, 1927, and whether or not that was afterwards paid to Mr. Doughty?

A. You mean $25,000 as a deposit?

Q. Yes.

A. Yes, sir; I could trace it.

Q. Will you tell us what the transaction is so far as the books show?

A. You have no idea which account it was, have you? There is a check drawn on July—not drawn —July twentieth, but paid on July 20, 1927, against

the Savoy Apartments signed by Isabel Dobbin for $25,000.

Q. Now, is there a corresponding deposit of $25,000?

A. On what date?

Q. Evidently prior to that date?

A. There was a deposit of $24,451.50 on July 16, 1927.

Mr. Richards: I call the Court's attention to that deposit corresponds with the settlement sheet.

Q. I show you check dated July 15, 1927, of the South Jersey Title and Finance Company in the sum of $24,451.50, endorsed Isabel Dobbin, Savoy Apartment; would that check correspond with the entry on your account sheets?

A. Yes, sir.

Cross-examination.

By Mr. Cole:

Q. Do you find a credit of Miss Dobbin on July twenty-sixth, $25,000 ——

By Mr. Richards:

Q. Will you look and see if your accounts show a deposit to Isabel Dobbin about October 15, 1927?

A. Savoy Apartments?

Q. Yes.

A. Yes, sir, $33,826.75.

Q. Corresponding with this check of the South

Jersey Title and Finance Company of that date; is that correct?

A. Yes, sir.

Q. Is there a corresponding ——

A. I think that was split up after that.

Q. Now, the balance between September 27th and October 15th seems to have averaged around a little over a thousand dollars?

A. Yes.

Q. Exception of an item of ten thousand dollars that seems to have gone in and out about October fifth?

A. Yes.

Q. Then the thirty-three is added and the balance is $25,000?

A. Almost immediately a check for $15,000 was drawn.

Q. It shows on your ledger, shows as having been paid on what date?

A. On the seventeenth of October.

Q. I show you a check dated October 15th, which was paid by you on what date?

A. On October the 17th, 1927.

Q. And that is—this is a check to Somers L. Doughty by Isabel Dobbin.

Cross-examination.

By Mr. Cole:

Q. Do you find a credit to Miss Dobbin on October 15, 1927, for $33,826.75?

A. October 15, 1927, $44,826.75, credit to the Savoy Apartments.

Q. Can you tell what that credit was, whether cash, check or whose check?

A. I can't tell right now but the South Jersey Title and Finance Company check there is the one that corresponds with it and that must be it.

The Court: South Jersey Title Company's check on the Marine?

Mr. Richards: Yes, on the Marine Trust Company.

By the Court:

Q. Can you tell, by examining that check, whether it is the check that constituted that credit?

A. Well, you would have to get the South Jersey Title and Finance Company ledger sheet for that and see if this was charged against the South Jersey Title and Finance Company; as far as I know, yes.

Q. Can't you tell by the endorsement on it?

A. Savoy Apartments, it was deposited to the Savoy Apartments on the fifteenth of October.

By Mr. Cole:

Q. Did I ask you about the check on the seventh month, 26th for $25,374.50, or rather a credit?

A. Yes, you did ask me. It was credited to the Savoy Apartments, $25,374.50.

Q. That is what I thought you said.

A. It was credited to the Savoy Apartments.

Re-cross examination.

By Mr. Richards:

Q. I just noticed here some other sheets; I ask you what this sheet is here that I have in my hand?

A. It is the Marine Trust record of a fifteen thousand dollar note discounted on December fifth, at different times paid off until it was gradually cancelled.

Q. Then this is headed, "Demand loan to Isabel Dobbin," note dated December 5, 1927, words written on it, "Guaranteed by S. L. Doughty." Now, below it are the various entries which apparently begin with the payment of interest and then a reduction by degrees of the loan on March 31st, June 30th, September 30, December 31st and January 12th, until the loan is closed out.

A. This is the time the interest was paid. This is the time the reductions, that is just the interest.

Q. This is the time that the interest was paid, the dates I gave, the dates of the reductions are 4/2/28, $2,000; 7/2/28, $1,000; 8/2/28, $3,500; 10/2/28, $2,500; 11/5/28, $2,000; 12/31/28, $700 and 1/12/29, $3,300. Now, have you any record that shows who paid those moneys?

A. No, sir.

Q. Can you, by consulting accounts, find any corresponding figures in the Savoy Apartment account?

A. You mean whether this note was discounted?

Q. Yes, I am asking about the payments; who made the payments?

A. I don't know who made the payments.

Q. Can you tell whether or not they were taken out of the Savoy account, by consulting that account as of those dates?

A. Yes, I can if they were taken out of that account.

By the Court:

Q. First was March 31st, $2,227.50?

A. Yes, there was a check drawn against the Savoy Apartments on April the third, 1928, $2,227.50.

Q. Now, on June 30, 1197.83, would be July 2nd, as a matter of fact?

A. There was a check for a thousand dollars.

Q. $197.83?

A. I didn't see that. The interest might have been paid from some other source.

Q. Now, September thirtieth, $3,661—$3,500?

A. This is the twenty-eighth, isn't it, $161 and $2500, paid on October second.

Q. August twenty-first?

A. Nothing in there.

Q. But you do find for September second. Now, November the fifth?

A. Thousand dollars?

Q. Two thousand?

A. There is one thousand and two thousand here, both same date, and $475.

Q. 12/31 for $700?

A. No.

Q. Now, on January 12, 1929, $3,300?

A. No, sir.

By Mr. Richards:

Q. Are there any other accounts that Miss Dobbin had?

A. Ohio Apartments.

Q. Let's look for the missing ones in there, first going to the last one.

The Court: I am wondering just exactly how this note enters into the transaction at all? It is a demand note of Miss Dobbin guaranteed by Mr. Doughty and is not connected, apparently, with the $15,000 which paid half of the mortgage loan to the Atlantic City Loan and Building Association.

Mr. Richards: This is one of the two notes that took up the building and loan.

The Court: Can't be; this note was three or four or five months before that time, before the building and loan was taken up. Building and loan wasn't taken up until February 29, 1928, and this is December the fifth, three months prior, so this was evidently another note, and the testimony was that Miss Dobbin gave a note to Mr. Doughty for that. This is a demand note by Miss Dobbin guaranteed by a separate writing by Mr. Doughty. Apparently is not the same transaction. There don't seem to be any connection between this and the present case.

Mr. Richards: I may be wrong; I assumed it was the same note.

The Court: Apparently it is not; if you have Mr.

Doughty's account it will show whether a note for $15,000 was discounted in the Marine Trust Company at approximately the time of February when this payment was made by him, which was his testimony, discounted one in the Guarantee, which has been followed up.

Mr. Richards: Until we clear that up then this isn't, I don't think, relevant at all. It is apparently some other transaction.

By the Court:

Q. Can you tell at the time this $15,000 demand discount was granted to Miss Dobbin to what account did it go, to the Savoy Apartments?

A. To the Savoy Apartments; it went to the credit of the Savoy Apartment, $15,000 discount.

Q. I show you what purports to be a guarantee by Mr. Doughty of a demand note of $15,000 dated December 5, 1927; can you tell from your records whether that paper guarantees this note?

A. That is the one that guarantees it for this $15,000 was issued on December fifth; this is dated December fifth.

Q. December 31st was the due date, not the due date but when the first payment ——

A. The interest was paid on that, the due date wasn't until April second, 1928.

Q. It was demand, as a matter of fact?

A. Four months.

Q. It wasn't a four months' note?

A. Well, it was a four months' note but it was paid on that, two thousand.

Mr. Richards: If your Honor please, you said that the date of the cancellation of the ——

The Court: The date of the payment for the mortgage in question was February 29, 1928, nearly three months after the discount of this note, which apparently isn't the note in question.

Mr. Richards: I think not, your Honor. Of course, Mr. Doughty's testimony is that it was.

The Court: Yes, but his testimony, not arguing with you gentlemen at all, his testimony was that he discounted a note made by Miss Dobbin to him in the Marine Trust Company, which would apparently be a different transaction from a demand note to which Mr. Doughty was not a party except as a guarantor on a separate instrument.

Mr. Richards: Of course, if your Honor please, you know there are two notes, two $15,000 notes.

The Court: One in the Guarantee Trust Company and the other in the Marine.

Cross-examination.

By Mr. Cole:

Q. Is this note which I show you, dated December 5, 1927, for $15,000, payable on demand, signed by Dobbin, and endorsed by Doughty, the note about which you have been testifying?

A. Yes, sir.

(Note marked D3 for identification.)

Q. The proceeds of that note went to whose credit?
A. Savoy Apartments.
Q. And that is the account of Miss Dobbin?
A. The Savoy Apartments; yes, sir; she signs on it.
Q. Did you trace the payments that were made, out of whose account the payments were made on that note?
A. We didn't get all of them; we didn't check all of them.
Q. You did check some?
A. Checked some.

The Court: You were going to look at the other account when I interrupted you.

A. You see they may have been paid one thousand from one and two thousand from the other to make the three.

The Court: Yes, absolutely, to exactly tell.

A. Unless you have the checks that is hard.

By the Court:

Q. Can you place the final payment of $3300 in any of these accounts?
A. $3300?
Q. Yes.
A. I will see.

Mr. Cole: Paid January, 1929.

A. Paid January 12, 1929, $3,306.60; $6.60 was apparently the interest.

Q. That was the interest marked on your slip.

A. That goes against the Ohio apartment account.

Q. Look at the date that this note was discounted and see if you can see any corresponding large check from her account in the Savoy Apartment?

A. There was a ten thousand dollar check drawn against it almost immediately; yes, here it is. You see the note was discounted December fifth, given credit on the sixth, the next morning.

Q. The next morning the ten thousand dollars was drawn?

A. Immediately, yes, sir.

DANIEL A. STEWART, sworn.

Direct examination.

By Mr. Richards:

Q. Mr. Stewart, where do you live?

A. Why, I live 3115 Fairmount Avenue.

Q. Do you know Mr. Doughty?

A. Yes, sir.

Q. And you know Miss Dobbin?

A. Yes, sir.

Q. Did you visit their home during the year 1925 and on down?

A. Oh, yes.

Q. Friendly with them?

A. Yes, sir.

Q. Did you know of the transaction which Mr. Doughty built these houses uptown?

A. Only from what Mr. Doughty and Miss Dobbin told me.

Q. Now, did Miss Dobbin ever tell you anything with relation to how the houses were built for her?

A. Yes, sir.

Q. What did she tell you?

A. Well, she told me that Father was building the houses for her and as soon as she had Father paid off, why, that is when she was going to take a trip to California and probably to Europe.

Q. Did she tell you whether or not her father was loaning her this money or whether he was giving it to her?

Mr. Cole: I object. He has already told particularly what was said and I think we ought to have what was said.

The Court: I think you are entitled to the conversation, what was said concerning it.

Q. When was this conversation that you refer to?

A. Well, it was on the front porch, I think we happened to be, she has mentioned it to me and him on several different occasions.

Q. Can you remember about when it was she first mentioned it to you?

A. Well, the first conversation ever I had with her in regards to anything was over at Burr Dennis's, English Creek; I drove over there with her

and Mr. Doughty and Mr. Doughty went out in the garden and she told me at that time that he had not made no will or had not made no provision in the way of her getting anything if he was to happen to die.

Mr. Cole: Who is this talking?

A. Sir?

Mr. Cole: Who is it talking now, Mr. Doughty?

A. Miss Dobbin.

Mr. Cole: All right.

A. And shortly afterward, why, she told me that Mr. Doughty had given her the ground up there anyway, corner New Jersey Avenue and Baltic, and then it wasn't long before she told me that he was going to finance her money and build them houses and she says "that will save me from working in the five and ten, anyhow."

Q. Go ahead; now, did you ever talk to her about it again?

A. Well, I, over in the Ohio apartment I have been talking to her one time.

Q. Now, what did she say on that occasion?

A. Well, she said it would take her a long time to pay Father back but she would finally do it.

Q. Do you remember any other conversations after that time?

A. After the Ohio Avenue property?

Q. Yes.

A. Well, I can't say that I do after that. Of course, before that.

Q. Is there any other conversation before that relative to the financing of the New Jersey Avenue properties that you recall?

A. Yes, sir. I went to Mr. Doughty to borrow fifteen hundred dollars and Mr. Doughty wasn't home and I told Miss Dobbin what my errand was and she told me that it was taking about all of Father's money at the present time to build them houses, but just as soon as she could get them finished and make a loan on them, get a loan on them, he would have plenty of money.

Q. Is that all the conversation that you recall concerning the transaction, either uptown or downtown, on Ohio Avenue?

A. Well, the Ohio, that was afterwards, she told me about that, that Ohio Avenue property was finished then, I stopped there with some fish for her, Mr. Doughty wasn't home and I stopped there and she showed me through them, that is, in the basement.

Q. She showed you through the apartments?

A. The basement. It was the day Burkard was putting in coal there.

Cross-examination.

By Mr. Cole:

Q. How long have you known Mr. Doughty?

A. Sir?

Q. How long have you known Mr. Douhgty?

A. Between fifty and sixty years.

Q. Have you been very friendly?

A. Always.

Q. Has he loaned you money?

A. Yes, sir.

Q. Numerous occasions?

A. Sir?

Q. On numerous occasions?

A. Yes, sir.

Q. And on numerous occasions before you went to borrow the fifteen hundred you just spoke of?

A. Oh, yes.

Q. Did you open the conversation about these improvements or did Miss Dobbin?

A. Well, it was a general conversation; no, I didn't open it. It was a business that didn't concern me. That was between her and him, but the conversation was opened.

Q. How did Mr. Doughty find out the conversation that had taken place between you and Miss Dobbin?

A. How did Mr. Doughty find it out?

Q. Yes.

A. I told him, when I saw him to get the money.

Q. What did you tell him?

A. Well, I told him that Bell told me he would have plenty of money as soon as she could get a loan up there on her property to pay him back some.

Q. Is that all you told him?

A. All I can think of right now.

Q. That is all you recall?

A. Yes, sir.

Q. How soon did you see him after you had been to the house and saw her about this fifteen hundred dollar loan?

A. The very next day; I was a frequent visitor there, from day to day, every other day, hardly goes a week I wasn't there a couple of dozen times.

Q. Did you eat there?

A. I have ate there, yes, sir.

Q. Tell us just what happened between you and Mr. Doughty about this fifteen hundred dollars?

A. He wanted to know what I wanted of it in the first place and I explained that to him.

Q. What did he say?

A. Then he agreed to give it to me.

Q. Was that before Miss Dobbin had said he would have plenty of money after the mortgage was paid?

A. Afterwards.

Q. Then you asked him for the loan and he agreed to give it to you?

A. Yes, sir.

Q. He didn't say he didn't need the money, did he?

A. No, sir.

Q. Having gotten the loan from him, why did you think it was necessary to tell him about what Miss Dobbin had told you?

A. Mr. Cole, Mr. Doughty is a bosom friend of mine and I would tell him anything that was detrimental to him or you, either, if it was in the same circumstances.

Q. I still don't understand why it was—now, you say this was when, or was how long ago?

A. I think it was in 1926.

Q. 1926?

A. I think it was.

Q. Why did you think it was necessary or impor-

tant to tell Mr. Doughty what Miss Dobbin had told you about his having plenty of money when he already had agreed to make you the loan?

A. He hadn't already agreed to make me the loan, Miss Dobbin told him this.

Q. You just said a moment ago he had?

A. No, sir; I didn't say that.

Q. Which is correct?

A. No, sir; I didn't say that.

Q. Had Mr. Doughty agreed to loan you fifteen hundred dollars before you told him what Miss Dobbin had told you about his having plenty of money after he got the mortgage?

A. Well, I met Mr. Doughty the one ——

Q. No, wait a moment.

(Question repeated.)

A. Yes, sir.

Q. How did you come to tell him?

A. As I explained to you before, anything that I would hear with regards to Mr. Doughty I would always tell him, because he has been my friend for forty years.

Q. Did you tell Mr. Doughty what Miss Dobbin had told you about his having this money as an inducement for him to loan you the fifteen hundred dollars?

A. I didn't tell him until afterwards.

Q. All right. That makes it plain enough. Did you relate to Mr. Doughty any of the other conversations that you had with Miss Dobbin or she with you other than this particular one?

A. Principally all the conversations that Miss

Dobbin had with me she had in front of Mr. Doughty.

Q. Well, those that she didn't have in front of Mr. Doughty, did you report to him what she said?

A. About the only ones she had with me was over in the apartment house.

Q. That is the only one, then, you reported to him, was it?

A. No.

Q. What?

A. No.

Q. What other?

A. I say this conversation happened on the porch that you have just got over. Now, I had another conversation with her in the apartment over in Ohio Avenue after this.

Q. Did you report that to him?

A. Yes, sir.

Q. How soon afterward?

A. As soon as I saw him.

Q. Why?

A. Because I just explained.

Q. Want to carry the messages?

A. No, sir; I just happened to say I was over there and left them fish and saw Bell.

Mr. Richards:

Q. Mr. Stewart, did you mean to tell Judge Cole just now that when you saw him the next day and you said, "I was over to the apartment and left the fish and saw Bell," did you mean to say that at that time you told him about this conversation

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in which she had told you it would take her a long time to pay this money off?

A. Oh, she told me that in the presence of Mr. Doughty.

Q. Now, of course, you have talked to Mr. Doughty about these various conversations since this case started, haven't you?

A. Well, yes.

Q. And you retailed to him these various conversations, then, didn't you?

A. Yes, sir.

Q. And also to his counsel?

A. Yes, sir.

Q. Now, I don't think it is very important, but let's try to straighten this thing out. When you went to borrow the fifteen hundred dollars did you say to Mr.—what was the first thing you said to Mr. Doughty, if you remember?

A. Why, I says to him, I says, "I come up," I says, "I am in a little trouble." He says, "What is the matter?" "Well," I says, "I need fifteen hundred dollars to straighten me out." And he says, "What do you want it for?" and I told him what I wanted it for and who I wanted to pay, which I did pay, and he agreed to give it to me.

Q. Now then, did you at that time say anything about having seen Miss Dobbin?

A. Yes, after he agreed to give me the money.

Q. That was afterwards?

A. Yes, sir.

Q. Then, after you said that you had seen her, you reported the conversation you had with her, is that correct?

A. Yes, sir.

Q. Now, you paid Mr. Doughty back, didn't you?
A. Most all of it, yes, sir.

By Mr. Cole:

Q. Now, Mr. Stewart, you have said that since then you have told Mr. Doughty or his attorney about all the conversations you had with Miss Dobbin; is that correct?
A. We had some conversation over with Mr. Doughty here himself, that is all.
Q. I am asking you whether you reported to Mr. Doughty or to his attorney all the other conversations you had had with Miss Dobbin about her relations with this property?
A. Yes.
Q. Now, what did the lawyer of Mr. Doughty say to you which provoked what you said that you told him?
A. What made me?
Q. How did it come about?
A. What made me tell him?
Q. Yes.
A. As I repeated to you a while ago ——
Q. The lawyer sent for you, didn't he?
A. Who?
Q. Mr. Doughty's lawyer.
A. Sent for me?
Q. Yes.
A. Mr. Doughty subpoenaed me.
Q. What?
A. They subpoenaed me.
Q. Where, to come here today?
A. Yes, where I was working.

Q. I understand to come here today?

A. Yes, sir.

Q. I know, but didn't you tell the lawyer about these things before today?

A. Yes, sir.

Q. When?

A. Yesterday.

Q. What did they say to you and what did you say to them?

A. Well, they asked me and I just give the evidence what I could think.

Q. What did they ask?

A. They asked me if I remembered the conversation, if I ever knowed them, and I said them.

Q. That conversation was how long ago?

A. About twenty-six, I think.

Q. Only a day or two ago for the first time you were asked about a conversation you had had with Miss Dobbin about these properties?

A. Judge, I have thought about it a thousand times.

Q. I am not asking about what you thought. I am asking you whether that was the first time you told him about it?

A. Told Mr. Doughty?

Q. Yes.

A. No, it wasn't the first time I told him about it.

Q. That is all.

By Mr. Richards:

Q. Mr. Stewart, the first time you told his counsel about them was yesterday?

A. Yes, sir.

Q. But you had reminded Mr. Doughty of the conversation?

A. Yes, sir.

Q. You knew about this lawsuit, didn't you?

A. Yes, sir.

Q. You knew what it was about, didn't you?

Mr. Salsburg: Object to the leading questions, if the Court please.

The Court: No objection.

Q. So that you had plenty of time to search your memory?

Mr. Salsburg: I object to this question.

The Court: Can't be but one counsel trying the case.

Q. You had had time, had you, to search your recollection prior to the time you were asked by counsel about these questions?

A. Yes, sir.

By Mr. Cole:

Q. Now, what did you know about the lawsuit?

A. Sir? Oh, I knowed about it along about the last of February.

Q. I didn't ask you when; I asked you what you knew about it.

A. What I do know about it?

Q. Yes.

A. All I know about it is the conversation that I have heard.

Q. No, but in the answer to counsel you said that you knew what this law suit was about; now, what did you understand it is about?

A. Well, didn't ask me that, did he?

The Court: Are we interested in that?

Mr. Cole: Yes, please your Honor; suppose they told him what it was about and undertaken to supply the testimony. I don't know what the fact is.

The Court: If you insist on the question.

Mr. Richards: That is why I am not objecting to it, if your Honor please.

The Court: If you insist on the question we will take the time.

Q. How did you find out what the lawsuit was about?

A. How did I find out what it was about, is that what you say?

Mr. Richards: Yes, that is what he said.

A. I never found out what the lawsuit was about. I knew there was going to be a lawsuit between him and her about the last of February, but I never found out what it was about until after I moved back in Atlantic City.

Q. Then who told you?
A. Mr. Doughty.
Q. What did he tell you?
A. Why, he told me he was going to get his money if he could get it, the money that he loaned her to build these houses with.
Q. How did he come to tell you?
A. General conversation, he tells me a lot of things.
Q. He told you he had sued her, did he?
A. Yes, sir.
Q. He told you he had sued her to get the money back?
A. Yes, sir.
Q. Did he ask you what you knew about it?
A. Yes, sir.
Q. Then you told him?
A. Yes, sir.
Q. That is all.

HERMAN M. SYPHERD, sworn.

Direct examination.

By Mr. Richards:

Q. Mr. Sypherd, you are vice-president of the Guarantee Trust Company?
A. Yes.
Q. And trust officer?
A. Yes.

Q. Did you have under your charge properties 20 and 22 North Ohio Avenue?

A. Yes.

Q. Did you sell those?

A. We did.

Q. Who did you sell them to?

A. Somers L. Doughty.

Q. Who negotiated for the sale of them?

A. Mr. Doughty.

Q. Did he take title in his name?

A. Yes.

Q. How was it paid for?

A. $15,000 cash and $15,000 purchase money mortgage.

Q. You don't know, of course, what he did with it after he got it, do you?

A. No.

Q. He gave you his own bond for the $15,000?

A. Yes.

Q. Secured by a mortgage?

A. By a mortgage, yes.

Cross-examination.

By Mr. Cole:

Q. Did you say who paid the $15,000?

A. Yes, Mr. Doughty; that is, the deed was given to Mr. Doughty; the check may have come from a title company, I don't know about that, but our contract was with Mr. Doughty; I don't recall the individual check, where that came from.

Q. I was going to say, do you now intend to say

that it was Mr. Doughty's check or cash that paid the fifteen thousand dollars?

A. No. I will have to correct that, if that was the impression.

Q. Is it your recollection that the check that you received was the check of the title company?

A. I have no recollection about that, Judge; I only assumed the ordinary course that that would be the case.

Q. Will this help your recollection; I show you a check dated January 29, 1927, Isabel Dobbin to the order of Guarantee Trust Company for three thousand dollars, and ask you whether that was the down money?

A. I can't say, Judge. The dates would control that to a certain extent, date of the agreement would refresh my memory on that. My recollection is, Judge, this was the down check, since you have refreshed my mind on the subject. I didn't attempt to carry these things in my own mind; I think this is the check.

(Check marked D4 for identification.)

The Court: Here is the settlement sheet has been offered in evidence.

Mr. Richards: Yes, evidently the three thousand dollars paid on account was her check, the $3,000 paid on account.

Mr. Reed: Here is the original agreement.

Q. When was that dated? Check was dated at

that same date, January nineteenth, when was the check dated?

Mr. Cole: January twenty-ninth.

A. It was doubtless the check.

By Mr. Richards:

Q. I show you agreement made the nineteenth day of January between Guarantee Trust Company, executor of the estate of Mary S. Smith, deceased, Somers L. Doughty of Atlantic City, purchaser, covering properties 20 and 22 North Ohio Avenue, and I note that the contract is signed by Somers L. Doughty, is it not?

A. That is right.

Q. And by yourself?

A. Yes, sir.

Q. Paragraph three says the consideration is $30,000 to be paid as follows: three thousand dollars in cash upon the signing of this agreement, receipt of which is hereby acknowledged?

A. Yes.

Q. Somebody did pay three thousand dollars?

A. Yes.

Q. Eighteen thousand dollar bond and mortgage?

A. Yes.

Q. Evidently that was changed, wasn't it?

A. Yes, Mr. Doughty advised us that he preferred to pay fifteen cash and gave us a purchase money mortgage of fifteen thousand.

Mr. Richards: I want to offer that contract or agreement in evidence.

JOHN C. SLAPE, sworn.

Direct examination.

By Mr. Richards:

Q. Mr. Slape, are you connected with the Atlantic City ——

A. Loan and Building Association.

Q. Yes, are you?

A. I am.

Q. What is your position?

A. President.

Q. Do you recall a loan upon properties at 711 and 15 Baltic Avenue?

A. I do.

Q. Who negotiated those loans?

A. Mr. Somers L. Doughty.

Q. The title to the property was in Miss Dobbin, was it not?

A. I don't know at the time of the negotiations.

Q. Did she make the mortgage?

A. She did.

Q. And the money, so far as you know, was turned over to her, was it not?

A. As far as I know, but I wasn't present at the time; I really don't know.

Q. But the negotiations for the loan were made by Mr. Doughty?

A. Yes, and the loan was promised to Doughty.

Q. Did you see or have anything to do with Miss Dobbin in the transaction at all?

A. Not at all.

Cross-examination.

By Mr. Cole:

Q. Whose bond? Who was the debtor?
A. Isabel Dobbin.
Q. It wasn't signed by Mr. Doughty?
A. No.

MAUDE ST. JOHN, sworn.

Direct examination.

By Mr. Richards:

Q. Maude, you work for Mr. Doughty, don't you?
A. Yes.
Q. How long have you worked for him?
A. Eight years.
Q. What have you been doing in those eight years?
A. General housework and cooking.
Q. Did you do the cooking and housework down there at the house?
A. Yes.
Q. Did Miss Dobbin live there during that time?
A. Did she do what?
Q. Did Miss Dobbin live there during that time?
A. Yes.
Q. Now, I suppose you heard many conversations

of different kinds between the stepdaughter and Mr. Doughty, didn't you?

A. Several, I heard.

Q. Now, did you ever hear any conversation with regard to Mr. Doughty having either loaned or given money to Miss Dobbin to build the apartment houses uptown?

A. No, I heard about the $75,000 mortgage he wanted her to put on it.

Q. You heard about that?

A. Yes, she told me that herself.

Q. What did she tell you about that?

A. Well, one Friday morning she carried me to the hospital and while we was going over there she said, "I just got through giving the old son-of-a-bitch hell upstairs." She said, "Believe me, I gave him hell, too." I said, "What between you and Mr. Doughty now?" She said, "He wanted me to get a $75,000 mortgage on my property, but I will see him in Hell first before I will get any money on my property to pay the old son-of-a-bitch, and all I want him to do is to say the word to get out and I can have him at me and I will get out, because I am all packed and ready to go."

Q. You remember when this conversation took place?

A. Yes, fourteenth of December, on Friday.

Q. How do you fix that?

A. How do I fix it?

Q. Yes, how do you know it is the fourteenth of December?

A. Because it was the last time I had to go to the hospital.

Q. Fourteenth of December what year?

A. 1928.

Q. Now, did she say anything at that time about owing this seventy-five ——

Mr. Cole: I object.

The Court: Yes, leading.

Q. What else did she say at that time about the money?

A. She said she owed him, she admit that she owed and that he told her to get out he wouldn't get a God damn cent.

Q. Did she wait down at the hospital and bring you back?

A. No, I walked back.

Q. When you say she carried you down there, you mean she took you down in the automobile or something?

A. Carried me in the automobile, sure.

Q. Now, after that did she give you a check to give to Mr. Doughty?

A. She gave me a check that Saturday morning, Mr. Doughty had gone out to her, gone out before she left for work, and she said, "Give this to him," she say, "He don't ought to have that."

Q. Do you remember seeing the check?

A. Sure; I read the check.

Q. I understand you are of some education, aren't you? Have you ever taught school or anything of that kind?

A. Yes; have been a while, though.

Q. I show you Exhibit C7 and ask you if that is a photograph of the check that she gave you?

A. Yes.

Q. When was it that she gave you this check, with relation to this conversation?

A. That was on Saturday the fifteenth.

Q. The day following it?

A. The day after.

Q. The day after?

A. Yes.

Q. What did you do with the check?

A. She left the check on the desk and when Mr. Doughty came in I picks the check up and says, "Here is a check Miss Doughty left for you," and he say, "All right, lay it back down there."

Q. Did you see the check after that?

A. The check laid around there for four or five days and she asked me did I gave it to him; I told her yes, I gave it to him; she said, "Why didn't he take it?" I said, "I don't know, because I didn't ask him."

Q. Then finally the check disappeared?

A. Yes.

Q. You don't know whether Mr. Doughty took it or not?

A. I don't know who taken it; I know it disappeared.

Q. Now, did she ever say anything to you about money affairs ——

A. Sure.

Q. —— in relation to the uptown apartments, the Savoy Apartments?

A. Well, I wanted her to get me a coat, stand for the rest money owing on a coat, and she told me she didn't have no damn money because taking all her money to pay Father off what she owe him for

these damn apartment houses and she needed a coat herself and took all her money to pay for these apartments.

Q. When was this conversation?

A. 1927, in January.

Q. This was a fur coat that you were buying?

A. Sure.

Q. How much money did you want to get from her?

A. 120 some dollars, I can't remember just exactly how much, I know over a hundred and some dollars.

Q. Had you already purchased the coat?

A. Sure.

Q. This was one of the payments on the coat, is that it?

A. I had paid all but that, it was three hundred dollars.

Q. You wanted to borrow this balance to pay it up?

A. Yes.

Q. Will you repeat again what she said to you?

A. Yes.

Mr. Cole: I object to the repetition.

The Court: Yes.

Q. Do you know whether she did buy a coat herself?

A. I saw her with one; she must did buy it.

Q. Did you ever have any other conversation with her about this money transaction up there?

A. Sure, several times I asked her to loan me

money, she said she didn't have any because she pay out all the money to her father, he was taking every cent she could rake and scrape, and she owed money, and when she getting out of owing him money, she take a trip to Europe, it would be 1930.

Q. Can you remember any other conversation?

A. No, that is all I remember.

Cross-examination.

By Mr. Cole:

Q. How old are you?

A. Thirty-two.

Q. How long have you been living in Atlantic City?

A. Eight years.

Q. Where did you live before you came here?

A. Baltimore.

Q. Where in Baltimore?

A. 525 North Packer Street.

Q. Are you married or single?

A. Single.

Q. What?

A. Single.

Q. Ever been married?

A. Yes.

Q. Husband living or dead?

A. Dead.

Q. Die here or in Baltimore?

A. No, he died in Richmond, Virginia.

Q. You have been living with Mr. Doughty for eight years?

A. Yes, only job I have since I have been here.

Q. During most of that time Miss Dobbin lived in the same house?

A. She was there when I went there.

Q. And when did she leave?

A. When did she leave? When she got married, sixth of February, 1929.

Q. You still living with Mr. Doughty?

A. Yes.

Q. When did you first tell Mr. Doughty these things that you say Miss Dobbin told you?

A. When did I first tell him? Well, he began to miss some money around there at all and she told him that I was taking it and he asked me did I take any, I told him no, I didn't know nothing about no money was missing around there, she said I been stealing money from him.

Q. You say Mr. Doughty told you?

A. He asked ——

Q. Pardon me—Mr. Doughty told you that Miss Dobbin had accused you of stealing money?

A. No, I said she had been missing money around there. I don't know where it was going to.

Q. Didn't you say that she said that you were taking it?

A. No, I didn't say she said I was taking it; she said had been missing money around there and he asked me did I know anything about it.

Q. There was no intimation by Miss Dobbin that you were taking the money, was there?

A. No.

Q. Did you think that she was charging you with taking it?

A. I didn't know; it wasn't but me and her and

Mr. Doughty in the house, so one of the three had to be responsible for it.

Q. Did you think perhaps she was saying that you had been taking the money?

A. Liable to.

Q. What?

A. Could have.

Q. Can't hear you.

A. She could have.

Q. Now, you said a while ago, in answer to my question, that she did say that you were taking the money?

A. You didn't understand what I said. I said Miss Doughty says she was missing money from around there and he asked me did I know anything about it any money missing from around there.

Q. Did the fact that you thought that maybe Miss Dobbin was accusing you of taking this money make you feel ill toward her?

A. Sure.

Q. That gave an ill-feeling, didn't it?

A. Yes, it did.

Q. You still have it?

A. Yes, I have.

Q. When was the first time you told Mr. Doughty what Miss Dobbin had told you about this money she owed him and so on?

A. What?

(Question repeated.)

A. I didn't say nothing about telling him, when she carried me over to the hospital and I had been

sick, when I came back he told me about the money missing around there.

Q. Then it was you told him?

A. What did I tell him? I said, "Well, if she missing money around here, did she tell you that she told me she owed you?"

Q. Then it was after you thought you had been accused of taking the money that you turned around and told Mr. Doughty what Miss Dobbin had told you?

A. Sure.

Q. You tell us, please, again, what you say Miss Dobbin told you about this $75,000 mortgage?

A. I didn't ask her that morning, she told me her own free mouth, when she was carrying me over to the hospital, she said, "I just got through giving that old son-of-a-bitch hell," and she said, "Believe me, I give him plenty this morning." I said, "What is the trouble between you and Mr. Doughty now?" She said, "He is trying to get my houses from me unknown to me, but he think I don't know it; come ask me for $75,000 mortgage," and she said, "I owe him and all I want him to do is to say the word and to get out, and he can take his damn key and go to Hell with it, and I am ready to go any time he says and he won't get a damn cent."

Q. Did she usually use that profane language when she talked?

A. Sure she does.

Q. All the time?

A. No, she used to be nice one time.

Q. When she talked around the house when Mr. Doughty was there, did she swear like that?

A. When he wasn't there she used to give me plenty of talk.

Q. What?

A. Sure.

Q. Sure what?

A. She used to swear when he was there, whenever she felt like it.

Q. Ever call him names?

A. Sure, she call him old son-of-a-bitch; that was his nickname.

Q. How often had she been calling him that?

A. All the time.

Q. All the time you were there?

A. No, this fall; that was his nickname.

Q. Did he object to her calling him that?

A. She wouldn't hear it, she would be fussing.

Q. Did you object to her calling him what you said he called her?

A. He never heard it.

Q. In other words, she was calling him these names out of his hearing?

A. Yes.

Q. Told you that is what he was?

A. Yes.

Q. Was he paying you?

A. Paying me?

Q. Yes.

A. He pays me my salary what I work for.

Q. You don't think it was nice, did you, for Miss Dobbin to be calling him those things?

A. No, I didn't think it was nice.

Q. Did you report to him that she was calling him these bad names?

A. Not at that time I didn't report to him.

Q. Did you report to him what she was saying about him?

A. No, not until this suit, because it didn't interest me.

Q. After this suit came about, after you thought that you had been accused of stealing, then you told him all this, didn't you?

A. Sure I did.

Q. You want to get even, don't you?

A. Get even?

Q. Yes.

A. No. I want to clear myself and not be a thief.

Q. Now, during this talk about the money, was there anything said about the furniture and furnishings in the houses?

A. Furnishing the houses?

Q. Yes, in the apartment houses?

A. I know nothing about the furniture around here, up there; I know Lit's furniture because I was up there and helped out cleaning up there.

Q. In the talk Miss Dobbin had did she mention this furniture of Lit's to you?

A. Yes, she said she had to pay furniture bills and everything, and her money had gone to pay them bills over to her father.

Q. In this same conversation?

A. And her father—sure.

Q. Did she tell you that she owed Mr. Doughty money that he had paid Lit Brothers?

A. He paid Lit Brothers?

Q. Did she tell you that she owed him money that he had paid to Lit Brothers for the furniture?

A. No, she never said nothing about what she had

done; all she said she owed her father and she had to pay him back every cent she owe him.

Q. That she had done it?

A. Had paid, she was in debt to him, she didn't know when she would get out.

Q. She never mentioned Lit Brothers?

A. No.

Q. Didn't mention Lit Brothers' bill?

A. No; all she said she was in plenty of debt.

Q. Did you say that she had paid back all the money she had owed him?

A. To pay him? He has, she said.

Q. All the money she was getting she was paying to him?

A. He may have said ——

Q. I am not asking what she owed him; I am asking what she said she did with the money?

A. She said all her money she taken she had to pay him.

Q. You understood her to say, when you wanted to borrow from her, it took all the money she had to pay Mr. Doughty?

A. Everything, didn't have nothing.

Q. Because she was paying Mr. Doughty?

A. Yes.

Q. Is that the way you understood it?

A. Yes.

Q. She told you how much she had paid him?

A. No, sir; I didn't ask her.

Q. Now, has Mr. Doughty ever loaned you money?

A. Loan me money?

Q. Yes.

A. Yes.

Q. Before you wanted to buy this coat?

A. I never did borrow no more than one, two or three dollars from him.

Q. I didn't ask you that. You said he did loan you money?

A. She wouldn't let him get this coat.

Q. What?

A. No, I never borrow no money from him.

Q. Why did you ask Miss Dobbin for the money for a coat rather than Mr. Doughty?

A. Because she went with me to pick it out, that is why; I could pay her back just as quick as I pay him.

Q. While you were there did Miss Dobbin do any cooking?

A. When I was out she did; when I stayed out.

Q. What do you mean, stayed out?

A. When I wouldn't be there, for the day, days I didn't work.

Q. She do any cleaning around the house?

A. No, she never did no cleaning.

Q. But she cooked when you weren't there?

A. Yes.

Q. Where did you teach school?

A. Out in the country of Richmond.

Q. How old were you then?

A. Seventeen years old.

Q. Did Mr. Doughty ever discharge you?

A. No; she did.

Q. I asked you whether Mr. Doughty ever discharged you?

A. No, he never discharged me.

Q. Why did she discharge you?

A. Me and her had a fuss.

Q. What?

A. Me and her had some words.
Q. Did she discharge you for drinking?
A. Drinking?
Q. Yes.
A. Not at that time she didn't.
Q. At any time did she?
A. No.
Q. Did she discharge you for being drunk?
A. No.
Q. Had you been drunk?
A. Yes, I used to drink.
Q. Fact of the matter is you were arrested a number of times for being drunk, weren't you?
A. No, I never was arrested for being drunk. I was arrested for fighting; somebody hit me and I hit them back. I wasn't drinking then.
Q. How long did you remain away when you were discharged?
A. I don't know; about six months.
Q. What?
A. About six months when they sent for me.
Q. Who sent for you, Mr. Doughty or Miss Dobbin?
A. I don't know who sent for me, one of the two; a colored boy came after me.
Q. But anyhow Miss Dobbin was the one who discharged you?
A. Yes.
Q. You are a member of the negro race, aren't you? You are a colored woman, aren't you?
A. Yes, sir, I am colored.

By Mr. Richards:

Q. Now, Maude, when you first went there did you ever hear Miss Dobbin use any profanity around the house?

A. No, I didn't.

Q. When did this change come over her in which she started to use profanity?

A. About a year ago.

Q. She start to smoke around that time?

A. Sure.

Q. Did you see, ever, any signs of her drinking?

A. Yes, she had some kind of colored Syrian wine, what I don't know what you would call it, and used to keep two or three glasses upstairs all the time.

Q. Do you know whether or not she kept liquor over in the Ohio apartments?

A. Champagne.

Q. How do you know that?

A. Because one Thursday I was over there and I looked in the ice box, while she went upstairs, I used to clean over there, and she stopped me from cleaning over there.

Q. What did you find in the ice box?

A. Was sherry and champagne.

Q. Now, was she going with Mr. Naame at this time?

A. She was going with him about a year ago, before the Ohio Apartments got finished good.

Q. Was it about that time when she began to change?

A. Yes, sir.

Q. After she had got to know Mr. Naame?

A. Yes, sir.

Q. This liquor you speak about, was that a Syrian drink?

A. Yes, sir.

Q. And Mr. Naame is a Syrian, isn't he?

A. Syrian?

Q. Yes.

A. I don't know what he is.

Q. Now, there is one matter I overlooked on direct examination. Did you ever see Miss Dobbin burn any papers or books or checks or anything of that kind?

A. About three weeks before she left, on a Sunday morning, she was herself cleaning out all papers and things and she carried out a handful of papers and all and checks and all, and stood out there and set them afire and stood there until they burned.

Q. Where did she get those papers from?

A. She came from the dining room with them.

Q. You didn't see where she got them from?

A. No, I didn't.

Q. When you asked her to loan you this money for the coat and she said that she didn't have any money, she had to give it to her father to pay him back, did you know whether that was in fact true or not?

A. Yes, she owed him.

Q. I mean whether or not she was using the money that she was getting to pay him back?

A. No, I don't know.

Q. You don't know that?

A. No.

Q. Did she spend any money on herself?

A. Yes, she spent plenty on herself; she had everything she wanted.

Q. Do you know whether or not in the fall of last year she bought a fur coat?

A. Yes, she bought a black baby lamb coat.

Q. Did she tell you how much she paid for it?

A. Three thousand dollars.

Re-cross examination.

By Mr. Cole:

Q. I suppose that made you jealous, didn't it?

A. No, didn't made me jealous, because I got mine out, too.

Q. Tell me, where did this Syrian drink come from?

A. Mr. Naame brought it there.

Q. Anybody else bring any there beside Mr. Naame?

A. I didn't say nothing about that because she asked me would I had any.

Q. I asked you whether anybody else brought any liquor there?

A. I haven't seen nobody brought no liquor there.

Q. Who did you see drink it?

A. Drink what?

Q. This liquor that was in the house?

A. Syrian liquor?

Q. Yes.

A. She did.

Q. Who else?

A. That is all I seen, nobody liked it but her.

Q. Mr. Doughty drink it?

A. I never saw him.

Q. What?

A. I never saw him.
Q. Never saw him what?
A. Drink. Drink water.
Q. You have never seen him drink liquor in that house?
A. No, I haven't.
Q. And you were there eight years?
A. Yes.
Q. And the only liquor you ever saw brought in the house was brought in by Joe Naame?
A. That is all I saw, the wine, yes.
Q. What?
A. I saw that wine, that is all.

ALFRED J. SHOWELL, sworn.

Direct examination.

By Mr. Richards:

Q. Mr. Showell, do you have a position with the South Jersey Title and Finance Company?
A. Yes, sir.
Q. What is it?
A. Settlement clerk.
Q. I show you South Jersey Title and Finance Company check dated July 15, 1927, for $24,451.50, and ask you what that check is?
A. That check represents the proceeds of a settlement made in my office, or the office of the company payable to Isabel Dobbin for the balance on the loan made to her by the Trident B. & L.

Q. Have you got the settlement sheet?

A. I have the original sheet and also the copy, whichever you want.

Q. I guess the copies are in evidence; is this the settlement sheet?

A. I would rather look at my own file. That is a copy of it, yes.

Q. Witness referring to C19. I show you another check, South Jersey Title and Finance Company check, to Isabel Dobbin for $33,617.48, and ask you what that is?

A. That is also a check representing the proceeds of a settlement from the Atlantic City Loan and Building Association April 23, 1926.

Q. Is this a copy of the settlement sheet for that?

A. That is a true copy also of the original settlement sheet.

Q. Witness referring to C11. Now I show you a third check, dated October 15th, for $33,826.75, and ask you what that one is?

A. That is a check payable to Isabel Dobbin representing the proceeds of a settlement from the Atlantic City Loan and Building Association.

Q. Is this a copy of that settlement?

A. That is a true copy of my settlement.

Q. Witness refers to C15, date being October 15, 1927.

(Checks offered and admitted in evidence, check dated October 15, 1927, for $33,826.75, marked Exhibit C19.)

(Check dated July 15, 1927, for $24,451.50, marked Exhibit C20.)

Cross-examination.

By Mr. Cole:

Q. I show you settlement sheet marked Exhibit C12 and I show you a check of Isabel Dobbin to the order of the title company for $12,594, and ask you whether that check is in settlement under that certificate?

A. Yes, sir, that is the check used in the purchase of the property.

(Check marked D5 for identification.)

(Title company checks returned to the witness.)

Mr. Richards: If your Honor please, we want to offer in evidence these two sets of plans; they are the property of the building department.

The Court: Let them be marked and returned.

Mr. Cole: I don't see what relevancy the plans have, wouldn't want to print them, either side.

Mr. Richards: Wouldn't expect them to, only offering the plans to show the contract and plans were made with Doughty for New Jersey Avenue.

Mr. Salsburg: Plans for Ohio were in the name of Dobbin?

Mr. Richards: Yes.

Mr. Salsburg: I think that can be consented to.

Mr. Cole: No dispute about that.

Mr. Salsburg: We don't dispute that.

The Court: Then they need not be offered in evidence.

(Offer withdrawn.)

Somers L. Doughty, recalled.

Direct examination.

By Mr. Richards:

Q. I show you this check, pay to the order of the South Jersey Title and Finance Company for $12,005.94, signed by Isabel Dobbin. What, if anything, did you do after that towards ——

A. To the best of my recollection is that there was three thousand dollars given to Mr. Syphers towards buying that property and afterwards Miss Dobbin gave this check for the balance to make the fifteen thousand and I reimbursed her by giving her half of it.

Q. You gave her a check for $7,500?

A. Yes.

Q. That was a gift, wasn't it?

A. Yes, sir.

Mr. Richards: I also want to offer in evidence this Lit Brothers' check for five hundred dollars.

Mr. Cole: Objected to on the ground it is purely a personal obligation, has nothing to do with the real estate, and therefore equity can't aid.

The Court: Can't be admitted as evidence of indebtedness at all. I will permit it as part of the proof of the case.

(Check admitted and marked Exhibit C21.)

Cross-examination.

By Mr. Cole:

Q. Mr. Doughty, did you produce a $7,500 check?
A. No, that check is missing amongst the others.
Q. That is one of the missing ones?
A. One of the missing ones, yes, sir.
Q. You have your pass book at the time that you got this five hundred dollar check from Miss Dobbin?
A. Have I what?
Q. Have you your pass book?
A. No, I haven't.
Q. Do you know when that check was actually deposited?
A. No, sir.
Q. You are a director of the Marine Trust Company, aren't you?
A. Yes, sir.
Q. That is where you deposited it?
A. Yes, sir.

Q. Won't you produce ——

A. I am not positive about that. It may have been deposited in the Guarantee.

Q. It doesn't have any endorsement. You didn't get that photographed?

A. I forgot it.

Q. Forgot what? That?

A. Yes.

Q. Would you mind trying to find out between now and tomorrow morning where you did deposit that and then have the bank produce the sheet showing when that check was deposited? You will do that, will you?

A. I will try to.

Q. Did you by chance ask Miss Dobbin to write in on that check, "Savoy and Ohio Apartment to Somers Doughty, principal?"

A. I didn't know that she wrote it.

Q. Just read the question to him.

A. No.

Q. Was it by chance that that had to do with the five hundred dollar Lit check which I show you dated November 12, 1925?

A. I don't understand you.

(Question repeated.)

A. No, had nothing to do with that.

Q. Nothing to do with that?

A. No.

Q. It wasn't given on account of Lit Brothers?

A. No.

Q. And you didn't ask her to write in there the words that are on that check?

A. No.

Q. May we ask you, please, to produce tomorrow morning the sheet with your account during 1926, 1927 and 1928?

A. I will try. I don't know whether they will let me have them or not.

Mr. Salsburg: The young man will bring it if permitted.

The Court: He will bring it if he is subpoenaed, of course.

By Mr. Richards:

Q. Mr. Doughty, you have more than the Marine Bank account, haven't you?

A. Yes, sir.

Q. What other accounts have you got?

A. Guarantee, Neptune Trust, did have the Boardwalk at that time.

Q. With reference to this $500 check, C7, had you on that date prior to the making of this check, had a quarrel with your stepdaughter?

A. Oh, not exactly a quarrel, just a few words in regards to money.

Q. You had what you might describe as a fuss, didn't you?

A. Yes, a little home fuss, yes, sir.

Q. Did Miss Dobbin use any profanity towards you during that time?

A. Oh, yes; she always called me lately by my nickname, son-of-a-bitch.

Q. Did she on that occasion?

A. Yes, sir.

Q. Were you speaking to her at the time that she left this check for you?

A. Yes, sir.

Q. You were talking?

A. Oh, yes.

Q. Notwithstanding the fact that you had had the fuss?

A. Oh, yes.

By Mr. Cole:

Q. Did you object to the nickname she was calling you?

A. Well, I did at first, but I got used to them; I didn't mind them.

Q. When did you first object to it?

A. When she first started to call me that.

Q. When was that?

A. About a year ago, September a year ago.

Q. You endured that until she left you, did you?

A. Yes.

Q. There was no reason why you shouldn't have put her out of the house, was there?

A. There was no reason, but she picked to stay until she got married.

Q. Notwithstanding the fact she was calling you this foul name from time to time, you just endured her?

A. I just didn't listen to her; that is all.

Q. Well now, didn't you testify this morning that the break between you came in November, because she came home drunk?

A. There was no break; she stayed there until February.

Q. No, but didn't you say that was the time that you made up your mind that you were going to try to get this money, after you found her drunk in November?

A. Yes, sir.

Q. Wasn't there any fuss then?

A. No more than to use just a few hot words, talk the next minute.

Q. Were you accustomed to quarrel?

A. For a year, yes, sir.

Q. One thing more; who collected the rent from this property at Drexel and Maryland, I think it is, after you made this deed, after the date of the deed and while it was unrecorded, who collected the rents?

A. I did.

Q. What?

A. I did.

Q. You did?

A. Yes, sir.

Q. Miss Dobbin did not?

A. No, sir.

Q. She never got any of the rents from any of the properties?

A. No, sir.

COMPLAINANT RESTS.

(Adjourned to September 13, 1929, at 9.30 A. M.)

Atlantic City, N. J., September 13, 1929.

(Trial of the cause resumed at 9.30 A. M.)

The Court: Judge Cole, it appears in the testimony that the name of the defendant is now different from the time of the institution of this suit. Should there not be a note of that on the record?

Mr. Cole: Was she sued in the name of Dobbin? That is right, the papers were served on the wedding day. I suppose the record ought to show since the filing of the bill the defendant has married Mr. Joseph Naame and she is now Mrs. Naame.

HARRY F. RILEY, JR., sworn.

Direct examination.

By Mr. Cole:

Q. Where do you live?
A. 523 Drexel.
Q. Atlantic City?
A. Yes, sir.
Q. What is your business?

A. Sub-contractor, stone, tile and concrete.

Q. Do you know Mr. Somers Doughty?

A. Yes, sir.

Q. How long have you known him?

A. Off and on for about twenty years, I guess.

Q. Do you know Mr. Joseph Naame?

A. Yes, sir.

Q. How long have you known him?

A. About twenty-five years.

Q. Did you do any work for Mr. Naame on the properties New Jersey and Baltic, this city, that are in question in this case?

A. Concrete work, yes, sir.

Q. Did the concrete work?

A. Yes, sir.

Q. On all the buildings?

A. Yes, sir.

Q. About how long were you up there working?

A. I imagine about six months.

Q. While you were there did Mr. Doughty appear?

A. He was there off and on, I should imagine every other day.

Q. What was he doing there?

A. Looking over the work, telling you what he thought should be done, asking you what kind of material you were using, and so forth.

Q. To whom did he talk?

A. Talking to every one on the job, me included.

Q. Now did you hear him make any statement during the progress of the work as to the part he was playing in it, what he was doing?

A. He told me he was building the apartments for his daughter.

Q. Do you know to whom he referred?

A. Miss Dobbin, the only daughter I knew he had.

Q. Did he make that statement more than once?

A. I knew him to make it twice positively.

Q. Was that while the work was in progress?

A. Yes, sir.

Q. Was anybody present when he made the statement to you?

A. Him and I were to one side; there were people present but I couldn't say they heard it.

Q. Can you recall how it came about that he made the statement to you? If you can, will you tell us?

A. I don't know; Mr. Doughty knows myself and my dad pretty well, used to discuss his personal affairs sometimes with us on all the work that we worked on.

Q. Then at that time were you and Mr. Doughty quite friendly and familiar with one another?

A. We are yet, I hope.

Q. Now has Mr. Doughty said anything to you within the last twenty-four hours about your testifying in this case?

A. Well, he made some comment about "you better not get on the stand."

Q. First of all, did he?

A. Yes, sir.

Q. When was that?

A. Yesterday morning, noon rather.

Q. At noon hour?

A. Yes, sir.

Q. What did he say to you?

A. He came over there and said I better not get on the stand; I don't know just exactly what he had reference to.

Q. What did he say? I don't care what he had reference to, what did he say to you?

A. Told me I better not get on the stand, that is all.

Q. Did he tell you why?

A. No, he didn't say why.

Q. Did you ask him?

A. No.

Q. Did you hear him say anything to any other person about testifying?

A. Well, there was a young lady sitting there, this young lady in the far corner.

Q. The young lady who is sitting by the side of Mr. Stewart in the court room?

A. Yes.

Q. What did you hear him say to her?

A. Well, he said he had something on her and when the testimony was over he was going to have her arrested if she testified.

Q. Do you happen to know the name of that lady?

A. No, I don't.

Q. At what time during the day was it that you overheard him say something about this young woman?

A. Yesterday afternoon right after the testimony began.

Q. Right after what?

A. Right after the testimony began.

Q. At the New Jersey and Baltic avenue property for whom were you doing the work?

A. Mr. Naame.
Q. Did you work on the Ohio Avenue property?
A. Yes, sir.
Q. What did you do there?
A. Cement work.
Q. For whom were you working?
A. Mr. Naame.
Q. Was Mr. Doughty there? Did he visit that property?
A. I don't believe I ever spoke to him on that job, no, sir.
Q. Not on the Ohio Avenue job?
A. No, sir.

Cross-examination.

By Mr. Richards:

Q. Mr. Riley, have you done other work for Mr. Naame as well?
A. Yes, sir.
Q. Been paid for it?
A. Yes, sir.
Q. All of it?
A. Yes, sir, except some money we hold on a mortgage on an apartment that he owns.
Q. On the Grand Apartment House?
A. On Indiana Avenue.
Q. The Indiana Avenue apartment?
A. Yes.
Q. That you haven't been paid for?
A. Well, I imagine the mortgage is payment, isn't it?

Q. What?

A. The mortgage is payment, isn't it?

Q. Well, I hope it is. Of course you know that the prior mortgages have been foreclosed on that property, don't you?

A. I believe there is some litigation over the foreclosure of them, yes, sir.

Q. Yours comes in along about fourth or fifth in the line of mortgages, doesn't it?

A. Fourth mortgage, yes, sir.

Q. How much is owed to you?

A. I think our part in the mortgage is approximately $13,500.

Q. $13.500?

A. Yes, sir.

Q. That mortgage was given to you, wasn't it, together with Lake and Risley, Thomas Graham and a man named Fleck?

A. Yes, sir.

Q. To secure material put in the apartment house?

A. Yes, sir.

Q. Now you were a sub-contractor on this work uptown here?

A. Yes, sir.

Q. As sub-contractor I suppose you busied yourself to find out in whose name the contract was for the building of those buildings, didn't you?

A. No, sir.

Q. Didn't you?

A. No, sir.

Q. You went there and did the work at Mr. Naame's suggestion without finding out who the owner was or who made the contract?

A. I had Mr. Naame's word for the fact that Mr. Doughty was the owner, as far as I was concerned.

Q. Well, you had his word for it that Mr. Doughty was the builder, wasn't he, that is the man, he was the man with whom the contract was made?

A. So far as I know, yes, sir.

Q. That is what Mr. Naame told you, didn't he? And Mr. Doughty here said that he was building the apartment for his daughter, didn't he?

Mr. Cole: Objected to what Mr. Doughty said. Are you talking about what he said to him?

Mr. Richards: Yes.

Mr. Cole: I withdraw the objection.

Q. You heard the testimony here yesterday, didn't you? You were in court?

A. Yes, sir.

Q. You heard Mr. Doughty say that same thing on the witness stand, didn't you?

Mr. Cole: That I object to, to what somebody else said.

The Court: Sustain the objection.

Q. Now, when Mr. Doughty had spoke to you he asked you if you were going to be a witness, didn't he?

A. I can't say that he did, no, sir.

Q. Did he understand you were going to be a witness?

A. He asked me what I was doing up here.

Q. What?

A. He asked me what I was doing up here.

Q. Whether you were going to be, is that what you said?

A. No, he asked me what I was doing up here.

Q. And you told him you were going to be a witness?

A. No, sir, I didn't answer him.

Q. What?

A. I didn't answer him.

Q. Oh, you didn't answer him?

A. No, sir.

Q. Didn't say a word to him?

A. I spoke to him yesterday noon, yes, but I didn't refer to the case in any respect.

Q. No, I mean at the time that you had this conversation with him about being a witness?

A. I discussed other things with him. I didn't discuss this case, not a bit, no, sir.

Q. Well, when he asked you what you were doing here didn't you make any reply?

A. No, sir, I didn't.

Q. Well, did you say anything to him at all?

A. I discussed other things with him, yes, sir.

Q. What did you say?

A. I just don't recall at the moment.

Q. Well, was there any reason why you shouldn't tell him that you were going to be a witness?

A. No.

Q. Why didn't you answer him?

A. Nothing more than these things are rather unpleasant incidents.

Q. And you didn't want to be unpleasant to Mr. Doughty, is that it?

A. Certainly not.

Q. Now, as a matter of fact, when Mr. Doughty talked to you and these other witnesses there, he was joking, wasn't he?

A. I couldn't say that.

Q. You couldn't say that?

A. No, sir.

Q. You would know a joke if you seen it coming down the street, wouldn't you, Mr. Riley?

A. I have a sense of humor, yes, sir.

Q. Most Irishmen have. Now at the time he talked to this young lady whom you spoke about, he knew her too, apparently, didn't he?

A. I didn't hear the question.

Q. I say, at the time he spoke to this young lady he knew her too, didn't he?

A. I don't know that. I don't know the young lady nor Mr. Doughty's acquaintance with her at all.

Q. Didn't he say to this lady that if she testified falsely or words to that effect she would get in trouble?

A. No, sir; he didn't say that.

Q. He didn't say anything like that?

A. No, sir.

Q. No intimation that it related to any manufactured testimony she might give?

A. No, sir, did not.

Q. Now what Mr. Doughty said was said right openly and out loud, wasn't it?

A. It was loud enough for me to hear it, yes, sir.

Q. And you were several feet away?

A. I was standing right in front of him, sitting there.

Q. Well, it wasn't said in a whisper or confidential way, it was said right out in an outspoken way, wasn't it?

A. I couldn't say you could hear it up above the rail.

Q. You can't hear very much in this room at any time. But you could hear all around where the other witnesses were, couldn't you?

A. No, I can't say you could. It wasn't said that loud, Senator.

Q. Well? How was it said?

A. He just leaned over and said it.

Q. To you or to the lady?

A. To the lady. I happened to be sitting right next to her.

Q. When do you say this thing occurred?

A. He spoke to the lady yesterday afternoon shortly after the testimony began.

Q. Right after the Court convened you mean, right after quarter after one?

A. It was a short time after that, I should say about two o'clock or five minutes of.

ROBERT CASEY, sworn.

Direct examination.

By Mr. Cole:

Q. What is your business?
A. Carpenter foreman.
Q. You live in Atlantic City?
A. Yes, sir.
Q. How long?
A. Nine years.
Q. Do you know Mr. Doughty?
A. Yes, sir.
Q. How long have you known him?
A. About six years. Since those apartments were built.
Q. Do you know Mr. Naame?
A. Yes, sir.
Q. Were you engaged in any way on the improvement to the properties in question here?
A. Yes, sir.
Q. What was your position?
A. In charge, foreman.
Q. Working for whom?
A. Mr. Naame.
Q. During the time you were there did Mr. Doughty visit the property?
A. He was there, yes, sir, back and forth.
Q. How often?
A. Maybe once a week.
Q. During that time did Mr. Doughty ever speak to you about the property?

A. Yes, several times.

Q. What did he do? First of all did he give any instructions about it?

A. Well, he used to be around, wanted to know how I was making out and stuff about the apartments I was building, and told me he was building it for his daughter, giving it to his daughter.

Q. Was that while the work was going on?

A. While the work was going on, yes, sir.

Q. Do you recall how he came to say that he was giving it to his daughter?

A. Well, he came to me and told me he was building it for his daughter and wanted to know how the apartment was going next there. He came to me I think the first one there and he asked me how he could get in touch with Mr. Naame about building apartments.

Q. Was that before the work was begun he asked you that?

A. That was before we started Mr. Doughty's apartments.

Q. Had you known Mr. Doughty at that time?

A. No, I just got acquainted with him then.

Q. What?

A. I just met Mr. Doughty at that time the job was going on.

Q. Did he know that you were working for Naame?

A. Yes, sir.

Q. Had you been working for Naame before that time?

A. Yes, sir.

Q. Now this statement that you said he made of giving the property, as I understood you to say,

to his daughter, was that while the work was going on?

A. Well, before he started building he was going to give it to his daughter, he spoke to me about it, going to give it to his daughter.

Q. Did he repeat that to you while the work was in progress?

A. Yes, sir.

Q. Did you work on Ohio Avenue?

A. Yes, sir.

Q. Did Mr. Doughty visit that property?

A. What was that?

Q. Did Mr. Doughty visit that property while the work was going on?

A. Yes, occasionally.

Q. What did he do with respect to that, did he supervise it in any way?

A. Well, he was there back and forth, yes, sir, to find out how things were going on.

Q. Have any talk with him?

A. Now and then.

Q. Did he say anything about that property so far as the daughter was concerned?

A. Supposed to be the daughter's property the same as the ones up above.

Q. No, with respect to any supervision or instructions, anything of that sort while the work was going on, did he say anything to you or anybody else in your presence about the work? I am speaking now about the Ohio apartment.

A. He never had much to say, just asked me different questions, I don't know just what they are, don't recall now, just kidding and stuff.

Q. At any time when Mr. Doughty talked with

you did he make any reference to giving his daughter any other property?

A. Yes, I think he did, somewheres out around Baltic Avenue there, the gas station ground, or something, put a gas station up.

Q. I can't hear you.

A. Out on Baltic Avenue or somewheres there he put a gas station or something up, he was providing to put an apartment up there some time, he was talking about it.

Q. Were you friendly with Mr. Doughty at that time?

A. Was I what?

Q. Were you friendly with Mr. Doughty at that time?

A. Then and now both, yes, sir, always been.

Q. Did you associate with him a good deal?

A. On the jobs back and forth, that is all.

Q. Drink with him ever?

A. Once in a while.

Q. Who did the treating?

A. What was that?

Q. Who treated?

A. Mr. Doughty.

Cross-examination.

By Mr. Richards:

Q. Mr. Casey, you are still employed by Mr. Naame, aren't you?

A. No, sir.

Q. Well, did you work for him when he has work?

A. Once in a while, yes.

Q. You knew that the contract for this uptown apartment was between Mr. Doughty and Mr. Naame, didn't you?

A. Yes, sir.

Q. And you knew both from Mr. Naame and from the contract and from Mr. Doughty that he was building it for his daughter, didn't you?

A. Yes.

Q. And that is what he said, wasn't it?

A. That is what he said, yes, sir.

Q. How long have you worked for Mr. Naame?

A. About six or seven years, somewheres about that.

Q. Of course you are on friendly terms with him?

A. Yes, sir.

Q. Like to help him out in this question if you could, wouldn't you?

A. Yes, sir, sure.

Q. Now then the expression that you say Mr. Doughty used, he was building this for his daughter, that he was giving it to his daughter. Are you sure that he said he was giving it to her or that he was building it for her?

A. Giving it to her.

Q. That was before the operation started, wasn't it?

A. Before and afterwards; it was going on.

Q. How did he come to use this phrase, how did he say this anyhow? Let's get this, I mean to say his exact words.

A. Well, he wanted to know who the builder was on the job I was working on, that was the apartment further from the other apartment; I told him Mr. Naame. Asked me where he could get in touch

with him. I told him Segal Building. So he got in touch with him and told me he was going to put up a couple of apartments on the corner for his daughter.

Q. That is what he told you, going to put them up for his daughter?

A. Build for his daughter.

Q. He didn't say at that time he was going to give them to his daughter, did he, going to put them up for his daughter? That is right, isn't it?

A. Yes.

Q. You say that after you started work he talked to you about it again. What were the exact words the second time?

A. Well, he said he was going to build the apartments, put up for his daughter, the only thing I could say.

Q. That is what he said the second time, he was putting them up for his daughter?

A. Yes.

Q. You took that to be that he was giving them to his daughter, wasn't that right?

A. Naturally.

JAMES E. MCGIMPSEY, sworn.

Direct examination.

By Mr. Cole:

Q. Where do you live?

A. 9 South Baltimore, Ventnor.

Q. What is your business?
A. Plastering.
Q. Do you know Mr. Doughty?
A. Yes.
Q. How long have you known him?
A. About five or six years anyway.
Q. Do you know Mr. Naame?
A. Mr. Naame?
Q. Yes.
A. Yes, sir.
Q. How long have you known him?
A. Oh, about ten years.
Q. Did you do any work on these properties in question?
A. I did all the plastering, sir.
Q. Did you do any work on the Ohio Avenue apartment?
A. Yes, sir.
Q. And you did it for Naame?
A. Yes, sir.
Q. During the course of the work there did you have any talk with Mr. Doughty and Mr. Doughty with you?
A. Several times.
Q. What did he say to you?
A. General conversation, talking about the buildings going over, he said he was building them for his daughter.

Mr. Richards: What was that? I didn't catch it.

A. He was building them for his daughter.
Q. Where were you when he told you that?

A. Around the building somewhere.

Q. Which property are you referring to?

A. Ones uptown.

Q. Was it while you were working on the job he told you that?

A. Well, when came around to get plastered, asked if the job was going along all right.

Q. Did he have anything to say about the work?

A. Yes, he asked me how it was going along, and so forth, general questions do ask around construction.

Q. How often was he there?

A. Well, I didn't see him there very often because I wasn't there very often myself.

Q. You had men working under you?

A. Yes, sir.

Q. Did you ever meet him when you were working on the Ohio Avenue apartment?

A. Yes, sir; I met him a couple of times.

Q. What was he doing there?

A. You mean on the apartment?

Q. Yes.

A. No, I don't think I ever met him on the apartment.

Q. Did he ever talk to you about the Ohio Avenue apartment?

A. Once in a while, yes.

Q. Tell us, if you recall, anything he said to you about it?

A. Usual questions how the job was going along and when he got started, and so forth.

Q. Did he make any reference to his daughter about the Ohio Avenue apartment?

A. No, I can't say he did.

Q. Did he make any reference to the apartment uptown, the Savoy apartment—did he ever more than once refer to the daughter and this property uptown?

A. Oh, yes, two or three occasions he said that he was building it for his daughter.

Q. Were you here yesterday?

A. Yes, sir.

Q. Mr. Doughty say anything to you yesterday?

A. Yes, he came over there ——

Q. Wait a moment, he did say something to you?

A. Yes.

Q. What time in the day was it?

A. It was just after recess.

Q. After lunch or at the close?

A. After lunch.

Q. Had we adjourned for lunch?

A. Just adjourned, yes, sir.

Q. What did he say to you?

A. He said, "You God damn Scotchman, I got something on you if you go on that stand," that is all I heard him say.

Q. Is that the way he opened up?

A. Yes.

Q. Was he talking to you?

A. I suppose so.

Q. Was there anybody around?

A. Only Scotchman around there I guess.

Q. Was there anybody around there?

A. Mr. Riley was there.

Q. Anyone else?

A. Young lady sitting over here.

Q. Young lady sitting next to Mr. Stewart?

A. Yes, sir.

Q. Was it loud enough for her to hear?
A. Yes, sir.
Q. Did you say anything back to him when he said that?
A. No, I just smiled.

Cross-examination.

By Mr. Richards:

Q. Well, as a matter of fact this was all a kidding conversation, wasn't it?
A. I don't know. I would like to know what he has got on me.
Q. You are Scotch and Mr. Riley is very evidently Irish. If this hadn't been a kidding conversation you would have probably made some difficulty about it, wouldn't you?

Mr. Cole: I object to the form of the question.

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

Mr. Richards: I don't see what is the matter with the form.

Mr. Cole: I don't see what Mr. Riley being Irish has anything to do with.

Mr. Richards: I think I am entitled to that question, your Honor.

The Court: I am overruling it on the other por-

tion of the question, there probably would have been some trouble.

Q. Well, if you had thought Mr. Doughty had meant this seriously you would have resented it, wouldn't you?

A. I did resent it anyhow, sir.

Q. You didn't say anything, did you?

A. What was the use?

Q. As a matter of fact, you said you smiled?

A. Certainly; what else could you do?

Q. Is that the way you resent a question like that, by smiling?

A. I am not going to cry about it, sir.

Q. Well, usually when people resent things they don't smile about it.

A. Well, maybe ——

Mr. Cole: Just a moment, that is not a question and it may not be so.

Mr. Richards: Are you objecting to it?

The Court: There is no question.

Mr. Cole: Objecting because there is no question.

Mr. Richards: Question has been answered.

Q. That is your usual behavior, is it, when you resent something, to smile at it?

A. What can you do?

Q. What can you do? Well, I don't know what you can do. I am asking you.

A. I am not going to cry over it.

Q. Now, you are very friendly with Mr. Naame, aren't you?

A. Yes, sir.

Q. Talked over this case with him?

A. No, sir.

Q. What?

A. No, sir.

Q. Not at all?

A. Never knew a thing about it until the other day.

Q. You talked to him the other day about it?

A. Asked me if I would come up here as a witness.

Q. Did he ask you what you could testify to?

A. Oh, yes.

Q. Did he tell you what he wanted you to testify to?

A. No. Nobody could tell me that.

Q. Now, did he know that you had had a conversation with Mr. Doughty?

A. I think he was present on one occasion.

Q. Well, on what occasion was he present?

A. I think it was in the office one day after he received a check from Mr. Doughty.

Q. You received the check from Mr. Doughty?

A. He did.

Q. Direct?

A. I imagine so.

Q. Well, was it made out to you?

Mr. Cole: He said he did from Mr. Doughty.

Q. Who is he?

A. Mr. Naame.

Q. Mr. Naame received the check?

A. Mr. Naame received it.

Q. And it was on that occasion that he said he was building the houses for his daughter?

A. For his daughter, yes.

Q. Now, exactly what did he say?

A. Exactly what he said? A long time ago.

Q. Yes, it is some six years ago, five years ago, and you can remember that as long as five years ago that one day up in Mr. Naame's office Mr. Doughty said that he was building these houses for his daughter?

A. Yes, sir.

Q. And Mr. Naame remembered that?

A. I don't know whether he did or not.

Q. You don't know whether he did or not?

A. Never said so to me.

Q. He never said so?

A. No.

Q. Well now, if he didn't remember it, how did it come that he came to you and asked you to testify to that?

A. Well, you asked me a question if he had spoke to me about the case and I answered you that he asked me if I would be a witness. At that time he asked me if I had heard anything and I told him at that time what he said. Now, whether he remembers or not I don't know.

Q. Now then, are we to understand that he did not say to you that "you will remember we had a conversation in the office in which Mr. Doughty said that he was building these properties for his daughter?" He didn't say that.

A. He didn't say anything about the conversation in the office. He said, "Do you remember about the conversation of Mr. Doughty building the apartments for his daughter?"

Q. Then he did suggest it to you, didn't he?

A. I don't know what you call a suggestion.

Q. Well, he asked you, when he talked to you about the case, he started in by saying, "You will remember, don't you, that Doughty said he was building these houses for his daughter?"

A. Yes, sir.

Q. That is the way he started?

A. Yes, sir.

Q. Then you remembered it, didn't you?

A. Naturally, yes.

Q. You hadn't had any occasion to fix this conversation in your mind, had you?

A. No, sir.

Q. Now, as a matter of fact, as a sub-contractor on the job, you knew that the contract was between Mr. Doughty and Mr. Naame, didn't you?

A. On what properties?

Q. On the uptown properties?

A. The plans was made out to Mr. Somers L. Doughty.

Q. And you knew the contract was with Doughty, didn't you?

A. Well, I surmised so.

Q. Well, didn't Mr. Naame tell you so?

A. I can't say I can recollect him telling me.

Q. You, as a sub-contractor, wanted to know who was going to be responsible and pay for this thing, didn't you?

A. I don't know; Mr. Naame always paid me.

Q. So that you didn't care for whom he was building it?

A. Well, I seen Somers Doughty's name on there; I knew it was good enough.

Q. You knew anything with Somers Doughty's name on was good, didn't you?

A. Absolutely.

Q. And you knew more than that, you knew that Doughty was paying the money out, didn't you?

A. Yes, sir.

Q. Because you seen it? Saw that in the office that day, didn't you?

A. Yes, sir.

Q. Now then, you didn't have to be told by anybody, Doughty or anybody else, that he was building the houses, did you?

A. I could use my own judgment.

Q. So then why was it that this conversation stood out in your memory for this five years?

A. Well, if anybody asks you a question and want to remember anything, don't you remember the same as I would do myself?

Q. That depends sometimes ——

A. You want to forget?

Q. Yes; now, in this case, as I understand it, Mr. Naame suggested to you that this conversation took place, didn't he?

A. If you call it a suggestion. I wouldn't call it a suggestion.

Q. He started off the conversation by saying, "Don't you remember that Doughty stated that he was building the houses for his daughter?"

A. No, I didn't say anything of the kind.

Q. Well, what was it that he said?

A. I just can't recall the exact words what he said.

Q. You mean you can't recollect the words that Mr. Naame said to you?

A. Yes, sir.

Q. That only occurred the other day, didn't it?

A. Yes.

Q. You are friendly with Mr. Naame?

A. As far as I know, yes.

Q. You want to help him out in this case, don't you?

A. I am here to testify to what I know.

Q. As a matter of fact, you have done a good deal of work for Mr. Naame?

A. Considerable, yes.

Q. And if he has any more you will probably do it for him again?

A. Providing the price is right.

Q. As a matter of fact, you have been in partnership with him, haven't you?

A. Yes, sir.

Q. You said that this conversation took place in the office; now, where was this office located?

A. Indiana Avenue.

Q. Indiana Avenue?

A. Yes, sir.

Q. Whereabouts on Indiana Avenue?

A. 13 North.

Q. 13 North?

A. Lincoln Apartments, yes, sir.

Q. In the Lincoln Apartment House?

A. Yes.

Q. And Mr. Doughty was there?

A. Mr. Naame.

Q. Was there. Mr. Doughty passed him this check and during that conversation he said that he was building these apartments for his daughter, is that right?

A. Yes, sir.

Q. Now, you are sure of that?

A. Well, he had already built the uptown apartments. I don't know whether he was referring to the other one on Ohio Avenue.

Q. Now, it develops that this conversation did not take place at the time that the apartments were built?

A. You asked me a question a while ago, if Mr. Doughty or Mr. Cole asked me a question if Mr. Doughty had spoke about the apartments; I said yes, up on Baltic Avenue, I said on several occasions. I don't say one specific occasion.

Q. He talked to you up on Baltic Avenue and said he was building them for his daughter?

A. Yes, sir.

Q. And he talked to you down in Mr. Naame's office in the Lincoln Apartment?

A. Yes, sir.

Q. And said he was building them for his daughter?

A. Yes, sir.

Q. Building them for his daughter, that was the words he used?

A. As far as I can remember.

Q. Now, at the time the Lincoln Apartment House was built and this was his office in the Lincoln Apartment?

A. No, he had his office all the time the building was going on.

Q. Was this while the building was going on or after it was completed?

A. I just can't remember.

By Mr. Cole:

Q. Counsel has been saying to you that this occurred five years ago. I ask you what year was it that you were working on the Savoy or uptown apartments?

A. I couldn't tell you that.

Q. What?

A. I couldn't tell you the exact year; I don't remember. I imagine around 1925 or 1926.

Q. At all events, whenever the time was, that was when Doughty had the talk with you?

A. Yes, sir.

Q. Did Mr. Naame suggest to you at any of these talks that you should not tell the truth about this matter?

A. Yes, sir.

Q. Repeat the question.

Mr. Richards: I object. He has answered the question.

Q. Did you understand my question?

A. You asked me if Mr. Naame said to tell the truth.

Mr. Cole: Read the question.

(Question repeated.)

A. Oh, I beg your pardon; no, sir.

Q. Well, you answered "yes" first; why did you answer "yes?"

A. Mr. Naame ——

Q. Go back a moment. In answer to my question you said "yes;" why did you say "yes" to the question and now you say "no?" Explain that.

A. Why, this morning I was talking to Mr. Naame and was telling him we should hurry this over because I wanted to get back to my job; I suppose I was a little nervous going on the stand; I haven't been on the stand in my life before. Well, he said, "You got nothing to fear, just tell the truth." That is what I thought you said, if I was to tell the truth.

By Mr. Richards:

Q. When were the Lincoln Apartments built?

A. That I couldn't answer you offhand.

Q. Well, they were built in 1927, weren't they?

A. I suppose it would be around there, took about a year and a half or two years for construction.

Q. You can't recall what year the Savoy Apartments were built, although you can recall that Mr. Doughty said he was giving them to his daughter?

A. Say that over again.

Q. Is that right?

A. I didn't hear you.

Q. I say you can't recall what year it was in which the Savoy Apartments, the uptown apartments, were built, but you can recall that Doughty said he was giving them to his daughter?

A. I said around 1925 or 1926.

Q. But you can't remember even the year?

A. Well, maybe late 1925 or early 1926, I don't just remember.

Q. Are you sure that was the time, now?

A. Well, I wouldn't swear to it.

Q. So, although you did the contracting work on this apartment, you can't be even sure of the date, although you can be sure of this one conversation?

A. Well, exactly, every job I do—I do plenty of them, I can't go into the dates.

Q. My question is why you can't be sure of the date if you can be sure of this conversation?

A. Never give it a thought.

Q. And you didn't remember this conversation until Mr. Naame suggested it to you?

A. Oh, yes, I always remembered the conversation.

Q. You did always remember the conversation?

A. Yes.

Q. Well, had you heard that Mr. Doughty was suing his daughter?

A. Yes, sir.

Q. Over these apartments?

A. Yes, sir.

Q. Well, why didn't you go to Mr. Naame and tell him about this conversation?

A. Why should I go to Mr. Naame and tell him about this conversation?

Q. I didn't ask you that. I asked you why you didn't do it?

A. Why I didn't do it?

Q. Yes.

A. Because I am busy with my own business. I haven't got time to run around with his.

Q. You knew this was an important case to Mr. Naame, didn't you?

A. I don't even know yet how important it is.

Q. Well, you knew that it involved these apartment houses, and that they were worth a lot of money, didn't you?

A. Yes, sir.

Q. And you knew that was important to Mr. Naame, didn't you? Didn't you think so?

A. No, sir.

Q. Didn't think so?

A. I got enough to do myself.

Q. Yet you were his partner or ex-partner in business, weren't you?

A. Yes, sir.

Q. On very friendly terms with him?

A. Yes, sir.

Q. Doing business with him?

A. Recently, not now; I was, yes.

Q. If he had any work to do, why, you would probably be there doing business with him or anxious to do business with him, weren't you?

A. Providing my price was right I am always willing.

Q. Yet, notwithstanding all that, you didn't go to him and tell him about this conversation that you remembered?

A. Why, no, too busy.

Q. Too busy?

A. Yes, sir.

Q. Are you very busy with work now?

A. Got enough to keep me going, yes, sir.

Q. Been busy all summer with work?

A. Fairly so.

Q. Where have you been working all summer?
A. Various places.
Q. Well, where, tell us?
A. Just completed the Morton Hotel.
Q. What?
A. I just completed the Morton Hotel, worked around small building for the last year, did some houses down in Margate and Ventnor.
Q. The small building has been completed for a year or more, hasn't it?
A. Yes, sir, but there has been an awful lot of alterations inside.
Q. You have been working on these alterations?
A. Yes, sir.
Q. All the time?
A. Yes, sir.
Q. So busy that you couldn't walk a couple of blocks over to Mr. Naame's place to tell him about this conversation?
A. Well, I have been in there on numerous occasions, stepped in there once in a while when I had time.
Q. You have seen Mr. Naame pretty often, haven't you?
A. Mr. Naame more or less was out when I was there.
Q. You have seen him a number of times during this last summer, haven't you?
A. I should say about half dozen times.

By Mr. Cole:

Q. Mr. McGimpsey, to whom did you first report what Mr. Doughty said to you yesterday?

A. To whom did I first report it?

Q. Yes, who did you notify first that he had made the statement to you?

A. I don't know. I don't remember.

Q. What?

A. I don't remember.

Q. Well, did you tell somebody after Mr. Doughty had made the statement to you yesterday?

A. Oh, this yesterday?

Q. Yes.

A. Mr. Riley was the only one I spoke to.

Q. Who?

A. Mr. Riley.

Q. You told it to Mr. Riley?

A. We spoke about it outside. He heard the conversation.

Q. All right; that is all.

MORRIS R. OST, sworn.

Direct examination.

By Mr. Cole:

Q. Where do you live?

A. I lived at 116 North Thirty-fifth, Longport.

Q. Mr. Ost, won't you speak a little louder?

A. 116 North Thirty-fifth Avenue, Longport.

Q. What is your business?

A. I am a druggist, have been a builder.

Q. Have been what?

A. Have been a builder.

Q. Do you know Mr. Naame?

A. I do.

Q. How long have you known him?

A. Oh, I suppose since I have been in Atlantic City, that has been nineteen hundred and ——

Q. Do you know Mr. Doughty?

A. I do.

Q. How long have you known him?

A. Same length of time, since I have been in Atlantic City.

Q. Did you have anything to do with the apartments at New Jersey and Baltic, called the Savoy, in this case?

A. No.

Q. Did you have anything to do with the Ohio Apartment?

A. No, sir.

Q. Did Mr. Doughty ever talk to you about his stepdaughter, Miss Dobbin, now Mrs. Naame?

A. Well, it has been some time ago.

Q. First of all, did he ever talk to you?

A. Yes, he did.

Q. And when was that?

A. Why, it was about the time that I completed the construction of some apartments at Delaware and Baltic Avenue.

Q. When was that, what was the date of that?

A. Why, that was in, I really don't recall, 1924 or 1925. About 1924—no, 1925.

Q. At that time how long had you known Mr. Doughty?

A. Well, I have known him since I was in Atlantic City. I didn't know him, you might say, well, but I have known him.

Q. Did you meet him at or about that time?

A. Yes, that was the first time I spoke to him.

Q. What was the reference that he made to his stepdaughter?

A. Why, he called around the place Delaware and Baltic and asked me who was building the apartments for me, that he wanted to build the same kind for his daughter, and I told him it was Mr. Naame, but I asked him whether he wouldn't be better off if he sold us the piece of ground, because I had an agreement with Mr. Robinson, my partner, that we would try to acquire the adjoining piece of property, if we were able to do so, on desirable terms, and he said no, it wasn't for sale, it was his daughter's, and he was going to put the same thing on that lot as we had on ours. Of course, it was—he didn't want to sell it.

Q. Did you and he ever talk after that time about the properties?

A. Why, yes, I asked him once or twice about the lot after that, and then I spoke to him about a mortgage, we were getting through a building and loan association he was interested in.

Q. Now, on any of these occasions after the first did he make any reference to his daughter with relation to the properties, or was it only on that one occasion?

A. Why, no, it was on several occasions. I spoke to him once about the rents, that there was some vacancies there and whether it would be well ——

Q. Vacancies where?

A. Vacancies in my building, whether it wouldn't be well to lower the rents; he said he had nothing to do with it, to see his daughter.

Q. Well, were you a tenant in the part of the property that was afterwards improved?

A. I don't understand.

Q. You said that rents were spoken about?

A. Well, we leased these apartments, Mr. Robinson and I owned 179 apartments on the corner Delaware and Baltic, running 200 feet on Baltic Avenue, and when he, Mr. Doughty—I spoke over with Mr. Robinson about reducing the rents or doing something about filling up the apartments and he suggested that I speak to the people who owned the building next door, that is, the Savoy Apartments. Well, I always felt that Mr. Doughty was the principal and I spoke to him, and he told me that he had nothing to do with it, that it was his daughter's, and I, of course, went to speak to her and I spoke to his daughter about it.

Q. Who is Mr. Robinson?

A. He was a partner of mine in the construction of the apartments at Baltic and Delaware Avenue.

Q. I still don't understand why you were talking to Mr. Doughty about rents. Were you a tenant in Mr. Doughty's property, a portion of it?

Mr. Richards: No, Judge Cole, he owned these apartments and he was trying to get ——

Mr. Cole: I didn't ask you, Senator. I was asking the witness.

The Court: I think we are taking too much time, Judge Cole. There seems to be a misunderstanding. This gentleman owned an apartment in which there were so many vacancies in which he thought

it was advisable to reduce the rent, but he didn't want to do that unless his competitor, who owned the next apartment, did the same thing, so he went to them and discussed the proposition of both landlords reducing the rents.

Mr. Cole: If your Honor understands that to be his testimony, that is satisfactory to me. So far, it isn't clear to me, but if it is clear to your Honor, I am through.

The Court: That is his testimony.

Cross-examination.

By Mr. Richards:

Q. Mr. Ost, when did you first meet Mr. Doughty with relation to your apartments?

A. Why, I don't know I ever met him in relation to my apartments. He did own a mortgage on my corner and he was paid off, but I don't recall ever speaking to him in relation to my apartments.

Q. Until after they were completed?

A. Pardon me; we made an application to the building and loan in which he was a director and I mentioned, I spoke to him about my apartments in that.

Q. As a matter of fact, didn't he come up there representing the building and loan to place a valuation on the apartment?

A. We already had our mortgage placed on then.

Q. Wasn't it placed through the building and loan?

A. Wasn't it placed through the building and loan? Yes; we had two separate mortgages there, that is, there were two appraisals made and two separate mortgages on two of the buildings in the same association.

Q. Do you know whether or not Mr. Doughty was one of the building and loan committee that came up there to appraise them?

A. No, I don't. I knew that he was one of the directors.

Q. You don't know whether he was one of the committee?

A. I don't know whether he was one of the committee.

Q. Never discussed that phase with him?

A. Well, to be truthful, I don't remember, that is I don't remember whether he mentioned that he was on the building committee, he was one of the committee or not, but I do know that he was a director.

Q. You did submit, I suppose, data concerning the earning capacity of these apartments to the building and loan?

A. Yes, and I knew that he saw the data and knew that they were paying propositions.

Q. You knew they were very well paying propositions at that time?

A. Well, at that time they were; of course they are not now.

Q. But at that time they were extremely well paying propositions?

A. First year, yes.

Q. Now as a matter of fact you and your partner bought the land upon which you built this apartment from Mr. Doughty, didn't you?

A. No, we didn't.

Q. You didn't?

A. No, sir.

Q. Wasn't he the original owner of the block?

A. Yes, he was according to the records but we didn't buy it from Mr. Doughty.

Q. At the time that he talked to you and told you that he was contemplating building an apartment similar to yours for his daughter?

A. He did.

Q. You just took that meant that he was going to give it to his daughter, didn't you?

A. No, he as much as told me that it was his daughter's, and that he was going to build the apartment for his daughter because they showed such a good income and he wanted his daughter to have a good income.

Q. Didn't he tell you really that he had already given her the land?

A. I don't know whether he told me already gave her the land but he led me under the impression that the land was hers or will be hers.

Q. Now, when you wanted to extend your apartments over on the land, that vacant lot, didn't he tell you that he had already given his daughter a deed to it?

A. Now, I don't remember, but I do know that he did not want to sell it because it was, he said it was his daughter's and that is as much as I know about that end of it.

Q. So that whatever he told you the general import of it was that the land belonged to his daughter, wasn't it?

A. Yes.

Q. And then he told you that they were going to improve it so his daughter could get an income?

A. That is it exactly.

Q. Now the details of how he was going to improve it he didn't tell you?

A. No, that is, only that he wanted to know who my builder was, who was putting them up for me and he wanted to put up the same thing.

Q. Same proposition?

A. Same proposition, yes.

Q. As a matter of fact the first year the earnings of these apartments was at least twenty-five per cent of the cost, wasn't it?

A. Well, I can tell you what our net earnings were the first year, if you want to know that. We had five buildings and they are all practically the same, I know just what our first——

Q. I don't want to pry into the details.

A. You say twenty-five per cent of the cost, net earnings?

Q. Yes.

A. No, sir.

Q. How much was it?

A. Net earnings about ten per cent.

Q. About ten per cent?

A. Yes, that was our net earnings.

Q. I am talking about on the investment. I am talking about income on the investment, was that around twenty-five per cent?

A. Well, it depends on what the investment would be. We had mortgages on them. I understood Mr.

Doughty didn't have any mortgage on them, depends on what.

Q. I am talking about if the apartment houses cost you fifty thousand dollars apiece, were they earning you as much as $12,500 a year, their income I mean?

A. Yes.

Q. Wasn't that the fact?

A. Well, you mean the gross income?

Q. Yes.

A. The gross income on the cost of the property?

Q. Yes.

A. Why, yes, it would be about that.

Q. That, of course, was a nice seashore investment, wasn't it?

A. Well, not exactly an investment, expenses, the expenses can sometimes exceed the income.

Q. But they wasn't at the time Doughty was get- this picture, was it?

A. Certainly not, no.

Q. The time that Doughty got the idea of building these apartments for his daughter, that was the situation, about twenty-five per cent investment?

A. That was the situation or pretty nearly as high, came up to the picture of the prospectus of the proposition.

Q. Of course the headache came later?

A. Sir?

Q. The headaches came later?

A. The headaches came last, yes, sir.

By Mr. Cole:

Q. Mr. Ost, did Mr. Doughty talk with you yesterday?

A. Why, out in the hallway.
Q. Out in the hall?
A. Yes.
Q. What time was it?
A. I don't know just what time it was. It was——
Q. Was it during the progress of this trial?
A. Yes, or at noon time.
Q. Was it while the Court was in session or when the recess had been taken?
A. Why, it was about, I don't know, after we left the room here.
Q. What did he say to you?
A. Well, he said that I had to better be careful what I say on the stand, and I said, "Well, I certainly am. I am going to tell the truth."
Q. He just walk up to you and say that to you?
A. Well, I wasn't the only one there. He said to all within hearing.
Q. Did he know you were going to be a witness in the case?
A. He saw me here.
Q. He just walked up to you and told you what you have just said?
A. Yes.
Q. Did you make any reply?
A. I said "I will tell the truth."

By Mr. Richards:

Q. Well, he said this generally to all this group of witnesses, didn't he, Mr. Ost?
A. Yes, loud enough for others to hear.
Q. And you were going to be careful about what you said anyhow, weren't you?

A. Well, I was going to tell what I knew and tell the truth, anything I couldn't remember so well I wouldn't say, I would want to make sure of what I say to be the truth.

Q. He didn't intimidate you; you wasn't scared about what he said, were you, or anything of the kind?

A. Well, no.

Q. And it hasn't altered your testimony what he said, has it?

A. I can't say it has.

EDITH CROUCH, sworn.

Direct examination.

By Mr. Cole:

Q. Where do you live?

A. 1736 Atlantic.

Q. Atlantic City?

A. Yes, Atlantic Avenue.

Q. How long have you lived in Atlantic City?

A. Over thirty years.

Q. Do you know Mrs. Naame, formerly Miss Dobbin?

A. I do.

Q. How long have you known her?

A. Since 1914.

Q. Do you know Mr. Doughty?

A. Yes.

Q. How long have you known him?

A. Several years before.

Q. Did you visit Mr. Doughty's home during the life of his wife?

A. I did.

Q. Did you visit his home after she died?

A. Yes.

Q. How frequent were your visits there?

A. As a rule once a day or night.

Q. Where did they live?

A. 12 South Indiana.

Q. During that time where did you live?

A. When his wife lived, I lived next door, 14 South Indiana.

Q. You were a tenant under him?

A. No.

Q. Not under him?

A. No.

Q. Rented the store?

A. Next door.

Q. Next door, pardon me. Now, then, after his wife died where did you live?

A. I lived around the corner and across the street on Atlantic Avenue.

Q. Did you ever eat at Mr. Doughty's home?

A. Very often.

Q. Did you have an opportunity of seeing whether Mrs. Naame did any work around the house?

A. She cooked when the maid wasn't there, drove the car, kept the house.

Q. Did Mr. Doughty ever say anything to you as to what he was doing for Mrs. Naame in a financial or property way or what he intended to do for her?

Mr. Richards: I object to what he intended to do.

The Court: I will permit the conversation.

(Question repeated.)

A. He said he was giving her the houses because he wanted to make her financially independent of anyone.

Q. Now, about when do you fix the time that he said that?

A. Well, he said it two or three times and I was there every day, so I just can't recall when he said it. It was during the building and before they started to build.

Q. How did he come to say that? How did it come about, do you recall the circumstances?

A. One night at the dinner table he said he was giving his daughter these houses.

Q. She there?

A. Yes. Another time in the automobile coming from Philadelphia.

Q. Was she present?

A. Yes.

Q. Who was driving the automobile at that time?

A. His daughter.

Q. Do you remember when the building known as the Savoy were in progress of improvement up there?

A. Yes.

Q. Was it while that was going on that he made one of these statements?

A. Yes.

Q. Do you remember when the Ohio Apartments were being improved?

A. Yes.

Q. Was it during that period he made the statement?

A. Yes.

Q. At any of the talks you had with him or he had with you did he make any reference to his deceased wife or any promise he had made her?

A. He had promised——

Mr. Richards: I object to that. It has nothing to do with this contract, if your Honor please.

The Court: I will admit it, conversation of Mr. Doughty against interest.

Mr. Richards: No.

The Court: That is the question.

Mr. Richards: The question is a conversation he had or a promise he made to his deceased wife.

Mr. Cole: Exactly.

Mr. Richards: If all men were held to those conversations I presume there would be many a lawsuit.

The Court: The question is admitted.

(Question repeated.)

A. He had promised to take care of her daughter if anything happened to her.

Q. Did he tell you that, Mr. Doughty?

A. I heard him say it.
Q. Was anyone present when he told you?
A. His daughter.
Q. And where was that statement made?
A. In his home, Indiana Avenue.

Mr. Richards: If your Honor please, I ask all of this testimony be stricken out, it doesn't tend to meet the issue. This issue, the only question here is the one of whether or not he raised up the buildings and gave this money for those apartments to the daughter or whether he loaned it to her. None of this conversation can affect that question.

The Court: I will permit it to remain.

Q. Have your relations with Mr. Doughty always been friendly?
A. Very.
Q. Had any falling out with him lately?
A. None whatever.
Q. Were you in court yesterday?
A. Yes.
Q. Did Mr. Doughty talk to you or say anything in your presence?
A. He talked to me.
Q. What did he say to you?
A. He said "If you testify against me I will"—I don't know—"have you locked up" or something like that, but I thought he was joking.
Q. Where were you when he said that?
A. Sitting right there.
Q. In the court room?
A. Yes, it was after lunch.

Q. What?
A. It was after lunch.
Q. Was it before Court had reconvened?
A. I think it was.
Q. Anybody around when he said that to you?
A. Mr. Riley sat next to me and this other man.
Q. Did you hear him say anything to Mr. Riley?
A. No; he was talking to him but I didn't know what he said.
Q. He had been talking to Mr. Riley?
A. Yes.
Q. But you didn't hear that?
A. I didn't hear anything he said to him.
Q. Did you make any reply to Mr. Doughty when he said that?
A. I said "What do you mean?"
Q. What did he say, if anything?
A. Kind of smiled.

Cross-examination.

By Mr. Richards:

Q. It was a joking conversation, wasn't it, Mrs. Crouch?
A. I took it as a joke, I don't know whether it was meant as a joke or not.
Q. You were old friends, back and forth, and so forth? You had joked with him before, hadn't you?
A. Yes.
Q. And what he said was quite audible to the other witnesses and people around there, wasn't it?
A. They seem to have heard it all.
Q. He stood there or leaned over and said "If

you testify against me I will have you locked up,'' didn't he?

A. Yes.

Q. And smiled when he said it?

A. After I asked him what he meant, he smiled.

Q. Now, Mrs. Crouch, this conversation occurred in the automobile, can you tell us when that occurred?

A. No, I couldn't say because I made so many trips to Philadelphia, I couldn't say. They were building the houses, I know.

Q. You couldn't tell the year?

A. I don't know whether it was 1927 or not.

Q. Which houses were they building when this conversation took place?

A. We were up in front of the Savoy.

Q. Out in front of the Savoy?

A. Yes.

Q. And what was it he said?

A. He said he was going to make his daughter financially independent and was giving her these houses.

Q. Now, wasn't it what he said was, that he had given her the land?

A. I saw the deeds.

Q. You knew that he had given her the land?

A. I knew that he had given her the land.

Q. Wasn't that what he referred to?

A. He meant the houses.

Q. Well, you were in and out every day or two, &c.?

A. Almost every day.

Q. You were very intimate with Mrs. Naame too, weren't you?

A. Yes.

Q. In fact her own close friend, weren't you?

A. Yes.

Q. Well, didn't Mrs. Naame tell you that she was making mortgages on these houses uptown?

A. She did.

Q. Did you ask her why she was giving these mortgages?

A. She said she was getting these mortgages to put on the Ohio.

Q. Both of them?

A. Yes.

Q. That is the only explanation she gave to you?

A. Yes.

Q. Now, as a matter of fact, she didn't get both of them to pay on the Ohio, did she?

A. I don't know what she did with the money.

Q. Didn't she tell you what she did with the money?

A. No.

Q. Did she ever tell you that she gave the $25,000 to Mr. Doughty?

A. No, she said she was going to put it on the Ohio, the cost of the Ohio.

Q. Did she tell you that Mr. Doughty had gotten the money for her?

A. Yes.

Q. Now, you knew that she got two mortgages up there, didn't you?

A. Yes.

Q. One for $25,000 and one for $35,000?

A. Yes.

Q. And you know that she turned all that money over to Mr. Doughty, don't you?

A. No, she didn't tell me what she did with it.

Q. She didn't tell you only that she was getting the money, is that right?

A. I know she had gotten the money, but I don't know what she did with it.

Q. And you two were intimate friends?

A. Yes.

Q. So intimate that she told you about getting the money but didn't tell you about what she did with it, is that right?

A. All she told me, she was going to pay it on the Ohio, toward building the Ohio.

Q. She didn't do that, that is a fact, isn't it, if you know? She told you since she didn't do that, hasn't she?

A. She did not.

Q. She has never told you that she didn't do that?

A. No.

Q. Never told you that she gave the money to Mr. Doughty?

A. Did not.

Q. Or that she turned it over to Mr. Doughty?

A. No.

Q. When was it that he told you that he had promised his wife to take care of her daughter?

A. He said just after her death, a few years afterwards, I can't remember the date.

Q. Let me refresh your memory, was it at the time that he deeded the corner property to his daughter?

A. No.

Q. It wasn't?

A. It wasn't.

Q. Was it before or after that time?

A. I think it was after that, she had gotten the deed.

Q. That he told you that?

A. Yes.

Q. Now, did he ever repeat that at the time he gave her the four apartments up on New Jersey Avenue?

A. I never heard him.

Q. Never heard him?

A. No.

Q. So that the only time that you heard him say that he had promised his wife to take care of his daughter was after he deeded her the New Jersey and Baltic Avenue corner?

A. I think it was.

Q. Now, how did the—what was the conversation that led up to his saying that he was giving these houses to his daughter, that you had in the automobile?

A. I don't know just the conversation but he was —he always wanted to make her independent of her relatives or anybody else, he said, while he lived.

Q. Well, he had already given her a lot of property, hadn't he?

A. Given her deeds to these lots, yes.

Q. Well, he had given her the New Jersey Avenue corner, which had houses on it, he had given her these four apartments on New Jersey Avenue and he had given her this lot on Baltic Avenue, hadn't he?

A. Yes.

Q. And they were all valuable properties, weren't they?

A. So far as I know.

New Jersey State Library

Q. Then, what was it that led him to say that he was giving her these houses?

A. Well, she wanted a business and she wanted the houses, so he said he would build them for her and give them to her.

Q. That was it, wasn't it, she wanted the houses and he said he would build them for her?

A. Yes.

Q. That was the actual words of the conversation, wasn't it?

A. She wanted these apartment houses and he said he would build them and give them to her.

Q. A minute ago you didn't say anything about giving them, you just think of that?

A. No, I said it in the first place.

Q. Did you say it in the first place?

A. Before they asked me.

Q. First time I think you said that he had given her the houses, now, that conversation is that he was building the houses, and when I repeated that you say he was building them and giving them to her, which one of the three is the statement you want to stand by?

A. Well, he built them for her and he gave them to her.

Q. He said both?

A. He did.

Q. What I don't understand is this, Mrs. Crouch, you were almost like a member of the family, weren't you?

A. Yes.

Q. You were in and out there all the time. Why did Mr. Doughty have to tell you that he was giving these houses to the daughter?

A. I don't know why he told me, but he said it in her presence and my presence.

Q. Had Miss Dobbin talked to you about these houses time and time again?

A. Only thing she said, she wanted the houses, wanted him to build the houses.

Q. Now, at the very beginning, before the houses were built or anything, didn't she tell you that she was going to try to get her father to build these houses for her?

A. Yes.

Q. Did she ever tell you about how it happened that she heard about being very profitable, these colored apartments?

A. She had gone through the buildings next door, she said.

Q. She came home and right away she was full of the idea wanting to build these colored apartments, wasn't she?

A. Yes.

Q. And didn't she say she was going to try to get her father to do it for her?

A. Yes.

Q. From that time you were in on all the conversations, weren't you, when you were there, you knew everything went on about it, weren't you?

A. Knew all about it, you say?

Q. Why, in view of that fact, he had to suddenly, in this method, tell you that he was giving her these houses?

A. I don't know why he had to but he did.

Q. That is your explanation of that?

A. Yes.

Q. You can't give us any connected conversation that led up to that statement?

A. I don't know of any.

Q. And the only thing you can remember about that conversation was that one statement that he was building and giving her the houses?

A. Well, we were talking about the houses and that led up to it.

Q. But you already knew all about the houses, didn't you?

A. Yes.

Q. Now, have you talked to Miss Dobbin about this case?

A. She told me about it as soon as she was sued.

Q. Did she tell you what her defense was going to be?

A. No. Asked me to be a witness.

Q. Did you tell her that you knew something about this case would be a benefit to her?

A. I did not.

Q. When did you tell her about this conversation?

A. She heard it.

Q. Well, didn't you talk to her about it since this case first came up?

A. I just said I would tell what I knew.

Q. Didn't you tell her what it was that you knew?

A. I said I knew he said he gave them to her.

Q. You told her that?

A. Yes.

Q. And then you knew that that was going to be her defense, didn't you?

A. Didn't say what it was going to be.

Q. Well, did you find out from Mr. Naame or his wife or anybody else——

A. No, I did not.

Q. ——that her defense was going to be that Mr. Doughty had given her these houses?

A. No, I did not.

Q. Then why did you think it was important to tell her about that conversation?

A. She was——

Q. What is the hesitation?

A. She was to get them, that is all I know.

Q. Well, I know, but what possessed you to come here as a witness?

A. She asked me to.

Q. All right, now, did you tell this story that you have told, to anybody?

A. I did not.

Q. Didn't you tell it to Miss Dobbin's counsel?

A. I did not.

Q. Didn't Judge Cole know what you were going to testify to before you got on the stand?

A. Asked me what I knew.

Q. When did he do that?

A. The other day.

Q. The other day?

A. Yes.

Q. When was that, this other day?

A. Last Tuesday.

Q. Whereabouts, in his office?

A. In his office.

Q. Miss Dobbin there?

A. She was.

Q. Mr. Naame there?

A. He was.

Q. Anybody else?

A. No, that was all when I was in there.

Q. Sure?

A. Positive.

Q. Wasn't Mr. Salsburg there?

A. Oh, yes, he was there; I meant no other witnesses.

Q. This conversation in the automobile took place, if it took place, when the apartments were being built nearly five years ago, is that right?

A. It was while they were being built; I don't remember the date.

Q. That would be anywheres between four and a half and five years ago, and you still think that you can remember that conversation?

A. Yes.

Q. Although you couldn't remember who was present in Judge Cole's office last Tuesday?

A. There was other witnesses but they had gone outside.

Q. You couldn't even remember the fact that Mr. Salsburg was there, could you, until I reminded you of it?

A. I didn't think you meant the lawyer.

Q. Well, Judge Cole asked you what you knew about it and right away you told him that you knew that Mr. Doughty had said that he was giving these houses to his daughter?

A. Yes.

Q. Now, why was it that you thought it was important to tell Judge Cole that?

A. He asked me what I knew; that is the only reason I can give.

Q. I know but you knew the intimate history and lives of these people for the past ten years or more, didn't you?

A. Over fifteen.

Q. For fifteen years?

A. Yes.

Q. How was it that you thought that he didn't want to know about this death-bed promise?

A. No.

Q. You don't know that?

A. No.

Q. Why was it you told him about that—or why was it you didn't tell him about that? You didn't tell him that, did you, at that time?

A. I think I did. I think I said about her mother wanting him to promise.

Q. You don't rememer whether last Tuesday you told Judge Cole that Doughty had promised his wife to take care of the daughter, you can't remember whether you told him that?

A. I did.

Q. You did?

A. Yes.

Q. You remember that now?

A. Yes.

Q. How was it that as soon as Judge Cole asked you what you knew about this thing you told him you knew that Doughty had given these houses to the daughter when you hadn't the obvious suspicion that that was the matter that was in controversy here?

A. I knew he was suing for the money.

Q. How did you know that?

A. His daughter told me.

Q. I thought you told us that you didn't know a while ago what the suit was about?

A. She said he was suing for the money he put in the buildings.

Q. Then, Miss Dobbin told you that?

A. She told me that right after the suit was started.

Q. When she told you that what did you tell her?

A. I said "How can he get the money when he gave them to you?"

Q. That was the time you told Miss Dobbin, was it?

A. She heard the conversation.

Q. I know, but I am asking you. I had asked you previously whether you talked about this to anybody and you said you didn't.

A. She just said she had been sued.

Q. Now, you say that you did talk to her about it?

A. She told me about the suit as soon as it happened.

Q. Now, you remember that you said to her that "How could he get the money back when he give it to her?"

A. Yes.

Q. And what did she say to that? What was her answer to that?

A. I don't remember what she said.

Q. Did she say anything about that he had given her the money at that time?

A. No.

Q. Well, did she assent to what you said?

A. She knew I knew.

Q. Well, didn't she in any way indicate that she agreed with your statement of the situation?

A. She said she didn't owe him anything.

Q. At that time she said that?

A. Yes.

Q. When you asked her this question, "How can he get the money back when he gave you the houses?" her answer was, she didn't owe him anything, is that correct?

A. She said she didn't owe him any money.

Q. That was her answer to your question?

A. Yes.

Q. Was it a sincere and coherent answer to that question, did you think?

Mr. Cole: I object to her thought.

The Court: Sustain the objection to that question.

Q. Did you think it was an answer to your question?

Mr. Cole: I object to that as to what she thought.

The Court: I will permit that.

A. I don't know.

Q. What?

A. I don't know.

Q. How was it you couldn't remember, when I first asked you, whether you talked to Miss Dobbin about this case?

A. She would generally tell me all her business.

Q. I am not asking you that. I started out, Madam, by asking you whether you had talked to anybody about this case and you said you had not.

Now, how is it that after a lengthy cross-examination I draw out of you the fact that you did talk to Miss Dobbin about it? Why couldn't you remember that and tell me that in the first place?

A. I don't know.

Q. Is there anything the matter with your memory?

A. Not that I know.

Q. You have got a good memory, haven't you?

A. Yes.

Q. Now, outside of this automobile conversation, what other time was it, you said there were several times that Doughty said he had given these houses to his daughter?

A. It was at the dinner table one night at their home, I don't remember any dates.

Q. Well, what—is there any link by which you can attach that conversation?

A. It was while they were building the Savoy.

Q. He said that he was giving the houses to his daughter?

A. Yes.

Q. How did that conversation come about?

A. They were talking about the property and how it was going to be.

Q. Now, who was at the table?

A. Mr. Doughty, his daughter and myself.

Q. Is that all?

A. That is all.

Q. Nobody, the three of you were sitting around the table eating dinner and you are discussing the Savoy Apartment, is that right?

A. Right.

Q. Somebody says that they are going to be a

very good investment, something like that, they are going to pay well, is that right?

A. Yes.

Q. Who said that?

A. Mr. Doughty or his daughter, both were talking about it.

Q. About how well they were going to pay?

A. Yes.

Q. They were talking to each other about it?

A. Yes.

Q. Now, then, how did that lead up to the conversation about him giving the houses to his daughter?

A. He knew I knew he gave her the land.

Q. What were his exact words?

A. I can't recall it now.

Q. Did he address the conversation to you or to the daughter?

A. Both of us.

Q. He was talking to both of you?

A. Yes.

Q. Now, then, he was sitting at the table and he and the daughter were discussing about how well these houses were going to pay and suddenly, out of a clear sky, he says "I am giving these houses to my daughter." Is that what you want us to understand the conversation was?

A. No, he was talking about the houses and he knew I knew that she had got the land, so he said he was building them for his daughter and giving them to her.

Q. Now, wasn't that what he said, that he was building them for her?

A. Yes, he said that.

Q. Yes, that is all. That is all.

By Mr. Cole:

Q. You in business, Mrs. Crouch?
A. No.
Q. Didn't you say at one time you had a store?
A. No. I lived next door.

MRS. ELLA MAUSER, sworn.

Direct examination.

By Mr. Cole:

Q. Where do you live?
A. 5125 Winchester Avenue, Ventnor.
Q. How long have you lived in Ventnor?
A. Well, I have lived in Ventnor and Margate and Atlantic City for about twelve or thirteen years.
Q. Do you know Mrs. Naame?
A. Yes.
Q. Do you know Mr. Doughty?
A. Yes.
Q. How long have you known Mr. Doughty?
A. I first met Mr. Doughty when he came down with a committee to appraise the value on my house which I was building, a bungalow, in Margate.
Q. When was that?
A. That was about, oh, I should say four years ago. I am not quite sure of the exact date of it, but I should say four or five years ago.
Q. Do you know Mrs. Naame?
A. Yes.

Q. How long have you known her?

A. I met her about six months after that.

Q. Ever visit their home?

A. Yes.

Q. How frequent were your visits?

A. Well, I used to go there and sometimes sit in the car out front while Mr. Naame was inside when he was doing the building for Mrs. Naame, and I was there for dinner a couple of times.

Q. Did you hear that there was some feeling between Mr. Doughty and Mrs. Naame because of Mr. Naame?

A. I didn't know anything about that until after I had had a talk with Mr. Doughty.

Q. Then you did learn about it?

A. I learned about it from Mr. Doughty.

Q. From Mr. Doughty?

A. From Mr. Doughty.

Q. When was that?

A. That was early last spring.

Q. Do you recall where you were when he told you?

A. Yes, I was in the Marine Trust Building.

Q. How did you happen to be there?

A. Well, I had had a little difficulty with some fire insurance and I understood that Mr. Doughty had placed this fire insurance with Collins, with Dan Collins, and it had been placed for fire insurance, placed on the mortgage which was carried by my estate. It is rather complicated to explain it.

Q. I don't care about that.

A. And I wanted the bill sent to my trustees for this fire insurance.

Q. That was the occasion of your going there. You saw Mr. Doughty?

A. So I called up Mr. Doughty on the telephone and asked him if I could talk to him about this, so he made an appointment with me to meet him in the Marine Trust.

Q. And you went there?

A. And I went there.

Q. Did you see him?

A. I met him in the main part of the building and he said "Come back into the directors' room." We went back in there and we talked about different things and I asked him about the fire insurance and while we were in the midst of talking about this, Mr. Burkard came in.

Q. Mr. William H. Burkard?

A. I don't know which. He said he was the president of the bank, and we sat and talked and Mr. Doughty and Mr. Burkard talked about their property up at the Inlet, whether they could get some of it and discussed that, and then Mr. Burkard left and after Mr. Burkard left Mr. Doughty came and sat next to me, his chair, and brought out some papers out of his pocket and among them was a clipping and he showed me this clipping and he said "Do you know about the trouble" he said "I am having with Isabel?" And I said, no, I didn't. And he gave me the clipping to read. I didn't have my glasses with me, so I couldn't read it, but he read me part of it and told me what it was.

Q. What did he read to you, can you remember, generally?

A. Why, it was about some lot that she had claimed that he had given her, this lot, and she was

trying to get the lot back, I think, and some improvements made, I just couldn't get head or tail of it.

Q. Now, proceed and tell us what Mr. Doughty said to you?

A. Well, he was very much excited and he used some oaths and said——

Q. I don't care about your using oaths if you can tell us the substance without, maybe the other side may want you to tell those, just leave out the oaths and tell us what he said to you?

A. Well, he said that "What do you think of this mess, G——, and this thing with it." And I said "I don't know what you mean?" Well, he said "This is a terrible thing," he said, I can hardly tell his conversation because it was mostly oaths.

Q. I would rather you wouldn't.

A. I would rather not, but, interspersed with oaths was that he swore about Mr. Naame.

Q. Give us the substance of what he said.

A. Well, the substance of that was that he said he didn't like Mr. Naame, he said he was a nigger, he wasn't a white man, and he said that he would like to see his body crushed on the ground, he said and like to wallow in his blood, and he rubbed his feet like that.

Q. Anything more at that time?

A. I said "Why, Mr. Doughty," I said "I always thought you liked Mr. Naame." "Like him, Hell," he said "I never liked him." And then he went on cursing. I said "You oughtn't to talk that way." He was saying how he didn't like him, how he was going to get every God damn cent back—pardon

me—he was going to get every cent back he had given to her.

Q. He had ever what?

A. Ever given to Isabel.

Mr. Richards: Given who?

A. Isabel.

Q. To whom did he refer when he used that word, Isabel?

A. He knew I would know it was his daughter.

Q. That is Miss Dobbin's Christian name?

A. Yes.

Q. Is that about all took place at that time?

A. Then, I said "Well, I came up here to see about my fire insurance and I don't really want to talk about it. I came up to see about the fire insurance." He said "All right, we will go in next door and look that up," so we went in next door and looked it up and outside I offered to take him anywhere he wanted to go in the car, my chauffeur was waiting, he said, no, he was going with Mr. Burkard, any time I needed any help or wanted any advice he would be very glad if I would call him up, he would be very glad to give me any advice and help me.

Q. Did you and he meet later and did you later refer to Mr. Naame?

A. Oh, yes.

Q. When was that?

A. Well, I should say it was about some time after that, he called me and said he would like to talk over something with me.

Q. He called you up?

A. He called me up, yes, and he came down to the house and my daughter opened the door and he came upstairs and we first talked about boating—I live in a boat house—talked about the water outside, about boating and things like that and then he turned to me and he said, "You know," he said "I think you and I have gotten a damn rotten deal." And I said "What do you mean?" Well, he said, "I think" he says "we ought to stick together." I said "How stick together, Mr. Doughty?" He said "I will tell you what I think." He said "You ought to sue Isabel for alienation of affections." I said "I couldn't do that because after all Mr. Naame has just been a friend of mine, a friend of my husband's and I have known him for a good many years. There is no question of affection outside of friendship." And then he swore some more and said I was too damn soft.

Q. Had you and Mr. Naame been friends before that time?

A. We had been friends for about eight years.

Q. Where was this boat house?

A. 5125 Winchester Avenue.

Q. Did you ever thereafter meet and have any talk about either Mr. Naame or Miss Dobbin?

A. The next time I met Mr. Doughty was at a sale of Warner Lindsay's over on the beach front, I can't remember the avenue, but a sale of personal property, and we talked about property values, but nothing as regards——

Q. No reference to Mr. Naame or this?

A. Nothing in reference to Mr. Naame.

Q. Have you related all the conversation you have

had with Mr. Doughty as far as Miss Dobbin, now Mrs. Naame, and Mr. Naame were concerned?

A. One time when we were on a boat together and Mr. Doughty and Mrs. Naame, who was then Miss Dobbin, my daughter and her brother and his wife, were out in the bay and I was sitting alone talking with Mr. Doughty in the back of the boat and I was telling Mr. Doughty about the trouble I was having about my husband's estate, about under the Pennsylvania law the widow gets half and it was hard for the widow to get her husband's money, and he said "For that reason I haven't made a will. I have taken care of Isabel during my life, so if I die she will be well provided for."

Q. Can you fix the date when that was?

A. I should say that was towards fall, latter part of August, 1927.

Q. What waters were you boating on?

A. We were going up in the bay.

Cross-examination.

By Mr. Richards:

Q. Isabel ever tell you before this conversation there that Mr. Doughty had deeded to her these properties uptown?

A. No.

Q. Did you know to what he referred when he said he had taken care of her?

A. I judged; I had heard the hearsay, of course.

Q. You had heard and you knew that he had——

A. I took it for granted what it was.

Q. ——deeded these various properties to her?

A. Yes.

Q. And you knew it was that to which he referred?

A. I judged so.

Q. Now, on this occasion, up at the Marine Trust Company, did Mr. Doughty tell you that he had already brought suit against his daughter?

A. I can't recall that he just said he brought suit. As told me there had been a suit. I had been south and that is how I didn't know anything about it. I had been to Miami about six weeks and he brought the notes of testimony out of his pocket and read me some of the things that had taken place at a former trial, which was all news to me, I didn't know anything about it.

Q. Now, are you sure about that?

A. Yes.

Q. That it was notes of a trial?

A. Some kind of typewritten notes and he read different portions to me where they had said Mrs. Mauser was in Miami. He said "got your name here, Mrs. Mauser is in Miami."

Q. That has to do with this controversy between his stepdaughter and himself?

A. Well, it was just in the conversation.

Q. I know, but what I am anxious to get at is, you say he read you some notes of testimony?

A. Well, I would call it notes of testimony; I may be wrong.

Q. It was something of that kind?

A. Yes.

Q. Typewritten sheets?

A. Yes.

Q. That related to a court proceeding?

A. Yes.

Q. And that court proceeding related to this fight between his stepdaughter and himself?

A. Well, now, that I can't say.

Q. What did it relate to, Madam?

A. Well, he just brought in, he said "They mention your name here." I didn't know what he was talking about in this thing because I was more concerned about my fire insurance, I really wasn't so very much interested.

Q. As a matter of fact, you were intent on getting your fire insurance fixed up and you were not intent on listening to any of this argument at all, were you?

A. It was only when he made threats over a person, about what he was going to do and what he would wish to see Mr. Naame's dead body, and so on—I couldn't help but hear that.

Q. As a matter of fact, you woke up and paid a little more attention when he addressed his remarks toward Mr. Naame and what he thought of Mr. Naame than you had about this trial, wasn't that so?

A. He talked more against Mr. Naame than he did about Isabel.

Q. So that you paid more attention to the Naame conversation than you did to the conversation so far as it related to Miss Dobbins, didn't you?

A. Well, I only paid attention to that which he talked about. He talked more about Mr. Naame than about Miss Dobbin.

Q. And that was naturally what impressed you, wasn't it?

A. Yes, when somebody says, would like to wipe

their feet in somebody's blood, that certainly makes an impression.

Q. And when he said Naame was a nigger and wasn't a white man, that kind of got your goat a little bit, too, didn't it?

A. Didn't get my goat, no.

Q. But it just did impress you?

A. I heard it.

Q. In fact you lost interest in your insurance problem right there and then, didn't you?

A. Not especially.

Q. You were still thinking about your insurance notwithstanding these remarks?

A. Yes.

Q. Then what was it that made you remember that he said that he was going to get every cent back that he had given Isabel?

A. Well, I told him I didn't think that was very nice or very kind.

Q. What did you think he meant by that?

A. Well, I felt that he was sore about the whole thing and I said "Why that isn't nice to take that away, Mr. Doughty," and I tried to calm him down, because I have always been fond of Mr. Doughty.

Q. Did he say he loaned her a lot of money?

A. No.

Q. Did he say he had given her a lot of money?

A. No.

Q. He just said he was going to get his money back?

A. Yes, he said he was going to get every God damn cent he had ever given her, back.

Q. Are you sure that he said "given"?

A. Yes.

Q. He didn't say in what connection he had given it to her?

A. No.

Q. And that part interested you, didn't it?

A. I didn't think it was fair.

Q. Why?

A. Well, she had been a daughter to him and he had no children of his own, he had no wife, why shouldn't he give her anything?

Q. Were you particularly interested in her?

A. Well, I pride myself on being a little broad-minded.

Q. Quite true, but being broad-minded, what did you think about it was unfair if he wanted his money back?

A. Well, I adopted a daughter of my own and I feel as long as she treated me right I would want to do right by her and I felt Mr. Doughty should do the same thing.

Q. In the meantime Miss Dobbin had married Mr. Naame, hadn't she?

A. Yes.

Q. Didn't you think Mr. Naame was capable of taking care of his wife?

A. I suppose he was, but still——

Q. All right, then, what was so unfair in Mr. Doughty getting his money back?

A. Why should he get it back? Hadn't she done everything for him?

Q. What had she done for him?

A. What had she done for him?

Q. Yes.

A. Well, her mother was his wife.

Q. And that would make her the stepdaughter?

A. Responsible, I should say.

Q. There was no blood relationship between them, was there?

A. No, not that I know of.

Q. What was it then that his daughter or step-daughter had done for him that you thought it was unfair for him to get his money back?

A. Well, if he had thought enough of her to give her the money, what had she done to make him want her to give it back, I couldn't see any crime in her marrying a splendid fellow, I couldn't see any crime in that.

Q. You didn't know what the reason for that was, did you?

A. No.

Q. You probably wouldn't agree with Lear either about the sharpness of the serpent's tooth, would you?

Mr. Cole: Objected to.

The Court: Sustain the objection.

Q. Anyhow, you think it is unfair to try to get back something that you had given to a foster child, is that correct?

A. Well, I have never been an Indian giver and I don't think it is sporty of anybody else.

Q. How long had you known Mr. Naame?

A. About seven or eight years.

Q. Knew him very well?

A. Yes.

Q. Before he married Miss Dobbin he was in your company a great deal, wasn't he?

A. Yes.

Q. Visited down there at your bungalow?

A. Yes.

Q. Stayed there some length of time?

A. Yes.

Q. How long?

A. Well, I should say from the time that they rented their home and they took a smaller house and there wasn't room, enough bedrooms and then he came down to stay at our house.

Q. How long did he stay there?

A. Well, I should say from that time on he was there about three years.

Q. Three years he lived in your house?

A. Yes.

Q. He was a frequent visitor on board your boat, wasn't he?

A. Yes.

Q. And you and he took trips together on the boat, didn't you?

A. He owned more of the boat than I did.

Q. He was a part owner of the boat, wasn't he?

A. Yes.

Q. This was a cabin cruiser?

A. Yes.

Q. You and he went off on trips in the boat?

A. Yes.

Q. Stayed some length of time?

A. Surely.

Q. And all this continued up until the time he suddenly decided to marry Miss Dobbin, didn't it?

A. I don't know how suddenly he decided to marry her; I don't know about that.

Q. Well, it was rather sudden as far as you were concerned, wasn't it?

A. No.

Q. You had some intimation about it?

A. Yes.

Q. How long?

A. Oh, I had known it possibly almost a year.

Q. Before he married her?

A. Yes.

Q. Was he still living at your house then?

A. Yes.

Q. When did he leave there before he married Miss Dobbin?

A. Oh, I should say about six months or eight months.

Q. Within four or five or six months after he met Miss Dobbin, why, he ceased to live at your house, didn't he?

A. Oh, no.

Q. What?

A. No.

Q. Well, now, he knew her about a year and he ceased to live at your house about six months, four to six months you said, now, which is it?

A. He knew Miss Dobbin a good many years.

Q. He did?

A. Surely.

Q. Well, he began to pay marked attention to her just about a year before he married her, wasn't it?

A. Well, possibly.

Q. Up to that time their relations had been entirely that of contractor and client, wasn't it?

A. I couldn't say that.

Q. Now, you are still friendly with Mr. Naame?

A. Yes.

Q. When you talk about this being an Indian gift, would you still like to see Mr. Naame share in this money if the Naames can hold on to it?

A. I don't quite understand your question.

Q. You don't? Well, you would like to see them win this case, wouldn't you? You would like to see them succeed in this lawsuit?

A. Well, surely.

Q. On this occasion, Mr. Doughty came down to your house, you had a pleasant conversation?

A. Yes.

Q. Wound up pleasantly?

A. Yes.

Q. When he went away he wasn't mad or provoked at you?

A. I am pretty hard to quarrel with.

Q. But was he ready to quarrel with you?

A. I don't think so, no.

Q. He was—he went away in a pleasant frame of mind?

A. Sure.

Q. And you were in a pleasant frame of mind?

A. Yes.

Q. No reason for any coolness between you?

A. No.

Q. And you wasn't provoked at anything he said, were you?

A. No.

Q. Now, he had said to you that he thought you and he were getting a rotten deal?

A. Yes.

Q. Now, what did you think he meant by that?

A. Well, I thought possibly he misunderstood the situation.

Q. What did you think he misunderstood?

A. Well, I thought possibly he was under the impression that Mr. Naame was more than a friend to me, which he was not.

Q. You thought Mr. Doughty thought that during the time that Mr. Naame had lived at your house that you had been on intimate terms?

A. Yes.

Q. How do you suppose he got that impression?

A. Well, I don't know what made him think that.

Q. And when he rather boldly suggested that was the fact and that is what you understood him to mean, you didn't resent it?

A. Yes, I did.

Q. I know, but you say you left on friendly terms?

A. Surely.

Q. When an almost stranger comes to you and suggests that you have been living on intimate terms with another man, do you mean that you can part with that gentleman on friendly terms?

A. Yes.

Q. You can?

A. Yes.

By Mr. Cole:

Q. You spoke about Mr. Doughty having some typewritten matter which he either showed to you or read to you from, about some case. Do you recall there was anything said in that about a boat?

A. Yes.

New Jersey State Library

Q. Was the name of Mr. Satanov used, if you can recall?

A. I believe it was.

Q. What?

A. I believe it was.

Q. Do you know Mr. Satanov?

A. No—yes, I do; pardon me.

Q. Is he in court here?

A. I think he is back there.

Q. Sitting over there, isn't he?

A. Yes.

Q. Do you recall whether that testimony that he read to you or what he said to you was about some controversy between Mr. Satanov and Mr. Naame about a boat?

A. I don't recall that he mentioned Mr. Satanov's name in connection with the boat but he just said, he said there was a case came up, he said, "You have been in Miami, haven't you?" I said, "Yes, I have been away, I have been south." He said, "There was a case here, they said you were in Miami, and the case came up, something about a boat," and that is all I remember, something about a boat, and folded up the paper and put in his pocket and that is about all was said about that.

Re-cross examination.

By Mr. Richards:

Q. Mrs. Mauser, how was it that you couldn't remember when I asked you about this paper that the controversy related to a boat until Judge Cole called it to your attention?

A. I had really forgotten it, but I remember now.

Q. All of this conversation that took place in the Marine Trust Company has disappeared out of your mind except the two statements against Mr. Naame and the one statement in which you can remember that Mr. Doughty had said that he was going to get every cent back that he had given Isabel, is that the fact?

A. I remember those statements very plainly.

Q. Those are all that you can remember?

A. No, those aren't all that I can remember.

Q. Unless your memory is jogged by Judge Cole?

A. No, but I wasn't especially interested in that typewritten sheet and didn't have my glasses with me and couldn't read it.

Q. It related to this boat?

A. Mr. Doughty read a couple of little extracts, one they said I was south and something about a boat.

Q. What happened to your boat in the meantime?

A. What happened to it?

Q. Yes.

A. I sold it.

Q. To whom did you sell it?

A. To Mrs. Naame.

Q. What?

A. Mrs. Naame.

Q. Oh, Mrs. Naame? That is you sold your interest in it?

A. Well, I practically didn't have any interest in it any more, a very small amount.

Q. How much did Mrs. Naame pay you for the interest in the boat?

A. I don't just remember.

Q. You can't recall that?

A. No.

Q. When did she buy it from you?

A. Oh, possibly six months ago, five months ago, I can't just recall exactly.

Q. You can't remember what Mrs. Naame, about six months ago, paid you for your interest in the boat?

A. No.

Q. Did the boat go with Mr. Naame?

A. Pardon?

Q. I say did the boat go with Mr. Naame?

A. I don't quite understand.

Q. When Mr. Naame left you or your house and went and married Miss Dobbin, why it seems that the boat changed ownership, too?

A. Well, I will tell you, Mr. Naame had paid all the expenses on the boat and he had kept it up and he had used it where, within the last year and a half, I hadn't used it at all, so I really didn't consider that it was mine.

Q. Did you have any kind of a lien on the boat?

A. Yes.

Q. What was it?

A. A mortgage.

Q. Chattel mortgage on the boat, wasn't it?

A. Yes.

Q. What happened to the chattel mortgage?

A. Oh, I cancelled everything.

Q. You did?

A. Yes.

Q. How much was the chattel mortgage for?

A. I really don't remember.

Q. You don't remember that?

A. No.

Q. Well, when the mortgage was made you took an affidavit as to the amount that was the real consideration, do you remember what your affidavit said?

A. No, I don't remember.

Q. Who gave you the chattel mortgage?

A. I think Mr. Naame.

Q. Why did he give you a chattel mortgage on the boat?

A. Well, I—he owed me some money.

Q. How much did he owe you?

A. I couldn't say.

Q. You can't remember that?

A. No.

Q. Perhaps, Madam, I can refresh your memory, was it $22,500?

A. I really couldn't say.

Q. Was it twenty thousand dollars?

A. I really couldn't tell you.

Q. Was it fifteen thousand dollars?

A. I really couldn't tell you.

Q. Was it twenty-five thousand dollars?

A. I can't tell you. I don't remember.

Q. Do you mean to tell this Court, do you mean to say that you can't tell this Court how much money it was that Mr. Naame owed you and for which he gave you this chattel mortgage?

A. No, because it was different odd sums at different times and we were out in real estate, we were twisted up on this thing and that in back and forth, that I really couldn't.

Q. And you can't tell how much was put in the chattel mortgage?

A. No, I really couldn't tell you that.

Q. Well, was it five thousand dollars or ten thousand dollars?

A. I don't know.

Q. Or $22,500?

A. I really don't remember.

Q. You couldn't give any amount?

A. No, really, I am on oath and I couldn't remember.

Q. And you couldn't remember whether it was a thousand dollars or twenty thousand dollars?

A. No.

Q. Are you a business woman, Madam?

A. Well, kind of a one.

Q. You have dealt around in real estate quite a little, haven't you?

A. Yes.

Q. You own real estate?

A. Yes.

Q. You have considerable property, still have?

A. Yes.

Q. And you collect rent from it?

A. Yes.

Q. And you keep books of account?

A. Of a kind.

Q. Well, they are enough to make up your income tax returns, don't you?

A. Well, I have an accountant do that for me.

Q. Well, he gets his information from what books you keep, doesn't he?

A. Well, from mostly what I tell him. I keep books, of course, my daughter keeps the books.

Q. Are you able to tell what rents you have collected?

A. Yes.

Q. How often does the accountant get this information from you?

A. Well, every year.

Q. Every year when he makes up your income tax?

A. Yes.

Q. Well, also, of course, you tell him about your expenses?

A. Yes.

Q. To charge against your income?

A. Have been about the same for the last twelve years, so I have memorized them to this time.

Q. It isn't what they were for years ago, what they are this year?

A. Same.

Q. Same expenses?

A. About the same, yes.

Q. And you are able to repeat those and tell him that?

A. After twelve years I should be able to.

Q. So that when he comes around to make up your income tax you tell him what income you got by way of rents?

A. He consults last year's.

Q. Last year's return?

A. Last year's return that he has.

Q. Makes it up from that?

A. He helps himself from that.

Q. But you tell him what money you got in during the year?

A. If I reduce any rents, something like that.

Q. You give him the paper giving your expenses, that is right?

A. I have made a list out of those.

Q. You are able to remember that, aren't you?

A. No, I couldn't tell you offhand what my taxes are, even on the buildings.

Q. But you got your tax bills for that, haven't you?

A. Sure I can show that.

Q. At the time that this chattel mortgage was cancelled how much money did you get? Did Mr. Naame pay you or Mrs. Naame?

A. I can't just recall.

Q. Wasn't it the same amount that he owed you?

A. Well, in the meantime we had had other financial dealings and things of that kind of ——

Q. Kind of what?

A. Kind of mixed up.

Q. They were? Well, did you have—did you try to straighten them out?

A. Well, I guess I am not much of a business person.

Q. Just you just let him—was there a difference? Did you get back a less amount than the amount of the mortgage?

A. I was satisfied.

Q. I am not asking you that. I am asking you to answer my questions. Did you get back a lesser amount?

A. I don't recall.

Q. You don't recall whether you got more back or less?

A. No.

Q. Or the exact amount?

A. No.

Q. Then how do you remember to tell your accountant what to put in your income tax return?

A. Well, I just ignored little things like that because mostly losses anyway.

Q. If you got back this $22,500 that wouldn't have been a loss, would it?

A. It would be a big loss in my estimation, greatest loss in there.

Q. You did?

A. Yes, it was more than you have mentioned.

Q. More than $22,500?

A. No.

Q. Then there must be something either wrong with your income tax return or something wrong with your memory, now, why can't you tell us? Didn't you put this in your income tax return?

A. I don't recall it.

Q. No question about this?

A. No. I must have completely forgotten that.

Q. Well, didn't your accountant ask you about it?

A. No.

Q. Who is your accountant?

A. Mr. Singer.

Q. Where is his office?

A. In the Schwehm Building.

Q. Certified accountant?

A. Yes.

Q. You didn't tell him anything about this chattel mortgage transaction?

A. No, I did not.

Q. That was a matter you thought was entirely between you and Mr. Naame?

A. Never entered my head.

Q. That wasn't what I asked you. I said that

was a matter which you thought was between Mr. Naame and yourself, is that right?

A. I didn't think of it.

Q. You didn't think that?

A. Didn't think that, never even thought of it.

Q. And you never even thought and can't think now whether or not you sustained a loss on that transaction?

A. No, never did.

Q. Nor how much the loss was?

A. No.

Q. All you can remember was that in the Marine Trust Company, after this suit was started, Mr. Doughty said he would like to wipe his feet in Naame's blood, that he was more than a nigger than a white man and that he had, that he was going to get back the money that he had given to Isabel?

A. Yes.

Q. Now, when did you report this conversation to Mr. Naame?

A. Report this conversation to Mr. Naame?

Q. Yes.

A. I don't recall that I ever reported the conversation to him.

Q. You never told him about it?

A. No.

Q. Did you tell Mrs. Naame about it?

A. No.

Q. Who did you tell about it?

A. I told Mr. Salsburg about it.

Q. When did you tell him about it?

A. I think it was that same night or the next night.

Q. What did you do, call him on the telephone?

A. No, I am a friend of the family and I was spending the evening there.

Q. Mr. Paul Salsburg here wants me to ask you which Salsburg it was?

A. Mr. Jacob Salsburg.

Q. His brother?

A. No, his uncle.

Q. And it was to him that you told this conversation?

A. Yes, and his wife.

Q. What did you tell him?

A. Well, I said, I generally told him—he advises me frequently as regards different things that come up in business because, as I say, I guess I am not much of a business woman, so I go to Mr. Salsburg for advice, and I told him that I was in a quandary about my fire insurance so I called up Mr. Doughty today and I met him in the Marine Trust. He said, "Did he mention anything about the trouble they have been having?" I says, "Yes, he said plenty." He said, "What did he say?" I said, "Well, I don't like to repeat." He said, "Well, you can tell my wife and I, we won't say anything about it." Well, I said, "I think I better not say what was said because I would rather not tell it," so finally they looked a little hurt to think I was keeping something from them, so I then repeated the conversation to them.

Q. And that was the conversation that you had at the Marine Trust Company?

A. Yes.

Q. That is all the conversation you told them about, is that right?

A. About the fire insurance.

Q. And about the fire insurance?

A. I repeated the whole thing.

Q. I mean all the conversation that you discussed with them was the one you had had the day before with Doughty in the Marine Trust Company?

A. Yes.

Q. Now, did you talk to Judge Cole about this case?

A. Yes.

Q. When did you talk to him?

A. Yesterday morning.

Q. He presumably knew then all about this conversation, didn't he?

A. Yes.

Q. Asked you if it was true, etc., and you told it to him again?

A. I really, to be quite honest with you, I was out of town last week and when I came home late at night Mr. Naame called up and asked me if I would be a witness for him. I said, "Yes, can you tell me what it is about?" and he said, "Oh, the same old trouble," or something to that effect and I said, "All right, I will do what I can for you." I said, "At least I will tell what I know; I will tell the truth," so I was to go up to see Judge Cole in the morning, so I went up to Judge Cole's office yesterday morning to find out what it was about. Up to that time I was rather inclined to think it was about the Satanov case because I was out of town, I had been attending to my husband's estate up in the country and I thought it was about this Satanov affair, as I had had several conversations with Mr. Satanov and thought he called me to tell me of my conversations with Mr. Satanov, so when I went in

and Judge Cole said that I should come in his office, I went in and I said I had come up to talk with him to find out what it was about that he wanted me as a witness.

Q. What they wanted you to testify to, is that what you said?

A. Wanted me as a witness, and so I told Judge Cole several little things. He said, "Well," he said, "now I don't think we will need you today." He said, "If we need you at any time we will send for you."

Q. Well, the several things you told him about was the Satanov case, is that it?

A. I mentioned them, I think I mentioned, I thought it was about the Satanov case, I am not quite sure I said that; it was in my mind.

Q. The Judge say to you that wasn't the case he was interested in?

A. No, I don't recall that he made any comment. I may not even have mentioned the Satanov case, I may have said I don't know just what case it was.

Q. What, you haven't told us—was—the question I asked you and that is I asked you what you told Judge Cole about this case?

A. Well, I told him that if there was anything that I could do for either side, I said, "I like Mr. Doughty, I like Mr. Naame and Mrs. Naame, I have nothing against them, but," I said, " I am willing to tell what is right."

Q. Did Judge Cole ask you some questions then?

A. Yes.

Q. What did he ask you?

A. He asked me when I had had any conversation with Mr. Doughty and I told him the first conversa-

tion that I thought I had with Mr. Doughty on the boat in 1927, year before last, summer before last, and I told him just what I have told you.

Q. Now, when he said, "Have you had any conversations, have you had any conversations with Mr. Doughty?" what did you think Judge Cole meant, what kind of conversations?

A. Well, I didn't really think.

Q. But you told him that you had a conversation with Mr. Doughty on the boat and that he had said that he was going to take care of Isabel, is that right?

A. Yes, that is right.

Q. And then he said go on?

A. No, he didn't say go on.

Q. Didn't he? What did he say?

A. He said, "If we need you we will let you know."

Q. Is that all the conversation?

A. That was practically all.

Q. That you had gone out on the boat and that he said he was going to take care of Isabel?

A. Well, naturally we talked about other little things.

Q. That is what I am trying to get at, Madam; then did he ask you to go on and tell about some more conversations?

A. No.

Q. Was that the only conversation you told to Judge Cole?

A. He didn't ask me to go on. I went on of my own accord and told him a few things.

Q. You went on yourself?

A. I went on myself and tried to recall the different conversations.

Q. You stopped. I thought you were through. What else did you tell Judge Cole?

A. Well, I told him that about this conversation I had with Mr. Doughty in the Marine Trust, about that.

Q. You told him that conversation?

A. Surely.

Q. Tell him anything else?

A. I told him practically what I have told you.

Q. Did you tell him about Doughty coming down to your house?

A. Yes.

Q. Tell him all three of those conversations?

A. Yes.

Q. Did you tell him any other conversations?

A. No, I don't believe I did.

Q. Now, Madam, you see if I am stating fairly what happened; if I don't, why you stop me. Mr. Naame asked you to go up to Judge Cole's office. You went up to Judge Cole's office and you were invited into his private office and the Judge asked you or you told the Judge, as I understood you to say, that you were willing to testify to anything you knew. Is that correct?

A. Yes.

Q. Had, up to that time, Judge Cole said anything to you?

A. I can't recall that he did. He sat back in his chair just looking at me.

Q. For which I don't blame him. But you knew what case you was there about, didn't you?

A. Oh, yes, surely.

Q. You knew that it was about the controversy between Mr. Doughty and his stepdaughter?

A. After I got there I knew it.

Q. How did you find that out?

A. Well, I mentioned Mr. Doughty's name, of course.

Q. I know but you said Judge Cole just sat there and looked at you?

A. Naturally he didn't sit there.

Q. What I am trying to find out was what Judge Cole said to you that elicited these responses which you made?

A. You know when a woman talks she doesn't give a man much chance to say anything.

Q. Perhaps not, but that is not Judge Cole's way. He always get his chance in. Now, what was it that Judge Cole said to you that started you off?

A. I think I asked him first just what is it you wanted to talk to me about?

Q. Now, then what did he say?

A. He said, "We want to find out what you know as regards any conversations you had with Mr. Doughty," and then I started to talk.

Q. And you started to talk?

A. Yes.

Q. Now, this thing all occurred ——

A. And I don't think he got in a word after that.

Q. He just got an earful? When was it this thing occurred, Madam?

A. What thing occurred?

Q. This conversation?

A. Yesterday morning.

Q. Before court?

A. Yes.

Q. Now, surely you can remember all that occurred as late ago as yesterday morning, can't you?

A. Well, I hope so, but I had a good bit on my mind. This wasn't the most important thing to me. This wasn't the most important thing to me.

Q. Yes, but it is important that you recollect as nearly as you can the various things that may be important with these people here.

A. I have Mr. Singer working for me now up in Pennsylvania and I was very anxious to get back.

Q. You were here yesterday, weren't you?

A. Oh, yes, but I wanted to go back.

Q. You are here today?

A. You see I have my apartment house to attend to.

Q. Now, we are getting off the subject. Judge Cole asked you what you knew about Mr. Doughty, is that right? Is that it?

A. No, he didn't ask me what I knew about Mr. Doughty.

Q. What did he say?

A. That would be a very strange question to ask me what I knew about Mr. Doughty.

Q. What were the words he asked? I thought that was what you told me a minute ago.

A. He asked me what I knew as regards any conversations I had had with Mr. Doughty as regards Mr. Naame's affairs.

Q. All right. Now, that was the question that he wanted to know what conversations you had had with Doughty about Mr. Naame's affairs?

A. Yes, something to that effect. I can't give the exact words.

Q. And then you went on?

A. I told him all the conversations I had had.

Q. What you said was, "Well, I know that in nineteen—I know that some time ago Doughty on the boat"—I think you said 1927, didn't you? You said, "I know that in 1927 we were out on the boat and Mr. Doughty said that he was going to take care of Isabel, and I know that last spring I had a conversation with him in the Guarantee Trust Company about my insurance" ——

The Court: Marine Trust Company.

Q. ——"Marine Trust Company about my insurance and at that time he stated that he was going to get back every"—I think you said—"damn cent that he had given to Isabel?"

A. Yes.

Q. "And I know that he came down to my house, after telephoning to me and said that you and I are getting a rotten deal." Now, that was what you told Judge Cole, is that correct?

A. Yes.

Q. And also you have testified, Madam, heretofore that you had not talked to anybody else about this matter except to Mr. Salsburg and that was about the Marine Trust Company conversation?

A. Yes.

Q. And you have also testified that you didn't know what this case was about when you went up to Judge Cole's office?

A. No.

Q. And you have testified that you thought it related to a lawsuit between Mr. Satanov and Mr. Naame?

A. Yes.

Q. Then will you explain to us how it was that you happened to remember, right off the bat, of all the conversations that you may have had with these people, the one single incident to which your attention had not been directed, to wit, that Mr. Doughty had said that he was going to take care of Isabel?

A. Well, he asked me what I knew about any conversations I had had with Mr. Doughty as regards Mr. Naame and Isabel and that brought up to my mind—it made a very vivid impression on me—so far as anybody trampling in blood.

Q. You didn't know anything about this lawsuit?

A. No.

Q. And this lawsuit is about whether or not Doughty gave or loaned certain money to his stepdaughter? And you didn't know anything about that?

A. No.

Q. Notwithstanding that, when Judge Cole asked you this very general question if you knew any conversations, you knew that he had promised the girl to take care of her in his will, you knew that he said he was going to take back every damn cent he had given to her and you knew that he said, "You and I are getting a dirty deal?"

A. Yes.

(Recess taken to 1:15 P. M.)

AFTERNOON SESSION.

(Trial of the cause resumed at 1:15 P. M.)

JOSEPH S. NAAME, sworn.

Direct examination.

By Mr. Cole:

Q. Are you the one who had the contract with Mr. Doughty to make improvements to property in the vicinity of New Jersey and Baltic Avenue?

A. Yes, sir.

Q. Will you state the location of the land and the character of the buildings before any improvements were begun?

A. When I first looked the site over to give Mr. Doughty an estimate on the price of these buildings, the lot itself is 150 feet on New Jersey Avenue and extends back a hundred feet. Now, on the corner of New Jersey Avenue, that would be the northwest corner of New Jersey Avenue, there was an old saloon and above that was a large room which was used as a meeting room, adjoining that, under one roof, there were two apartments.

Q. On which street adjoining?

A. On New Jersey, adjoining on New Jersey Avenue there was two houses or apartments. Now, the

saloon and the room above it were vacant at the time I looked at them. That was around the fall or winter, Judge, of 19—no, it was around the summer of 1925. And the two apartments were rented at the time, but the tenants were moving out or been served with notice or something, I don't remember the details, but they were vacating at the time I looked at it. Back of that there are two separate houses consisting of two apartments each.

Q. Back of that on what avenue?

A. On New Jersey. I should have stated on Baltic Avenue, adjoining the corner on Baltic Avenue.

Mr. Salsburg: How many feet on Baltic?

A. One hundred feet on Baltic I meant to say. I said New Jersey, 150 feet on Baltic and one hundred feet on New Jersey running north.

Q. Now, were those buildings, these several buildings you have mentioned, were they immediately adjacent to one another or was there some space between?

A. The saloon and the two houses on Baltic Avenue were adjacent, nothing dividing them but brick party walls. The two houses in the back are separated by a small alley each.

Q. Now, on which property or properties did your contract first operate, your first contract operate?

A. The first contract was to operate on the eighty-five to ninety feet, I don't know which it was, immediately on Baltic Avenue just adjacent to the corner buildings.

Q. What did you do there?

A. I built two apartments similar in character to the ones that I had just finished for a concern by the name of U. G. S. Robinson and Company.

Q. Did you complete that entirely before you began under another contract?

A. To the best of my recollection I think I had finished all those apartments, yes.

Q. What was the next thing you did?

A. The next thing I did was to build these two apartments for Mr. Doughty.

Q. On which street was that?

A. On Baltic.

Q. And you completed that job?

A. Yes.

Q. What became of the saloon?

A. I completed the two apartments first and then after they were completed we altered the character of the corner building entirely to make it correspond with the form of buildings I had just constructed.

Q. In all how many contracts had you?

A. I had two at that time.

Q. With relation now to the property in that vicinity, at Baltic Avenue?

A. Yes, two contracts.

Q. How long were you there doing that work? When did you begin and when did you complete the whole transaction?

A. I began some time during the summer of 1925 and the first building was open somewhere around the first of the following year, which would make it in January of 1927—1926. The second apartment, that is the corner alteration, I began about some time in March, I believe, of the same year, 1926.

Q. And completed when?

A. And completed approximately five to six months later.

Q. And had they been entirely completed before you began work on the Ohio Avenue apartment?

A. Completely finished and running and operating.

Q. Now, have you some knowledge about the placing of mortgages on the uptown or New Jersey and Baltic property?

A. I have all the knowledge, yes, sir.

Q. Now, state about the placing of those mortgages, what apartment they covered and when they were placed and what you know about the disbursal of the money?

Mr. Richards: I object to that, if your Honor please. Doesn't seem to me it is material what he knows about the placing of these mortgages. There is no denial that the mortgages were placed and there is no issue in which they are in issue.

Mr. Cole: His story will be a different story, I think, from what Mr. Doughty told and will be significant, I think.

The Court: Will permit it.

A. The first contract I had for the two apartments were effectually completed and no mortgages whatsoever on them in the beginning. They were in operation from 1926, January of 1926, to 1927, without any mortgages. In the summer of 1927, or, I would say, spring or summer of 1927, no mortgages whatsoever on them. The very first mort-

gage was placed on the old corner saloon which we called it. That mortgage was in the amount of $35,000. That mortgage was gotten about, I can't definitely say, but I am positive I hadn't received more than one payment before that mortgage was taken. The mortgage was taken primarily to pay me for the amount of the work I done there. That is that corner building. There was no mortgages placed there or any talk of mortgages whatsoever on any of the buildings until I started the Ohio Avenue apartment. I talked that over with my present wife and decided the size of the building and one thing another and the financing of it. At the time that Mr. Doughty talked about mortgaging those properties. We mortgaged those properties in 1927, I believe one was placed in July and one in October, to the best of my recollection, in the summer and fall of 1927, and that was to defray the difference in the cost of the Ohio Apartments, I mean by difference, the rest of the money.

Mr. Richards: I object and ask that be stricken.

The Court: Yes, let that be stricken.

A. Strike what?

Q. Just a moment. You have told us about the first mortgage placed on the saloon?

A. Yes, sir.

Q. Where was the second mortgage placed, what property?

A. The building adjacent to the saloon, I don't remember which one, I couldn't tell you which one in order, because was numbered 711, 13, 15 and 17.

Q. Do you recall the amount of the mortgage?

A. The amount of the mortgage was $25,000.

Q. Each of them?

A. No, one was for $25,000 and one for thirty-five.

Q. Now, how long had you been under way with the Ohio Apartment when the first of the two mortgages were placed, when the first of the two mortgages on the property adjoining the saloon?

A. From three to four months.

Q. Now, was the first mortgage that had been placed, the one on the corner, afterwards paid off?

A. Before these new mortgages were placed that old one had been paid off, yes. sir.

Q. By the old one you mean covering what property?

A. What was the saloon.

Q. Do you know how that was paid?

A. Paid off by two notes, one given and signed by my present wife, Mrs. Naame and one given to Mr. Doughty in the amount of fifteen thousand dollars, because he wanted to discount it in the Guarantee Trust and she had no account there.

Q. Now, was that first mortgage then paid off with the proceeds of those two notes?

A. Positively.

Q. And did you know, of your own knowledge, to whose credit the proceeds of the two mortgages which followed went, to whose credit?

A. To my wife's credit.

Q. Do you know whether the checks that have been offered here, I think the checks offered here drawn by your wife, were they drawn from the proceeds of those two mortgages, if you know?

A. The only one I know that was drawn from

the proceeds of the mortgages is the one for $25,000 which she loaned him for a few days and got back, I think, within three or four days. Now, I might say that I know these things because I kept the books, both, and my knowledge from running the apartments, keeping the books for them and asking what I didn't know from Mr. Doughty, himself.

Q. When did you first meet Mr. Doughty?

A. In the summer of 1925.

Q. Under what circumstances?

A. Very peculiar.

Q. What were they?

A. Mr. Doughty, it seems, had been looking for me for over a week or two, it was during the summer and I, for the time being, I don't believe I had any work, I was doing on, and I was taking it easy, so he spoke to my girl, my stenographer, told me there was a very peculiar man in here, in and out all day asking for me.

Q. Did that result in his seeing you and making this contract?

A. Yes.

Q. At that time did you know your present wife?

A. No, I had never met her.

Q. When did you first meet your present wife?

A. After I had signed the contract with Mr. Doughty.

Q. Now, do you know, of your own knowledge, from—to whom the rents on these properties uptown were being paid at the time you made your contract?

A. All the rents were collected by my wife and handled solely by her.

Q. Do you know what she did with them?

A. Yes, I could tell you what she was doing with the money.

Q. Did they go into her bank account?

A. Oh, yes, positively into her bank account, yes.

Q. Now, was there any change made, and if so, what, if you know, touching the collection of rents from the original properties after you made your contract for the improvement?

A. There was no change in the new apartments that I constructed because the minute they were finished my present wife operated and ran them and handled all the money, deposited to her own credit and used the money toward her own use and disposed of it in her own way.

Q. I am assuming you are talking now what you know. Do you know whether, after these buildings were completed, any of the rents were being collected by Mr. Doughty?

A. Yes, there was, only thing was collected by Mr. Doughty is the three rents out of the four in the back of the original saloon building.

Q. What do you mean by the three rents?

A. There were four apartments in those two houses, two separate houses next to each other, each one had an upstairs and downstairs, which made four families living in those houses. The three houses that he collected the rent and also did because they were rented by C. J. Adams Company prior to even giving the land to my present wife and continued the same way, but the money, always, Mr. Doughty gave back to her all the time.

Q. Gave what money back to her?

A. The check that he collected from the C. J. Adams Company.

Q. How do you know that?

A. I kept all the books for her.

Q. You knew it from keeping the books?

A. Yes.

Q. Now, when was it or how long before your marriage had you been engaged to your wife?

A. What was the question, Judge?

Q. How long before your marriage had you been engaged to your wife?

A. About six months.

Q. Did there come a time when you and Mr. Doughty had some trouble?

A. The first trouble I had was ——

Q. First of all, did there come a time?

A. Yes, there came a time of trouble.

Q. How long was that before your marriage?

A. Two or three months.

Q. What was the trouble you had?

A. I believe my wife told him that I was going to get married or rather she told him that I was engaged to her and that started all the fuss and trouble.

Q. What was it? Tell us what occurred between you?

A. Well, the following morning, I think the Saturday we were going to a football game or something and he told me if I didn't keep away from his daughter he was going to shoot me at sight. Now, the next time was in December where he deliberately attempted to kill me.

Q. December what year?

A. 1928.

Q. What occurred and where?

A. He met me or rather saw me at the apartment at Ohio Avenue ——

Mr. Richards: If your Honor please, I don't want to obstruct this thing but what is the purpose of this? How does it affect this controversy, what trouble he had with Doughty?

The Court: Like to hear you on that, Judge.

Mr. Cole: It affords some evidence of the motive of the change of what we say was the position of Mr. Doughty toward his stepdaughter, that he had given all this to her and changed his position because of the difficulty that he had with Mr. Naame. That is when the trouble began, therefore, I think we have a right to show just what took place between them.

The Court: Mr. Doughty has testified that the changed relations between himself and his daughter arose by reason of her association with the present witness and I think it is admissible for Judge Cole to ask the witness ——

Mr. Richards: If your Honor please, what contradiction is there? We say that was true.

The Court: I can't tell what the contradiction is.

Mr. Cole: He told one part of the story. We want to have the whole picture.

The Court: I will admit it.

A. That was some day in December, I can't exactly recollect what day, around between five and six o'clock when he came in awfully excited and I won't repeat the oath because that seemed to be the usual habit with him and he says, "You want to keep away from my daughter. You let go of my daughter; all you want is her money and you keep away from her or I will take every" so and so, a long string of oaths, and there was a stick, good sized club, standing in the corner, which he picked up and deliberately tried to kill me with it, if I hadn't been so quick in jumping, getting out of the way he would have hit me with it.

Q. Anybody there?

A. My wife was there and the janitor.

Q. What is the janitor's name?

A. Wilson. Immediately, not immediately but a few days after that he followed me, must have followed me because I don't know how he could know I was there, around five or six o'clock came up in an automobile, I don't know how he got there, but he saw me at the Savoy Apartment where he deliberately struck me in the jaw, cold, my back to him, turned, in other words, I was facing this way and he started to argue about something, to take her money, if I did immediately why he was going to break me, take everything he gave her and a lot of other insinuations, and I turned my back like this and he deliberately hit me in the jaw, cut my lip open, loosened one of my teeth, incidentally the blow was so hard that he cut his own knuckles.

Q. When was that?

A. That was sometime in December, 1928, about

a month and a half or approximately a month and a half before we got married.

Q. On other of these occasions did you attempt to resist him?

A. Never. I told him it was too bad he wasn't a younger man, that was all.

Q. Did Mr. Doughty at any time ever talk to you as to what he was doing for his stepdaughter in a financial way or what he intended to do?

A. Positively.

Q. Will you tell what he said to you, state the occasions if you can remember it and give us the time?

A. I wouldn't attempt to state the occasion. I was at their house practically every afternoon during the construction of all these buildings and in between the time they weren't being constructed he invited me for dinner, in fact, he made special clam chowder and everything else, on best of terms, continuously told me what a fine business girl Isabel was, when he first gave her these properties he had doubts as to whether she could handle them, but after the Savoy Apartment he had no doubt she could handle them. He was giving her these properties because she is the only one he had who lived with him since the death of his wife, only companion he had, she kept the house for him, attended to him, and drove him around and did everything practically a dutiful daughter should do. That wasn't only one occasion, that was the usual understanding every time and he was praising her to me.

Q. Were any of those statements made after the Savoy Apartments or Ohio Apartments had been completed?

A. They were made; he began to make those statements to me, I would say, within a week after he began the original contract until I met her and went there for the first check and met his daughter and ever since that time that was the talk, I couldn't begin to tell you of the time because it was on so many occasions.

Q. Was there ever any time he told you he was loaning her the money?

A. Never. In fact, I would go to him and ask him, "How much did you give her now?" so I can make some kind of report when the income tax came around.

Q. Did you ever hear him make any demand on her to pay any money back?

A. Never.

Q. Now, up until what time did you continue to visit his home?

A. Until sometime in December, November or December, latter part of November or December. It was right after the football season closed, I couldn't tell you exactly what day it was.

Q. Was there ever an occasion when you came home with or came to Mr. Doughty's home with your present wife when she was drunk?

A. Never, never drunk in my life.

Q. What?

A. I was never drunk at all, I was never drunk and never seen her drunk.

Q. I am talking about her.

A. Never saw her drunk.

Q. By the way, what about this, what was the testimony about you have wine down there?

A. Yes, I gave her some Syrian wine, which is

very pure wine, white wine made of grapes, in fact, I drank it right along with Mr. Doughty.

Q. Tell me, did you ever see your present wife do any work around that house?

A. All the time.

Q. What kind of work did she do?

A. She wouldn't leave the house until ten o'clock in the morning, helping the maid in the kitchen, cleaning the house up, and usually she—well, I would say half the week she would have to get the dinner because the maid was away, she was drunk half the time.

Q. Did you eat there?

A. I have ate there on many occasions, in fact, he would go out in the country to get special clams so could have clam chowder at dinner, lunch rather.

Q. Did he ever object to eating there?

A. Never, I even went to different banquets with him on several occasions.

Q. Did you ever see your wife drunk?

A. Never in my life, no, sir.

Q. Did you ever hear her call Mr. Doughty a s. of a b.?

A. I never used the term. I never heard her use the term at any time.

Cross-examination.

By Mr. Richards:

Q. You say that there were originally no mortgages on the two properties that you first built?

A. Positively.

Q. And then that the first mortgage was put

on, was on the corner property which was the remodelled saloon?

A. That is right.

Q. And you said in answer to Judge Cole's question that that mortgage was put on there before you received the first payment on account of that contract; is that right?

A. I didn't say before. I said I know I didn't receive more than one.

Q. One payment?

A. I am not speaking one payment, I don't remember, but I know couldn't have been more than one payment.

Q. That was then right after you started the improvement?

A. Right close to it, yes, sir.

Q. Now, you are clear about that?

A. Positively sure, yes.

Q. And you got payments, of course, as you went along with the work?

A. That is true.

Q. So that, very soon after the improvements started on the corner property, Mr. Doughty procured the placing of that mortgage on that property?

A. Yes.

Q. Now, that you are sure of?

A. Yes.

Q. Now, where did you get your information from?

A. From Mr. Doughty.

Q. From Mr. Doughty?

A. And my present wife.

Q. So it was all hearsay, you didn't see any of this done, did you?

A. Mr. Doughty told me right along his business.

Q. So that what happened was that Mr. Doughty told you that he was placing this mortgage on this property?

A. Yes.

Q. Tell you what kind of a mortgage he was placing there?

A. B. and L.

Q. Building and loan?

A. Building and loan.

Q. Now, Mr. Naame, did you know it every time that he was placing this mortgage on there that he was putting it on or did he tell you about it afterwards?

A. I heard the conversation, in fact, he discussed it in my presence and my wife's presence.

Q. Now, there was two contracts up there, wasn't there?

A. Two definite contracts, yes, sir.

Q. And there were only two?

A. At that time.

Q. And when the contracts were completed and you signed a release of liens, didn't you?

A. I know that I signed one. I don't know which one at that time, I don't remember what release of liens I did sign.

Q. Well, that is your signature on that one, isn't it?

A. Yes, that is, certainly is.

Q. And this is your signature on this one?

A. That is right. May I look at those, please?

Q. Just a minute and I will let you look at it.

Now, you say that right after he placed this building and loan mortgage he told you about it?

A. Why, no, I didn't say that at all. I said he discussed it even before he started to build that apartment as to the financing of it.

Q. That he was going to put the building and loan mortgage on it?

A. Yes.

Q. Before he started to build it?

A. Yes.

Q. And as soon as the building got under way he put the building and loan mortgage on it?

A. That is right.

Q. Well, now, don't you know that building and loan associations won't put mortgages on properties until the building is completed?

A. Yes, but this building, there was a building on the property already.

Q. Now, I want to call your attention to the fact that the mortgage on that property was placed there in April of 1927, and the release of liens that you signed on that building was ——

A. I think ——

Q. Wait a minute ——was acknowledged on April 29, 1926, just about a year before that.

A. May I look at these two releases of liens, please?

Q. Yes.

A. I think I can set you straight on that, sir. This is one building, you will notice reading on the back, 717 and 719 Baltic, 713-715, that is two releases of liens for the first two buildings; that corner building, I don't know whether I signed a release for or not, so that doesn't belong to that, if you will look

at them records I think you will find the mortgage is dated April 22, 1926.

Q. You testified to Judge Cole just a little while ago that the corner buildings were completed within six months after they started, that they were started during the period that you were building these two ——

A. I said nothing like that, sir. I said nothing like that.

(Testimony on direct repeated.)

Q. Now, then, it appears, Mr. Naame, that I was correct about it, so that you completed the saloon building within five or six months of March of 1926.

A. Two or three months after the other two buildings were completed.

Q. Within two or three months after they were completed you completed the saloon building?

A. No, I started it.

Q. That is right. There is no argument about that. Six months later, which would make it some time in the fall of 1926, you completed the saloon property?

A. That is correct.

Q. Now, I have called your attention to the fact that the mortgage wasn't placed upon the saloon property until April of 1927?

A. I tell you, Senator, if you will look up your records I think you will find that mortgage was gotten April 22, 1926, not seven. That is what I tried to tell you before, to save a lot of time.

Mr. Cole: Mr. Naame, don't argue with counsel. Just answer the questions.

A. Don't want him to try to make me out a liar, either.

Q. How do you explain the fact that this mortgage was placed on there by the building and loan association while the building was still going on?

A. Because there was a complete building on it before I started; they figured that old building was worth enough money to give them that much money on it.

Q. Who told you that?

A. Within a week after I met Mr. Doughty I have been the greatest friends with him, we discussed everything; in fact, I know all the relations of the bank, the Marine Trust, anything you want to know about I can probably tell you.

Q. I am not interested in the Marine Trust.

A. I can tell you that, too.

Q. I am interested in this lawsuit now.

A. I can tell you everybody's bank deposit, if you want to know it.

The Court: Just answer the questions.

Q. What I want to know is, did you get your information from Doughty, did he tell you?

A. Yes, sir.

Q. Did you ask him about it?

A. Discussed in front of me.

Q. Did you say to him it is a strange thing you can get this building and loan association mortgage on here on an uncompleted building, did you say that to him?

A. No.

Q. Now, if you didn't say that ——

Mr. Cole: I object to it on the ground it is not controverted here the mortgage was placed, they proved it, on the property in 1926. Why tax this witness' recollection as to why a building association would make a mortgage on the property? How does that help us any in the solution of this problem, and I object to it.

Mr. Richards: We are trying to find out the accuracy of the statement.

Mr. Cole: Let him show the accuracy by showing the mortgage made in 1926.

The Court: May be a test of the accuracy of his testimony as to the completion of the work. I will admit it.

Q. I was just about to ask you another question, Mr. Naame, and that was how did you come to discuss with Mr. Doughty the fact that he was getting this building and loan mortgage on this uncompleted building?

A. I don't remember whether it was on the job or at his house, but Mr. Doughty called me over, my wife was present, when he said, "What can you do with the corner building?" I said, "I could change that building," I said, "It will cost some money but I can change that building over to a building similar in character to that already constructed." He says, "I have already given my daughter approximately a hundred thousand dollars, I don't have any cash on me now, but I can probably place a B. & L. on it temporarily until she gets it completed."

I said, "I have no doubt you can. The building itself, to my estimation, is worth every bit of thirty-five thousand dollars." Within a short time after that, I don't remember whether one day or not, he said, "I have placed a mortgage on that; go ahead and work."

Q. Now, what was done with the money?

A. The money was paid out to me.

Q. For the building?

A. For the building.

Q. Now, you knew that your wife owned the property, she had title to it?

A. Positively.

Q. And, of course, you knew that she must have made this mortgage?

A. Positively.

Q. And you knew that you got the money and expended it on the building?

A. Yes.

Q. Now, she ever get that money back from Mr. Doughty?

A. Get the money back?

Q. She ever get that money back?

A. What money back?

Q. This thirty-five thousand dollars.

A. She never got it from him.

Q. She gave the money to you, you said?

A. No, she gave him the check and he paid me.

Q. You said that on the $25,000 mortgage she loaned it to him for a few days?

A. Yes.

Q. And then he gave it back to her?

A. Positively. I made the entry myself for the income tax collector, that I know.

Q. You did.

A. Yes, sir.

Q. What entry did you make on the income tax?

A. In order to check up the amount of money that was made or lost there was a deficit of $25,000, check that she gave out which she had made no mark of when she got it back, so we checked it back and found the $25,000 came back, I think within three or four days afterwards. I think I have the bank book over there, I think I can show you that definitely.

Q. Now, Mr. Naame, did you make up the income tax returns for Miss Dobbin?

A. I made up the figures from which she had a man to make it up from.

Q. The figures showed the income and the expenses, &c.?

A. And the expenses, yes, sir.

Q. Now, how did you set up the money that Mr. Doughty gave you for these houses?

A. I considered that as a gift, a personal investment, original investment of my wife's, present wife.

Q. And you set it up that way?

A. Every time.

Q. Did you set up in the income tax returns the gift of this $100,000?

A. I don't know what the accountant may have done. I didn't consider it for the simple reason I knew it was a gift, had nothing to do with anything whether he set it up or not, that isn't up to me.

Q. Didn't your figures show this $100,000 as a gift?

A. No, because for my own purpose I had all I needed. The accountant, he may show a profit and

loss statement, that is for the receipts and the disbursements.

Q. Do you know whether there were copies kept of this income tax return?

A. I couldn't tell you that. I made up the sheets and gave to her and that was all.

Q. Have you ever seen any copies of the income tax return since?

A. I think there is some, yes. I think there are, to the best of my knowledge, I think there are. I am not sure.

Q. Now, what I am getting at is this; does this income tax return sheet show this money reported to the government as a gift?

A. No, because if ——

Q. They don't?

A. No.

Q. That is the answer.

A. What was your answer to the question, please, to make this plain?

Q. I asked you if these income tax returns showed this money reported as a gift?

A. It wasn't necessary to.

Q. Your answer was no.

A. No.

Q. That is the answer?

A. Yes, but also never showed it as a loan of any kind where the money had to be paid out, because if it was a loan I would have put there a loan, because interest would have been deducted.

Q. But you didn't show it as a gift?

A. No, it wasn't necessary, sir.

Q. Why, what do you mean it wasn't necessary?

A. Keeping books, why, I know it wasn't necessary, to my estimation.

Q. Do you know whether it was necessary to report to the government this $100,000 was a gift and pay income tax on it?

A. I couldn't tell you that. All I know, I didn't think it was necessary but I do know that it wasn't a loan, and I certainly would have entered it, because then I would have had to pay interest on it and that is deducted. That I did know, but I didn't know anything about the other.

Q. You say you kept these books during this period for Miss Dobbin?

A. Yes, I came in quite often and checked her up on the receipts of her accounts and disbursements for the various money that came in.

Q. Kept boks for yourself as well, I presume?

A. Yes, sir.

Q. Covering all of your own business transactions?

A. Yes, sir. I had a bookkeeper.

Q. You said that the rents on these properties, that is, the corner property before it was improved, were collected by your wife, is that correct?

A. Repeat your question, please?

(Question repeated.)

A. The corner property had no tenants in when I first met Mr. Doughty, had no tenants, so I don't know who collected the rents, there being no tenants.

Q. You were asked this question by Judge Cole, do you know of your own knowledge who collected the rents, referring to that building, before you made

this contract, and you answered, my wife. Now, do you mean that?

A. I don't think I said my wife, Senator. I said C. J. Adams collected the rents.

Q. No, you said C. J. Adams collected the rents of the three of the four apartments in the rear.

A. Getting up so many apartments now pretty hard to tell which apartments you are talking about.

Q. I am talking about the saloon property, and Judge Cole asked you this question, do you know of your own knowledge who collected the rents before you made this contract, referring to the contract for the improvement?

A. I believe I answered that by saying there was no tenants in the corner building.

Q. You answered it by saying, "My wife."

A. I don't think so.

Q. Is that correct?

A. I don't think I said that. If I did, it is wrong.

Q. If you did say it it is wrong?

A. If I did say it it is wrong, but I don't think I said that.

Q. You don't know of your own knowledge who got the rents, do you?

A. Yes, I seen C. J. Adams' men around there around the first to the fifth of the month.

Q. Did he collect any rents in the saloon property?

A. I said there was no tenants in the saloon when I first went there.

Q. Now, Mr. Naame, this property was given to Miss Dobbin in 1922 ——

A. I only met Mr. Doughty about ——

Q. Wait a minute—in 1922, and in answer to the

Judge's question you said of your own knowledge you knew that your wife got those rents. Now, do you mean to say that or not?

A. I didn't say anything of the kind, Senator. I am sorry, but I don't remember saying anything of the kind. When I first met Mr. Doughty and looked the site over, there were no tenants in the corner building. I don't know who collected those rents. There were no tenants there, couldn't collect rents, no tenants there.

Q. Then you don't mean to say that you have any knowledge whatsoever as to who collected the rents when there was tenants in this house, do you?

A. No, that I don't know. I have never questioned that because there were no tenants there.

Q. All that you can say is that after the two apartments were built and after the corner property was improved, then Miss Dobbin collected the rents?

A. Yes.

Q. That is all that you can say?

A. No, I can say a little more.

Q. What more can you say?

A. As I said before, he collected three of the four rents under the two leases in the two houses in the rear of the corner.

Q. Who did?

A. C. J. Adams Company.

Q. I didn't ask you that. I said all that you can say concerning the collection of the rent is that, so far as the two apartment houses you built were concerned, and after the improvement on the corner property, Miss Dobbin collected the rents in those places?

A. Oh, yes, certainly.

Q. And C. J. Adams Company collected the rents on all the apartments were rented in the rear part?

A. Only three.

Q. Who collected the fourth?

A. Miss Dobbin at that time, or my present wife.

Q. When did she start to collect that?

A. That I couldn't tell you, either. The reason for that was because the same tenants have been in the building continuously before the property was given to my wife, those tenants were in there, probably C. J. Adams had rented them, and under the real estate law, I believe the agent rented them, he kept on collecting the rents. The other tenant she rented herself and she collected the money; in the meanwhile the rent for the three apartments were continuously given back to her, exception of five or six ——

Q. Did you ever see it given back?

A. With the exception of five or six checks which were lumped in December because made the contract for thirty-six thousand dollars, contract, borrow thirty-five on that, there was a question of a thousand dollars and all lumped in that amount and he kept the checks to that amount.

Q. Did you ever see him give these checks back to his daughter?

A. I don't remember that.

Q. You say they were given back; how do you know that?

A. Because from the very beginning, when I first built the first apartment, I saw several checks, $114, $112, my wife said it is the rent for the apartments in the back.

Q. All you know about it is what your wife told you?

A. No.

Q. How do you know?

A. I saw Mr. Doughty's check.

Q. You saw a check from Mr. Doughty to his daughter?

A. Yes.

Q. All that you know, whether this was rent or not, is what she told you about it, is that right?

A. Well, if he hands a check to somebody and he says, "Here is a check for so and so rent," it certainly must be so unless the man is a darn liar.

Q. That is what I am asking you, did you see him hand over checks?

A. Yes.

Q. And say, "Here is the rent for those apartments?"

A. Yes, on a couple of occasions.

Q. On a couple of occasions?

A. Yes.

Q. And you seen him actually give the checks over?

A. Yes, sir.

Q. Whose checks?

A. His check.

Q. His check?

A. Sometimes his check and sometimes C. J. Adams.

Q. Why would he give his own check?

A. Because the original check was made out to C. J. Adams under the old arrangement to Mr. Doughty was never changed, that was all; the arrangement was made before he even give her the

property, same tenants were there, same man collected the rents, same man received the rents.

Q. He gave her the property long before you ever met her?

A. I say that.

Q. Then how can you testify as to that?

A. Because in checking up her records, books and one thing another, I made entries $14, from here, $112 from her.

Q. What way did she have to check up before she started?

A. Why, deposits in the book.

Q. Why would you check up on her deposits for years prior to the time of this business?

A. I couldn't strike a proper balance; I had to know what her balance was in bank.

Q. You went and got that right off the last settlement from the bank, didn't you?

A. Had to make her own figures check with that and I know my own books sometimes are a little bit off.

Q. Now, why did you have to make that check?

A. Yes, to get it correct as possible, always do.

Q. You thought it was necessary to go back for several years prior to the time that you started these books to find out whether or not she had collected these rents from these apartments?

A. No, just came up as a matter of course, that is all, asking about what this check is, what the other check is for, naturally helps those things.

Q. If you saw the checks, what kind of checks were they, what condition were the checks when you saw them?

A. What do you mean, what condition?

Q. You say you asked what these checks were, is that right?

A. Yes.

Q. Were the checks there?

A. Were the checks there?

Q. Yes.

A. I remember on two occasions when I was building there, Mr. Doughty came along and says, "Here, Isabel, here is a check for the rent I just got from C. J. Adams."

Q. You say now that in checking over her accounts you wanted to know about these checks. Now, I am asking you were the checks there that called your attention to it?

A. I couldn't find them, in other words, as rent received from the apartments.

Q. Well, did you say a few minutes ago and all through this examination you have spoken about these checks; now, what checks do you refer to?

A. I am referring to several checks that I have seen Mr. Doughty hand my present wife and say, "Here are the rents from C. J. Adams Company."

Q. That is after you met them and after you were doing this business?

A. Yes.

Q. What I am talking about is what you have testified to was with relation to checking back on her accounts?

A. Yes, I started several months back in order to catch a different foothold somewhere, and I ran across these checks, and I said, "What are these checks?"

Q. Now we are down to a showdown. You did see the checks?

A. If you will tell me what you want I will try to give it to you.

Q. You did see the checks?

A. I did see some of them. I didn't see all of them.

Q. You asked your wife what those checks were?

A. That is right.

Q. She told you they were checks from Mr. Doughty to her for the rent?

A. That is correct.

Q. That is all correct?

A. That is all correct, yes, sir.

Q. And you put them down as amount received?

A. That is right.

Q. That is all correct?

A. So far.

Q. Now then, inasmuch as tnese were Mr. Doughty's checks, how did they come into her possession?

A. Because, as I explained to you, when he gave her the property, understand, he started to turn over the checks to her, but he didn't tell Mr. C. J. Adams, "Here, I have gave my property," probably, he just turned over the check, just naturally.

Q. Mr. Naame, the cancelled checks would have been in, either in the bank or in Mr. Doughty's possession; now, how could you have gotten those checks?

A. I didn't say that. I didn't say that I seen the checks, or rather I saw the check when Mr. Doughty had gave it to my wife. If you will get C. J. Adams Company you will probably find checks of theirs endorsed by my wife, or if Mr. Doughty

will bring his checks you will probably find some there which he paid to her.

(Former testimony repeated.)

A. I believe you misunderstand me when I said checks, I meant the deposits.

Q. I didn't misunderstand you at all. I asked you repeatedly, as the stenographer has read it to you, whether you saw those checks, and you have said you did.

A. No, I didn't say that.

Q. Now I point out you couldn't possibly have seen the checks, your answer is now that I misunderstood you, is that correct?

A. You misunderstood me. I know what I meant to convey. I saw the entries for those checks laying from the deposit slips, $114, and some $114. I didn't mean to say I saw the check $114.

Q. You have used the word "checks" repeatedly here.

A. I saw Mr. Doughty hand to her, but the rest of them I merely saw from papers.

Q. How do you know they were Mr. Doughty's checks then?

A. Miss Doughty told me at that time.

Q. So that was mere hearsay?

A. For those few checks, if you call it that.

Q. Every time Judge Cole asked you if you knew of your own knowledge and you answered was just as in this case; it wasn't your own knowledge at all, was it?

A. I saw two pass, two, possibly three, actually pass hands.

Q. Was it of your own knowledge that you knew anything at all about this payment of rents prior to the time that you got acquainted with them?

A. Positively, I saw them pass direct, I would call that, yes. I don't know what else you would call it. I saw it, handing the checks over.

(Question repeated.)

A. That knowledge, as I call it, my own knowledge, is the fact I have seen Mr. Doughty on several occasions say, "Here, Isabel, here is a checking belonging to the rent for these apartments in the rear." That certainly I would call it my own knowledge.

Q. That is what you mean by your own knowledge?

A. Certainly.

Q. All of your testimony has been based upon the same kind of knowledge, hasn't it?

A. Well, Senator, if you would know the relationship there you could understand it. I was with them and they consulted me in everything.

Q. I think I understand it very well, I think you are testifying to what your wife told you and not anything you yourself knew.

A. No, Mr. Doughty.

Q. But we will put it again, that what you are testifying to is what Mr. Doughty told you or your wife told you; that is the fact, isn't it?

A. With actual facts I have seen come down.

Q. The only actual facts you have ever seen and want to speak by, you have seen him hand her a couple of checks, is that right?

A. Positively did.

Q. Now, on this occasion that you testified to that Mr. Doughty told you that he didn't want you to go around with his daughter, which resulted in him chasing you around the office with a club, he said, as I understand it, that you only wanted to marry her for her money?

A. That is true; that is what he told me.

Q. That occurred when?

A. Why, to the best of my recollection, sometime in December.

Q. Of 1928?

A. That is correct.

Q. Did you tell him that you were going to marry her?

A. I had mentioned to him and I am sure that my wife had told him.

Q. When did you mention it to him?

A. One day at his house when I was calling on Isabel to take her to the Apollo Theatre, and I said, "Mr. Doughty, I think you are going to have a new son-in-law pretty soon." He didn't say anything at the time, he just turned, see his face turn red, I didn't say anything.

Q. And then, sometime in December of 1928, he did say to you that you were only marrying her for her money?

A. He said a little more than that, but this is one of the things that he said.

Q. But that was considerably of the gist of it, wasn't it?

A. Yes; well, not considerably, that was only part of it.

Q. Can you remember whether that was the early or the latter part of December?

A. I couldn't tell you. I don't remember exactly. I know it was after the first, because the first we were away to the football game, I think the New Year's football game, Stamford and somebody else, some time after that, and that is all I can remember about it.

Q. After the first of December?

A. After the first of December.

Q. And it may have well been after at least the first week in December?

A. It may have been; I don't remember.

Q. Were you marrying her for her money?

A. I don't consider that I am marrying her for her money because I have always made a living and I can still make my living, and I think I have as much as she has.

Q. What I was getting at was this, was there any justification for his remark?

A. No, because I haven't married richer girls than her.

Q. What?

A. I could have married richer girls than her.

Q. Were you in need of money at this time?

Mr. Cole: I object, your Honor.

The Court: I don't see how that is relevant.

Mr. Richards: It is merely to test his contradiction of the fact that he married her for that.

The Court: Sustain the objection.

Mr. Richards: If your Honor please, I think that is quite important. I think I have a right to find out, as long as this thing was brought in, over my objection, I have a right to go into it now.

Mr. Cole: I didn't bring that into the case, what Mr. Doughty said.

The Court: Sustain the objection.

Q. Did you—you have said that you didn't marry her for her money?

A. Positively not.

Q. Did you at the time of this affair have any reason to raise a large sum of money?

Mr. Cole: I object to that. That is the same question in another form, irrelevant and immaterial, and it is not cross-examination.

The Court: Sustain the objection.

Q. You have said, in answer to my question a minute ago, that you considered you was as rich a man as Mr. Doughty?

A. I didn't nothing of the kind.

Q. What did you say?

Mr. Cole: I object. That is not the question.

The Court: That is not the question that was offered at all, the testimony.

(Question withdrawn.)

Q. After you married your wife did you endeavor to raise a large sum of money on her property?
A. I did not.

Mr. Cole: Objected to as being irrelevant and immaterial and not cross-examination.

The Court: I will permit it. He has answered he did not.

Q. You did not?
A. No.
Q. Did your wife try to raise a large sum of money upon her property to loan to you?

Mr. Cole: Objected to.

The Court: Permit it.

A. She did not.
Q. Were you in need of a large sum of money?
A. No, sir.

Mr. Cole: Objected to.

The Court: Sustain the objection.

Mr. Richards: Your Honor please, the offer is to prove by this witness that in December of 1928 he was in need of a large sum of money, as your Honor happens to know from hearing another case, and that he continued through January to be in need of a large sum of money, and the offer is to prove that by this witness.

The Court: I will sustain the objection.

Q. Do you know whether or not your wife applied for a loan of a large sum of money for her on her property?

A. My wife did not apply.

Mr. Cole: I object.

The Court: I will permit that on her property.

A. My wife did not apply on her property, neither did I ever ask her.

Q. Do you know whether she applied immediately after your marriage for a loan upon it?

A. I know of a loan she applied for, yes. Not for me, though.

Q. When was that?

A. Why, I think—I couldn't tell the date, it was some time after we got married, there was an eight thousand dollar note due in the Guarantee which she tried to raise money to pay off, which Mr. Doughty was endorser on, when she went to make the loan the bank granted the loan, but told her under the circumstances they couldn't give it to her; that was the only loan she ever applied for.

Q. But she never made any loan to you?

A. I never asked her. I said that before.

Q. Now then, you say that you never saw your wife during the time that you were attentive to her prior to your marriage, drunk or under the influence of liquor?

A. Never did.

Q. Did she drink?

A. Occasionally.

Q. What did she drink?

A. We drink a little highball occasionally and we drink a little champagne, which a couple of friends of ours used to give us in the court room here, Mr. Henry Kuehnle, and we drink some of this so-called Syrian wine.

Q. How many drinks would she take at a time?

A. I never saw her take more than two.

Q. Did she ever drink any of that Syrian concoction?

A. Yes, it is really a medicinal drink, very good for the stomach.

Q. What is the name of it?

A. Arak.

Q. Did she ever drink any of that?

A. Yes, very nice, medicinal.

Q. How much have you seen her drink of that at a time?

A. Couple of small whiskey glasses, half size, filled like half size.

Q. That is equally as powerful as whiskey, isn't it?

A. No, it isn't as harmful, made of pure grapes, don't drink only the pure stuff.

Q. I mean its alcoholic contents is about as powerful as that of whiskey, isn't it?

A. I never tested it, couldn't tell you; I know it is very mild.

Q. Doesn't take very many drinks to show its effect, does it?

A. I have seen people drink it. It won't get you drunk quick as whiskey will, or any other wine; in fact, we drink it all the time the same way Italians

drink wine. In fact, we mix it up with water some and makes a very delightful drink.

Q. But she did drink?

A. She drank like most everybody could occasionally, never saw her drunk or intoxicated any time I have known her in five years or approximately five years I have known her.

Q. Smoke, too?

A. Very seldom. Very seldom.

Q. And you say you never heard her use any profanity?

A. I never did.

Q. You don't know what she did when you were not around?

A. No.

Mr. Cole: I object to that. Of course he don't.

The Court: Sustain the objection.

Q. What I mean is you don't pretend to say that she did not use profanity?

A. Why, I never heard her myself.

Q. That is all you can say?

A. From what I know of her, I am positive, if I may judge her character, although I never did hear her.

Q. All you can testify is you never did hear her?

A. Naturally.

By Mr. Cole:

Q. Did she do any of her drinking in the presence of Mr. Doughty?

A. Most of the time.

Q. This eight thousand dollar note that she was trying to get this money to pay off is the note that has been introduced here in this case?

A. Yes, that is the note; she was the maker of it and wanted to pay it off.

Q. Did the bank know that there had been a lis pendens or something filed against the property?

A. Not when they first granted the loan, only when they came to give her the loan. I think the vice-president or someone in the Atlantic Safe found out there was a lis pendens pending and they said under the circumstances we can't give you the money.

Q. Growing out of this present suit?

A. That is right.

Q. Did you ever assist Mr. Doughty in making up an income tax return?

A. No, I can't say I ever did.

Q. Now, Mr. Naame, I want to ask you this question. It may be a delicate one. Several times counsel in examining you used the word "prior" and I want to know whether you know what that means?

A. Prior?

Q. Yes.

A. Prior?

Q. Yes.

A. Yes, I think I do.

Q. What do you think it means?

A. Before something.

By Mr. Richards:

Q. Mr. Naame, you are a college graduate, aren't you?

A. Yes, sir.

SOMERS L. DOUGHTY, recalled.

Further cross-examination.

By Mr. Cole:

Q. Have you the papers I asked you yesterday to produce today?
A. What papers did you ask me for?
Q. Don't you remember?
A. I will answer your question. Tell me what papers.
Q. Do you remember what papers I asked you to produce?
A. You didn't ask me for any papers.
Q. Then you have none to produce, have you?
A. You asked me for books, not papers.
Q. Have you any books?
A. I have.
Q. Where are they?
A. In my pocket.
Q. Let me see them.

(Books produced.)

Q. What books are you producing?
A. Guarantee and Marine.
Q. What do you call them?
A. Bank books.
Q. Are they pass books in which you took receipts for the money you put in the bank?
A. Where I made deposits, deposit books.

Q. Is this the only one you have on the Marine Trust Company?

A. Yes, sir.

(Book offered, received and marked Exhibit D6.)

Q. When did you begin to deposit in the Guarantee Trust?

A. Years ago.

Q. Well, the book in the Guarantee Trust opens January 17, 1928; have you nothing before that?

A. Yes, sir.

Q. Where is it?

A. I don't know.

Mr. Cole: Offer it in evidence.

A. Old book was wore out.

Mr. Richards: I object. I should have objected to the other, because unless the Court's attention is directed to some entry in the books, the books themselves are of no probative value.

The Court: They are entirely valueless unless some attention is called. I will permit them to be offered, question of the value, not the admissibility.

(Book admitted and marked Exhibit D7.)

Q. You were also asked whether you would have the Marine Trust Company produce a statement of your account, which would show checks drawn

against your account; do you know whether they have that here or not?

A. Beg pardon; I don't recollect you ever asking me that.

Q. You said that you had passed a check for $7,500, which check you couldn't find, on account of the $15,000 note; is that correct?

A. Yes, sir.

Q. Now, you have been to the Marine Trust Company, of which you are a director, since yesterday, to ask them to produce a statement which would show that you drew a check for $7,500 on your account?

A. I have not.

Q. Of course, you are a business man enough to know that there would be a statement there showing that check?

A. Yes, sir.

Q. And you haven't asked for it?

A. No, sir.

Q. Have you a copy of your income tax return for 1926 and 1927?

Mr. Richards: I object.

The Court: What is the objection?

Mr. Richards: My objection is that there doesn't seem to be any probative value to whether he has or not. What is the purpose of it?

Mr. Cole: The purpose of it is to try to show whether or not he has any record of the claim he is now making as to principal of moneys, whether

he collected $500 he says he received on account, and that would be quite relevant, I think.

Mr. Richards: The income tax return wouldn't show it to begin with, but, even if it did, it hasn't any probative value here.

The Court: Sustain the objection.

Q. Mr. Doughty, have you any book or any record anywhere that you can show us where you credited Mrs. Naame with the five hundred dollar check?

A. No book, no, sir.

Q. Any record anywhere?

A. No, sir.

Q. Did you ever have any record of that?

A. Yes, sir.

Q. What was it put in?

A. In a notebook that I had.

Q. What?

A. In a book that I had that was burned up or lost.

Mrs. Isabel Naame, sworn.

Direct examination.

By Mr. Cole:

Q. I show you what I call a pass book or deposit book, perhaps, of the Marine Trust Company, which opened on 9/3/26 and ask you whose book that is?

A. That is my book for the Savoy Apartments.

(Book offered, received in evidence and marked Exhibit D8.)

Q. Did you have an account in any bank with the Ohio Apartment?

A. The Marine Trust.

Q. Have you the deposit book for that account?

A. Over on the table.

Q. Is the book I show you that book?

A. It is.

(Book offered, received in evidence and marked Exhibit D9.)

Q. Do you remember the circumstances of the deed from Mr. Doughty to you for the property on which the Savoy Apartments were built?

A. It was to be given to me for a birthday present.

Q. About when was that?

A. The first piece of property he gave me in 1922, that is the rear of the lot.

Q. The rear of what lot?

A. Of my 150 feet on Baltic Avenue by 100 on North New Jersey.

Q. How did he come to do that?

A. From the time of my mother's death he gave me the large amount of fifty dollars to dress on per month, and at that time it wasn't very much, and he decided that if I had those houses I would have enough income to buy my clothes.

Q. All right; now, you say he gave you that as a birthday present?

A. Yes.

Q. Was it given to you on the anniversary of your birth or some other date than that?

A. Yes, he never gave anything on time.

Q. Later, did you get another deed for another piece of property?

A. Several years after that.

Q. What is your recollection as to when that was?

A. I don't remember the date that he gave me the deed, but it was for several birthday presents.

Q. Where was the property?

A. New Jersey and Baltic Avenue.

Q. Did that make up all the land on which the buildings are?

A. Yes.

Q. Now, who collected the rents on the buildings on the tracts of land under those deeds?

A. C. J. Adams collected three rents on those small apartments because they had rented the apartments to the tenants that were in there, and I rented the other apartment to Oscar Whiting and collected the rent myself.

Q. Was that before you began the improvements?

A. No, there was a girl in there by the name of—yes, there was a girl in there.

Q. I want to find out now who got the rents before the improvements began?

A. Before the improvements they were all turned over to my father and he in turn gave me his check for my monthly allowance.

Q. Were they turned over to your father directly by the tenants or were they turned over through Adams and Company?

A. Through Adams.

Q. Did he give you a check for all the rentals that he was receiving between the time of the date of the deeds until you began the improvements?

A. Yes.

Q. Now then, you started to say that you collected the rents from some of the apartments that you rented?

A. One apartment that I rented myself.

Q. Was that before the improvements?

A. Yes.

Q. Then there was one of the apartments, was there, that you got the rent yourself?

A. Yes.

Q. Did you collect that directly from the tenant?

A. Yes.

Q. You collected from the tenant directly?

A. Yes.

Q. How much did you get a month from that?

A. Forty dollars.

Q. What became of the money?

A. I used it for myself.

Q. And didn't give it to him?

A. No.

Q. Now, what happened to the rentals after the improvements were made?

A. You mean after he built these new houses?

Q. Yes.

A. I kept them myself.

Q. How did the rents reach you after the improvements had been made? Did you get them directly or they come through some third party?

A. You mean the apartments of C. J. Adams collected for?

Q. Yes.

A. Mr. Doughty would sometimes give them to me and sometimes would not.

Q. What I am trying to find out, Mrs. Naame, how those rents were collected, and by whom?

A. Mr. Conover, C. J. Adams.

Q. Was that after the improvements were made?

A. Mr. Conover still collected those three rents.

Q. Did you continue to collect from the apartment which you rented?

A. Yes.

Q. Now, what became of the rents then that were collected by Adams and Company after the improvements?

A. My father kept them.

Q. He didn't give them to you?

A. No.

Q. You had a deed for a property at Drexel ——

A. And Maryland Avenue.

Q. —— and Maryland, didn't you?

A. Yes.

Q. Was there anything on that property when he gave you the deed?

A. A gasoline station.

Q. At that time?

A. Yes.

Q. Who collected the rent from the gasoline station after he gave you that deed?

A. Mr. Headley sent his check to me.

Q. Did you keep the rent?

A. Yes.

Q. What Mr. Headley was it?

A. Mr. Samuel Headley, contractor.

Q. Did you get all of the rent from that property from the time he gave you the deed?

A. No, because he was poor pay and hasn't paid if all.

Q. Let me put it the other way; did Mr. Doughty get any of that rent?

A. No.

Q. Are you still receiving the rent?

A. Mr. Doughty told Mr. Headley not to pay me.

Q. About when did that take place?

A. One day I came from your office in February and I met Mr. Headley downstairs and he owed me four hundred dollars back rent on last year. I asked him why he didn't pay it and he said Mr. ——

Mr. Richards: Wait a minute. I object.

The Court: Sustain the objection.

Q. There was four hundred dollars due?

A. Four hundred dollars, yes.

Q. Then Mr. Headley refused to pay?

A. Yes.

Q. Was that about the time he brought the suit against Mr. Doughty?

A. Yes.

Q. Had you learned that he had deeded the property to somebody else in the meanwhile?

A. No.

Q. Did you learn it afterwards?

A. I read it in the paper.

Q. How long was it after Mr. Headley refused to pay the rent that you learned that Mr. Doughty had conveyed the property to somebody else?

A. About six weeks.

Q. Now, do you remember the mortgage transactions on the property uptown, the Savoy?

A. I do.

Q. Will you please state your recollection of those transactions and take the mortgages in their order, first, second and third?

A. The first mortgage I put on the house, the corner building, to make an alteration. That was created in April of 1926 and that was what paid for the alteration up there with the exception of one thousand dollars. The following year, when I started to build the Ohio Apartments, I mortgaged

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Q. Won't you pause there just a moment; what became of the mortgage that was placed on the corner property? Was it paid off?

A. Yes.

Q. How was it paid?

A. By notes from me.

Q. Your notes?

A. Yes.

Q. How many notes were there?

A. Two notes, fifteen thousand each.

Q. One in the Marine Trust and one Guarantee Trust?

A. Yes.

Q. Where did you get the money with which to pay the note in the Marine Trust Company?

A. From the rentals for my apartments.

Q. Where did you get the money to reduce the note in the Guarantee Trust from fifteen thousand to eight thousand?

A. From my apartments.

Q. Did there come a time when you couldn't pay the eight thousand dollar note?

A. There did.

Q. Why?

A. Mr. Doughty ruined my credit.

Q. In what way?

A. He attached my, he had brought this suit against me and the bank wouldn't loan me any money or renew the note.

Q. Do you remember the purchase of the Ohio Avenue property?

A. Yes.

Q. Do you know how that was paid for?

A. I paid for it.

Q. In what way?

A. I gave Mr. Sypherd a three thousand dollar check the day we had the transaction.

Q. I show you a check for three thousand dollars, which is marked Exhibit D4 for identification, and ask you whether that is the check that made the down payment?

A. Yes, my personal check.

(Check offered, received in evidence and marked Exhibit D4.)

Q. I show you a check marked Exhibit D5 for identification, $12,005.94, and ask you whether that paid the balance?

A. It did.

(Check offered, received in evidence and marked Exhibit D5.)

Q. Did you have any other source of income, other than what you were getting from the rents on these properties?

A. I have.

Q. Mr. Doughty said that on this $30,000 he paid you back $7,500 with his check; did he?

A. I haven't any recollection of it.

Q. If you had received a $7,500 check would you have deposited it?

A. Positively.

Mr. Richards: I object.

(Question withdrawn.)

Q. Did you deposit the checks that you received from time to time from anybody?

A. Yes.

Q. Now, I notice in these two books, pass books offered in evidence, quite a number of credits, and ask you whether or not any of those represent rents that were received from those properties?

A. These are practically all rents with the exception of paper.

Q. Now we have disposed of the first mortgage on the corner. Now tell us about the other mortgages.

A. The other mortgage was placed on 717 and 19 for $25,000, that is the second mortgage.

Q. Why, and what became of the money?

A. The money was used for the construction of the Ohio Apartment.

Mr. Reed: I object to that answer; it is not responsive.

The Court: There is no objection.

Q. Was all the money that was received from the mortgages, the two mortgages on the Savoy property, used to pay for the work on the Ohio Apartment?

A. It was.

Q. Will you state how your stepfather came to advance moneys to Mr. Naame and to you to be used in the improvement of the two properties, and what arrangement you had, if any, with him about it?

A. On my mother's death-bed he requested my mother to let me remain with him and not return to my father. She promised him I would stay if he would look after me as a daughter, which he always has. From time to time he gave me different moneys, he built these houses and gave them to me. It was a gift, that was all there was to it.

Q. Did he ever ——

Mr. Richards: That answer is certainly not responsive and I ask that it be stricken.

The Court: That is not responsive to the question at all.

Q. It may be, Mrs. Naame, that is not quite responsive. What I had in mind and what I asked you was what was the arrangement you had with him, if any; how did he come to make these advances or payments on account of these properties?

Mr. Richards: Is the other answer out of the record?

The Court: Yes.

(Question withdrawn.)

Q. You lived at his home, did you not, from the time that your mother married him until she died?

A. Yes, sir.

Q. And continued to live there with him until when?

A. The day of my marriage, February sixth, 1929.

Q. Now, state if anything occurred before your mother died between her and Mr. Doughty concerning you?

Mr. Richards: If your Honor please, I object, because it can't possibly throw any light upon the issue here.

The Court: Sustain the objection.

Q. Were you present, in your presence?

A. I was.

Q. Was there some talk between your mother and Mr. Doughty or between Mr. Doughty and your mother?

A. There was.

Q. Where did it occur?

A. In her bedroom; she was in bed.

Q. What was said between them?

Mr. Richards: I object.

The Court: Sustain the objection.

Mr. Cole: The proffer is to show that on that occasion the wife requested Mr. Doughty, in consideration of her remaining with him, that he make proper provision for her support and to give her financial assistance, and that he promised to do so.

The Court: Sustain the objection.

Q. Now, when, if you can remember, did the question of the improvement of the Savoy Apartment first come up?

A. My father was on the committee of the building and loan to which I believe Mr. Ost applied for a loan, and one afternoon we were driving around and he said we will stop. We did, went into the office and Mr. Ost took us through the last building; he had just furnished it. When we came out my father thought it was a very good idea; being in the bank, he knew of the best rentals, and he decided he would build a couple of those houses for me, to give me something to do, so the following year for my birthday he gave me those two houses.

Q. Did that include all the improvements that were made there, the two houses you speak of?

A. Two houses, yes.

Q. Did you ever ask him to loan you any money?

A. I did not.

Q. Did he tell you he was loaning you the money?

A. He told me he had given me those houses.

Q. When was the first time that your stepfather ever made a demand on you for payment of money

to him growing out of the improvement on the Savoy?

A. On my wedding day.

Q. What happened on that day?

A. Papers were served in this suit one hour before I was married.

Q. Had you before that time had any demand from any attorney to pay any money?

A. I had not.

Q. Had you before that time ever had any demand from him to pay you any money?

A. We exchanged checks occasionally.

Q. I mean any demand from him to pay any money on account of what he had spent on those properties?

A. No.

Q. Right there, you say you exchanged checks. Just what do you mean by that?

A. He was short and I would give him money, he would pay it back.

Q. You did pass your check to him sometimes?

A. Very often.

Q. Now, coming to the Ohio Apartment, how did that come about that that was built?

A. He decided Mr. Naame's investment was such a good one we would put one up over there.

Q. What do you mean, Mr. Naame's investment?

A. Lincoln Apartment House.

Q. Lincoln Apartment?

A. Yes.

Q. Where is that?

A. On Indiana Avenue.

Q. In Atlantic City?

A. Yes.

Q. Did you borrow the money from him to build that?

A. From whom?

Q. From Mr. Doughty?

A. No, I put two mortgages on the Savoy and he gave me the rest.

Q. Did he ever tell you he was loaning you the money for the Ohio Apartment?

A. He did not; he told me whatever I was short he would give me.

Q. Did you ever promise to pay the money back to him?

A. I did not.

Q. Did you have any demand from him to pay the money that went into the Ohio Apartment, before this suit was brought?

A. I did not.

Q. Either from him or his lawyer?

A. No, sir.

Q. Now, do you know whether or not he ever kept books to show his income?

A. No.

Q. You mean you don't know or he didn't?

A. He didn't keep any books.

Q. You lived with him continuously through the years you have mentioned, didn't you?

A. Yes, sir.

Q. Do you know how he determined what income to pay to the government?

Mr. Richards: I object—finish it.

The Court: Finish your question.

Q. Do you know how he managed to make up an income tax return to the government if he did make up one, showing his income and outlay? Do you know, the question is.

Mr. Richards: Objected to.

The Court: Permitted.

Mr. Richards: Objected to even if she knows.

The Court: No, I think the question is admissible. Mr. Doughty has testified how he made up his income tax, as I remember it. It may be only a test of credibility.

Mr. Cole: Perhaps to contradict him.

The Court: I will permit it. You may answer.

(Question repeated.)

Mr. Richards: Answer to that is just yes or no, Madam.

Q. Do you know?
A. No.
Q. Do you know whether he had any income or not?
A. Yes.

Mr. Richards: I object to that.

The Court: What is the objection to that?

Mr. Richards: It is immaterial whether he had an income or not.

The Court: I will permit that.

Q. Do you know if he had an income?
A. A very large one.

Mr. Richards: I object to that and ask it to be stricken.

The Court: Answer is yes or no.

Q. Do you know whether he had an income?
A. Yes.
Q. Do you know how much income he had?

Mr. Richards: I object to that.

The Court: Permit it.

Q. Do you?
A. I imagine around thirty or thirty-five thousand a year.

Mr. Richards: Ask the answer be stricken.

Mr. Cole: Strike out imagine.

The Court: It will be stricken.

(Question repeated.)

A. Not the exact amount.

Q. I show you this check marked C7, photographed, dated December 15, 1928, to Somers L. Doughty, for $500, check for Ohio Apartments and Savoy Apartments. Take that check, please, and state the circumstances of the giving of it, all the circumstances.

A. The morning that I gave him this check he nagged me and fought with me about Mr. *Doughty* from breakfast time until I finished dressing, followed me from room to room in a terrible temper, I was afraid of my life, he said if I was a man he would knock me down, then in the heat of anger he said, "You still owe me money for that furniture." He said, "You still owe money. Can I have a check?" I said, "Well, if that is the way you feel about it, how much do you want?" He said, "I will take five hundred dollars," so I was so excited I said, "Come on downstairs." He followed me downstairs and stood over me while I wrote this check and made me write on there, "Ohio and Savoy Apartments to Somers Doughty, principal," and grabbed the check out of my hands, grabbed out of my hands, and came back later on very much calmed down, and laughed at me, "Now I have got you. I will get everything I ever gave you. I will take it back from you if you marry Joe Naame." I said, "I don't see how you can do that." He said, "I have got the evidence; you only borrowed my money; that is the evidence I wanted to get and you did it for me." Several days after that he came to the Ohio Apartments and threatened to kill Mr. Naame with the club. The following week he followed me to the Savoy Apartments and threatened

to kill Mr. Naame again and hit him on the jaw and broke his own knuckles.

Q. Did you see that?

A. I saw and my janitor saw it in the Ohio Apartment.

Q. Was it true, as stated on this check, that you were paying him $500 principal on account of the Savoy Apartment real estate?

A. Furniture, that is what the argument was about, furniture. If you lived with him as long as I did you would know the rage he gets into.

Mr. Richards: I ask that be stricken.

Mr. Cole: Yes, strike it out.

The Court: Let it be stricken.

Q. During the time you lived with him what did you do about the house?

A. What did I do about the house? I cooked. I made the beds, I darned his socks, I patched his shirts, I did everything he wanted me to do.

Q. What help did he have?

A. This colored maid that testified yesterday, when she was there.

Q. Did she mend his socks?

A. She did not. She may have recently.

Q. He have anybody else there to mend them?

A. Not to my knowledge.

Q. Who did the cooking when she wasn't there?

A. I did. I cooked for six weeks at a time for him and his four dogs.

Q. Where was the cook during that time?

A. Oh, sometimes be up in the hospital, home drunk in a fight.

Q. Well, this maid says that you admitted to her that you owed Mr. Doughty money?

A. I don't discuss my business with servants.

Q. She also testified that you said that it took all the money you had to pay for the apartments and didn't have anything left to pay him or something to that effect. Did you ever tell her that?

A. No.

Q. She also testified that you said when you got Mr. Doughty paid off or words to that effect, you were going to take a trip to California?

A. I had nothing to pay him off.

Q. No, did you tell her that?

A. No.

Q. Did you discuss with her the fact that Mr. Doughty had demanded of you that you give him a $75,000 mortgage on the Ohio Apartments?

A. No.

Q. She said you did; is that true or not?

A. Not true.

Q. She also said that you were in the habit of calling him a s-of-b, were you?

A. I had too much respect for him.

Q. Did you ever call him that?

A. Not to my knowledge.

Q. All right, while we are on that subject, Mr. Doughty said the first time he became very much disgusted with you when you came in on some occasion with Mr. Naame drunk, did you?

A. I did not.

Q. Have you ever been drunk in Mr. Doughty's presence?

A. No.

Q. Mr. Stewart said that on one occasion, and maybe more, you told him in substance that you owed him, Mr. Doughty, the money that he put into these apartments and when you got him paid off, I think, that you were going to take a trip to California?

A. I never discussed my business with him.

Q. Did you ever, on any occasion, discuss with Mr. Stewart about these apartments and the money that your stepfather had put in them?

A. No.

Q. He said that you told him that Father built the buildings for you and that when you got him paid off you were going to take a trip to California; did you say that to him?

A. I have no recollection.

Q. Anything like that?

A. No.

Q. He also said that you told him that your stepfather had given you the ground on which the buildings were and had advanced the money to build them and that you were saving up, or words to that effect, to pay him off; is that true?

A. No.

Q. Did you ever burn up any checks of Mr. Doughty's?

A. I did not.

Q. Did you ever burn up any books of his?

A. I did not.

Q. Did you burn up anything at any time while you were there?

A. When I was moving I had fourteen years' accumulation of truck that I burned.

Q. What did you burn up?

A. Old stockings, gloves, lace, postal cards, belts, old things that I had was no good.

Q. Ever burn up any of his checks?

A. No, he stood by the barrel while I burned them.

Q. Was he there all the time?

A. He was in the house that day.

Q. How long was that before you left?

A. The Sunday previous.

Q. Did you ever burn up or destroy this $7,500 check he is talking about?

A. I did not.

Q. Mrs. Naame, I show you a check of July 20, 1927, to Somers L. Doughty for $25,000; look at that check and tell me whether you can recall what that check represents?

A. I had just gotten my mortgage and at that time Father was buying stocks and bonds—I had just received the mortgage money and my father was buying stocks of Barnes and Loffland in Philadelphia and wanted the loan of that money for a few days and I gave it to him. My bank book shows he immediately returned it.

Q. Does this $25,000 check represent the first mortgage that was placed on the property we talked about?

A. The second mortgage, on the new building, $25,000 mortgage.

(Check offered, received in evidence and marked Exhibit D10.)

Mr. Cole: May I inquire whether you introduced

into evidence Mr. Doughty's checks; were they offered formally?

Mr. Richards: Yes, all of them.

Q. Now in this Marine Trust deposit book we have offered under date of seventh month, twenty-sixth, is a credit of $25,374.50; do you know what that represents?

A. $25,000 loan and $374.50 for my rents.

Q. When did the unpleasantness between you and your father begin, if ever it began?

A. When he knew I was going with Mr. Naame.

Q. About when do you fix that time?

A. Last September.

Q. And when was the engagement, about?

A. About December.

Q. Did you tell him of the engagement?

A. Not directly.

Q. Did you do it indirectly?

A. Yes.

Q. In what way?

A. We had an argument.

Q. What was the argument?

A. About Mr. Naame.

Q. Well, do you know when he first learned that you were engaged to be married?

A. I don't.

Q. How did you come to leave when you did leave?

A. I left to get married.

Q. Did he tell you to go?

A. The last night he attempted Mr. Naame's life I was ready to move out then and he said, "No, re-

main until you get married, you may change your mind.''

Q. How long was that after, would you say, was the attempt at his life, his, Naame's life?

A. The attempt on his life was in December, both attempts, and I was married in February.

Q. Where were you when the papers were served on you in this suit?

A. At the breakfast table.

Q. In whose home?

A. My father's.

Q. Then they were served on you before you left?

A. One hour before I was married.

Q. Where were you married, at what place?

A. The parish house of the Ventnor Catholic Church.

Q. Did you go directly from your father's home there to be married?

A. I took a taxi there.

Q. Then you didn't return there after the marriage?

A. No.

Cross-examination.

By Mr. Richards:

Q. If I understand it, Madam, you deny that the various sums of money that were advanced by Mr. Doughty were loans?

A. I do.

Q. And that the moneys advanced were in the nature of a gift?

A. Positively.

Q. Now, you have also said that at various times Mr. Doughty and you exchanged checks?

A. We did.

Q. Were those gifts or loans?

A. They were temporary loans.

Q. Well, they were loans, then, weren't they, whether temporary or not?

A. More or less, just convenience.

Q. Did you actually exchange checks at the time or would you give the money and he pay you back when it was convenient and when you wanted money did he give you a check and you pay him back when it was convenient?

A. When I needed money he gave it to me.

Q. Now, when you wanted these properties uptown improved, you asked him, as I understand your testimony, to improve it for you?

A. It was his suggestion.

Q. His suggestion that he would improve it for you?

A. He would build these houses and give them to me.

Q. And give them to you?

A. Yes.

Q. Well, you understood then that he would cause houses to be built and make you a present of them?

A. Positively.

Q. Right?

A. Yes.

Q. Now, when it came to building the first one of the houses, he advanced the money, made the contracts, advanced the money and when it was completed you took possession of it?

A. I did.

Q. And you thought that constituted a gift to you of the moneys that had gone into building the houses?

A. Yes.

Q. That was what you thought when you moved into it, is that right?

A. Yes.

Q. You did take possession of them, you rented them to these colored people and ran them as your property?

A. I did.

Q. And you hadn't any suspicion that Mr. Doughty was to get any of that money back?

A. No.

Q. When did you first find out that he did expect to get it back?

A. When he sued me.

Q. And that was the first time that you knew that he expected to get the money back?

A. Yes.

Q. Never before?

A. No.

Q. Now, when it came to improving the corner property, you asked him to improve that for you, didn't you?

A. No. I created the mortgage for the improvement.

Q. Why didn't you get him to give that to you?

A. He said at that time he had given me all he could, for me to get the money and he would pay me back.

Q. Then you expected him to give you the money the other way around, then, is that right?

A. No, sir; I expected him to give me that.

Q. Did you ever get it back?
A. No.
Q. In no way, shape or form?
A. No.
Q. Now, then, when it came to the Ohio Apartment, you bought that land yourself according to your story?
A. I did.
Q. Mr. Doughty didn't pay any part of the purchase price, did he?
A. No, sir.
Q. You did that entirely on your own hook?
A. He made the arrangements for it.
Q. He made the arrangements for it but it was your deal?
A. Yes.
Q. He told you that Sypherd would sell you the property for thirty thousand dollars?
A. He talked to Mr. Sypherd.
Q. He reported to you to the effect that the property could be bought from the Guarantee Trust Company for thirty thousand dollars?
A. Yes.
Q. And then you went to see Mr. Sypherd, didn't you?
A. With Mr. Doughty.
Q. And you put down your check for three thousand dollars?
A. I did.
Q. Then you came along and you put up another check for $12,000?
A. I did.
Q. And purchased the property?
A. Yes.

Q. So far as you were concerned it was your property?

A. Positively.

Q. And Mr. Doughty didn't figure in it at all?

A. No.

Q. In no way?

A. No.

Q. So that you bought the thing entirely on your own hook?

A. I did.

Q. Now, then, will you explain to us why it was that Mr. Doughty gave the mortgage and went on the bond for fifteen thousand dollars?

A. Explain why?

Q. Yes.

A. It was his transaction and he just simply did that for me.

Q. But you went up there and put down the money, the cash at the time the contract of sale was signed, you put up the balance of the cash, you have just told us that it was your deal, why did he take the property in his name, why did he give the mortgage for fifteen thousand dollars and why did he go on the bond?

A. I have no recollection why he did.

Q. That is the only answer you can give, is that you have no recollection?

A. I never thought anything about at the time.

Q. That is your answer to that?

A. Yes.

Q. Now, you got $35,000 on the corner property? $35,000 on the next apartment and $35,000 on the third apartment? Will you explain to us how it

was that in each case the proceeds of those three mortgages were paid to Mr. Doughty?

A. Was paid to him?

Q. Yes.

A. He attended to all my business.

Q. But these properties, Madam, were your properties, you owned the fee to them.

A. I know.

Q. And initially the building and loan company gave a check to you for them?

A. Yes.

Q. Every case, didn't they?

A. Yes.

Q. Then what was the necessity for your turning around and giving the check to Mr. Doughty?

A. He paid the checks to Mr. Naame.

Q. Why?

A. I don't know why.

Q. You had a bank account, didn't you?

A. Yes.

Q. Why didn't you put these checks in your bank account and pay the money to Mr. Naame?

A. I did take them into my bank account.

Q. Why did you give a check to Mr. Doughty after you had the money in your bank account?

A. What particular checks?

Q. I am talking about the checks for all three of those properties, for the proceeds for them?

The Court: They are building association checks which were returned or rather the title company checks which were returned.

Q. You saw them yesterday, Madam, the three

checks from the title company, one for $33,000, one for $34,000, I think, and one for $24,000 odd. You saw those three checks that were here yesterday, didn't you?

A. No, I didn't.

Q. Madam, you did know, didn't you, that the three checks were made to—we will suspend that inquiry a minute and talk about this check—this check, Exhibit C7, you explained to Judge Cole that after having this argument or fuss with Mr. Doughty he asked you for five hundred dollars and you wrote out this check and he grabbed it out of your hands and took it away with him; is that correct?

A. He asked me for five hundred dollars on account of the furniture that he paid for.

Q. There is no mistake about that, is there?

A. No, sir.

Q. You owed him five hundred dollars on the furniture?

A. He said I did.

Q. Did you know whether you did or not?

A. I did not.

Q. Did you dispute it?

A. I never disputed any money that he said I owed him, money I paid him.

Q. Well, why did you think you owed him money on the furniture?

A. He said I did.

Q. Hadn't he given you the furniture as well as the houses?

A. No, I bought that from the rentals.

Q. Why didn't you get him to give you the furniture if he gave you the houses?

A. I was perfectly willing to buy the furniture myself.

Q. You didn't try to get that out of him?

A. No.

Q. Now, notwithstanding that this check was given, you say, for repayment of the furniture, you wrote on it, "Savoy and Ohio Apartment to Somers Doughty, principal." Why did you write the word "principal" on there if this was given for furniture?

A. He dictated it.

Q. Why did you write it?

A. I always did everything he told me to.

Q. Why would you write the word "principal" there? You knew what "principal" meant, didn't you?

A. Principal of furniture. I thought he was going to treat me right.

Q. There is no principal about furniture; that was for furniture, wasn't it?

A. Why, the word meant was principal, isn't it?

Q. When you wrote a check to Mr. Doughty after conditions got unpleasant around there didn't you always write on it exactly what it was for?

A. Not always.

Q. Did you on some occasions?

A. On some occasions.

Q. When you wrote on it you wrote on it what it was for, didn't you?

A. On some occasions.

Q. Why didn't you write on this thing for furniture?

A. He pulled it out of my hands before I was through.

Q. You had a serious misunderstanding with him that morning, hadn't you, or serious quarrel with him that morning?

A. I was so excited I didn't know what I was doing.

Q. That is your only explanation?

A. It is.

Q. Then, Mr. Doughty, now, was on the stand yesterday morning and this check was referred to and before this photograph had made its appearance I asked you for the original of this check and, I think, you told me across the table that you didn't have it. Now, have you found it since?

A. No, I can't find a lot of my checks.

Q. What explanation have you for the absence of this check?

A. Not any for that particular one. In the excitement of moving and the conditions under which I was married, the strain, I don't know where half of my things are. My father told me I could come back and get anything I wanted out of the house after I was married and when I went back he wouldn't let me in.

Q. You burned up all the useless things and moved everything else out that belonged to you, didn't you?

A. Oh, no, indeed.

Q. You didn't move anything out?

A. No.

Q. Did you leave any of your papers or effects there?

A. I think I did.

Q. You think you did?

A. Yes.

Q. Well, do you think that if you left the original of this check, why, that Mr. Doughty wouldn't have had it?

A. I don't know.

Q. Rather than the picture of it?

A. Well, I don't know anything about that; possibly he has.

Q. Now, he came in at noon time—by the way, what time was this in the morning?

A. It was in the morning about half-past ten or eleven o'clock before I went to business.

Q. Before you went to where?

A. Business.

Q. He came in again about noon?

A. At dinner.

Q. When was dinner?

A. Six o'clock.

Q. So you didn't see him between ten and six in the evening?

A. No.

Q. When he came in he told you that he had tricked you?

A. He did.

Q. And that now he had the proof of the fact that these moneys were a loan to you, didn't he?

A. He did.

Q. And said, "If you marry Naame I can break you because I can make you give back every cent that I have given to you."

A. He said he would do that if it cost him a million dollars.

Q. On that day on the evening of December 15, 1928?

A. I don't remember the date.

Q. That is the date of the check.

A. That must have been the evening.

Q. And that must have been the evening?

A. Yes.

Q. There was no dispute about that in your mind at all? Your mind is perfectly clear about it?

A. Absolutely.

Q. As I have recited this and you have affirmed it took place?

A. Yes.

Q. A few minutes ago, in answer to Judge Cole's question, you said that Mr. Doughty never made any demand upon you for this money until your wedding day?

A. For the return of the money on the buildings.

Q. What was this return for?

A. Furniture.

Q. He had just said to you that he had tricked you, that he had now the proof by which he could get back the money that he had given to you, on the fifteenth of December, and in view of that statement I ask you now to explain why you told Judge Cole that he never made any demand on you until your wedding day?

A. Judge Cole asked me if he made a demand for the return of the money on the buildings, as I understood it.

Q. What was he talking about when he said he tricked you?

A. This check.

Q. What was he talking about?

A. Why, he told me he was going to take everything away from me that he had ever given me and break me if it cost a million dollars.

Q. Then he had demanded the money from you, hadn't he?

A. That morning he took my check.

Q. That was on the fifteenth of December?

A. Yes.

Q. What I want to know is why you told Judge Cole that he did not make this demand until the morning of your wedding day?

A. There was no discussion about buildings when I wrote that check.

Q. I am not asking you about when you wrote the check, I am asking you, Madam, to explain to me why you told Judge Cole on your direct examination that he had made no demand on you until your wedding day whereas you admit to me that he made this demand on December fifteenth?

A. Judge Cole asked me if he had made any demand or his lawyer had made any demand for me to repay him for the buildings and I said no.

Q. Now, he didn't use the word buildings, but, even if he did, it is obvious what he referred to on the fifteenth was the money that he had loaned to you, wasn't it?

A. For furniture.

Q. Was it going to break you if you paid him back for all the furniture?

A. I was under the impression I had paid him.

Q. It was only five hundred dollars or a little bit more, wasn't it?

A. Yes.

Q. Then how had he broken you?

A. By getting me to write that on that check.

Q. Well, the only trick was, if he had tricked you,

was that he had gotten you to write the word "principal" there?

A. Yes.

Q. And it referred to the money that he had advanced on the buildings, didn't it?

A. He told me that night.

Q. Then he did tell you, according to your story, that he claimed that you owed him this money and he had the proof of it, on the fifteenth, didn't he?

A. Yes.

Q. Then I want again to ask you why it was that you said to Judge Cole that there was no demand made on you until your wedding day?

A. I must have made a mistake.

Q. Now, then, Madam, I want to ask you another question. You had been in business at the time you made this check on your own book for about four years, hadn't you?

A. Three years.

Q. And you had been accustomed to ordinary business affairs and ordinary bank affairs, hadn't you?

A. Yes.

Q. Did you tell anybody after Mr. Doughty came back and told you that he had tricked you with this check about it?

A. My future husband.

Q. That night, didn't you?

A. Yes.

Q. You made it your business to say to Mr. Naame that Mr. Doughty had tricked you into signing a check which acknowledged your indebtedness to him for the money he had loaned to you on the promise that if you persisted in marrying him he was going to break you if it cost him a million dollars?

A. I did.

Q. You told him all of that, didn't you?

A. Not those exact words.

Q. Well, that was the effect of it?

A. Yes.

Q. And I have repeated, in substance, what you told him?

A. Yes.

Q. Is there any additional things you told him that you want to put in the record?

A. No.

Q. That fairly tells the tale?

A. Yes.

Q. And Mr. Naame was also a business man?

A. Yes.

Q. Had been taking care of your business for you?

A. Yes.

Q. Keeping your books for you?

A. Yes.

Q. Was in the contracting business?

A. Yes.

Q. And you knew he was a college graduate, didn't you?

A. Yes.

Q. Both of you were ordinary intelligent business people, weren't you?

A. I don't know very much about business.

Q. But you did tell Mr. Naame all this story?

A. Yes.

Q. And that was on the night of the fifteenth of December?

A. I presume it was.

Q. Couldn't remember what day of the week it was, could you?

A. I think it was on Friday.

Q. Now, Madam, I want to ask you why, in view of the fact that you thought he had tricked you, that this check was evidence that he could use against you, as he has used it against you in this case, to deprive you of this large sum of money, you didn't stop the check?

A. Never gave it a thought.

Q. And Mr. Naame never gave it a thought?

A. No.

Q. And Mr. Naame didn't even give it a thought to testify concerning this thing when he was on the stand today, did he?

A. I didn't listen to all his testimony.

Q. Did you ever tell this explanation to your counsel?

A. What of this check?

Q. Yes.

A. Yes.

Q. When did you tell him?

A. When the lawsuit was first brought up.

Q. When it first came up?

A. Yes.

Q. You told Judge Cole that this check was outstanding?

A. Among other things.

Q. You told Mr. Salsburg it was outstanding?

A. Yes.

Q. And it would probably turn up in this case?

A. Yes.

Q. To be used against you?

A. Yes.

Q. Why didn't you get up this in your answer that you filed in this case?

Mr. Cole: How can this witness answer that, and besides it would not be a proper thing to set up in the answer, it would be a matter of evidence and I object to it.

The Court: Sustain the objection.

Q. Your counsel then knew from sometime in February last that this check with this word "principal" on it was some place at large?

A. I presume so.

Q. You told him so, didn't you?

A. I did.

Q. Did you make any effort to find this?

A. I did.

Q. What effort did you make?

A. Hunted in my office.

Q. Is that all?

A. Yes.

Q. Why didn't you go to the bank and see if it could be cancelled?

A. I knew he had it. What was the idea of that?

Q. He had what?

A. I knew my father had the replica of it.

Q. The photograph of it?

A. Yes.

Q. I know, but you wanted the original, didn't you?

A. I never had the original.

Q. Why didn't you go to the bank and get it, can you tell us that, Madam?

A. Why didn't I go to the bank? I had withdrawn my account.

Q. What?

A. I had withdrawn my account.

Q. Withdrawn your account?

A. Yes.

Q. When?

A. Sometime in February, first part of February.

Q. All right, you withdrew your account in the first part of February. Was that before you got married?

A. No, after I was married.

Q. And had you not stated—when was it you were married, Madam?

A. Sixth of February.

Q. You were married on the sixth of February. When did you close your account?

A. I just don't remember. I didn't use it for quite some time after I was married.

Q. It seems to have been on the twenty-second of February, 1929.

A. Yes, there were no deposits after the fifth.

Q. So that you closed and got your book balanced on the twenty-second of February, didn't you?

A. Yes.

Q. At that time you, of course, must have gotten back this check?

A. I guess so.

Q. That was after you had been sued and after you had told your counsel about the circumstance of the check, wasn't it?

A. No, I don't think I had told my counsel at that time.

Q. When did you tell your counsel about the circumstance of that check?

A. I visited him several times and I don't just remember the dates.

Q. You said a little while ago it was right after you were married?

A. We went on a honeymoon you know.

Q. How long were you gone?

A. A week.

Q. Then you were back about the thirteenth or fourteenth, you saw your counsel right after that, didn't you?

A. Several days after that.

Q. You did arrange for the filing of a defense in this case, didn't you?

A. Yes.

Q. You said a little while ago that you told him about this?

A. I did.

Q. Then that must have been before you got it back from the bank, wasn't it?

A. I presume so.

Q. Even having told your counsel about the importance of this check, having told them how you had been tricked in writing the word "principal" in there, you got the check back from the bank and then proceeded to lose it?

A. No, I moved several times since then.

Q. That is the only explanation you have?

A. No, not necessarily.

Q. Is that all, that you just moved?

A. We moved several times. I don't know where half of my clothes are.

Q. A matter of—I won't say that—so strictly

likely to lose a large fortune, didn't you think it was worth while taking care of it?

A. I didn't put that much significance to it.

Q. You didn't think that this statement, unexplained, might be controlling evidence in this case?

A. No.

Q. Has your counsel told you that it would be damaging?

A. He said he would have to produce it.

Q. He said that he told you that you would have to explain it, too, didn't he, I guess?

A. I just don't know.

Q. But he said you would have to produce it, he told you it was important, didn't he?

A. Yes.

Q. Yet after you got it back from the bank you proceeded to lose it?

A. Not of my own free will.

Q. You didn't think about stopping the check the next day, did you?

A. No.

Q. Did you ever think about stopping the check?

A. No, I never have in my life, never had occasion to stop it.

Q. Notwithstanding the fact that you knew you had been tricked into signing this check with this damaging word on it?

A. I was in such a highly nervous state I didn't know which I was doing.

Q. When did you get over being nervous about it?

A. Not until after I was married, about, and the treatment I had.

Q. Didn't you calm down in the next ten days at all?

A. I have been very nervous ever since.

Q. Weren't you capable of some relief thought on this subject?

A. I suppose so.

Q. Didn't you talk it over with Mr. Naame?

A. Not frequently.

Q. In the few days or next ten days that followed this affair didn't you talk with him further about the check?

A. Not that I remember.

Q. Do you know when Mr. Doughty actually cashed the check?

A. I think the twenty-fourth of December.

Q. How did you find that out?

A. I don't just remember.

Q. So that the check was out, outstanding from the fifteenth until the twenty-fourth before Mr. Doughty cashed it, is that right?

A. I guess so.

Q. Now, he kept this check, according to your statement—by the way, did you ever see the check after he snatched it out of your hand?

A. No.

Q. He kept this check uncashed from the fifteenth to the twenty-fourth, notwithstanding the fact that he told you that he had tricked you, is that right?

A. If you say so.

Q. What?

A. You say so.

Q. No, I am asking you is that correct?

A. That he kept it?

Q. Yes.

A. I don't know what he did.

Q. It wasn't cashed until the twenty-fourth, was it?

A. No.

Q. It was cashed by him when it was cashed, wasn't it?

A. I don't know.

Q. Didn't you look to see whether it was endorsed by him when you got it back?

A. No, I didn't.

Q. You didn't?

A. No.

Q. Is that the last check you ever gave him?

A. I don't know whether it was or not. I have given him many checks.

Q. After this row and after he had told you that he had tricked you, did you venture on giving him any more checks for any purpose?

A. I think he asked me to pay for a ring he had bought for me.

Q. Did you do it?

A. I did.

Q. Well, isn't that something he had given you?

A. No, I didn't have the money to buy it at the time and he said he would buy it for me; I didn't consider it a gift.

Q. You paid him for that?

A. I did.

Q. When did you pay him for it?

A. Sometime in December.

Q. Well, before or after this affair?

A. I don't remember.

Q. You can't recall?

A. No.

Q. If it was afterwards did you write anything on that check that you remember?

A. I was very careful after that.

Q. Very careful about what you wrote?

A. After that.

Q. What did you write on that check?

A. I just don't remember.

Q. It was for a ring?

A. It was a platinum chain.

Q. Ring and platinum chain?

A. Yes.

Q. Didn't owe him for any other jewelry, did you?

A. I did not.

Q. And that was the only thing that you considered you did owe him for?

A. Positively.

Q. And you were very careful this time to write on the check exactly what it was for?

A. Wouldn't you be after that?

Q. What?

A. Wouldn't you be after that?

Q. I probably wouldn't be but I am asking you if you are?

A. Yes.

Q. Now, I will show you what you wrote, "For account of, paid in full for diamonds purchased by S. L. D. for I. D."

A. Yes.

Q. You didn't write anything about a ring and a chain there, did you?

A. No, I knew what it was for.

Q. And you were very careful, you said, to write exactly what the check was for. Now, how do you explain that while the thing purchased was a ring

and a chain, you wrote on the check that it was for diamonds?

A. It was a diamond ring.

Q. Was the chain diamonds?

A. No.

Q. And you paid him this check on the nineteenth of December, didn't you?

A. I don't remember the date.

Q. Well, that is the date on it, isn't it?

A. It is.

Q. And that is four days after he had served notice on you that he had tricked you with this other check?

A. He didn't serve notice. He told me.

Q. Well, after he had told you?

A. Yes.

Q. Now, Madam, did you ever tell anybody that you hadn't any money because every cent that you got out of these apartments you had to give to Mr. Doughty to pay him back?

A. No.

Q. Did you ever tell anybody any language of that import?

A. I said that all the money that I got from the apartments I used to pay for the expenses on the apartments after my own personal expenses.

Q. To whom did you say that?

A. I have told that to many people.

Q. Did you ever tell anybody, however, that you had to use the money to pay Mr. Doughty back?

A. No.

Q. Do you know Enoch Burkett?

A. Former janitor of mine.

Q. Did you ever tell Burkett that you hadn't any

money because you had to use all your money to pay Mr. Doughty back?

A. Not that I remember.

Q. Well, will you deny that you said that?

A. I don't remember saying that.

Q. You may have said that to him?

A. He may have tried to borrow some money and I gave him that as an excuse.

Q. Now, as a matter of fact, he did try to borrow some money from you, didn't he?

A. Yes, I went his bail.

Q. Yes, and he tried to borrow seventy-five dollars from you to pay for the funeral of his wife's sister, didn't he?

A. He did borrow it.

Q. And on that occasion didn't you tell him that you hadn't any money because you had to use your money to pay Mr. Doughty back?

A. I did not.

Q. Did you, on or about the fourth of July, 1928, tell Burkett that you had to use all the money that you got to pay Mr. Doughty back or words to that effect?

A. No, not that I remember.

Q. Did you ever tell Burkett that he was better off than you were because he was getting a salary and that you wasn't getting a cent out of it?

A. No, I said he was better off than I because he had no worries.

Q. But you never said that he was better off because he was getting a salary and you were getting nothing out of it?

A. I took what I wanted.

Q. I am asking you if you said that?

A. No.

Q. But you will not deny that you may have told Burkett that you had to pay this money back to Mr. Doughty?

A. I deny that.

Q. You deny that?

A. Yes.

Q. A few minutes ago you didn't deny it.

A. You didn't use those words.

Q. You said you may have told Burkett that?

A. No, I don't think so. If I did I shouldn't have said that.

(Former testimony repeated:

"Q. Did you ever tell Burkett that you hadn't any money because you had to use all your money to pay Mr. Doughty back?

"A. Not that I remember.

"Q. Well, will you deny that you said that?

"A. I don't ever remember saying that.

"Q. You may have said that to him?

"A. He may have tried to borrow some money and I gave him that as an excuse.")

A. That was incorrect if I answered that.

Q. So now you want to say you never made such a statement to him even as a matter of excuse?

A. No.

Q. And at no time you made such a statement the effect of which was that you had to use the income from these apartments to repay Mr. Doughty?

A. I don't recall it.

(Adjourned to Friday, September 20, 1929, 10.00 A. M.)

Atlantic City, New Jersey, September 20, 1929.

(Trial of the cause resumed at 10 o'clock A. M.)

ISABEL NAAME, resumed.

Cross-examination (resumed):

By Mr. Richards:

Q. When we recessed, I think we were discussing your conversation with Burkett, were we not?

A. I think you were.

Q. Now, as I recall it, you had not told, or you testified that you had not told Burkett that you owed Mr. Doughty any money; is that correct?

A. Yes.

Q. And that is the fact, that you never did say to Burkett anything that would indicate that you recognized that you owed Mr. Doughty any money?

A. No.

Q. Now, have you seen, since this case was adjourned over until today, have you seen Burkett?

A. He came to my office last Friday evening.

Q. Did you have a conversation with him?

A. Not about the case.

Q. Did you ask Burkett if he was going to testify against you?

A. No.

Q. Did he say that he was?

A. He didn't say anything about it.

Q. What did you talk about?

A. He said he understood I was going to have him arrested and he wanted to know why.

Q. Did you say that?

A. Did I say that?

Q. Yes.

A. No. He was under the impression before when he was down here I was going to have him arrested.

Q. Did you say to him that, "You know I have been very nice to you, are you going to testify against me?"

A. I don't remember.

Q. Who else was present?

A. My janitor and Mr. Naame.

Q. Which office was this that this took place?

A. Savoy Apartments.

Q. He came to your office, or was he visiting in the Savoy?

A. He was in my office when I arrived.

Q. Did you offer him a job?

A. I did not.

Q. Did Mr. Naame offer him a job?

A. I didn't hear him.

Q. Did you hear Mr. Naame say that, "If I subpoena you, you could testify and do me a lot of good?"

A. No.

Q. Did you hear him ask that, "All I want to do is to beat Doughty?"

A. No.

Q. I want to see if I understand correctly your contention about the moneys that went to build these apartment houses. The first two apartments were

built out of moneys advanced by Mr. Doughty, is that correct?

A. Money given by Mr. Doughty.

Q. Well, at least, paid in cash to Mr. Naame the total amount of the cost of the houses; is that correct?

A. Yes.

Q. Which was $100,000, was it not?

A. I think it was.

Q. Now, he then paid to Naame some $36,000 in cash for the remodeling of the corner apartment, is that correct?

A. I borrowed that money for him to pay it.

Q. Wait a minute. He paid that in cash?

A. Yes.

Q. You then borrowed $35,000 on the corner apartment?

A. Yes.

Q. Now, what do you contend you did with that money?

A. I contend I made the alteration with that money.

Q. Well, obviously, Madam, the checks show that Mr. Doughty paid the $36,000 directly to Mr. Naame, how do you mean that you gave thirty-five of it back, by raising the money on the mortgage and paying it to Mr. Doughty?

A. Yes.

Q. So that it is your contention that, as far as that transaction is concerned, that Mr. Doughty was paid all but the thousand dollars; is that correct?

A. I put the mortgage on there to pay for the alterations.

Q. Will you please answer my question?

(Question repeated.)

A. Yes.

Q. Now, do you contend that any moneys whatever were repaid to Mr. Doughty with respect to the hundred thousand dollars paid by him on the new apartments?

A. No.

Q. So that, if this was a loan and not a gift, then there would be $100,000 due on the new apartments?

A. It was a gift.

Q. I don't mean that; I say if that was the fact, if it was a loan and not a gift, there would still be $100,000 due to Mr. Doughty from you on these apartments?

A. If it was a loan, but it was a gift.

Q. I am trying to find out what your contention is in this case. And it is also your contention that you raised the money necessary to build the Ohio Apartments from the proceeds of the two mortgages placed upon the new apartments?

A. Yes.

Q. They amounted to $60,000?

A. Yes.

Q. Now, the Ohio Apartments cost about $104,000. Where did the balance of the money come from?

A. I had notes, when I was short he gave me money.

Q. Well, did you raise any other moneys outside of what Mr. Doughty either gave or loaned to you to construct the Ohio Apartment?

A. I used the proceeds from the Savoy Apartments in there.

Q. You mean the income?

A. Rentals, yes.

Q. Do you know how much you used of that?

A. No, I don't.

Q. Can you tell us how much money was either advanced or given to you by Mr. Doughty to complete the building of the Ohio Apartments?

A. No.

Q. The amount of cash you were short was about $44,000?

A. About forty-two; the contract was a hundred and two thousand.

Q. Yes, but there were some extras amounting to something over two thousand dollars, were there not?

A. There may have been.

Q. Now, I show you this series of thirty checks that run from September 25, 1925, to December 23, 1926, all made to Joseph S. Naame, and signed by Doughty and endorsed by Naame, drawn on either the Marine Trust Company or the Boardwalk National Bank, which, my recollection was, were offered in evidence as Exhibit C1, and ask you if you will look these over and see if those were the checks which Mr. Doughty gave Mr. Naame to build the Savoy Apartments and the corner apartment?

A. They most likely were.

The Court: The total of the thirty checks was $140,000.

Q. Now, then, those thirty checks approximate within four thousand dollars the total amount of the Savoy contracts?

A. One hundred and thirty-six thousand, yes.

Q. Now, then, I show you the series of checks beginning June 10th, 1927, and which were introduced in evidence as C3, and which I believe total $61,000, which were made payable to yourself and signed by Mr. Doughty and endorsed by you, Isabel Dobbin, Savoy Apartments, all with the exception of one, and ask you if they represent the moneys that Mr. Doughty either gave or advanced to you for the building of the Ohio Apartments?

A. Some of them are and some of them are exchanged checks.

Q. Will you pick out those that were the advances and those that were the exchange checks?

A. One $25,000 was an exchange check, and then there was a fifteen thousand there, moneys that he gave me back, one check for ten thousand and several smaller checks, in my bank account, the other money he gave me when I was short.

Q. Where is that $15,000 check?

A. He didn't give it back to me all at one time, he gave it to me at various times.

Q. Have you got those two checks here, the exchange checks?

A. I believe I have.

Q. Will you produce them?

Mr. Cole: What checks are they you want?

Mr. Richards: $25,000 check and $15,000 check.

(Checks produced.)

Q. Now, when you say exchange checks, do you mean at the time that you gave him your check for

the twenty-five thousand he gave you a post-dated check?

A. No. He gave it back to me several days later.

Q. Then what you do mean is that you did not exchange checks but that you loaned him the money and he paid it back to you?

A. Yes.

Q. Now, where did you get the $25,000 to loan Mr. Doughty?

A. Mortgage money, twenty-four thousand of it, and the rest was my receipts.

Q. So that the money you speak about then, was the proceeds of the $25,000 that was raised on one of the Savoy Apartments?

A. Yes.

Q. Now, where did you get the $15,000 that you say that you loaned to Mr. Doughty?

A. I think that was out of the proceeds of the $35,000 mortgage.

Q. Then of the $61,000 represented by these checks ——

The Court: How many checks are there there?

Mr. Richards: Twelve.

The Court: Does it total sixty-one thousand?

Mr. Richards: That is what Mr. Reed has it. Have you got a different amount?

The Court: I have seventy-one thousand on the direct examination.

Mr. Richards: Seventy-one thousand. The Court is correct.

Q. Of the $71,000 of total checks that we have here, it is your claim that $40,000 of that represents repayments to you of money loaned to Mr. Doughty?

A. Yes, sir.

Q. And thirty-one thousand, then would be the amount which was either loaned or given to you by Mr. Doughty?

A. Given to me.

Q. Either one, these figures, we are trying to arrive at the figures now.

A. Yes.

Q. So that, then, would make a total of $132,000 that was either loaned or given to you by Mr. Doughty on the whole series of apartment houses?

A. Yes.

Q. And in addition to that, of course, you don't contend that Mr. Doughty gave you the $8,000 which he paid on the promissory note; that you admit you do owe?

A. I do.

Q. Now, in the case of the $35,000 mortgage, was the proceeds deposited to your credit or to Mr. Doughty's credit?

A. To my credit.

Q. And did you turn that money over to Mr. Doughty?

A. I think I gave him the fifteen thousand which he afterwards repaid me.

Q. Didn't you, in fact, endorse the check over to him?

A. No. I think I deposited it.

Q. Now, in the case of the $35,000 check on the remodeled apartment house, did that check go into that account, or did you recheck to him, or did you endorse the Title Company's check directly to him?

A. I don't remember.

Q. Madam, when did your birthday come?

A. September 17th.

Q. September 17th?

A. Yes.

Q. I believe you told us the other day that Mr. Doughty gave you these various tracts of land for a birthday present?

A. Yes.

Q. Now, the deeds to the various tracts of land dated March 19th, 1927, in one case, and December 30th, 1922, in the second case, and September 19, 1925, in the third case, which deed was, however, not recorded until March the 4th, 1926. I ask you how it was that if these properties were given to you for birthday presents, the deeds were dated in two cases in March, when your birthday was in September?

A. On my birthday, he never gave me anything on the day it really was due, really was two or three months later, but on the day he would tell me, "I am giving you this for your birthday."

Q. Two of the deeds he gave you some six months after your birthday?

A. Yes.

Q. But they were birthday presents?

A. Positively.

Q. Were you of age in 1922?

A. Yes.

Q. How do you explain the fact that the contracts

for the erection and remodeling of the Savoy Apartments were in Mr. Doughty's name?

A. He built them and gave them to me.

Q. Well, according to your story he gave you a part, at least, of the money he used to use the Ohio Apartments, why wasn't that in his name?

A. He thought that I was capable of attending to that myself at that time. That was several years afterwards.

Q. You say it was several years afterwards?

A. Yes.

Q. Now, the Savoy Apartments was completed in 1926?

A. 1925 they started.

Q. Started, but they were finished in 1926, and you started operations there in the spring of 1926, didn't you?

A. January of 1926.

Q. And when did you start to build the Ohio Apartments?

A. The following year, in the summer.

Q. The summer of 1927?

A. '27.

Q. So that it was not several years, it was only one year, wasn't it?

A. The Savoy was my first business venture.

Q. All right, but it wasn't several years.

A. A year and a half.

Q. A year and a half?

A. Yes.

Q. The last check on the Savoy deal seems to be December, 1926, December 23rd, 1926, and the first checks on the Ohio Avenue deal, exclusive of the

$25,000 check, is June, 1927. Now, that was only a period of about six months, wasn't it?

A. Not from the completion of the alteration.

Q. Didn't Mr. Naame get his money as soon as he completed the apartments?

A. He evidently did not.

Q. There were checks all during the fall of 1926?

Mr. Cole: May it please your Honor, I object to this examination, the time it takes. Whatever the time was, is spoken to by the checks. Why, we are concerned about whether it was six months or two years, there is documentary evidence. The lady says she thought several years. Now, we are spending time on cross-examination absolutely inconsequential and I object to it.

Mr. Richards: I don't think it is. It is contesting the verity of the witness. She makes the statement this was a year and a half when very evidently it was not over six months between one transaction and the other.

(Last question repeated.)

The Court: No question.

(Question withdrawn.)

Q. When do you contend that the properties uptown were completed?

A. The new buildings were completed in February, the end of February, and the alteration was completed——

Q. February of what year?

A. 1926; and the alteration was completed either the last of July or the first of August of 1926.

Q. And the other building was started some time prior to June of 1927?

A. About the middle of April, 1927.

Q. Then, you were in business from July until April?

A. I was in business from January, 1926, to the following April, 1927, almost a year and a half.

Q. Now, I asked you some time ago about whether or not these title company checks had been made payable to you and by you endorsed to Mr. Doughty, or whether you put them in your account and checked to him. Now, I show you the Exhibit C4, the check for $33,617.48, and note that it was endorsed by you to Mr. Doughty direct.

A. That is the first check that I said I didn't remember.

Q. Now, why did you endorse this check to Mr. Doughty?

A. He most likely asked me to. I did everything he asked me.

Q. Now, Madam, I want to again ask you about this $500 check. As I understand it, you say that you wrote on here, "Savoy and Ohio Apartments, to Somers Doughty, principal," because Mr. Doughty compelled you to write it on there?

A. It was to be principal of furniture.

Q. And at the time you were greatly excited?

A. I was. I thought he would do me bodily harm, the way he carried on.

Q. You were nervous?

A. I was so hysterical I didn't know what I was doing.

Q. And that is your explanation of this?

A. Yes.

Q. Have you made any search for this original check since this case was adjourned?

A. I looked for it, yes.

Q. Did you find it?

A. No. It wasn't among my checks when I got them from the bank.

Q. What do you mean by that?

A. It was not among them.

Q. You mean that you never got this check back?

A. No. I presume my father had it. He was in the habit of taking checks out of the bank, being a director he had access to everything.

Q. You mean to say that the bank did not return, Marine Trust Company did not return your cancelled check?

A. I didn't see it in the checks.

Q. Did you look for this check?

A. I looked for it when I got my statement, yes.

Q. When it wasn't there, why didn't you go to the bank and inquire about it?

A. I presume my father had it.

Q. Why didn't you ask him for it?

A. He wouldn't talk to me.

Q. It was your check, wasn't it?

A. Yes.

Q. Why didn't you go to the bank and inquire?

A. I tell you I presume my father had it, he was in the habit of bringing checks down.

Q. That is your only answer to that?

A. Yes.

Re-direct examination.

By Mr. Cole:

Q. How old are you?
A. Thirty-two.
Q. Had you, before you had the experience of improving these properties, had any business experience?
A. No.
Q. Had you spent, before you went to live with Mr. Doughty, any part of your time in a convent?
A. Six years.
Q. How long was it after you left the convent before you went to live with Mr. Doughty?
A. I left the convent in June, and he and my mother were married in November.
Q. Now, did you send for Mr. Burkett to come to see you?
A. No.
Q. Did you ask anybody to send for him to come to see you?
A. No.
Q. Do you know how it was he did come to see you?
A. I imagine my father sent him.
Q. Do you know?
A. No.
Q. You may imagine a lot of things.

Mr. Richards: She has.

Q. Did you find him there when you arrived?
A. I did.

Q. Where?

A. In my office.

Q. Who else was there, if anyone, besides him?

A. My janitor.

Q. What is your janitor's name?

A. Julius Burden.

Q. Now, when you arrived—by the way, when was this?

A. It was last Friday evening about half past eight or nine o'clock.

Q. After we had taken an adjournment in this case until today, was it?

A. Yes.

Q. Who first began to talk when you entered that room, as between you and Burkett, who opened the conversation?

A. I said, "Good evening, Burkett."

Q. And then what?

A. I don't remember what he said.

Q. How did he come to ask you whether it was true that you intended to have him arrested, if you know?

A. I don't remember.

Q. How long was he there?

A. He was there about fifteen minutes, I guess, or twenty minutes.

Q. Did Mr. Naame arrive while he was there?

A. I called him in from the automobile.

Q. Called who in?

A. My husband.

Q. How long had it been before this occurrence that you had seen Mr. Burkett?

A. Why, I hadn't seen him to talk to since he left my employ last year.

Q. Where was he working?

A. I think he is working in New York.

Q. No, then, what property?

A. Savoy Apartments.

Q. Did he leave or did you dismiss him?

A. I dismissed him.

Q. Had you, during the time that you lived with Mr. Doughty and after you began to get an income from these properties, ever passed your checks to him?

A. To my father?

Q. Ever given him your checks?

A. Yes.

Q. Do you recall how it came about that you gave checks?

A. No, I don't.

Q. Now, we offered for identification the other day five checks and they are all your checks on the Marine Trust Company, to the order of S. L. Doughty. Will you look at those and tell me whether you can recall what those checks were given for?

A. No, I can't.

(Checks offered in evidence.)

Mr. Richards: Then I object to them, have no evidential value here.

Mr. Cole: They are checks of hers to Mr. Doughty and certainly they are evidential.

The Court: I will admit them.

Mr. Richards: If your Honor please, he asked her what the checks were about and she says she doesn't recall.

The Court: They are checks which passed through Mr. Doughty's hands. I don't see that they have any great evidential value, but they are certainly admissible.

Mr. Richards: Of course, it seems to me, might have given checks to anybody, and if there is no proof what they were about, they can't be admissible.

The Court: Of course, if the checks were to anybody, they would not be, but they are to the parties in this case. Of course, if it is not shown that they have any connection with this case, then they will have to be eliminated.

(Checks received in evidence and marked Exhibit D2.)

Q. You spoke of a $15,000 check on your cross-examination, and I ask you if that is the check?

A. That is.

(Check offered, received in evidence and marked Exhibit D11.)

Q. For what was that $15,000 check given, if you remember?

A. Temporary loan, he was short and needed, and I had some extra money.

Q. You say this was paid out of the mortgage loan?

A. I presume it was.

Q. Check bears date apparently the same date as the settlement. Did he pay you that $15,000 back?

A. He did.

Q. Can you presently recall whether he paid it back in one payment or more than one payment?

A. One check was for ten thousand and the other was smaller amounts.

Re-cross examination.

By Mr. Richards:

Q. About this $15,000 check. How soon after you gave him this check was it that he gave you the $10,000 back?

A. Why, I presume only a short time.

Q. It was not months afterwards, was it?

A. No.

Q. Then, I show you these checks, C1, and point out to you that there is only two $10,000 checks, one of them is dated October 5th, 1927, and the other January 7th, 1928. Which one was the repayment check?

A. Why, most likely, wasn't either of those. I have a deposit in my bank-book where he paid it back. Couldn't get it from any place else.

Q. It wasn't any of these checks, then?

A. Evidently not.

Q. So, then, that your contention that of this series of checks of $71,000, forty thousand was paid

back, is not correct by at least ten thousand dollars, is it?

A. No.

Q. Now, of the balance of $5,000 after the October 5th check, there is no check at all until November 23rd, which is a check for $1,000. Was that a part of the repayment, or was it not?

A. I don't remember.

Q. How about the check of November 28th, which is for another thousand dollars, was that a part of the repayment or wasn't it?

A. I don't remember that either. I have some deposits in my book that you can see.

Q. Then, there is a check of December 23rd, of $2,500.

A. That was money I was short and he most likely gave me.

Q. Now, Madam, can you take these checks, any of them, and find any stubs that will exactly reach $5,000?

A. Exactly reach five thousand?

Q. Yes.

A. No. Here is some $4,500.

Q. The only possible combination you can make out of the checks would amount to $4,500 and those checks were partially dated in November and in December of 1927?

A. He continued giving me money until the building was paid for.

Q. None of these checks, as far as you can recollect now, were any repayment checks for this $15,000?

A. I guess they are missing.

Q. So that none of the $15,000 repayment is in-

cluded in the series of checks produced in evidence as C3?

A. Not in that particular series.

Q. And, therefore, it follows that of the $71,000 that they represent, all but $25,000 was advances made to you or given to you?

A. Given to me.

Q. For the erection of the Ohio Apartments?

A. Yes.

Q. Either one, according to your contention, is correct about that?

A. They were given to me, that is the way I got them.

Q. Well, they were either—what I am getting at is this, of course, whichever side is right, they were either given or advanced to you?

A. Yes.

Q. All but the twenty-five thousand?

A. Yes.

Q. That is clear, is it?

A. And the fifteen.

Q. The fifteen is not represented by any of these checks?

A. No, but there must be some others.

Q. But it isn't any part of this series of advances by Mr. Doughty?

A. No.

SAMUEL H. HEADLEY, sworn.

Mr. Richards: At this time I wish to have stricken the series of checks Judge Cole introduced, apparently has not connected them.

The Court: I will decline to do it at this time.

Direct examination.

By Mr. Cole:

Q. What is your business?
A. Building contractor.
Q. Where do you live?
A. In Absecon, 553 South Shore Road.
Q. How long have you lived in Atlantic City?
A. Since 1889.
Q. Do you know Somers L. Doughty?
A. Yes, sir.
Q. Did you ever negotiate with him for a lease of a property in Atlantic City?
A. Yes.
Q. About when was it?
A. I am not so clear on the date, possibly very near three years ago.
Q. And where is that property?
A. At the corner of Drexel and Maryland Avenues.
Q. Atlantic City?
A. Atlantic City.
Q. As a result of your negotiation with him, was a written lease made?

A. Yes.
Q. Between whom?

Mr. Richards: I object, if your Honor please. This property is not in controversy in this case.

Mr. Cole: It is in controversy in the matter of evidence.

The Court: Yes, I think this property has been mentioned.

Mr. Richards: Has been mentioned, I think, but not by us, if your Honor please. They brought out some evidence on their part about a lease of this property. Now, we are not going into that, that happens to be another lawsuit which will be before your Honor at another time, but at this particular time we are not trying that and I don't see any reason for dragging that in, in this case. There is no use dragging it in this case. What we are trying to do is to impose a lien on these specific properties, we mention in our bill, and Mr. Doughty was not asked about that, and it is not a question of rebuttal testimony.

Mr. Cole: Please your Honor, the question——

The Court: I will admit it.

(Question repeated.)

Q. Between whom was the lease made, that is what I want to know?
A. When the lease came back to me——

Mr. Richards: If your Honor please, of course, I want to make another objection and that is, of course, that the lease speaks for itself.

The Court: Sustain the objection.

Mr. Cole: I want to trace that to Mr. Doughty. It is turned over to him and I call on him now to produce it. Produce, Mr. Doughty, the lease between Mr. Headley and Isabella Dobbin for the property, Baltic and Drexel Avenue.

Mr. Richards: Got it, Mr. Reed?

The Court: Why should that be asked, if this witness has the lease?

Mr. Cole: If your Honor please, I haven't come to it yet.

Q. Was that lease in writing?
A. Yes.
Q. Did you keep a copy of it, have a copy of it?
A. I had a copy of it.
Q. Have you it now?
A. No.
Q. What did you do with it?
A. I returned the lease and surrendered the property.
Q. To whom did you return the lease?
A. To the man I negotiated for the rental of the property.
Q. Who was that?
A. That was Mr. Doughty.

Q. In what way did you return it to him, did you hand it to him or did you mail it to him?

A. I mailed it to him.

Q. Did the letter ever come back to you undelivered that contained this lease?

A. No.

Mr. Cole: I renew my call on Mr. Doughty or his counsel to produce that lease, if there is any question about whether it was in writing or not.

Mr. Richards: If your Honor please, we were not noticed to produce it.

The Court: Evidently is no part of this case and not noticed to produce it.

Q. To whom did you pay the rent?

Mr. Richards: I object to that, because it is no part of this case, and the lease will speak for itself.

The Court: Let me hear, Judge Cole, why is this admissible in this case?

Mr. Cole: Please your Honor, the relation between Mr. Doughty and his stepdaughter is such that any evidence that would throw any light on whether the money is he now claiming is a loan, was in fact a gift, and what he did with relation to other property at or about the time that he made these deeds, and, as we claim, gave this money, certainly reflects what his mental attitude was toward her

with respect to this property. It is a matter that is collateral in a sense, but it is certainly evidential.

Mr. Richards: If your Honor please, we not only admitted he gave her these other properties, but he even contends he gave her properties which she says he didn't give her, in the case of the Ohio Apartments, we say that we gave her a very substantial interest in that property. She denies it, but what other properties he may have given her certainly are not evidential in this case because the question here is whether or not he gave her this money, this one hundred and forty odd thousand dollars.

The Court: I will sustain the objection to this question.

Mr. Cole: I want to put on the record the proffer is to show by this witness that Mr. Doughty negotiated with him for the leasing of the property at Baltic and Adriatic Avenue——

The Court: That has been admitted and is evidence.

Mr. Cole: That Mr. Doughty prepared the original lease, delivered it to the witness. The written lease was between the witness and Mr. Doughty, that the rent that he paid was always paid by check to Miss Dobbin, now Mrs. Naame, and that there came a time when Mr. Doughty told him to stop paying the rents to her, and he then stopped

paying the rents and surrendered the lease to Mr. Doughty.

The Court: Objection sustained.

(No cross-examination.)

HARRY RILEY, sworn.

Direct examination.

By Mr. Cole:

Q. How old are you?
A. Sixty-one.
Q. Are you well or sick?
A. Sick.
Q. How long have you been sick?
A. Three years.
Q. Where do you live?
A. Well, at present, we are in Venice Park. We live 120 South Connecticut.
Q. How long have you lived in Atlantic City?
A. 1901.
Q. What is your business?
A. Contractor, tile, stone and concrete.
Q. Do you know Mr. Doughty?
A. I do.
Q. How long have you known Mr. Doughty?
A. Oh, possibly twenty years or more.
Q. Are you friendly with him?
A. Yes.

Q. Have you been intimate with him during the years?

A. Well, might talk with him at times. Been very friendly.

Q. Ever do any work for him?

A. Yes, not directly for him, but through him, that is, on his property.

Q. What properties?

A. Indiana and Atlantic and below Atlantic.

Q. Now, do you know Mrs. Naame, who was at one time Miss Dobbin?

A. I do. I done these houses out there on Baltic Avenue, too, concrete.

Q. What properties?

A. Out there, New Jersey.

Q. You mean the properties in question here?

A. Yes.

Q. Did you work on them?

A. Yes.

Q. Did you talk with Mr. Doughty or he to you about Miss Dobbin?

A. He told me——

Q. First of all, did you talk with him, that is the first question?

A. Yes.

Q. About when was that?

A. I think it was some time early in '27.

Q. Do you recall where you were when you talked?

A. Indiana and Atlantic, below Atlantic, on Indiana.

Q. Tell us what the talk was?

A. Well, we were talking there, and had been standing there for some time in a friendly way, and

he told me that he had got his daughter fixed up now, he had given her those properties up there, and had everything all straightened out, papers all made out and everything, properties New Jersey and Baltic, he referred to them because he knew that I had been working out there, I had done work there for him.

Q. Now, then, were those properties completed, the improvements, at the time he so talked with you?

A. Yes.

Q. Did you make any reply after he had made that statement to you?

A. I just simply said that was very nice, very good of him.

Q. Did he ever mention to you on any other occasion?

A. Well, he did, yes, different times he spoke about what he was doing for his daughter, but the exact words used I just don't remember. He told me that he was fixing his daughter up, because I met him occasionally while the work was building, was going on.

Cross-examination.

By Mr. Richards:

Q. Can you remember the exact words that he used when you were talking to him down Indiana Avenue?

A. Well, so far as I can remember, he said that he now had his daughter all fixed up on that property out there on Baltic Avenue, and the papers

were all fixed up and everything was all in shipshape now, and he had given them to her, turned them over to her.

Q. Turned title over to her?

A. He turned the properties over to her, he didn't say title, he turned the properties over.

Q. That was the words he used, that he had turned the properties over to her?

A. Yes.

Q. Didn't say when he had turned them over, did he?

A. No, he didn't go in anything. This was shortly after, about the time things were getting cleaned up on the properties, after they were built and remodelled.

Q. Did he say what papers he had made out?

A. No, only he gave it to me, he told me that he had made the papers out, and turned the property over, given her the property, leading, of course, that the thing was complete, he didn't go into details and mention each paper or any particular paper.

Q. You don't know——

A. The conversation was all of a general order.

Q. ——that he had actually deeded a part of this property to his daughter some four years before; did you?

A. No, in other words——

Q. He didn't say when he had deeded it to her, did he?

A. No, but the conversation——

Q. All that he said was that he had his daughter fixed up?

A. No, he said——

Q. And that he had given her the properties, is that right?

A. If you will let me repeat what he said.

Q. Yes.

A. He told me that he had got everything in shipshape now for his daughter, had all the papers and everything all made out and turned the property, gave the property to her and turned everything all over to her, at that time, or sometime previous to this conversation I had.

Q. Well, you understood that to refer to a short time before you had the conversation?

A. Sometime before that, I don't know just, wasn't any date given, I wasn't interested.

Q. So, you can't say to what he actually referred, can you?

A. Yes, he referred, he told me those properties at Baltic Avenue and New Jersey.

Q. Now, however, Mr. Riley, the fact is, which is not disputed, as to part of this property he deeded it to her in 1922?

A. Well, he didn't go into any details of the thing with me, only gave me the impression that he had been very good to his daughter and he had given her that property.

Q. That is all.

JACOB SALSBURG, sworn.

Direct examination.

By Mr. Cole:

Q. Where do you live?
A. Atlantic City, 3809-11 Ventnor Avenue.
Q. How long have you lived in Atlantic City?
A. About nine years.
Q. Where did you live before you came to Atlantic City?
A. Philadelphia.
Q. What is your business, if any, at this time?
A. Well, I was, when I came here to live I was semi-retired, I had an interest in business in Philadelphia, and I got active in the building and buying and selling real estate.
Q. In Atlantic City?
A. Yes, sir.
Q. Do you know Mr. Doughty?
A. I have met Mr. Doughty for the first time about two years ago. I haven't met him since until the other day.
Q. Do you know Miss Dobbin, now Mrs. Naame?
A. I do.
Q. When did you first meet her?
A. I first met her about two years ago on a boat on a Sunday that we went out in Great Bay.
Q. Was that the occasion when you first met Mr. Doughty?
A. Yes, sir.

Q. Did Mr. Doughty on that occasion talk to you concerning Miss Dobbin?

A. Yes, sir.

Q. Tell us, please, your present recollection of what he said to you?

Mr. Richards: I object to that, what his present recollection of what he said to him.

The Court: Permit it.

Q. Tell, Mr. Salsburg, the talk that passed between you and Mr. Doughty concerning Miss Dobbin?

A. Well, I met Mr. Doughty and we become friendly. He asked me how long I have lived in Atlantic City, where I originally came from and I told him that I was a boy I was brought up and lived in Wilkes-Barre, that is the coal regions, in the early days my father dealt in cattle and horses, and that interested him, and he said that was his line of business, and he said he knew a good many people up there, in fact, I think he told me that he had been up there. I asked him how long he has lived in Atlantic City and he told me that he had lived here about forty years, told me that he got into the livery stable business here, ran a livery stable, and then we got to comparing ages, and he told me his age and I told him my age, and then finally I complimented him on his young wife, thinking that this lady here was his wife, and he said, no, she was his stepdaughter, she was the daughter of his wife that he had lost about eight or nine years ago, but he is taking the place of her father,

he says, so much so that he has given her over two hundred thousand dollars and expected that she will have more after he is gone, and I complimented him on his feeling in that way, and we talked, and we spent a very pleasant day together, and after that time I never saw him or spoke to him.

Q. Who else were on the boat?

A. Well, to my best recollectioin, was a couple by the name of Mr. and Mrs. Rosswell, Mr. Paul Salsburg and his wife, Mrs. Naame or Mr. Naame, Mrs. Mauser, my wife and myself, Mr. Doughty and his daughter.

Q. Miss Dobbin?

A. Miss Dobbin, yes.

Q. How long were you on the boat on that occasion?

A. Well, we were on that boat, it was on a Sunday, we got there about half past nine or ten o'clock, but we were on that boat, we came back about seven o'clock in the evening.

Q. How did you come to be on the boat?

A. I was invited by Mr. Naame.

Cross-examination.

By Mr. Richards:

Q. What were you doing most of the time when you were on the boat?

A. Well, we were visiting, and when we got anchored I fished a little while.

Q. When did this conversation take place?

A. I think while we were going up to Great Bay.

Q. Now, you say that Mr. Doughty said that he had already given his daughter over $200,000?

A. Yes, sir.

Q. Did he say in what form he had given it to her?

A. No, sir.

Q. When was it that this conversation took place, what was the date of it, as near as you can recall?

A. Well, it was on a Sunday.

Q. What year?

A. Two years ago this last August.

Q. That would be 1927?

A. 1927, yes, sir.

Q. Now, did anybody hear Mr. Doughty tell you this or hear this conversation?

A. I can't recall that. I don't think there were anybody around but just himself and myself.

Q. How did you come to inform counsel in this case of this conversation?

A. Well, when I was in the court room here the other day leading up to this trial, and hearing a great many witnesses, that has come to my recollection that Mr. Doughty and I spoke about it.

Q. What were you doing in court, Mr. Salsburg?

A. What is that?

Q. What were you doing in the court room?

A. What was I doing in the court room?

Q. Yes.

A. Well, once in awhile when I have time I kind of get interested in these cases and one thing another.

Q. Well, did you know that this case was coming up?

A. Did I know that this case was coming up?

Q. Yes?
A. Yes, I did.
Q. And you came up here to listen to the trial?
A. Part of it, yes.
Q. Didn't expect to be a witness at that time?
A. No, sir, I did not.
Q. You are an uncle of Mr. Paul Salsburg, the counsel of record in this case, are you not?
A. Yes, sir.

FRANK E. SINGER, recalled.

Direct examination.

By Mr. Cole:

Q. Have you produced certain, what I will call ledger sheets of the Marine Trust Company under subpoena call?
A. Yes, sir.
Q. Are they the sheets?
A. These are the sheets.
Q. How many in number?
A. Five.
Q. What do they represent or show?
A. They represent the deposits and checks drawn by Mr. Doughty, the deposits made by Mr. Doughty.
Q. During what period?
A. 1926, 1927, 1928 and 1929, some 1925 there.

Mr. Cole: I want to make an offer of these sheets, five in number, at this time.

Mr. Richards: What is the purpose, if I may know?

Mr. Cole: The object is first to examine these sheets and ascertain the date and amount of deposits made by Mr. Doughty during the period in question, and also the checks drawn against that account. I can't now, seeing these sheets for the first time, determine whether there is any item of relevancy here or not. I think we are entitled to have them put in evidence so we may examine them to see how they stand related to these checks he says he drew and checks he says he deposited. If your Honor will remember, he had no book himself. He said, I think, that they had been destroyed, and so on, so I think we are entitled to have the bank account here.

The Court: It will be admitted. May be a motion to strike later if it is not connected.

Mr. Richards: Of course the whole point is, that if it is subject to a motion, I don't suppose I care particularly.

(Sheets admitted and marked Exhibit D12.)

Q. Could we have a copy of those made so we wouldn't have to keep them off of your files?

A. Yes, you could have a copy made.

Cross-examination.

By Mr. Richards:

Q. While you are on the stand, I want to ask you who had charge of the books of the Marine Trust Company during December of 1928?

A. All the bookkeepers know all the accounts.

Q. What?

A. Any of the bookkeepers know all the accounts.

Q. Do you know the Doughty and Dobbin accounts in October and December of 1928?

A. Yes, sir.

Q. Now, Miss Dobbin's account was closed on February either 17th or 19th, 1929. When that account was closed, was all of the checks that had been cashed against that account returned to her?

A. Every one but the last check that closed the account for $69, we have that here.

Q. Is there in your files anywhere any checks that were not returned to her?

A. No, sir.

Q. Were any checks, drawn on her account, given to anybody else?

A. No, sir.

Q. Were any of her checks given to Mr. Doughty?

A. No, sir.

Q. Mr. Doughty ever ask for any of the checks?

A. Not that I recall.

Q. Was the check of December 15th, 1928, for $500 returned to her when the account was closed?

A. It was returned before the account was closed, when the book was balanced. Book couldn't be balanced without that check, which would show on it.

Q. Miss Dobbin says this check was not returned to her by the bank. Would that be possible?

A. No, sir. We wouldn't return the book showing a $500 difference. We wouldn't return the book showing a penny difference.

Q. These ledger sheets of Mr. Doughty's, that have been offered in evidence, do they contain any data from which it is possible to tell to whom the various amounts paid out were paid to?

A. No, sir.

Q. Nor do they contain any data from which the credits to the account can be traced, do they?

A. Well, might be able to trace on that banks the checks deposited were drawn on, if they were checks.

Q. Through the deposit slips?

A. Through the deposit slips.

Q. The ledger sheets themselves only show the amounts of the balance, the withdrawals, the deposits, in figures, and the credit balance?

A. That is all.

By the Court:

Q. When was this account closed?

A. Which account are you referring to?

Q. The account of Miss Dobbin, either the Savoy or the Ohio Apartment.

Mr. Cole: This I have offered is Mr. Doughty's.

(Question withdrawn.)

By Mr. Richards:

Q. You just produced from your pocket some checks; what are they?

A. They are the checks that close three different accounts, the Savoy, Ohio and Isabella Dobbin's personal account.

Mr. Richards: I want to offer all three of these in evidence.

(Checks received in evidence and marked Exhibits C22, C23 and C24.)

By the Court:

Q. Have you the Ohio Apartment sheet here?

A. Yes, sir.

Q. When was that closed?

A. March the 2nd, 1929, the Ohio Apartment was closed.

Q. Have you that sheet here?

A. I have the sheet here.

Q. Have you the previous sheet?

A. Yes.

Q. Are there any checks on these sheets between December 15th and the date of closing the account in the amount of $500?

A. There is one drawn on December 24th charged up to Miss Dobbin.

Q. On December 24th, one for $500?

A. Yes, sir.

By Mr. Richards:

Q. I show you the pass book, Exhibit D9, for the Ohio Apartments, when was that balanced last before it was closed?

A. On February 27th, 1929.

Q. Now, at that time, would the $500 check of December 15th have been returned to Miss Dobbin?

A. Yes, sir.

SOMERS L. DOUGHTY, recalled.

Further cross-examination.

By Mr. Cole:

Q. This photographed check doesn't show what was on the back of it. Will you say why you didn't have the back photographed?

A. So far as I remember there was nothing on the back. It was plain.

Q. Do you mean there was nothing on the back when you had it photographed?

A. Yes, sir; that is what I mean.

Q. When did you have it photographed?

A. Well, I should judge about a week, probably, after it was written.

Q. Who photographed it?

A. Fred Hess.

Q. Did you have any reason for holding it for a week after its date?

A. It laid on the desk.

Q. Before you photographed it?

A. It laid on the desk. I didn't pick it up.

Q. Well, did you deposit this check or get the cash on it?

A. To the best of my recollection I deposited it with other money.

Q. Do you remember how much other money you deposited?

A. And other checks; no, sir.

Q. And as I remember, you haven't your deposit book here?

A. I have. You asked me to bring them and I brought them.

Q. Let's see them.

A. You have had them.

Q. Is it here now?

A. Yes, sir.

(Book produced.)

Q. Will you point out the deposit in this book that you say included the $500 check?

A. I cannot.

Q. Can't do it?

A. No, sir.

Q. Keep a copy of your deposit slips?

A. No, sir.

Q. Now, did you testify that you had nothing other than the checks that may be here to show what moneys have been paid back to you by your step-daughter?

A. You asked me if I had testified?

Q. If you testified so?

A. I don't recall.

Q. What is the fact? Have you any record anywhere other than the checks to show——

A. Not that I know of.

Q. Did you ever have?

A. No, sir.

Q. Where is the check book or stubs from which your checks were drawn?

A. I guess they are around home. I don't know where they are.

Q. Will the stubs of your checks show for what the checks were given?

A. I suppose they will if I can find them.

Q. That is your practice, isn't it, to put on the stub what it is for?

A. Yes, sir.

Q. Did you cause a lease to be drawn between Isabella Dobbin, your stepdaughter, and Mr. Headley——

A. No, sir.

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

The Court: Sustain the objection.

Re-direct examination.

By Mr. Richards:

Q. Mr. Doughty, referring to your testimony of a minute ago, you said you had no other account. Did you have such another account at one time?

A. You mean bank account?

Q. No, account showing your transactions?

A. Yes, sir.

Q. What happened to that account?

A. I don't know, disappeared.

Q. That is the one you think was burned?

A. Burned up, yes, sir.

Q. Will you find those check stubs and bring them here?

A. Will I bring them?

Q. Yes.

A. If I can find them. They may be burned up.

Q. Were you asked before to bring those stubs here?

A. No, sir.

Q. Now, Mr. Doughty, while you are on the stand I want to ask you about this $15,000 check. Did you borrow that $15,000 from your daughter?

A. No, sir.

Q. How did you come to get the $15,000?

A. If I remember right, this is the loan on the mortgage on one of the properties, she had the money and she turned it over to me on account of what she owed me.

Q. This is part of the proceeds of one of the Savoy mortgages?

A. Yes, sir.

Q. Now, I show you this $25,000 check, Exhibit D10, and ask you whether or not you got that as the result of exchange of checks?

A. No, sir. This twenty-five thousand that she turned over to me on the mortgage that she got out of the Trident Building & Loan on one of the Savoy Apartments.

Q. Now, a few days after you got this, you re-checked it, apparently re-checked it to your daughter, did you?

A. Yes, sir.

Q. How did that come about?

A. For her payments on the Ohio Apartments.

Q. Now, were you in the habit of exchanging checks with your daughter?

A. No, sir.

Q. Did you ever exchange checks with her?

A. Not to the best of my knowledge, no, sir.

Q. While you are on the stand I am going to ask you about this conversation with Mr. Salsburg. Did you have a conversation with Mr. Salsburg on the boat?

A. No, sir, never spoke to Mr. Salsburg in regard to my business. Why should I?

Q. Did you ever say to Mr. Salsburg that you had given your daughter over $200,000?

A. No, sir.

Q. Did you have a conversation with Mr. Riley, Senior, concerning the gift of anything to your daughter?

A. No, sir.

Q. Did you ever talk to him at all, do you mean?

A. Oh, yes, I talked with him, but not about my daughter.

Q. Did you ever tell him that you had given the apartment to your daughter?

A. No, sir.

Q. Did you have such a conversation with Riley, Junior?

A. Riley, Junior? No, sir; I never knew Riley, Junior, until 1927.

Q. Well, at that time he says that he had a conversation with you in which you said that you had given the property to your daughter?

Mr. Cole: Not Riley, Junior.

Mr. Richards: Yes, Riley, Junior.

(Objection withdrawn.)

Q. Did you?
A. No, sir.
Q. Now, Mr. Doughty, did you ever tell anybody that you can recall that you had given these properties to your daughter?
A. The property, the land, yes, but not the houses.
Q. Did you tell a number of people that you had given the property to your daughter?

Mr. Cole: Just a moment, I object to that.

A. I can't say.

The Court: Yes, it must be limited.

Mr. Richards: Limited to what?

The Court: To individuals.

Mr. Richards: If your Honor pleases, the object of my question is to admit that he told a number of people, not necessarily those who are witnesses, that he had given the property so far as the land was concerned to the daughter.

The Court: Sustain the objection.

Q. Did you say to either of the Rileys or to Miss

Crouch, or Mr. Casey or Mr. Naame, Mr. Salsburg or Mrs. Mauser that you had given these properties to your daughter?

A. No, sir.

Q. What, if anything, did you say to any of them?

Mr. Cole: I object to that. The question is, whether or not he said what they said he said touching the case.

The Court: Yes, he denies that he said it. Sustain the objection.

Q. Did you have conversations with any of these people concerning the properties?

A. No, sir.

Q. And with relation to your daughter?

A. No, sir.

Q. With none of them?

A. With none of them.

Q. Referring to Mrs. Crouch, did you say that you were giving the houses because you wanted to make your daughter financially independent?

A. No, sir.

Q. You recall whether or not you ever discussed with Mrs. Crouch the question of the properties at New Jersey Avenue?

A. I never did.

Q. Did you ever discuss with Mrs. Crouch the giving of the land to your daughter?

A. No, sir.

Q. Did you discuss with Mr. Ost the transaction between your daughter and yourself regarding this property?

A. When Mr. Ost wanted to buy the ground I told him——

Mr. Cole: I object, unless it is a contradiction, did he tell him what Ost said?

The Court: Yes, this is rebuttal.

Q. Did you have a conversation about it with Mr. Ost?

A. I did.

Q, Did you tell him that you were building the apartment for your daughter?

A. No, sir.

Q. Will you tell what you did say?

Mr. Cole: I object.

The Court: Sustain the objection.

Mr. Richards: It seems to me we have a right to have the conversation he had.

The Court: On rebuttal, you are limited to admitting or denying the statement which was made.

Mr. Richards: I don't understand the rule. Ost refused to give the exact words of the conversation. Now, I think we have a right to give the exact words, showing that he misinterpreted what the complainant said.

The Court: Rebuttal; I think you are limited.

Q. Did you have a conversation at any time with Mrs. Mauser?

A. I had a conversation with her.

Q. When was that?

A. After she returned from Florida, I can't say the date.

Q. In the Marine Trust Company?

A. Yes, sir.

Q. Did you tell her that you thought that she and you had gotten a rotten deal?

A. No, sir.

Q. Did you advise her to sue your daughter?

A. No, sir.

Q. Did you say that you were going to get every cent back that you had given to Isabel?

A. I did not.

Q. Did you tell Mrs. Mauser that you had taken care of Isabel in your will?

A. I did not. I have no will.

Q. And did not have?

A. No, sir.

Q. What conversation did you have with Mrs. Mauser in the bank relating to your daughter and this lawsuit?

Mr. Cole: I object for the same reason, it is not a contradiction.

The Court: Sustain the objection.

Q. Did you ever tell Mr. Naame that you were giving this money to your daughter?

A. No, sir.

Q. Did you have a conversation with him relative

to the money that you say you were advancing for the construction of these houses with Mr. Naame?

A. No, sir.

Q. No conversation at all with him?

A. Not at all.

Q. Did you tell your daughter, your stepdaughter, that you were giving her this money?

A. No, sir.

Q. Referring to this $500 check, C7, did you coerce your daughter into writing that check?

A. I did not.

Q. Did you compel her to write on there, "Savoy and Ohio Apartments, to Somers Doughty, principal"?

A. I did not.

Q. Did you threaten her with bodily harm if she did not?

A. I did not.

Q. Was she excited at the time that she wrote it?

A. I didn't see her when she wrote it. I don't know.

Q. You didn't stand over her and compel her to write that?

A. I did not. I wasn't in the house.

Q. Did you make any declarations to this list of witnesses, the Rileys, Crouch, Naame, Salsburg and others, concerning the giving of the land upon which the Savoy Apartments are located, to your daughter?

A. No, sir.

Mr. Cole: I object upon two grounds, the question is entirely too general and it is not a contradiction.

The Court: Sustain the objection.

Mr. Richards: Will your Honor indicate upon which ground you are sustaining it?

The Court: Upon both.

Q. Did you make a declaration to Riley, Junior, concerning the giving of the title of the land upon which the Savoy Apartments were located to your daughter?

Mr. Cole: That is objected to. It is not a contradiction, and the bill says it was a gift.

The Court: Sustain the objection.

Mr. Richards: The point in the offer is to prove the conversations that he had with these various witnesses. Now, is it necessary to go through the whole line?

The Court: No, I will rule upon all of them, make one general ruling, to save time, and overrule the offer.

By the Court:

Q. Mr. Doughty, what nature of a check book do you use for your account in the Marine Trust Company?

A. Little, small, pocketbook.

Q. Is it numbered consecutively?

A. Yes, sir.

Q. Do you draw all your checks at your office?

A. Yes, sir, at home.

Q. How are those books numbered?

A. I couldn't tell you exactly, they are up in big numbers.

Q. The reason I am asking you is this, on September 25th, 1925, a check is numbered 1404, on June 25, 1926, check number is 1364, on December 11, 1926, the check number is 1251, and on September 30th, 1927, the check number is 1245. The earlier checks bear a higher number than the later checks. Can you give me any explanation?

A. The only way I can explain that, when I got these check books, you see my names are on them, they were printed by the directors, I think there were about fifteen of them sent to each one of us, a great big box, lays on my desk, and I am not always so particular, maybe I picked up one check book, and sometimes another, that is how that comes.

Q. Then you didn't govern yourself by the numbers?

A. No, not in rotation.

By Mr. Cole:

Q. Was Mr. Salsburg on the boat with you at the time he said he was?

A. At the time he said he was, I don't know what time that was he said.

Q. I think he said August, 1927.

A. I don't remember. He was on the boat one Sunday when I was there.

Q. Then he was on the boat with you on a certain Sunday?

A. On one Sunday, yes, sir.

Q. When was that?

A. I couldn't say.

Q. Was it ten years ago?

A. No, I should judge about three or four years ago.

Q. Was it two years ago?

A. I can't recall.

Q. Who else were on the boat beside you and Mr. Salsburg at that time?

A. My daughter and Mr. Naame, the engineer, and the other people were strangers to me.

Q. Was Mrs. Mauser on the boat?

A. I said I saw Mrs. Mauser and her daughter.

Q. And some other folks were there?

A. Yes, sir.

Q. Were you at Mrs. Mauser's house on the date that she said you were there?

A. No, sir.

Q. You knew, of course, when you filed this bill, that you had to prove what you said, didn't you?

Mr. Richards: I object to that.

The Court: Yes, sustain the objection.

Q. Have you made any effort to find any records with relation to these transactions with your step-daughter since you filed this bill?

A. Yes, sir.

Q. Haven't you found anything?

A. No, sir.

Q. What?

A. No, sir.

Q. Did you hunt for anything before you filed the bill?

A. Yes, sir.

Q. And couldn't find it?

A. And couldn't find it.

Q. Here are five checks clipped and marked as one exhibit, D2. I ask you to look at those checks and tell me, if you can—they are Miss Dobbin's checks to you—what they were given for.

A. I couldn't tell you.

Q. Have you given her any credit on account of these alleged loans for the amounts of these checks?

A. I don't know if they were on loans.

Q. You don't know what they were for?

A. No, sir.

Q. The checks aggregate $16,125, and you mean to say that you don't know what they were for?

A. I said that.

Q. When these checks were given to you, did you make a memorandum of them anywhere, what they were about?

A. No.

Q. You expect to carry it in your mind, what they were for?

A. Yes.

Q. But now you don't know?

A. I don't know what they were for.

Q. You haven't any idea what this check of Miss Dobbin, dated August 6, 1926, to your order, for $7,000 is for?

A. No, sir.

Q. But you do know you haven't given her any credit for any of it, don't you?

A. No, sir, I don't.

Q. You haven't given in this suit, have you?

A. I think so, if she is entitled to a credit, I have given it to her, it might be money I have loaned her, I don't know. I will show you if she is entitled to a credit I have given it to her.

Q. The trouble is, you don't know, do you?

A. You heard my answer.

Q. All right. But you had such confidence in her that you didn't need to keep an account with her, did you?

A. At that time, yes, sir.

Q. That is all.

DEFENDANT RESTS.

PLAINTIFF'S REBUTTAL.

LEE WEBSTER MELCHER, sworn.

Direct examination.

By Mr. Richards:

Q. Mr. Melcher, what is your business?

A. I am a member of the Philadelphia Bar and have been specializing for a number of years in the examination of disputed documents ——

Mr. Cole: We will admit that he is a handwriting expert.

Q. As a part of your examination as a handwriting expert, have you been called to examine questioned documents to see under what conditions of emotion they have been written?

A. Yes, not frequently, but in some cases that I can recall particularly, in will cases where it is a question of testamentary capacity.

Q. Or undue influence, you mean?

A. Or undue influence.

Q. Can you tell by any means whether or not a paper has been written under great stress or emotion?

A. My answer to that is that I have known writings, which I have examined, to have been executed under such conditions, and my study of those kind of writings leads me to believe that in every such case ——

Mr. Cole: I object. He has answered the question. I object to anything further.

The Court: Yes, I don't think this is now responsive.

Mr. Richards: My question was whether or not he could.

(Question and answer repeated.)

Mr. Richards: Obviously the question has not been answered yet.

The Court: It may not be answered, but it was not responsive.

(Question repeated.)

A. I think so.

Q. Can you also tell when a paper, alleged to have been written under great stress, emotion or coercion, has not in fact been so written?

A. I think so.

Q. Now, have you examined the photograph of the $500 check, C7?

A. I have, yes, sir.

Q. And have you compared with writings alleged to be the writings of Miss Dobbin?

A. I have, yes, sir.

Q. What did you compare it with?

A. The rent receipt books of Charles R. Boughton, which that book contained some receipts signed by Isabella Dobbin, and similar rent receipt book to Mrs. James Oakley, with some entries by Isabel Dobbin, and checks of the Ohio Apartments, Isabel Dobbin, number 146, dated February 28, 1929, to the order of cash, marked Exhibit C23, and Exhibit C22, and Exhibit C24, and endorsements on the checks of S. L. Doughty to Isabel Dobbin, from the Marine Trust Company, nine checks, Exhibit C3, nine on the Marine Trust Company and three on the Guarantee Trust Company, that I also examined. I have compared the Isabel Dobbin writing on those with the Isabel Dobbin writing on this $500 check, Exhibit C7, for the purpose of determining, if possible, if there was any abnormal, physical or nervous condition indicated in the writing of Exhibit C7.

Q. Now, did you hear Miss Dobbin testify this morning?

A. I did, yes.

Q. Did you also examine the record of her testimony last Friday?

A. I read a part of it, I don't know whether that was all she testified to on this particular check, I presume it was, as to the execution of this check.

Q. Did you have this read to you: "Q. You had a serious misunderstanding with him that morning, hadn't you, a serious quarrel with him that morning? A. I was so excited I didn't know what I was doing." That was read to you, was it?

A. Yes.

Q. And you heard the witness this morning say that she was so excited that she didn't know what she was doing?

A. I did.

Q. And was so hysterical?

A. Yes, sir.

Q. Now, from your examination of the handwriting on the check and of the other writings to which you have referred, will you say—can you say whether or not there is any evidence that the witness was laboring under any excitement, and if so, how much, whether she was hysterical or not, or whether or not it shows any evidence of coercion?

A. Yes, I can.

Q. Will you?

A. I find that the writing on Exhibit C7 ——

Mr. Cole: The answer to that will be yes or no, I think.

The Court: He says he can.

Mr. Richards: I asked him now to say.

A. Yes, I will.

Q. Proceed.

A. The writing on Exhibit C7 I found to be identical in nervous and muscular characteristics with the other writing of Isabel Dobbin. I found it to be the natural writing of the same party who did the other Isabel Dobbin writings, and to be in no respect abnormal or unusual, to follow in every respect the customary and usual writing habits of this particular writer.

Q. Now, does it exhibit any signs of excitement at the time the check was written?

A. None whatever.

Q. If the writer had been in a hysterical condition would it have shown on that check?

A. I believe it would, although I doubt if I should give a positive answer to that question. My belief is based on my experience with writing which has been done under coercion, and under peculiar and abnormal conditions.

Q. And does such writing show evidence of it?

A. It always has, in my experience.

Q. And in this case the writing does not show any such evidence?

A. Exactly.

Cross-examination.

By Mr. Cole:

Q. This handwriting expert business is a science, isn't it?

A. Well, I don't know whether you call it a science or not.

Q. How do you treat it?

A. Well, I am still learning. I have been at it since 1912.

Q. And you don't know whether it is a science or not?

A. It is not—I don't know what your definition of a science is, Judge.

Q. Will you say it is an exact science?

A. I think it is as exact as some so-called sciences.

Q. Have you found yourself that you have made mistakes in opinions you have reached after examinations you have made?

A. Yes, I have made mistakes.

Q. How long have you been a handwriting expert?

A. I have been testifying since 1919 as an expert.

Q. Will you state one case where you testified touching whether the person who wrote the document did so under emotion or excitement or hysteria; I am not talking about a forged paper now, I am talking about one where you testified whether or not the writer wrote under emotion, hysteria or excitement.

A. I don't recall the name of the case I have in mind, but there it wasn't a pure question of coercion, as in this case.

Q. Mr. Melcher, I am asking you a plain question, I think, that admits of a yes-or-no answer.

(Question repeated.)

A. Yes, I have so testified.

Q. In what case was that?

A. I don't recall the name of the case, but ——

Q. When was it?

A. It has been within the last two years.

Q. Where was it?

A. I think in Philadelphia.

Q. What was the nature of the contest?

A. I couldn't even recall.

Q. What was involved?

A. I think it was a civil suit.

Q. What was involved?

A. I don't recall.

Q. Some writing was involved, wasn't it?

A. Certainly.

Q. Was it a question whether the party who it was claimed had written the paper, had written it?

A. Yes, the signature, as I recall it, was denied, and the reason it was denied was because it had been written while the author was hysterical or in some such condition.

Q. That was the claim, was it?

A. No, the claim was a flat denial. The explanation of the whole case was that the person was in an abnormal condition.

Q. Now, for the purpose of a manifestation to you as a handwriting expert as to whether the writing was done under emotion or hysteria or excitement, is the manifestation the same in all three of those words, or is it different?

A. I think it is different in every case, depending on the individual.

Q. I am not talking about the case, I am talking about the words, the words used, hysteria, emotion

or excitement, are they synonymous for the purpose of a manifestation?

A. I think so, for our purpose here.

Q. Is it possible for a person under excitement and under emotion to write the same as if they were not under excitement or emotion?

A. That would depend on the extent of the excitement or the emotion, and also on the nervous control of the individual.

Q. And the individual, wouldn't it?

A. Absolutely.

Q. Depend very largely on the individual, wouldn't it?

A. I should say so.

Q. What makes you say that it would depend largely on the individual?

A. Because I have known forgers who have very good control over their nerves.

Q. It doesn't follow, then, because someone may be excited or under emotion, that they can't write so it wouldn't be discovered; is that so or not?

A. I think as an abstract proposition that is true.

By Mr. Richards:

Q. As an abstract proposition, but as a practical proposition, is it true?

A. Not in my experience; I have never seen a document, which I knew to have been written under an unusual condition, not to indicate it. Request writing of guilty parties, that is coercion in a sense, of course not in the sense that we have in this case, but it always indicates abnormal emotional condition.

Q. That you are frequently, I suppose, called upon to look into?

A. Yes.

Q. So that if I, for instance, was accused of having forged a document and was asked to write that signature over again for you, we will say, there would be evidence in my re-writing of it that there was emotion there, wouldn't there?

A. There certainly would, unless you differ from every other forger that I have ever had experience with.

Q. Now, so that, even though you might be able to determine that I had actually perpetrated the forgery by comparing that with the sample that I had written for you, there still would be indications in what I had written which would show that I was writing it under nervous excitement?

A. Yes. It is almost always possible to pick out of a number of suspects those who have guilty knowledge of the crime by the fact that their writing varies from their normal writing. That is done quite frequently in criminal investigations where a number of suspects are picked up and the police require them to write, force them to write, and then that writing is compared with their normal writing.

Mr. Richards: I think that is all, but at this time I would like to call upon counsel for the other side to produce check stubs of the book in which this $500 check appears. May I have any answer to that because I want to give it to this witness?

Mr. Cole: Of course, I haven't the check book.

Mr. Naame: Haven't them.

Mr. Richards: You haven't the check stubs, either?

Mr. Naame: No; looked for them.

By Mr. Cole:

Q. I have tried to have you tell me whether you knew of any case that you had been in and testified where the question was whether the admitted signature had been written under emotion, hysteria or excitement. Now, have you ever had such a case as that?

A. No, not ——

Q. That is all I want to know. You say no, do you?

A. No.

Q. Very well, that is all.

By Mr. Richards:

Q. Will you explain what you mean by no in that case?

A. I mean that this is the first case that I think I have ever testified in, where it was directly simply the question of coercion. I have examined papers where that was the only question involved, but I have never testified.

The Court: Have you testified in cases where that was involved in connection with other questions?

A. In connection with other questions, yes, sir, many times.

By Mr. Cole:

Q. Tell me the name of a case where you testified in which the element of emotion, hysteria and excitement was involved with the question of forgery, I suppose?

A. Well, I could name the Mary Frances Morgan inquest in Montgomery County, Pennsylvania, within the last three weeks, you may recall it, where

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Q. I don't want all that detail. Give me the name of the case, please?

A. Mary Frances Morgan.

Q. Did you testify in that case?

A. I did.

Q. What was involved there?

A. The death of Mary Frances Morgan.

Q. The controversy, what was the controversy?

A. There was no controversy.

Q. Was there any writing involved?

A. Yes, sir.

Q. What was the nature of the writing that was involved?

A. It was a letter, note, found upon the body of the deceased, purporting to be by her murderer.

Q. Was the question as to who wrote it?

A. Yes, and also ——

Q. Was the authenticity of the writing involved?

A. Yes, sir.

Q. But in this case, of course, that is not involved, is it?

A. I explained that was collateral in that case.

By Mr. Richards:

Q. The question that was involved, so far as you are concerned here, was whether or not that was written under circumstances of extreme emotion?

A. That was one of the questions involved.

Q. Was it?

A. It was.

(Recess taken until 1.30 o'clock P. M.)

AFTERNOON SESSION.

(Trial of the cause resumed at 1.30 P. M.)

ENOCH H. BURKETT, sworn.

Direct examination.

By Mr. Richards:

Q. Mr. Burkett, you were the janitor of the Savoy Apartments in 1927, were you not?

A. Yes, sir.

Q. Did you ever have any conversation in 1927 or '28 with Miss Dobbin relative to the money advanced by Mr. Doughty to her?

A. How I came to know that ——

Q. No, did you?

A. Yes.

Q. Now, could you fix about the time that it was you had the conversation?

A. Well, after my sister-in-law died I borrowed some money from there to ship her over home, the Metropolitan wouldn't pay her until her body was in New York.

Q. How much did you collect from Miss Dobbin?

A. I collected $75; she said she will have to see Father because she owes him money and she couldn't loan us such money as that without his say-so.

Q. Now, at any other time, did she say anything about owing her father any money?

A. Yes, she said she owed a lot of money, but the amount she didn't say, but she don't know how she is going to pay him.

Q. When was that conversation?

A. This was in 1928.

Q. When?

A. Along in June.

Q. Did you ever have any conversation with her subsequent to the Fourth of July, 1928?

A. Yes, and 4th of July, 1928, was on, I wanted to go out crabbing, that is the only time I had off, and she used to come early in the mornings, and she wanted to go out on the boat, and she told me if I would stay there she would let me go Monday; you see, that was on a Sunday, she said wanted to go out on a boat and if I stayed there 4th of July

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Q. What was the conversation?

A. She said she owed a lot of money, if any way she could get out she certainly would, she don't

know how going to pay him, and she not going to give him any more money.

Q. Did she ever have any conversation with you in which she said anything about you were better off than she was?

A. Oh, yes.

Q. What was that conversation?

A. She said I had work and I got paid for it, and she had to do it and she wouldn't get nothing, she said I was better off than she was, I worked and get paid, and she worked and get nothing until she gets Father paid, she said she didn't know when that will be.

Q. Burkett, did you go up to the Savoy Apartments after this case was over last Friday?

A. I did.

Q. Where did you go?

A. I went down there, and my daughter lives in there in B-31.

Q. Your daughter?

A. Yes, sir.

Q. Did you go down to visit her?

A. I goes up there and she told me letter downstairs for Lillie, janitor downstairs, Mr. Burgess, letter down there, he says yes, ain't no more than advertising, so he went down there, looking over the mail, then Miss Dobbin, she come, Miss Isabel, and then she come, "Hello, Burkett, what are you doing here?" I says, "I am after a letter, Alice told me a letter here for Lillie."

Q. Did she say, ask you if you were going to be a witness in this case?

A. I told her I didn't want to say anything about the case.

Q. But did she ask you that?

A. Yes, asked me—go ahead.

Q. Did she ask you how you were going to testify?

A. Yes, I told her I wasn't going to say anything about the case.

Q. Did Mr. Naame come in?

A. She called him.

Q. Did Mr. Naame say anything to you in her presence?

A. Yes, he says, "Hello, Burkett, how are you?" and shook hands with me. Then says, "Well, what do you think about it?" I says, "I won't say anything about the case whatever." He says, "Are you going to testify?" I says, "No." "How did they know where you was?" I says, "Well, they got my address from my daughter Alice." He said, "They did?" I say, "Yes." She says, "You don't know nothing, going to pay $200 for a subpoena," she says, "you don't have to pay that." "Yes, he does, too, that is on the papers." She said, "I didn't know that." Then he asked me was I going to testify, and I says, "I don't know, I haven't been on the stand yet." He says, "Are you going to testify?" And I says, "I don't know." He says, "What are you going to say?" I say, "I don't know what they are going to ask me." She said, "Now, you know, Burgess right here, be careful what you say." I says, "Miss Doughty, I ain't bearing Burgess in mind," that is what I say to her.

Q. Did they offer to give you a job?

A. Yes, said job kept open two weeks, and I asked her if she wanted me to tell the truth, and she said

yes, I told her I didn't want her job, that is what I told her.

Cross-examination.

By Mr. Cole:

Q. When were you dismissed?
A. I never was dismissed, I went on a vacation 15th of September.
Q. Did you ever come back?
A. No, sir.
Q. What year?
A. 1928.
Q. Did you tell her when you left you were not coming back?
A. I didn't have to, because she told me ——
Q. I didn't ask you that.
A. No.
Q. And you never came back?
A. No, sir, not to the job.
Q. At the time that you were talking to Mrs. Naame and her husband the other day, had you been subpoenaed?
A. Oh, yes.
Q. By Mr. Doughty?
A. Well, that is his name on there, yes.
Q. Of course, you had told Mr. Doughty what you know about this matter, hadn't you?
A. I had told him?
Q. Yes.
A. No, I hadn't told him what I knew about it because he knew I knew.

Q. Just a moment. You had not told him, that is what you said?

A. Yes.

Q. Is that right?

A. He knew I knew.

Q. But you told him before you got the subpoena what you know about this case?

A. No, I told the lawyer after I got the subpoena.

Q. How did the lawyer know that you knew anything about it?

A. Well, because Mr. Doughty must have told him.

Q. How did Mr. Doughty know that you had not told him?

A. How did he know? You have asked that question?

Q. You don't know how he knew what you knew about it?

A. Sure he knew, because I had to ask for money, she told me to see him, and I would go around to see him; I have been to his house several times and got money from Mr. Doughty.

Q. In other words, you would go to Mr. Doughty, you tried to borrow money from Miss Dobbin?

A. And she told me to see him.

Q. She told you she didn't have any?

A. No, she told me she would have to see him.

Q. That is what she did, tell him?

A. Yes.

Q. Were you trying to borrow the money from her or trying to borrow it from Mr. Doughty?

A. I was asking from her, of course she was right there, and she said to see Father, and she told me to see Father, and I would go to see him.

Q. Did you ever go to Mr. Doughty for the money?
A. I told her to give it to me.
Q. Did you ever go to Mr. Doughty for the money?
A. No, I talked on the office phone, in the office.
Q. Do you know what he said to her?
A. No.
Q. Did you phone?
A. Yes.
Q. After you had asked her for the money and you didn't get it?
A. She say I ask him, and then I would call him up.
Q. And you did?
A. I did.
Q. What did he tell you?
A. He told me to see Babe.
Q. That is who?
A. That is what he called her, yes.
Q. Did you tell her what he said?
A. No, because he told her to give me the money the next morning when she came.
Q. Did she do it?
A. Sure she did.
Q. Did you ever pay it back?
A. Yes, sir.
Q. Whom did you pay?
A. Paid it to her.
Q. How much did you borrow from her?
A. I borrowed $75 once, I borrowed $50 once and I got $12, $20, $7 and $8.
Q. And every time you got the money Mr. Doughty told her to let you have it?
A. Every time, the small amounts I didn't, and

sometimes I used to short it and she took it out of my wages.

Q. What did you say you were doing in Mrs. Naame's apartment the other day?

A. I was waiting.

Q. What?

A. I was down in the hall, I wasn't in her apartment, I was down in the office.

Q. What office?

A. In the Savoy.

Q. Pardon me, I used the wrong word, in the office of the apartment?

A. Yes.

Q. How did the letter come to be there?

A. Of course, I used to live there.

Q. Way last September?

A. Oh, yes.

Q. And the letter came here only the other day?

A. I don't know, you have to ask the janitor how long it has been.

Q. Been away a year?

A. You have asked me how long it has been.

Q. Didn't you say a while ago that you left there last September?

A. I did, on the 15th, on a Saturday.

Q. And you haven't been back to work since?

A. No, sir.

Q. Where have you been getting your mail in the meanwhile?

A. Where been getting my mail? When mail come here, was sent to me, Burgess always ——

Q. Where?

A. Burgess give it to my daughter, and she send it to me.

Q. Where has mail been addressed to you since last September?

A. From Atlantic City?

Q. Anywhere?

A. 1425 McCoombs Road, 113 Haines Street, East, and 1382 Inwood Avenue.

Q. Did you say it was a letter to you addressed in care of this apartment house?

A. 711 Baltic Avenue; when I left here I didn't leave no, didn't go to the post office to put no slip in where I was going.

Q. I am asking you, sir, whether or not the letter that you say was at this apartment house for you was addressed?

A. It was not for me, it was for my wife, an advertisement.

Q. For your wife?

A. Yes.

Q. Have you got the letter here?

A. No, I have not.

Q. Where is it?

A. It is in New York.

Q. Where do you regard your home at this time?

A. Now?

Q. Yes.

A. 1382 Inwood Avenue, Bronx, New York.

Q. How long have you been living there?

A. How long have I been living there?

Q. Yes.

A. I have been living there ever since March.

Q. When did you come to Atlantic City recently?

A. Recently? I came here last night.

Q. How did you come to come here last night?

A. I was subpoenaed. I was here week before last.

Q. What were you doing here week before last?

A. Attending court.

Q. What?

A. I was here in court.

Q. Week before last?

A. Last week, at least.

Q. How did you get the subpoena?

A. How did I get the subpoena? It was handed to me.

Q. Where?

A. Here.

Q. Why did you come here last week?

A. Why did I come here last week? Because I had to come; wasn't I subpoenaed?

Q. For what?

A. This case.

Q. Well, did you get a letter from somebody asking you to come?

A. Certainly did.

Q. From whom?

A. Mr. Doughty.

Q. Have you got the letter?

A. No, sir.

Q. What did the letter say?

A. Said they wanted me down here, and after I got here the subpoena was served on me.

Q. Send you any money?

A. What? No.

Q. None at all?

A. No, sir.

Q. Did you know what he was sending for you for?

A. I did.

Q. How did you know?

A. After he told me that first time I came down here on a visit.

Q. When was that?

A. That was during the convention.

Q. But the other day when you were in this room or the office of the apartment, you say you went there to get a letter addressed to your wife?

A. Yes, sir.

Q. And you and your wife have been living together over in New York ever since last March?

A. Yes, sir; not last March, last September.

Q. Were there any other letetrs than that one that came addressed to you or your wife here in Atlantic City?

A. Yes, sir, came to me in care of the apartment, to ask me for reservations during the convention, and I wrote this letter back to Washington and told them I wasn't there and better write and see Burgess, that is, if he was there.

Q. Have you had any talk whatever with Mr. Doughty about your testimony in this case?

A. No.

Q. Do you still have the letter Mr. Doughty wrote you?

A. No, that is in New York.

Q. You have it in New York, haven't you?

A. Yes, I have it in New York, but I haven't it here.

Q. Tell us all you remember that is in it.

A. Just a short word, want me to be down here, want me to come down, I had words to ask my boss,

and he took the letter and gave it to me, and so I came on down.

Q. Didn't even get carfare?

A. I didn't need it. I work every day.

Q. I say you didn't even get carfare from Mr. Doughty?

A. No.

Q. Have you any understanding with him as to how you are going to be paid?

A. No.

Q. None at all?

A. No.

Q. Hasn't been a word passed between you?

A. About no pay, nothing.

Q. When were you served a subpoena; here in the court room, was it?

A. No.

Q. Where were you when they served it?

A. Downstairs.

Q. In this building?

A. Yes.

Q. Who served it?

A. Lawyer.

Q. Have you got it with you?

A. No.

Q. Were you paid any money at that time?

A. No, sir.

Q. What did you say took place between Mrs. Naame and Mr. Naame the other day?

A. What took place, she asked me, she says, "Well, what are you doing down here?" I says, "I came down for a letter for Lillie," and I showed it to her, advertisement, she said, "Yes." She says, "Enocy, you—I have been very nice to you, are

you going to testify?'' I says, ''Don't want to have anything to say about the case,'' and Burgess was standing right there, then, right opposite a little counter, I put down in the office, and she said, ''Burgess listening every word you say, remember he will be there.'' I says, ''I don't pay no mention to that, I know what I am saying.'' I asked her when she got me out of jail, she said she didn't say so; I said, ''Yes, you did.'' She says, ''I didn't.'' I said, ''Yes, you did, Miss Doughty.'' I said, ''You certainly said that. Did you take notice of anything of me?'' I says, ''No, when you was talking,'' I said, ''I was looking right straight at you.'' ''You said I was your nigger janitor and you got me out of jail.'' He said, ''Enoch, I went your bail.'' I said, ''Miss Doughty, ten o'clock now, and court close four.'' I said, ''Yes, if you can't think of what you say from four o'clock to ten, what are you going to do next Friday,'' that was this Friday.

Q. Now, do you remember being asked by counsel for Mr. Doughty what took place down there the other day?

A. Yes.

Q. You didn't tell about this story about the arrest and her getting you out, did you?

A. What? I didn't get arrested, she didn't get me out.

(Question repeated.)

A. No.

Q. Why didn't you tell that in answer to counsel's question?

A. Why?

Q. Had you forgotten that?

A. No, I hadn't forgotten it because she has never got me out of jail, she never got me out of jail at all.

Q. I am not talking about that, sir.

A. Where was I arrested at, then?

Q. In answer to my question, you have told something now that you didn't tell when Mr. Doughty's lawyer asked you. What I want to know is why it was you didn't answer it when he asked you?

A. Why, I didn't answer him when he asked me, because she never got me out of no jail.

Q. What did you say she said about getting you out of jail?

A. She said on the stand she got me out of jail; she went my bail, that is what she did.

Q. When she was on the stand?

A. When she was on the stand Friday afternoon.

Q. Said she got you out of jail?

A. Yes, sir.

Q. Had you been in jail?

A. No, I hadn't.

Q. Had you been arrested?

A. Sure, I had been arrested.

Q. Who had you arrested?

A. Weeks.

Q. What Weeks?

A. Jay Weeks.

Q. For what?

A. About a fan was left in the storeroom and I gave it to a fellow sent up for it and I give it to him, and he made me pay for it.

Q. Were you arrested for stealing it?

A. No, I didn't steal it.

Q. Were you arrested for stealing it?

A. No.

Q. Is that the charge against you?

A. For having the fan in my possession, and couldn't produce who I gave it to.

(Question repeated.)

A. It was, but after ——

Q. That is all I want to know. It was. On that occasion the other day when you were down here, she told you she got you out of jail?

A. No, she didn't there.

Q. Didn't she say that to you?

A. No.

Q. That she got you out of jail?

A. No, she didn't.

Q. What did she say about that?

A. I asked her when did she get me out of jail.

Q. Why did you ask her that?

A. Because I wanted to know because she said something she had no business to say, she never got me out of jail.

Q. You mean having heard her say here that she got you out of jail, you were asking her about it down there?

A. Yes, I wanted to know when it was.

Q. Now, what did you say Mr. Naame said about it?

A. I could do what he said about that, he says, he didn't say anything about that, but he said I could do him a lot of good, he wanted to subpoena me; I told him no, I said, "You better not, I don't know

whether I know all the circumstances or not," and he says, "You can do me a lot of good."

Q. Didn't you come down here to go on the stand?

A. Didn't I come down here to go on the stand?

Q. Yes.

A. You don't go on there unless you are called.

Q. Well, didn't you know, when you told Mr. Doughty that you didn't know whether you were going to testify or not, I mean Mr. Naame, that you were going to be a witness in this case?

A. Did I tell her? It was none of her business.

Q. I didn't ask you that. I want to know whether you didn't know when you talked to Mr. Naame ——

A. I know, but she didn't, and it wasn't my place to tell her.

Q. But you didn't tell her?

A. No, I didn't have to tell her.

Q. Of course, it wasn't your place, and you didn't have to tell her?

A. I didn't, you are right.

Mr. Richards: In fact, I didn't know he was going to be a witness. He was sitting here in the court room.

Q. How long have you been in this court room?

A. How long have I been in this country? Ever since I born.

Q. How many days?

A. How many days been in this country?

Q. In this court?

A. I have been here one day this week, two days last.

Q. You have been waiting over, haven't you, to testify?

A. No, sir, been back to New York and came back again, left here last Sunday morning.

Q. When you were subpoenaed, did you get any money?

A. No.

Q. What did you do with the subpoena after you got it?

A. I got it yet in my handbag.

Q. Here?

A. Up New Jersey and Baltic, in my daughter's room.

By Mr. Richards:

Q. Mr. Burkett, when you came down here you came to Mr. Reed's office, didn't you?

A. Yes, sir.

Q. You met Mr. Reed and myself there?

A. I did.

Q. And I questioned you about this case, didn't I?

A. You did, sir.

Q. And it was after that you were subpoenaed?

A. That is it.

Q. The next morning after you had this conversation last Friday night, you came in and told Mr. Reed about it, didn't you?

A. I did.

Q. And dictated to his stenographer a statement of what occurred?

A. I did.

Q. And at that time you told about this asking her when she got you out of jail?

A. I did.

Q. And that referred to her testimony on the stand?

A. That certainly did.

Q. Now, in this case in which you were arrested, what happened to the case?

A. When I was arrested? Was a fan and it ——

Q. No, I didn't mean, I don't care about that. What happened to the case?

A. What happened to the case?

Q. Yes.

A. Oh, it was squashed, and I had to pay Weeks $25 for a fan that was took, and I gave it to a fellow to take and bring him, asked me about a dozen times about the fan, and I say it was in the storeroom, and he says all right, he says, "I will send somebody up after it."

Q. I don't care. We are not going to try that case.

A. I did.

Q. That is what it was about?

A. That is what it was about.

Q. You were arrested and the case was quashed?

A. Yes, to a magistrate.

Q. And Miss Dobbin went your bail?

A. Yes, sir.

Q. Now, when you left here in September, you went to a job in New York?

A. No, sir, I didn't, I didn't have no job at all.

Q. Did you get a job when you got to New York?

A. I certainly did.

Q. Kept it ever since?

A. No, sir, not that one; the first one I worked was Wolfe Brothers, 18th and Fifth Avenue, I was a porter down there, and I can run a machine a little, and I can do a little tailoring work, and he kept me up until three weeks before Christmas, and I puts an ad in the World, and I gets a job as a fireman at 1425 McCoombs Road in the Bronx.

Q. That is an apartment house?

A. Apartment house.

Q. And you are there yet, is that i?

A. No. While working there, was a building going up on the corner, same as this was, when I used to go up to the Inlet and get oysters, when I had a restaurant, and I asked who was putting this building up, and Casey was the man I asked. He says, "Mr. Doughty," and he says, "You know him?" I says, "No." I say, "Where he live at?" He says, "12 South Indiana Avenue," and I goes

---

The Court: What is the use going into that?

A. I did.

Q. I was just asking whether you were working over in New York?

A. Yes, sir, I work for Billingsley Real Estate Company, Incorporated, 9 West 17th Street.

By Mr. Cole:

Q. Mr. Doughty send you a railroad ticket?

A. Mr. who?

Q. Mr. Doughty?

A. No, sir, I bought my ticket my own self.

Q. Mr. Doughty get you a job over in New York?

A. Who?

Q. Mr. Doughty get you a job in New York?

A. Myself, Miss Tillie wrote me to Wolfe Brothers.

Q. When you talked to Mr. Reed the other day, didn't he know what you knew about the case?

A. Did he know?

Q. Yes.

A. He didn't know until after I told him.

Q. He didn't tell you that Mr. Doughty had told him what you knew about it, did he?

A. No.

Q. So you went in there and Mr. Reed didn't know a thing about it, and you had to tell him?

A. He didn't know a thing about it? You have to ask Mr. Reed that.

Q. But you had never told anybody else what you knew about it, had you?

A. No.

Q. Are you able to travel back to New York?

A. I bought a round-trip ticket.

Q. Don't expect to be paid for coming down here?

A. I don't know.

Q. Are you trusting Mr. Doughty about that?

A. I ain't trusting nobody.

Q. Expect to get any pay?

A. I don't know.

Q. Why don't you know?

A. Because I don't.

Q. When are you going back?

A. As soon as the case is over.

Q. Right from here?

A. I don't know go right from here or not.

Q. Are you going to see Mr. Doughty before you go?

A. I don't know.

Q. Don't know whether you are going to see him or not?

A. I don't know.

Q. Are you going to see his lawyers about being paid?

A. I don't know.

MAUDE ST. JOHN, recalled.

Direct examination.

By Mr. Richards:

Q. Miss St. John, I show you this five hundred dollar check, C7; did you see Miss Dobbin write that check?

A. She wrote it at the desk, sat at the desk.

Q. Did you see her write it?

A. Yes.

Q. Was Mr. Doughty present?

A. He was not anywhere around in the house. She left it with me.

Q. She wrote it and handed it to you?

A. Yes, told me to give that check to Father when he came in.

(No cross-examination.)

SOMERS L. DOUGHTY, recalled.

Direct examination.

By Mr. Richards:

Q. Mr. Doughty, have you looked for these check stubs since the recess?

A. Yes, sir.

Q. Or during the recess?

A. Yes, sir.

Q. Did you find them?

A. I did not.

Q. In case I didn't ask you, I want to ask you again, were you present when this check was written? (Referring to C7.)

A. No, sir.

Q. Did you stand over your stepdaughter and compel her to write this check?

A. No, sir.

Q. Did you coerce her into writing it?

A. No, sir.

Q. Did you compel her to write that statement on the check regarding the principal?

A. No, sir.

Q. Did you tell her afterwards, "Now, I have got you, I will get everything I ever gave you?"

A. No, sir.

Q. Did you say to her, "I have got the evidence, you only borrowed my money, that is the evidence I wanted to get and you did it for me?"

A. No, sir.

Cross-examination.

By Mr. Cole:

Q. But you are in fact trying to get the money back in this suit, aren't you?
A. Looks like it.
Q. Where did you look for this check book stub?
A. On my desk.
Q. Is that the only place it might be, on the desk?
A. No.
Q. Anywhere else to look for it?
A. I looked through the dining room for it, sideboard.
Q. Find any check books there at all?
A. Not concerning Miss Dobbin.

COMPLAINANT RESTS.

Mrs. Eleanor LaRosa, sworn.

Direct examination.

By Mr. Cole:

Q. I called you as Miss Maurer; are you married?
A. Yes, sir.
Q. What is your married name?
A. La Rosa.
Q. Are you the daughter of Mrs. Mauser who was on the witness stand?

A. Adopted daughter.

Q. Do you know Mr. Doughty?

A. Yes, sir.

Q. How long have you known him?

A. I have known Mr. Doughty, I should judge, about five or six or seven years.

Q. Was he ever in your mother's home?

A. Yes.

Q. And where is that home?

A. 5125 Winchester Avenue.

Q. How do you know he was there?

A. I saw him.

Q. When he came, do you remember him, who admitted him? Who admitted him into the house?

A. The second time he was at the house I let him in.

Q. Was he there more than once?

A. Yes.

Cross-examination.

By Mr. Richards:

Q. He was there a number of times, wasn't he?

A. No, he was only at Winchester Avenue twice.

JOSEPH NAAME, recalled.

Direct examination.

By Mr. Cole:

Q. You remember this Mr. Burkett who was on the stand?

A. Yes, sir.

Q. Did you see him down at the Ohio Apartments the other day?

A. After the trial here we went down to the apartment to collect what money there was there.

Q. What part of the building was he in?

A. The office of the building, is in the basement; that is, you have a flight below the level of the ground.

Q. Did you go in the office?

A. Not at first. My wife went in first, and she said, "I am going to get the money and come right out," and I waited in the car, she got out and went in. She beckoned to me through the window to come in, and when I went in I saw Mr. Burkett there.

Q. Did you have any conversation with him?

A. No, Judge, for the simple reason ——

Q. Did you have any talk with him at all?

A. I just said, "Good evening."

Q. That was all the conversation?

A. For the time being.

Q. Did you on that occasion ask him whether he was going to testify for you or testify for Doughty?

A. I did not, Judge.

Q. Was there anything said about his testifying?

A. Positively no.

Q. Did you tell him on that occasion that he might be of advantage to you?

A. No, sir.

Q. Was there anything said on that occasion by him in which he charged your wife with having said that she had got him out of jail and he wanted to know when that was?

A. That was the first thing he said, yes. He did say that.

Q. What was the conversation about that?

A. The first thing, when he walked in there, I heard him say, "You swore, you said on the stand that you took me out of jail, and you only went my bail," and he says, "How do you know what I am going to testify on the stand? I have been subpoenaed here." And I said, "Subpoenaed from New York?" He says, "Yes." So I told my wife, "We better get out of here, that is merely a plan set by Mr. Doughty, obvious on the face of it, he was sent down there;" we beat it out of there fast as we could go.

Q. In his presence?

A. Yes.

Q. You said that?

A. No.

Mr. Richards: I ask it to be stricken.

Mr. Cole: You may strike it.

The Court: Yes.

Q. Was there a letter there for his wife?

A. I don't know.
Q. Did you see any letter?
A. I saw the letter, I wasn't down in there.
Q. You mean you don't know who it was for?
A. There was no conversation about a letter when I went down there.
Q. Did you see any letter that at that time?
A. No, I didn't see any myself.

By Mr. Richards:

Cross-examination.

Q. You heard the first question that Mr. Cole asked you, Judge Cole asked you, didn't you?
A. What was it?
Q. He asked you if you had been to a certain place, you heard that question?
A. The first one, it is pretty hard to say which is the first question.
Q. Where did this conversation take place?
A. In the, what is known as the office of the Savoy Apartment.
Q. You were mistaken when you answered that question, weren't you?
A. I don't think so.
Q. What?
A. I don't think so.
Q. You don't think yet?
A. No.
Q. Judge Cole asked you if you had seen Burkett down at the Ohio Apartments.
A. He didn't. I didn't know he said Ohio Apartment.

Q. He said so. You just heard the stenographer read the question, didn't you?

A. If that was the question, he must have said it, but it wasn't down there.

By Mr. Cole:

Q. You say that he was not at the Ohio Apartments?

A. No, it was the Savoy Apartment.

Q. Oh, the Savoy, pardon me.

A. Known as the office of the Savoy Apartment, New Jersey and Baltic, that is where he was.

Q. I had intended to fix the place where he fixed it. I got the apartments mixed up.

A. I knew you meant the Savoy.

Q. You did see him at the Savoy, is that the idea?

A. He was there when we got there.

Q. That is all.

Mr. Richards: Your Honor please, I want to move to strike from the record the admission of these ledger sheets which were not connected, the Doughty ledger sheets, and also to strike from the record the series, I think, of five or seven checks which were offered in evidence, which were not connected.

Mr. Cole: I object to having them stricken. In the first place, that ledger sheet was introduced to show that that check of $500 was not deposited to

his account. I think it is admissible on that ground, but if at all it is admissible as far as the other checks are concerned, Mr. Doughty admitted he got the money on those checks, he admitted he had not given credit, if there are any he wanted to give credit for, but he didn't know what they were for.

Mr. Richards: No, she admitted she didn't know what they were for.

The Court: I will permit both to be stricken.

TESTIMONY CLOSED.

EXHIBIT C1.
9/12/29L

No. 1252 Atlantic City, N. J., Dec. 22 1926
MARINE TRUST COMPANY
Pay to the order of Joseph S. Naame
Two thousand.....x/100 Dollars
$2000. 00/xx S. L. Doughty.
(Printed in left-hand margin)
Somers L. Doughty

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.

All prior endorsements guaranteed
DEC 23 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
12-23-26

No. 1251 Atlantic City, N. J., Dec 11th 1926
MARINE TRUST COMPANY
Pay to the order of Joseph S. Naame
One thousand.....x/100 Dollars
$1000.00/xx S. L. Doughty.
(Printed in left-hand margin)
Somers L. Doughty

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
DEC 14 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
12-14-26

No. 1469 Atlantic City, N. J., Sept 20th 1926
MARINE TRUST COMPANY
Pay to the order of Joseph S. Naame
Two thousand.....x/100 Dollars
$2000.00/xx S. L. Doughty
(Printed in left-hand margin)
Somers L. Doughty

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
SEP 22 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
9-22-26

No. Atlantic City, N. J. Aug 27th 1926
GUARANTEE TRUST COMPANY 55-143
of Atlantic City, N. J.
Pay to the order of Joseph S. Naame $3000.00/xx
Three thousand.....x Dollars
Safe Deposit Boxes for Rent
For S. L. Doughty.

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
AUG 28 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
8-28-26

No. 1445 Atlantic City, N. J., Aug 20th 1926
MARINE TRUST COMPANY
Pay to the order of Joseph S. Naame
One thousand.....x/100 Dollars
$1000.00/xx S. L. Doughty.
(Printed in left-hand margin)
Somers L. Doughty

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
AUG 21 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
8-21-26

———

No. 1374 Atlantic City, N. J., Aug 6th 1926
MARINE TRUST COMPANY
Pay to the order of Joseph S. Naame
Two thousand.....x/100 Dollars
$2000.00/xx S. L. Doughty.
(Printed in left-hand margin)
Somers L. Doughty

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.

All prior endorsements guaranteed
AUG 7 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
8-7-26

No. Atlantic City, N. J., July 9th 1926
GUARANTEE TRUST COMPANY 55-143
of Atlantic City, N. J.
Pay to the order of Joseph S. Naame $2500.00/xx
Twenty five Hundred.....x Dollars
Safe Deposit Boxes for Rent
For S. L. Doughty.

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
JUL 10 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
7-10-26

No. 1370 Atlantic City, N. J., July 9th 1926
MARINE TRUST COMPANY
Pay to the order of Joseph S. Naame
Twenty five Hundred.....x/100 Dollars
$2500.00/xx S. L. Doughty.
(Printed in left-hand margin)
Somers L. Doughty

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
JUL 10 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
7-10-26

No. 1364 Atlantic City, N. J., June 25th 1926

MARINE TRUST COMPANY

Pay to the order of Joseph S. Naame

One thousand.....x/100 Dollars

$1000.00/xx S. L. Doughty.

(Printed in left-hand margin)

Somers L. Doughty

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
JUN 25 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
6-26-26

No. Atlantic City, N. J. June 10th 1926

GUARANTEE TRUST COMPANY 55-143
of Atlantic City, N. J.

Pay to the order of Joseph S. Naame. $2000.00/xx

Two thousand.....x Dollars

Safe Deposit Boxes for Rent

For S. L. Doughty.

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
JUN 12 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
6-12-26

———

No.
Atlantic City, N. J., May 21th 1926
Pay to the order of Joseph S. Naame $3000.00/xx
Three thousand.....x Dollars
to the
BOARDWALK NATIONAL BANK
Atlantic City, N. J.
S. L. Doughty.

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.

All prior endorsements guaranteed
MAY 21 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
5-22-26

No. Atlantic City, N. J., April 30th 1926
THE BOARDWALK NATIONAL BANK, 55-146
Pay to the order of Joseph S. Naame $15,000.00/xx
Collectible at par thro Federal Reserve Bank,
Phila., Pa.
Fifteen thousand.....x Dollars
S. L. Doughty.

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
APR 30 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
5-1-26

No. Atlantic City, N. J., April 28th 1926
THE BOARDWALK NATIONAL BANK, 55-146
Pay to the order of Joseph S. Naame $5000.00/xx
Collectible at par thro Federal Reserve Bank,
Phila., Pa.
Five thousand.....x Dollars
S. L. Doughty.

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
APR 28 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
4-29-26

No. Atlantic City, N. J., April 26th 1926
THE BOARDWALK NATIONAL BANK, 55-146
Pay to the order of Joseph S. Naame $5000.00/xx
Collectible at par thro Federal Reserve Bank,
Phila., Pa.
Five thousand.....x Dollars
S. L. Doughty.

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
APR 27 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
4-28-26

No. 1429 Atlantic City, N. J., Mar 26th 1926
MARINE TRUST COMPANY
Pay to the order of Joseph S. Naame
Eighteen thousand.....x/100 Dollars
$18,000.00/xx S. L. Doughty.
(Printed in left-hand margin)
Somers L. Doughty

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
MAR 29 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
3-29-26

———

No. Atlantic City, N. J. Mar. 13th 1926
GUARANTEE TRUST COMPANY 55-143
of Atlantic City, N. J.
Pay to the order of Joseph S. Naame $3000.00/xx
Three thousand.....x Dollars
Safe Deposit Boxes for Rent
For S. L. Doughty.

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.

All prior endorsements guaranteed
MAR 15 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
3-15-26

No. Atlantic City, N. J. Mar 6th 1926
GUARANTEE TRUST COMPANY 55-143
of Atlantic City, N. J.
Pay to the order of Joseph S. Naame $5000.00/xx
Five thousand.....x Dollars
Safe Deposit Boxes for Rent
For S. L. Doughty.

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
MAR 8 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
3-8-26

No. Atlantic City, N. J., Feb 27th 1926
THE BOARDWALK NATIONAL BANK, 55-146
Pay to the order of Joseph S. Naame $1000.00/xx
Collectible at par thro Federal Reserve Bank,
Phila., Pa.
One thousand.....x Dollars
S. L. Doughty.

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
MAR 1 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
3-1-26

No. Atlantic City, N. J., Feb 26th 1926
THE BOARDWALK NATIONAL BANK, 55-146
Pay to the order of Joseph S. Naame $2000.00/xx
Collectible at par thro Federal Reserve Bank,
Phila., Pa.
Two thousand.....x Dollars
S. L. Doughty.

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
MAR 1 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
3-1-26

No. 1455 Atlantic City, N. J., Feb 11th 1926
MARINE TRUST COMPANY
Pay to the order of Joseph S. Naame
Five thousand.....x/100 Dollars
$5000.00/xx S. L. Doughty
(Printed in left-hand margin)
Somers L. Doughty

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
FEB 15 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
2-15-26

No. 1425 Atlantic City, N. J., Jan 30th 1926
MARINE TRUST COMPANY
Pay to the order of Jos. S. Naame
Seven thousand.....x/100 Dollars
$7000.00/xx S. L. Doughty.
(Printed in left-hand margin)
Somers L. Doughty

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.

All prior endorsements guaranteed
FEB 1 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
2-1-26

No. 1424 Atlantic City, N. J., Jan 23th 1926

MARINE TRUST COMPANY

Pay to the order of Joseph S. Naame
Six thousand.....x/100 Dollars
$6000.00/xx S. L. Doughty.
(Printed in left-hand margin)
Somers L. Doughty

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
JAN 25 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
1-25-26

No. Atlantic City, N. J., Dec 18th 1925
THE BOARDWALK NATIONAL BANK, 55-146
Pay to the order of Joseph S. Naame $6000.00/xx
Collectible at par thro Federal Reserve Bank,
Phila., Pa.
Six thousand.....x Dollars
S. L. Doughty.

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
DEC 21 1925
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
L. E. Conover, Jr., Cashier

(Perforated)

PAID
12-21-25

No. 1411 Atlantic City, N. J., Dec 12th 1925

MARINE TRUST COMPANY

Pay to the order of Joseph S. Naame

Thirty five Hundred...../100 Dollars

$3500.00/xx S. L. Doughty

(Printed in left-hand margin)

Somers L. Doughty

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
DEC 17 1925
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
L. E. Conover, Jr., Cashier

(Perforated)

PAID
12-16-25

No. Atlantic City, N. J. Nov 28th 1925

GUARANTEE TRUST COMPANY 55-143
of Atlantic City, N. J.

Pay to the order of Joseph S. Naame $3500 00/xx

Thirty five Hundred.....x Dollars

Safe Deposit Boxes for Rent

For S. L. Doughty.

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
NOV 30 1925
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
L. E. Conover, Jr., Cashier

(Perforated)

PAID
11-30-25

———

No. Atlantic City, N. J. Oct 24th 1925
GUARANTEE TRUST COMPANY 55-143
of Atlantic City, N. J.
Pay to the order of Joseph S. Naame $14000.00/xx
Fourteen thousand.....x Dollars
Safe Deposit Boxes for Rent
For S. L. Doughty.

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.

All prior endorsements guaranteed
OCT 26 1925
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
L. E. Conover, Jr., Cashier

(Perforated)

PAID
10-26-25

No. Atlantic City, N. J., Oct 17th 1925
THE BOARDWALK NATIONAL BANK, 55-146
Pay to the order of Joseph S. Naame $7000.00/xx
Collectible at par thro Federal Reserve Bank,
Phila., Pa.
Seven thousand.....x Dollars
S. L. Doughty.

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
OCT 19 1925
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
L. E. Conover, Jr., Cashier

(Perforated)

PAID
10-17-25

No. Atlantic City, N. J. Oct 3rd 1925
GUARANTEE TRUST COMPANY 55-143
of Atlantic City, N. J.
Pay to the order of Joseph S. Naame $6000.00
Six thousand.....x Dollars
Safe Deposit Boxes for Rent
For S. L. Doughty.

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
OCT 5 1925
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
L. E. Conover, Jr., Cashier

(Perforated)

PAID
10-5-25

No. 1404 Atlantic City, N. J., Sept 25 1925

MARINE TRUST COMPANY

Pay to the order of Joseph S. Naame

Five thousand.....x/100 Dollars

$5000.00/xx S. L. Doughty.

(Printed in left-hand margin)

Somers L. Doughty

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
SEP 25 1925
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
L. E. Conover, Jr., Cashier

(Perforated)

PAID
9-26-25

No. 1256 Atlantic City, N. J., Dec 23th 1926

MARINE TRUST COMPANY

Pay to the order of Joseph S. Naame

One thousand.....x/100 Dollars

$1000.00/xx S. L. Doughty.

(Printed in left-hand margin)

Somers L. Doughty

(Endorsed)

Joseph S Naame
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
DEC 24 1926
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
12-24-26

EXHIBIT C2.
9/12/29L

J. S. Naame, President Phone Marine 2333-R
J. S. NAAME CO.
Engineers and Builders
Office: 206 Segal Building
Atlantic City, N. J., July 27 1926 192

MMr Somers Doughty,
12 S. Indiana Ave., Atlantic City., N. J.

Building # 1&2 Contract	100.000.00
Rec	96.000.00

		4000.00
Building #3 Contract	36.000.00	
Rec.	32.000.00	
		4000.00
Balance #1 2 & 3		$8000.00

EXHIBIT C4.
9/12/29L

SOUTH JERSEY TITLE AND FINANCE COMPANY

No. A6808

Subject to conditions of Bond in favor of Drawer and his Banks. This check is bonded by National Surety Company against forgery and alteration.

Atlantic City, N. J. APR 23 1926 192

Pay to the order of Isabel Dobbin $33617 48/100

Thirty Three Thousand Six Hundred Seventeen Dollars Forty Eight Cents Insured Dollars

17566—Bal. due mtgor.

Alfred J Showell
Settlement Clerk
Leo S. Lewis
Assistant Secretary

To MARINE TRUST COMPANY
55-145 Atlantic City, N. J.

(Printed in left-hand margin)

Countersigned by Marine Trust Company,
Treasurer
By F C Bossler Asst Secretary

(Endorsed)

This endorsement of this check shall be a receipt in full for the items enumerated on the face thereof.
Isabel Dobbin
S. L. Doughty.

(Perforated)

PAID
4-24-26

EXHIBIT C5.
9/12/29L

162.67
$8000 00/ Atlantic City, N. J., Oct 29 1928
Four months after date I promise to
Pay to the order of Somers L Doughty at the
GUARANTEE TRUST COMPANY 55-143
of Atlantic City, N. J.
Eight thousand ..... Dollars
Without defalcation or discount Value received
No. 6253 Due Feb 28 ID Isabel Dobbin
Feb 28—122

(Endorsed)

SLD

Somers. L. Doughty.
Atlantic City, N. J.,
Feb 28 1929 19

For value received I hereby waive protest, demand and notice of protest on note drawn by Isabel Dobbin for $8000.00/ dated Oct 29 1928, at four months, bearing the endorsement of Somers L. Doughty and hold myself as duly bound as if same had been legally protested.

Somers L Doughty

EXHIBIT C6.
9/12/29L

No. 1398 Atlantic City, N. J., 2-29-1928

MARINE TRUST COMPANY

Pay to the order of Atl. City Loan & Bldg. Assn. Twenty nine thousand nine hundred & eighty nine 75/100 Dollars

$29989.75/100 S. L. Doughty.

(Printed in left-hand margin)
Somers L. Doughty

(Endorsed)

FOR DEPOSIT ONLY
To the Credit of
THE ATLANTIC CITY LOAN
& BUILDING ASSOCIATION
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
MAR 2 1928
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier.

(Perforated)

PAID
3-2-28

EXHIBIT C8.
9/12/29L

WHEREAS, We, the subscribers, have furnished materials used in the erection of

or have been employed as journeymen and laborers in the construction thereof, and which is erected upon a lot or curtilage situate
and have agreed to release any and all liens which we, or any of us, now have or may have on such building and the lot or curtilage whereon the same is erected, by reason of the said premises.

NOW THESE PRESENTS WITNESSETH, that we, the subscribers, as well in consideration of the premises, as of the sum of one dollar to each of us, at or before the ensealing and delivery hereof by

well and truly paid, the receipt whereof we do hereby acknowledge, have remised, released and forever quitted claim, and by these Presents do remise, release and quit claim unto the said

and to heirs and assigns, any and all manner of liens, claims and demands whatsoever which we or any of us have, or might or could have, in, upon, on or against the said building and the lot or curtilage whereon the same is erected, being the premises above described, or mentioned and intended so to be, for any materials furnished and used in the erection of said building and any and all work and labor done and performed in the construction thereof, or in any otherwise howsoever, whether such labor and materials be of the nature set opposite our respective names, or whether we may not in fact have furnished labor or materials of some other description; and so that the said

heirs and assigns, shall and may have, hold, use, occupy and enjoy the said building and lands whereon the said stand, and the premises above described, freed, cleared and dscharged of and from any and all liens, claims and demands whatsoever, which we, or any of us, have or might or could have in, upon, on or against the same if these Presents had not been made and executed.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, the day of the date written opposite our respective signatures.

Date Witnesses at Signing

Joseph S Naame (L. S.)
Cellar Digging.
(L. S.)
Stone.

Albert Suisman—Thomas Graham (L. S.)
Bricks.

Albert Suisman—Thomas Graham (L. S.)
Sand.

Albert Suisman—Thomas Graham (L. S.)
Lime.

Brickmats

1/28/26 W J Roebuck—Lake & Risley Co.
R. J. Harris (L. S.)
Lumber.

1/28/26 Harry Davidry—Albert Suisman (L. S.)
Carpenter.

1/27/26 Joseph S Naame—H Hoffman & Sons
Reuben Hoffman (L. S.)
Hardware.

1/28 Millie M. Carver—Chas. Rubinstein (L. S.)
Roofing.

Harry Davidry—
James A. McGimpsey (L. S.)
Plasterer.

James A. McGimpsey—M. Goldstein (L. S.)
Painter.

Albert Suisman—Harry Davidry (L. S.)
Plumbing & Gas Fitting.

1/26/26 Thos S Taylor—Fleck Atlantic Co (L. S.)
Plumbing Materials.

1/26/26 Thos S Taylor—Fleck Atlantic Co (L. S.)
Heaters and Pipes.
1/26/26 Thos S Taylor—Fleck Atlantic Co (L. S.)
Range, Boilers, &c.
1/28/26 W J Roebuck—Lake & Risley Co
R. J. Harris Treas (L. S.)
Sash, Glass Doors and Mill Work.
(L. S.)
Mantels.
(L. S.)
Pavement.
(L. S.)
Paper Hanging.
1/26/26 Thos S Taylor—Harry Davidry (L. S.)
Gas Fixtures.
Albert Suisman
Albert E. Gleaves—
Albert E. Gleaves (L. S.)
Electrical Wiring.
4/29/26 H. L. O'Brien—
Hudson Cement & Supply Co. (L. S.)
W B Cramer Treas
Cement.
Mason Material.
(L. S.)
Mason Work.
(L. S.)
Bricklayer.
4/29/26 H. L. O'Brien
Joseph S Naame (L. S.)
General Contractor.
(L. S.)
(L. S.)

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

Joseph S. Naame being duly sworn, on his oath saith, that he is the person named in the within Release of Liens as contractor; that all persons who may at this time have furnished materials used in the erection of the building within named, have released their lien on such building and the land or curtilage whereon the same is erected; that all journeymen and laborers employed in the construction thereof have been fully paid and satisfied; and that no person or persons, other than those named in said Release, have any claim for liens upon such building or lands and premises within mentioned by reason of work done or materials furnished for the erection and construction thereof.

Harriet L. O'Brien,
Notary Public. (Seal)
My Commission Expires
February 13th, 1930.

Sworn and Subscribed this
29th day of April
A. D. 1926, before me.

RELEASE OF LIENS
TO
Somers Doughty
#717-719
Baltic Ave.

EXHIBIT C9.
9/12/29L

WHEREAS, We, the subscribers, have furnished materials used in the erection of

or have been employed as journeymen and laborers in the construction thereof, and which is erected upon a lot or curtilage situate #713-715 Baltic Ave. and have agreed to release any and all liens which we, or any of us, now have or may have on such building and the lot or curtilage whereon the same is erected, by reason of the said premises.

NOW THESE PRESENTS WITNESSETH, that we, the subscribers, as well in consideration of the premises, as of the sum of one dollar to each of us, at or before the ensealing and delivery hereof by

well and truly paid, the receipt whereof we do hereby acknowledge, have remised, released and forever quitted claim, and by these Presents do remise, release and quit claim unto the said

and to heirs and assigns, any and all manner of liens, claims and demands whatsoever which we or any of us have, or might or could have, in, upon, on or against the said building and the lot or curtilage whereon the same is erected, being the premises above described, or mentioned and intended so to be, for any materials furnished and used in the erection of said building and any and all work and labor done and performed in the con-

struction thereof, or in any otherwise howsoever, whether such labor and materials be of the nature set opposite our respective names, or whether we may not in fact have furnished labor or materials of some other description; and so that the said

heirs and assigns, shall and may have, hold, use, occupy and enjoy the said building and lands whereon the said stand, and the premises above described, freed, cleared and dscharged of and from any and all liens, claims and demands whatsoever, which we, or any of us, have or might or could have in, upon, on or against the same if these Presents had not been made and executed.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, the day of the date written opposite our respective signatures.

Date Witnesses at Signing

Joseph S Naame (L. S.)
Cellar Digging.
(L. S.)
Stone.
Albert Suisman—Thomas Graham (L. S.)
Bricks.
Albert Suisman—Thomas Graham (L. S.)
Sand.
Albert Suisman—Thomas Graham (L. S.)
Lime.
Brickmats
1/28/26 W J Roebuck—Lake & Risley Co.
R. J. Harris (L. S.)
Lumber.
1/28/26 Harry Davidry—Albert Suisman (L. S.)
Carpenter.

1/27/26 Joseph S Naame—H Hoffman & Sons
Reuben Hoffman (L. S.)
Hardware.
1/28 Millie M. Carver—Chas. Rubinstein (L. S.)
Roofing.
1/26/26 Harry Davidry—
James A. McGimpsey (L. S.)
Plasterer.
1/28/26 James A. McGimpsey—
M. Goldstein (L. S.)
Painter.
1/26/26 Thos S Taylor—Harry Davidry (L. S.)
Plumbing & Gas Fitting.
1/26/26 Thos S Taylor—Fleck Atlantic Co (L. S.)
Plumbing Materials.
1/26/26 Thos S Taylor—Fleck Atlantic Co (L. S.)
Heaters and Pipes.
1/26/26 Thos S Taylor—Fleck Atlantic Co (L. S.)
Range, Boilers, &c.
1/28/26 W J Roebuck—Lake & Risley Co
R. J. Harris Treas (L. S.)
Sash, Glass Doors and Mill Work.
(L. S.)
Mantels.
(L. S.)
Pavement.
(L. S.)
Paper Hanging.
1/26/26 Thos S Taylor—Harry Davidry (L. S.)
Gas Fixtures.
Albert Suisman
Albert E. Gleaves (L. S.)
Electrical Wiring.

4/29/26 H. L. O'Brien—
Hudson Cement & Supply Co. (L. S.)
W B. Cramer Treas.
Cement.
Mason Material.
(L. S.)
Mason Work.
(L. S.)
Bricklayer.

4/29/26 H. L. O'Brien
Joseph S Naame (L. S.)
General Contractor.
(L. S.)
(L. S.)

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

Joseph S. Naame being duly sworn, on his oath saith, that he is the person named in the within Release of Liens as contractor; that all persons who may at this time have furnished materials used in the erection of the building within named, have released their lien on such building and the land or curtilage whereon the same is erected; that all journeymen and laborers employed in the construction thereof have been fully paid and satisfied; and that no person or persons, other than those named in said Release, have any claim for liens upon such building or lands and premises within mentioned by

reason of work done or materials furnished for the erection and construction thereof.

Harriet L. O'Brien,
Notary Public. (Seal)
My Commission Expires
February 13th, 1930.

Sworn and Subscribed this
29th day of April
A. D. 1926, before me.

RELEASE OF LIENS
TO
713-715

EXHIBIT C10.
9/12/29L

SOUTH JERSEY TITLE AND FINANCE COMPANY
Atlantic City, New Jersey

STATEMENT OF SETTLEMENT

Between Isabel Dobbins and Trident Building and Loan Association, as of July 15th, 1927. 192
Under application No. 19907- affecting premises situate #719 Baltic Avenue, Atl. City.

Deposited by Mortgagee,		25000.00
Recording Mortgage	5.50	
Policy 25,000. Mortgagee,	130.50	
Morris M. Gorson, Solicitor's fee,	137.50	
Trident B & Loan Assicition Dues, 1 month only,	275.00	
Balance due Mortgagor, Isabel Dobbins,	24451.50	
	25000.00	

Alfred J. Showell,
Settlement Clerk.

The above statement is hereby approved and settlement thereunder authorized

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SOUTH JERSEY
TITLE and FINANCE COMPANY
Marine Trust Company Building
Atlantic City, N. J.
Statement of Settlement
BETWEEN

EXHIBIT C11.
9/12/29L

Copy of Bill of Charles C. Babcock.

Re—$35000.00 Mortgage Loan.

N. W. Corner New Jersey & Baltic Aves.

April 19th, 1926.

Miss Isabel Dobbins,
to
Charles C. Babcock, Dr.

.....

Drawing Bond & Mortgage, Association Form.			5.00
Drawing Assignement of Stock,			2.00
Dues for January, February, March, and April, 1926, at $175.00 per month,		$700.00	
Interest for April 1926, (half month)		87.50	
Premium for April, 1926, (half month)		26.25	
Estimated Earnings.		26.25	840.00
Solicitor's fee for passing on title, etc.,			25.00
Total paid			872.00

Alfred J. Showell)

SOUTH JERSEY TITLE AND FINANCE COMPANY

Atlantic City, New Jersey

STATEMENT OF SETTLEMENT

Between Isabel Dobbin and Atlantic City Loan & Building Association, as of April 22nd, 19226
Under application No. 17566 affecting premises situate N. W. Corner New Jersey & Baltic Aves.,

Deposited by Mortgagee		35000.00
Taxes, 1925	322.32	
Interest on 322.32 for taxes,	17.20	
Charles C. Babcock, Solicitor's fee,	25.00	
Draw Bond & Mortgage, Assignement of Stock,	7.00	
B & L Dues, Int., Jan. Feb. Mar. April.	840.00	
Recording B & L Mortgage	5.50	
Policy $35,000.00 Mortgagee,	165.50	
Fire Insurance, (Paid outside of settlement)	.....	
Balance due mortgagor, paid to Isabel Dobbin,	33617.48	
	35000.00	

ALFRED J. SHOWELL,
Settlement Clerk.

The above statement is hereby approved and settlement thereunder authorized

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SOUTH JERSEY
TITLE and FINANCE COMPANY
Marine Trust Company Building
ATLANTIC CITY, N. J.
Statement of Settlement
BETWEEN

EXHIBIT C12.
9/12/29L

SOUTH JERSEY TITLE AND FINANCE COMPANY
Atlantic City, New Jersey

STATEMENT OF SETTLEMENT

Between Guarantee Trust Company and Somers S. Douthty to Isabel Dobbin as of March 19, 1927

Under application No. 19276 affecting premises situate 144

Price		30000	
W. R. 30—3/19/27—8/1/27		10 80	
Sewer 20 and 22 N. Ohio 26.25 to 5/1/27		2 90	
Sewer rear 22.70 to 3/1/28		21 44	
		30035 14	10
Paid on account	3000		
Purchase money mortgage 3 years	15000		
Adjusting 1927 taxes 659.28	144 20		
Due Seller	11890 94		
	30035 14		
Due Seller	11890 94		
Recording deed to Doughty	3		20
Recording deed — Doughty — Dobbin	3		
Recording purchase money mortgage	3 50		
Drawing deed and mortgage	10		
Policy (15000—owner)	95 50		
	12005 94		

The above statement is hereby approved and settlement thereunder authorized 30

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SOUTH JERSEY
TITLE AND FINANCE COMPANY
Marine Trust Company Building
Atlantic City, N. J.
Statement of Settlement
BETWEEN

10

EXHIBIT C13.
9/12/29L

Series of checks made to the order of Isabel
20 Dobbin signed S. L. Doughty, drawn either on Guarantee or Marine Banks.

1—Jan.	7,	1928—	$10,000
2—June	10,	1927—	2,500
3— "	20,	1927—	1,000
4— "	24,	1927—	5,000
5—July	1,	1927—	10,000
6— "	25,	1927—	2,500
7—Sept.	30,	1927—	1,000
8— "	30,	1927—	2,000
9—Oct.	5,	1927—	10,000
10—Nov.	23,	1927—	1,000
11— "	28,	1927—	1,000
12—Dec.	23,	1927—	2,500

30

EXHIBIT C14.
9/12/29L.

RECAPITULATION SHEET

Sheet No. 146

Name of Work 57 Family Apt. (Isabel Dobbins) Location 20-22 N. Ohio
Architects or Engineers J S Naame Date 12/17/27 Job No.

Class of Work	Estimated Total Cost	Actual Total Cost	Total Gain on Est.	Total Loss on Est.	Unit Loss on Est.
Permits	500 —	567 —		67 —	
Foundation	3000 —	3250 —		250 —	
Brickwork & Incin	18000 —	19000 —		1000 —	
Steel	4000 —	3800 —	200 —	.....	
Electrical Wk	2000 —	2250 —		250	

30 20 10

Plumb—Heat	22000 —	22000 —		.....	
Lath—Plaster	11500 —	12000 —		500	500*
Roofing	1600 —	1550 —	50	.....	
Paint	2000 —	1900 —	100	.....	
Cement Base.	1500 —	1700 —		200	
Concrete Halls	1000 —	1200 —		200	
Carpenter Wk	6500 —	7356 —		856	372 —*
Tile Work	2580 —	2580 —		.....	
Hardware	800 —	887 —		87	87 —*
Ranges	935 —	935 —		.....	
Med. Cabinets	118.25	118 25		.....	
Light Fixtures	.....	252 —		252	252 —*
Incinerator	275 —	275 ..		.....	
Miscellaneous	100 —	153 —		53	
Stained Glass	.....	190 —		190	
Main Stairs	.....	1990 30		1990 30	
Firescapes	.....	1706 19		1706 19	
Murphy Beds	1912 50	2412 50		510 —	510 —*
Hardwood Floors	2650 —	2650 —		.....	

Millwork	10500 —	11000 —		500 —	364 —*
Marquise	.....	400 —		400 —	400 —*
	93470 75†	102132 24†	350 —†	9011 49†	
	9011.49*	pd 87500 —*			
	102482 24*	14632.24*			
	350 *				
	102,132.24*				

(Written in left-hand margin)

14632.24*
2500.—*

12,132 24*

Extra work—†

Lath—plaster closets—	500 —†
Carpenter work	372 —†

30 10

Hardware	87 —†
Fixtures	252 —†
Beds	510 —†
Millwork	364 —†
Marquise	400 —†
	2485 —†

†—in red ink.
*—in lead pencil.

EXHIBIT C15.
9/12/29L

Copy

Oct. 15, 1927.

Miss Isabel Dobbin,

to

Charles C. Babcock, Dr.

Dues, expenses etc., in re: Loan of $35,000. made by the Atlantic City Loan & Building Association to Isabel Dobbin upon security of property 713-15 Baltic Avenue, this City.

Dues to the Association for July, August, September and October, 1927, at $175.00	700.00
One-half month's interest for October, 1927,	87.50
One-half month's Premium for October, 1927,	26.25
Estimated Earnings.	28.00
Solicitor's fee for passing on Title, etc.,	162.50
Total	$1004.25

Received payment.
A. J. Showell.)

SOUTH JERSEY TITLE AND FINANCE COMPANY
Atlantic City, New Jersey

STATEMENT OF SETTLEMENT

Between Isabel Dobbin, and Atl. City Loan and Building Association as of Oct. 15, 1927. 192
Under application No. 20297 affecting premises situate #713-15 Baltic Avenue, Atlantic City, N. J.

Deposited by Mortgagee		35000 00
Recording Mortgage,	3 50	
Title Policy 35,000. Mortgagee,	165 50	
Atl. City Loan & Building Assn. dues for July, Aug. Sept. and October	841.75	
Chas. C. Babcock, Solicitor's fee,	162.50	
Balance due Mortgage, Isabel Dobbin,	33826.75	
	35000.00	

Alfred J. Showell.
Settlement Clerk.

The above statement is hereby approved and settlement thereunder authorized

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SOUTH JERSEY
TITLE and FINANCE COMPANY
Marine Trust Company Building
ATLANTIC CITY, N. J.
Statement of Settlement
BETWEEN

EXHIBIT C16.
9/12/29L.

LIT BROTHERS
Market and Eighth Streets
Filbert and Seventh Streets
CONTRACT DEPARTMENT
New York Office
1261 Broadway
Paris Office
28 Rue D'Hauteville
Cablegrams
Carupano, Paris
Cable Address
Brotil-Philadelphia

Prices Quoted Strictly Net

Philadelphia April 22, 1926.

Mr. S. Doughty,
18 South Indiana Ave.,
Atlantic City, N. J.

Dear Sir:

We take pleasure in submitting you our estimate on furnishings for your Apartment House, New Jersey Avenue, Atlantic City, New Jersey, as follows:

24—Breakfast Room Suites; consisting of: (4) chairs (1) table, Ivory, Decorated in blue; flower decoration on table; automatic metal brace on leaves; each leaf 12½" wide; table 15x35, as per sketch

New Jersey State Library

	Each	$23.00	$552.00
24—Bed Outfits, complete, same as previously delivered	Each	22.00	528.00
48—Pillows, feathers	"	.90	43.20
24—Ivory Bureaus, as sample shown	"	18.00	432.00
24—Chairs, as per sketch	"	4.50	108.00
24—Windsor Arm Chairs, Ivory, as per sketch	"	9.10	218.40
24—Refrigerators	"	9.95	238.80

Trusting this estimate will meet with your approval and hoping to be favored with your valued order, we remain

Very truly yours,
Lit Brothers
E. J. Moletor

CONTRACT DEPT.
EJM:K

EXHIBIT C17.
9/12/29L

No. Atlantic City, N. J. Jan 25th 1928

GUARANTEE TRUST COMPANY 55-143
of Atlantic City, N. J.

Pay to the order of Atl City Loan & Building Ass
$805.00/xx
Eight Hundred & Five.....x Dollars
Safe Deposit Boxes for Rent
For S. L. Doughty.

(Endorsed)

FOR DEPOSIT ONLY
To the Credit of
THE ATLANTIC CITY LOAN
& BUILDING ASSOCIATION.
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
JAN 27 1928
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier

(Perforated)

PAID
1-27-28

EXHIBIT C17.
9/12/29L

(This should apparently have been marked C18. It is also marked D1 for identification.)

55-145
MARINE TRUST COMPANY

Number
111

Atlantic City, N. J. Dec. 15th 1928
Pay to the order of Somers L. Doughty $500.00/xx
Five Hundred.....x Dollars

For account of Savoy & Ohio Apts to Somers Doughty—principle.

OHIO APARTMENTS
Isabel Dobbin

(Printed in left-hand margin)
OHIO APARTMENTS
20-22 No. Ohio Avenue

EXHIBIT C19.
9/12/29

SOUTH JERSEY TITLE AND FINANCE COMPANY

No. A10243

Subject to conditions of Bond in favor of Drawer and his Banks. This check is bonded by National Surety Company against forgery and alteration.

Atlantic City, N. J. Oct 15 1927 192

Pay to the order of Isabel Dobbin $33826 75/100
Thirty Three Thousand Eight Hundred Twenty Six Dollars Seventy Five Cents Insured Dollars
20297—Bal due mtgor. fr. Atl. City L & B. Assn

Alfred J Showell
Settlement Clerk
Leo L. Lewis
Assistant Secretary

To MARINE TRUST COMPANY
55-145 Atlantic City, N. J.
(Printed in left-hand margin)
Countersigned by Marine Trust Company,
Treasurer
By Ernest A. Lord
Secretary

(Endorsed)

The endorsement of this check shall be a receipt in full for the items enumerated on the face thereof.
Isabel Dobbin
Savoy Apts.

(Perforated)

PAID
10-15-27

EXHIBIT C20.
9/12/29L

SOUTH JERSEY TITLE AND FINANCE COMPANY

No. A9872

Subject to conditions of Bond in favor of Drawer and his Banks. This check is bonded by National Surety Company against forgery and alteration.

Atlantic City, N. J. Jul 15 1927 192

Pay to the order of Isabel Dobbin $24,451.50
Insured Twenty Four Thousand Four Hundred Fifty One Dollars Fifty Cents Insured Dollars
19907—Balance due mtgor. from Trident Building and Loan Association.

Alfred J Showell
Settlement Clerk
Leo S Lewis
Assistant Secretary

To MARINE TRUST COMPANY
55-145 Atlantic City, N. J.
(Printed in left-hand margin)
Countersigned by Marine Trust Company,
Treasurer
By Ernest A. Lord
Secretary

(Endorsed)

The endorsement of this check shall be a receipt in full for the items enumerated on the face thereof.
Isabel Dobbin
Savoy Apts

(Perforated)

PAID
7-16-27

EXHIBIT C21.
9/12/29L

No. Atlantic City, N. J., Nov 12th 1925
THE BOARDWALK NATIONAL BANK, 55-146
Pay to the order of Lit Brothers $500.00/xx
Collectible at par thro Federal Reserve Bank,
Phila., Pa.
Five Hundred.....x Dollars
S. L. Doughty.

(Endorsed)

Pay to the order of
THE PHILADELPHIA NAT'L BANK
Philadelphia
NOV 13 1925
LIT BROTHERS
Pay any Bank, Banker or Trust Co.
Or Order
All Prior Endorsements Guaranteed
NOV 16 1925
GUARANTEE TRUST CO.
Atlantic City, N. J.
Harry T. Sickler, Treas.
55-143
Pay to the order of
Any Bank, Banker or Trust Co.
All Prior Endorsements Guaranteed
NOV 16
THE PHILADELPHIA NATIONAL BANK
3-1 Philadelphia, Pa. 3-1
G. Howard Wolfe, Cashier

(Perforated)

PAID
11-16-25

EXHIBIT C22.
9/20/29L

No. 412

SAVOY APARTMENTS
Atlantic City, N. J. Feb. 28th 1929.

Pay to the order of Cash $1088.16/xx
One Thousand eighty eight.....16/xx Dollars
For Savoy Apartments
Isabel Dobbin.

To the
MARINE TRUST COMPANY
55-145 Atlantic City, N. J.

(Endorsed)

Isabel Dobbin
Deposit to credit of Savoy Apartments
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
MAR 2 1929
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier

(Perforated)

PAID
3-2-29

EXHIBIT C23.
9/20/29L

55-145
MARINE TRUST COMPANY

Number 146

Atlantic City, N. J. Feb. 28th 1929

Pay to the order of Cash $30.52/xx

Thirty .....52/xx Dollars

For account of
Ohio Apartments
Isabel Dobbin

(Printed in left-hand margin)
OHIO APARTMENTS
20-22 No. Ohio Avenue

(Endorsed)

Isabel Dobbin
Deposit to credit Ohio Apartment
Pay to the order of
ANY BANK OR TRUST CO.
All prior endorsements guaranteed
MAR 2 1929
Atlantic City National Bank
55-139 Atlantic City, N. J. 55-139
J. Wm. Alcorn, Cashier

(Perforated)

PAID
3-2-29

EXHIBIT C24.

Check on Isabel Dobbin's personal account, offered in evidence on printed p. 375 (p. 433 of stenographer's transcript), but lost.

EXHIBIT D3.
Iden.
9/12/29L

3300 Int.
$15000 00 Pro.

Atlantic City, N. J. Dec 5th 1927

On Demand months after date, for value received, I/we promise to pay to the order of Marine Trust Co Fifteen thousand..... Dollars payable at MARINE TRUST COMPANY OF ATLANTIC CITY, N. J.

Presentment and demand for payment, notice of non-payment, protest and notice of protest are each and all hereby waived by the makers, endorsers and guarantors jointly and severally. Any monies of the undersigned and each of the undersigned and of any endorser or deposit with said bank may be

appropriated and applied by said bank on this note at any time before or after maturity of this note and without demand upon or notice to anyone.

I D Isabel Doblin
Address

No. 1605 Due
Days

10

(Stamped)

Cancelled
Jan 12 1929
Marine Trust Co.
Atlantic City, N. J.

(Endorsed)

20

FOR VALUE RECEIVED, the undersigned and each of the undersigned in addition to the obligations imposed by endorsement and waiving of notice of every character and nature, hereby become a party to, adopt, agree to, accept, guarantee and assume all the terms, conditions and waivers contained in the note on the reverse side hereof, and guarantee the payment of said note at maturity and consent without notice of any kind to any and all extensions of time made by the holder of said note.

30

Credit account Savoy Apt
Somers L Doughty

(Stamped)

Cancelled
Jan 12 1929
Marine Trust Co.
Atlantic City, N. J.

(Written in red ink)

Pd on acct 4/2/28	2000.
Bal due CGS	13,000.
Pd on acct 7/2/28	1000.
	12000.
Paid on a/c 8/21/28	3500.
Balance Due CP	8500.
Pd on acct 10/2/28	2500.
Bal due CGS	6000.
Pd on acct 11/5/28	2000.
Bal due CGS	4000.
Pd on acct 12/31/28	700.
Bal due CGS	3300.

(Stamped)

Cancelled
Jan 12 1929
Marine Trust Co.
Atlantic City, N. J.

(Stamped)

Cancelled
Jan 12 1929
Marine Trust Co.
Atlantic City, N. J.

EXHIBIT D4.
9/12/29L

No. 1282 Atlantic City, N. J., Jan. 29th 1927
MARINE TRUST COMPANY
Pay to the order of Guarantee Trust Company
Three Thousand .....x/100 Dollars
$3000.00/xx Isabel Dobbin
(Printed in left-hand margin)
Isabel Dobbin

(Endorsed)

Guarantee Trust Company
Trust Fund Account
Pay any Bank, Banker or Trust Co.
or order
All Prior Endorsements Guaranteed
JAN 31 1927
55-143 Guarantee Trust Co.
Atlantic City, N. J.
Harry T. Sickler, Treas.

(Perforated)

PAID
1-31-27

EXHIBIT D5.
9/12/29L

SAVOY APARTMENTS No. 119
Atlantic City, N. J. Mar 19 1927 192
Pay to the order of South Jersey Title & Finance Company $12005 94/100
Twelve thousand five and 94/100.....Dollars
For 19276 Savoy Apartments
Isabel Dobbin
To the
MARINE TRUST COMPANY
55-145 Atlantic City, N. J.

(Endorsed)

FOR DEPOSIT
To the credit of
South Jersey Title and Finance Co.
Jay C. Kline,
Secretary

(Perforated)

PAID
3-19-27

EXHIBIT D10.
9/13/29L

SAVOY APARTMENTS No. 171
Atlantic City, N. J. July 20th 1927
Pay to the order of Somers L. Doughty $25000.00/xx
Twenty-five thousand .....x Dollars
For Savoy Apartments
Isabel Dobbin

To the
MARINE TRUST COMPANY
55-145 Atlantic City, N. J.

(Endorsed)

Somers L. Doughty.
S. L. Doughty.

(Perforated)

PAID
7-20-27

EXHIBIT D11.
9/20/29L

SAVOY APARTMENTS No. 228
Atlantic City, N. J. October 15th 1927
Pay to the order of S. L. Doughty $15000.00/xx
Fifteen Thousand .....x Dollars
For Savoy Apartments
Isabel Dobbin

To the
MARINE TRUST COMPANY
55-145 Atlantic City, N. J.

(Endorsed)

S. L. Doughty.
Pay any Bank, Banker or Trust Co.
or order
All Prior Endorsements Guaranteed
OCT 17 1927
Guarantee Trust Co.
55-143 Atlantic City, N. J.
Harry T. Sickler, Treas.

(Perforated)

PAID
10-17-27

CONCLUSIONS.
71-496

IN CHANCERY OF NEW JERSEY.

Between
SOMERS L. DOUGHTY,
Complainant,
and
ISABEL DOBBIN,
Defendant.

On Bill, &c.
Conclusions.
(Not For Print.)

MR. JOHN C. REED and MR. EMERSON RICHARDS for complainant.

MESSRS. COLE & COLE and MR. PAUL M. SALSBURG for defendant.

INGERSOLL, V. C.:

The defendant, Isabel Dobbin (now Isabel Naame), is the child of the deceased wife of complainant by her former husband. She continued to live in the household of complainant after the death of her mother.

On December 30, 1922, and on September 19, 1925, the complainant, by deeds bearing said dates, conveyed the two tracts of land described in the com-

plainant's bill to the defendant, for the express consideration of $100.00 and natural love and affection.

It is admitted that these conveyances were gifts to his stepdaughter of this land. These premises were improved by erecting thereon apartment buildings and remodeling old structures. The complainant advanced monies for said work to the extent of $136,000. After the completion of the buildings, the defendant secured three montgages, one realizing $24,451.50, one $33,617.48 and a third $33,826.75, aggregating $91,895.73, which monies were received by the complainant and credited by him on account of the money so advanced by him. Later, an additional payment of $250 was made. The complainant also insists that there is also an additional sum due him by reason of the fact that to pay off a mortgage of $35,000, the complainant borrowed through the use of complainant's credit, the sum of $30,000, all of which has been paid by defendant, except the sum of $8,000, which is represented by a note of $8,000, upon which he is endorser.

The complainant prays that an accounting may be had and that defendant pay to complainant the amount found to be due, or in default thereof, the amount so found to be due to be decreed to be a lien and charge on said land and premises described in the bill of complaint in the nature of an equitable mortgage.

The defense is that all sums of money so advanced were gifts to her by her stepfather. A great amount of testimony has been taken and it can be of little avail to recite it. The land was a gift but I am convinced that the money advanced by Doughty

for the building and construction of these buildings was not intended to be a gift. This view is sustained by reason of two facts, the first that he received the proceeds of all of the mortgages and secondly by the fact that she paid to Doughty a check of $500 from the bank account of the "Ohio Apartments," on the face of which appears "for account of Savoy & Ohio Apts. to Somers Doughty— principle."

Mrs. Naame testified as follows:

> "The morning that I gave him this check he nagged me and fought with me about Mr. *Doughty* (Naame?) from breakfast time until I finished dressing, followed me from room to room in a terrible temper, I was afraid of my life, and he said if I was a man he would knock me down, then in the heat of anger he said, 'You still owe me money for that furniture.' I said, 'No, I paid you for that furniture.' He said, 'You still owe me money. Can I have a check?' I said, 'Well, if that is the way you feel about it, how much do you want?' He said, 'I will take five hundred dollars,' so I was so excited I said, 'Come on downstairs.' He followed me downstairs and stood over me while I wrote this check and made me write on there, 'Ohio and Savoy Apartments to Somers Doughty, principal,' and grabbed the check out of my hands, grabbed out of my hands, and came back later on very much calmed down, and laughed at me, 'Now, I have got you. I will get everything I ever gave you. I will take it back from you if you marry Joe Naame.' I said, 'I don't see how you can do that.' He said,

'I have got the evidence; you only borrowed my money; that is the evidence I wanted to get and you did it for me.' Several days after that he came to the Ohio Apartments and threatened to kill Mr. Naame with the club. The following week he followed me to the Savoy Apartments and threatened to kill Mr. Naame again and hit him on the jaw and broke his own knuckles.''

Mr. Doughty's explanation of the check is that the check was made out for $500, $250 on account of the Savoy Apartments and $250 on account of the Ohio Apartments, which made $500, all in one check, and followed her refusal to execute a mortgage for $75,000 on the property in question as she had on the other property. He gives the circumstances of the check as follows:

''She left it, she give it to the maid to give to me, gave it to the maid and the maid gave to me after I left her, after I asked her for it. The maid give it to me when I came home and I looked at it and laughed, laid it down on the desk and walked out and left that laying there, such a small amount.''

He finally took it and deposited it. In this he is corroborated by the testimony of the maid to whom the check was given by Mrs. Naame to deliver to Doughty.

Mrs. Naame's story is also refuted to some extent by the testimony of the expert on handwriting, who testified that he found the writing to be identical in nervous and muscular characteristics with the other writing of Isabel Dobbin. He found it to be

the natural writing of the same party who did the other Isabel Dobbin writings, and to be in no respect abnormal or unusual, to follow in every respect the customary and usual writing habits of this particular person, and showed no signs of excitement at the time it was written. Doughty had this check photographed and the photograph only is offered in evidence, Mrs. Naame being unable to find the original, although it passed through her account in bank and was returned to her.

I am convinced that the testimony of Mrs. Naame does not give the Court the benefit of the true facts insofar as this check is concerned, and while the maxim *falsus in uno falsus in omnibus* is not a mandatory rule of evidence (*Addis v. Rushmore,* 74 N. J. L. 649), where a defendant's testimony is discredited by documentary proofs and by the contradiction of other and disinterested witnesses in relating facts of which all may have knowledge, her testimony cannot be relied upon when narrating incidents (the truth of which is essential to her defense), which lie solely within her knowledge. *Sinclair v. Sinclair,* 57 N. J. Eq. 222. Finding this testimony of Mrs. Naame's false and considering her demeanor and manner of testifying, I am convinced that her testimony can have but little weight.

I am unable to find any testimony which is at all convincing that the repayment to him was to be limited to the amounts which were obtained through the mortgage loans. Ordinarily, the improvements made will be presumed to be gifts to the stepdaughter, unless that presumption is sufficiently overcome by proofs. *Selover, v. Selover,* 62 N. J. Eq. 761; *Prisco v. Prisco,* 90 N. J. Eq. 289.

I am satisfied that the presumption of a gift has been overcome by the evidence with that degree of certainty that is required in such circumstances. I will advise a decree in accordance with these views. If it becomes necessary, I will advise a reference to ascertain the correct amount.

CONCLUSIONS.
72-154.

IN CHANCERY OF NEW JERSEY.

Between
SOMERS L. DOUGHTY,
Complainant,
and
ISABEL DOBBIN,
Defendant.

On Bill, &c.
Conclusions.
(Not For Print.)

MR. JOHN C. REED and MR. EMERSON RICHARDS for complainant.
MESSRS. COLE & COLE and MR. PAUL M. SALSBURG for defendant.

INGERSOLL, V. C.:

On or about March 19, 1927, the Guarantee Trust Company of Atlantic City, New Jersey, conveyed,

for an express consideration of $30,000, certain lands and premises in Atlantic City to the complainant, of which $7,500 was paid by Isabel Dobbins and the sum of $7,500 was paid by complainant. On or about March 19, 1927, the complainant conveyed said lands and premises to the defendant, the stepdaughter of complainant. Complainant alleges that he advanced and paid money to the said defendant to the amount of $104,617.24, for the erection of an apartment house structure on said land, and alleges that the agreement between them was that upon the completion of said building, a mortgage would be secured upon said premises for his benefit. He secured a party ready, able and willing to loan the sum of $75,000 upon said premises, but the defendant declined to execute said mortgage.

While the testimony in this case and in the companion case was taken at one time, in the companion case I found the agreement as alleged by the complainant proven. Such finding was based by reason of two facts, the first, upon the fact that she had made mortgages upon the premises in question, from the proceeds of which Doughty was reimbursed a portion of the money so advanced by him, and that she had delivered to Doughty a check for $500 from the bank account of the "Ohio Apartments," on the face of which appears "for account of Savoy & Ohio Apts. to Somers Doughty—principle."

I am quoting from the opinion in the companion case:

> "Mrs. Naame testified as follows:
>
> 'The morning that I gave him this check he nagged me and fought with me about Mr. *Doughty* (Naame?) from breakfast time until I

finished dressing, followed me from room to room in a terrible temper, I was afraid of my life, and he said if I was a man he would knock me down, then in the heat of anger he said, "You still owe me money for that furniture." I said, "No, I paid you for that furniture." He said, "You still owe me money. Can I have a check?" I said, "Well, if that is the way you feel about it, how much do you want?" He said, "I will take five hundred dollars," so I was so excited I said, "Come on downstairs." He followed me downstairs and stood over me while I wrote this check and made me write on there "Ohio and Savoy Apartments to Somers Doughty principal," and grabbed the check out of my hands, grabbed out of my hands, and came back later on very much calmed down, and laughed at me, "Now, I have got you. I will get everything I ever gave you. I will take it back from you if you marry Joe Naame." I said, "I don't see how you can do that." He said, "I have got the evidence; you only borrowed my money; that is the evidence I wanted to get and you did it for me." Several days after that he came to the Ohio Apartments and threatened to kill Mr. Naame with the club. The following week he followed me to the Savoy Apartments and threatened to kill Mr. Naame again and hit him on the jaw and broke his own knuckles.'

Mr. Doughty's explanation of the check is that the check was made out for $500, $250 on account of the Savoy Apartments and $250 on account of

the Ohio Apartments, which made $500 all in one check, and followed her refusal to execute a mortgage for $75,000 on the property in question, as she had on the other property. He gives the circumstances of the check as follows:

> 'She left it, she give it to the maid to give to me, gave it to the maid and the maid gave to me after I left her, after I asked her for it. The maid give it to me when I came home and I looked at it and laughed, laid it down on the desk and walked out and left that laying there, such a small amount.'

He finally took it and deposited it. In this he is corroborated by the testimony of the maid to whom the check was given by Mrs. Naame to deliver to Doughty.

Mrs. Naame's story is also refuted to some extent by the testimony of the expert on handwriting, who testified that he found the writing to be identical in nervous and muscular characteristics with the other writing of Isabel Dobbin. He found it to be the natural writing of the same party who did the other Isabel Dobbin writings, and to be in no respect abnormal or unusual, to follow in every respect the customary and usual writing habits of this particular person, and showed no signs of excitement at the time it was written. Doughty had this check photographed and the photograph only is offered in evidence, Mrs. Naame being unable to find the original, although it passed through her account in bank and was returned to her.

I am convinced that the testimony of Mrs. Naame does not give the Court the benefit of the true facts

insofar as this check is concerned, and while the maxim *falsus in uno falsus in omnibus* is not a mandatory rule of evidence (*Addis v. Rushmore,* 74 N. J. L. 649), where a defendant's testimony is discredited by documentary proofs and by the contradiction of other and disinterested witnesses in relating facts of which all may have knowledge, her testimony cannot be relied upon when narrating incidents (the truth of which is essential to her defense) which lie solely within her knowledge. *Sinclair v. Sinclair,* 57 N. J. Eq. 222. Finding this testimony of Mrs. Naame's false and considering her demeanor and manner of testifying, I am convinced that her testimony can have but little weight."

Although this case does not have the support of the fact that mortgages were placed upon the property, I am of the opinion that the presumption that the money advanced by Doughty was a gift has been overcome by the evidence with that degree of certainty required in such circumstances. I will advise a decree in accordance with these views.

FINAL DECREE.
D-71-496.

IN CHANCERY OF NEW JERSEY.

Between
SOMERS L. DOUGHTY,
Complainant,
and
ISABEL DOBBIN,
Defendant.

On Bill, &c.
Final Decree.

This cause coming on to be heard in the Court of Chancery at the Chancery Chambers, in the City of Atlantic City, County of Atlantic and State of New Jersey, in the presence of Messrs. John C. Reed and Emerson L. Richards, solicitors for and of counsel with the complainant, and Messrs. Cole & Cole and Paul M. Salsburg, solicitors for and of counsel with the defendant, and the pleadings and evidence having been heard and considered and the argument of counsel having been made, and it appearing to the Court that the complainant is entitled to the relief sought and prayed for by him in his bill of complaint.

It is, on this 19th day of December, A. D. 1930, ordered, adjudged and decreed that an account be taken and settled of the transactions between the

complainant and the defendant touching the land and buildings described in the bill of complaint and in this final decree, and specifically touching the cost of the erection, remodeling and construction of said buildings; of the monies advanced or disbursed or paid by the complainant on account of the erection, construction and remodeling and completion thereof; of the monies repaid to or received by the complainant in repayment or the reimbursement; and that the balance found to be due from defendant to complainant be ascertained and determined and the defendant pay complainant the amount so ascertained and determined.

It is further ordered, adjudged and decreed that in default of the payment of the sum or balance so found and decreed to be due complainant, the same be decreed to be a lien and charge on the said lands and premises described in the bill of complaint in the nature of an equitable mortgage thereon; and that the rents and income thereof be sequestered for the benefit of and paid to the complainant in discharge or reduction of his said lien.

And it is further ordered, adjudged and decreed that the complainant may have such further or other relief as the circumstances of the case may render appropriate, just and equitable.

And it is further ordered, adjudged and decreed that such sum as shall be found to be due shall be impressed as an equitable lien or mortgage against the following described premises:

ALL those certain lots, tracts or parcels of land and premises situate in the City of Atlantic City, County of Atlantic and State of New Jersey, described separately as follows:

Description #1.

TRACT #1.

BEGINNING in the Westerly line of New Jersey Avenue at point distant 65 feet Northwardly from the Northerly line of Baltic Avenue; thence (1) Westwardly, paralled with Baltic Avenue, 65 feet; thence (2) Northwardly parallel with New Jersey Avenue, 35 feet; thence (3) Eastwardly, parallel with Baltic Avenue, 65 feet to the Westerly line of New Jersey Avenue; thence (4) Southwardly, along the Westerly line of New Jersey Avenue, 35 feet to the place of beginning.

Description #2.

TRACT #2.

BEGINNING at the intersection of the Northerly line of Baltic Avenue and the Westerly line of New Jersey Avenue and extending; thence (1) Northwardly, along the Westerly line of New Jersey Avenue, 65 feet; thence (2) Westwardly, and parallel with Baltic Avenue, 65 feet; thence (3) Northwardly, and parallel with New Jersey Avenue, 35 feet; thence (4) Westwardly, and parallel with Baltic Avenue, 85 feet; thence (5) Southwardly, and parallel with New Jersey Avenue, 100 feet to the Northerly line of Baltic Avenue; thence (6) Eastwardly, and along the said Northerly line of Baltic Avenue, 150 feet to the place of beginning.

And it is further ordered, adjudged and decreed that such amount so found to be due from the de-

fendant to the complainant shall be due and payable immediately.

And it is further ordered, adjudged and decreed that costs of suit to be taxed be allowed the complainant.

WALKER,
C.

Respectfully advised,
R. H. INGERSOLL,
V. C.

FINAL DECREE.
D-72-154.

IN CHANCERY OF NEW JERSEY.

Between SOMERS L. DOUGHTY, *Complainant,* and ISABEL DOBBIN, *Defendant.*	On Bill, &c. Final Decree.

This cause coming on to be heard in the Court of Chancery at the Chancery Chambers, in the City of Atlantic City, County of Atlantic and State of New Jersey, in the presence of Messrs. John C. Reed and Emerson L. Richards, solicitors for and of counsel

with the complainant, and Messrs. Cole & Cole and Paul M. Salsburg, solicitors for and of counsel with the defendant, and the pleadings and evidence having been heard and considered and the argument of counsel having been made, and it appearing to the Court that the complainant is entitled to the relief sought and prayed for by him in his bill of complaint.

It is, on this 19th day of December, A. D. 1930, ordered, adjudged and decreed that an account be taken of the transactions and dealings between complainant and defendant touching the erection of any improvements upon the land described in complainant's bill of complaint and in this final decree; of the monies paid or expended by complainant in the construction of said improvements, and of the monies paid to or received by him and the balance due complainant, if anything, be ascertained and determined; and the amount of monies paid to the defendant as rentals of said premises be ascertained and determined.

And it is further ordered, adjudged and decreed that defendant pay to complainant whatever sum shall be ascertained and determined to be due from her to complainant; and that such sum so decreed to be due complainant be a lien and charge on the said lands and premises; and that the rents and income thereof be sequestered for the benefit of and paid to the complainant in discharge or reduction of his said lien.

It is further ordered, adjudged and decreed that complainant have such further or other relief as may be appropriate, equitable and just.

And it is further ordered, adjudged and decreed

that such sum as shall be found to be due shall be impressed as an equitable lien or mortgage against the following described premises:

ALL that certain lot, tract or parcel of land and premises situate in the City of Atlantic City, County of Atlantic and State of New Jersey, bounded and described as follows:

BEGINNING at a point in the Westerly side of Ohio Avenue 275 feet Northwardly from the Northerly line of Atlantic Avenue; thence (1) Westwardly, parallel with Atlantic Avenue, 175 feet; thence (2) Northwardly, parallel with Ohio Avenue, 50 feet; thence (3) Eastwardly, parallel with Atlantic Avenue, 175 feet to the Westerly line of Ohio Avenue; thence (4) Southwardly, along the Westerly line of Ohio Avenue 50 feet to the place of beginning.

SUBJECT to the rights, if any, of the City of Atlantic City and the general public in any portion of the rear of said premises falling with the bounds of Adams Place.

And it is further ordered, adjudged and decreed that such amount so found to be due from the defendant to the complainant shall be due and payable immediately.

And it is further ordered, adjudged and decreed that costs of suit to be taxed be allowed the complainant.

WALKER,
C.

Respectfully advised,
R. H. INGERSOLL,
V. C.

NOTICE OF APPEAL.
71-496.

(Filed Dec. 27, 1930.)

IN CHANCERY OF NEW JERSEY.

Between
SOMERS L. DOUGHTY,
Complainant,
and
ISABEL DOBBIN, now ISABEL NAAME,
Defendant.

On Bill, etc.
Notice of Appeal.

To John C. Reed, Solicitor of Complainant:

The defendant, Isabel Dobbin, now Isabel Naame, hereby appeals from the final decree made in the above entitled cause on the 19th day of December, nineteen hundred and thirty, made by the Chancellor on the advice of Vice-Chancellor, Robert H. Ingersoll, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated: December 26th, 1930.

PAUL M. SALSBURG,
Solicitor for Defendant.
PAUL M. SALSBURG,
Of Counsel with Defendant.

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

PAUL M. SALSBURG,
Of Counsel with Defendant.

[ENDORSED]

Service acknowledged Dec. 26, 1930
John C. Reed,
Solicitor for Complainant.

NOTICE OF APPEAL.
72-154.

(Filed Dec. 27, 1931.)

IN CHANCERY OF NEW JERSEY.

Between
SOMERS L. DOUGHTY,
Complainant,
and
ISABEL DOBBIN, now ISABEL NAAME,
Defendant.

On Bill, etc.
Notice of Appeal.

To John C. Reed, Solicitor of Complainant:

The defendant, Isabel Dobbin, now Isabel Naame, hereby appeals from the final decree made in the above entitled cause on the 19th day of December, nineteen hundred and thirty, made by the Chancellor on the advice of Vice-Chancellor, Robert H. Ingersoll, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated, December 26th, 1930.

PAUL M. SALSBURG,
Solicitor for Defendant.
PAUL M. SALSBURG,
Of Counsel with Defendant.

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

PAUL M. SALSBURG,
Of Counsel with Defendant.

[ENDORSED]

Service acknowledged Dec. 26, 1930.
John C. Reed,
Solicitor for Complainant.

PETITION OF APPEAL.
71-496.

(Filed Jan. 14, 1931.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between SOMERS L. DOUGHTY, *Complainant-Respondent,* and ISABEL DOBBIN, *Defendant-Appellant.*	On Bill, &c. Petition of Appeal.

To the Honorable, the Court of Errors and Appeals in the last resort in all causes:

The petition of Isabel Dobbin Naame, sued herein as Isabel Dobbin, the appellant in the above entitled cause, respectfully shows that your 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, upon the advice of the Hon. Robert H. Ingersoll, Vice-Chancellor, bearing date the 19th day of December, 1930, in a cause wherein the said appellant was defendant and Somers L. Doughty was complainant,

in this respect, to wit, that the said decree orders and decrees that an account be taken and settled of the transactions between the complainant and the defendant touching the land and buildings described in the bill of complaint and in the final decree, and specifically touching the cost of the erection, remodeling and construction of said buildings; and of the moneys advanced or disbursed or paid by the complainant on account of the erection, construction and remodeling and completion thereon; and of the monies repaid to or received by the complainant in repayment or the reimbursement; and that the balance found to be due from defendant to complainant be ascertained and determined and that the defendant pay complainant the amount so ascertained and determined; and in this respect that the said decree orders and adjudges that in default of the payment of the sum or balance so found and decreed to be due complainant, the same be decreed to be a lien and charge on the said lands and premises described in the bill of complaint in the nature of an equitable mortgage thereon; and that the rents and income thereof be sequestered for the benefit of and paid to the complainant in discharge or reduction of his said lien and in this respect, to wit, that the said decree orders, adjudges and decrees that such sum as shall be found to be due shall be impressed as an equitable lien or mortgage upon the premises specifically described in the decree; and in this respect, to wit, that the said decree orders, adjudges and decrees that such amount so found to be due from the defendant to the complainant shall be due and payable immediately; and in this respect, to wit, that the said decree adjudges, orders and decrees

that the defendant-appellant herein pay the costs of suit to be taxed.

Your petitioner, therefore, humbly appeals from those parts of the decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous for that the evidence did not warrant the Court in decreeing as aforesaid, and for that it appeared from the evidence that the moneys which were advanced were gifts from the complainant to appellant, and for that it appeared from the evidence that complainant advanced the monies upon a representation to the defendant that she should improve the lands, and that the complainant would advance the monies necessary for such improvements, and acting upon the representation of the complainant, the defendant did improve the buildings and placed herself in a different position, and the complainant is estopped, and for that it appeared from the evidence that the complainant did not come into court with clean hands, and was guilty of laches, and for that the transaction involves an interest in land and there was no writing or memorandum thereof as required by the Statute of Frauds, and for that the complainant had a full and complete adequate remedy at law, and for that the Court of Chancery had no jurisdiction to settle and determine the amount of any alleged debt due from the defendant to the complainant.

Your petitioner, therefore, prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden and that the record may be remitted to the Court of Chancery, with instructions to enter a decree dismissing the complainant's bill of complaint,

with costs and counsel fee to defendant, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

PAUL M. SALSBURG,
Solicitor of Appellant.
MERRITT LANE,
Of Counsel with Appellant.

[ENDORSED]

Service of a copy of within petition of appeal acknowledged this 14th day of January, 1931.

John C. Reed,
Solr. for Complainant-Respondent.

PETITION OF APPEAL.
72-154.

(Filed Jan. 14, 1931.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between SOMERS L. DOUGHTY, *Complainant-Respondent,* and ISABEL DOBBIN, *Defendant-Appellant.*	On Bill, &c. Petition of Appeal.

To the Honorable, the Court of Errors and Appeals in the last resort in all causes:

The petition of Isabel Dobbin Naame, sued herein as Isabel Dobbin, the appellant in the above entitled cause, respectfully shows that your 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, upon the advice of the Hon. Robert H. Ingersoll, Vice-Chancellor, bearing date the 19th day of December, 1930, in a cause wherein Somers L. Doughty

was complainant and Isabel Dobbin was defendant, in this respect, to wit, that the said decree orders, adjudges and decrees that an account be taken of the transactions and dealings between complainant and defendant touching the erection of any improvements upon the land described in complainant's bill of complaint and in said final decree, and of the monies paid or expended by complainant in the construction of said improvements and of the monies paid to or received by him and the balance due complainant, if anything, be ascertained and determined; and the amount of monies paid to the defendant as rentals of said premises be ascertained and determined; and in this respect, to wit, that the said decree orders, adjudges and decrees that defendant pay to complainant whatever sum shall be ascertained and determined to be due from her to complainant, and that such sum so decreed to be due from defendant to complainant be a lien and charge on the said lands and premises, and that the rents and income thereof be sequestered for the benefit of and paid to the complainant in discharge or reduction of his said lien; and in this respect, to wit, that the said decree orders, adjudges and decrees that such sum as shall be found to be due shall be impressed as an equitable lien or mortgage against the premises described in the said decree; and in this respect, to wit, that the said decree orders, adjudges and decrees that such amount so found to be due from the defendant to the complainant shall be due and payable immediately; and in this respect, to wit, that the said decree orders, adjudges and decrees that costs of suit be allowed to complainant.

Your petitioner, therefore, humbly appeals from those parts of the decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous for that the evidence did not warrant the Court in decreeing as aforesaid, and for that it appeared from the evidence that the moneys which were advanced were gifts from the complainant to appellant, and for that it appeared from the evidence that complainant advanced the monies upon a representation to the defendant that she should improve the lands, and that the complainant would advance the monies necessary for such improvements, and acting upon the representation of the complainant, the defendant did improve the buildings and placed herself in a different position, and the complainant is estopped, and for that it appeared from the evidence that the complainant did not come into court with clean hands and was guilty of laches, and for that the transaction involves an interest in land and there was no writing or memorandum thereof as required by the Statute of Frauds, and for that the complainant had a full and complete adequate remedy at law, and for that the Court of Chancery had no jurisdiction to settle and determine the amount of any alleged debt due from the defendant to the complainant.

Your petitioner, therefore, prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden and that the record may be remitted to the Court of Chancery, with instructions to enter a decree dismissing the complainant's bill of complaint, with costs and counsel fee to defendant. And that

your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

PAUL M. SALSBURG,
Solicitor of Appellant.
MERRITT LANE,
Of Counsel with Appellant.

[ENDORSED]

Service of a copy of within petition of appeal acknowledged this 14th day of January, 1931.

John C. Reed,
Solr. for Complainant-Respondent.

66 MAY.T.1931

67 MAY.T.1931

Filed after the Oral Argument by leave of Court.

New Jersey Court of Errors and Appeals

Between

SOMERS L. DOUGHTY,
Complainant-Respondent,

and

ISABEL DOBBIN,
Defendant-Appellant.

On Appeal from Chancery.

Sat Below
Ingersoll, V. C.
Nos. 66 and 67,
May Term, 1931.

(Italics ours except where otherwise noted.)

REPLY BRIEF FOR APPELLANT.

I.

The step-father in his brief (pp. 1 to 5) states that the step-daughter *importuned* the step-father to make the gifts of the real estate to her, and counsel, on the oral argument, stated that there was no dispute with respect to this. There is dispute (p. 43, *et sequi* of our original brief). The fact is that the step-father thought a great deal of the step-daughter and no importuning was needed. Moreover, the step-father had promised the mother of the step-daughter that he would take care of the step-daughter (pp. 43 and 72 *et sequi* of our original brief). The step-father did not leave it to a will for the reason that he anticipated that there might be trouble over a will (pp. 73, 74 of our original brief).

II.

On page 7 *et sequi* of his brief the step-father insists that he is supported in his assertion that

the advancement of the moneys for improvements were loans because he had received re-payment in part from the proceeds of mortgages put upon the properties.

We have attempted to show, page 20 to page 25 *et sequi* of our original brief, that "there is no probative proof that complainant received one cent from the proceeds of any one of these mortgages *on account of any advances made by him*".

We suggest here, as insisted in our original brief (p. 40), that the purposes for which the conveyances are assumed to have been made by the step-father, that is to say, to give the step-daughter an income and to secure her after the death of the step-father, would not be subserved if these advances were treated as loans.

From page 8 to page 12 of his brief the step-father refers to what he says is corroborating evidence of his contention. We have considered this testimony (p. 63 *et sequi* of our original brief) and have there indicated the bias and prejudice of the witnesses from whence it comes, to wit, Daniel A. Stewart (p. 63 of our original brief), Maude St. John (p. 64 of our original brief), Enoch H. Burkett (p. 65 of our original brief), and its inconsistencies and improbabilities.

III.

On page 16 of his brief the step-father speaks of an application which he says he made in the fall of 1929 for a loan of $75,000 on the Ohio apartments and the fact that he requested his step-daughter to execute a mortgage for that amount. The testimony indicates that this loan was never granted. All that Lord, who was President of the Trident Building and Loan Association, said, was that

> "Q. Your recollection is the directors never passed on it at any formal meeting? A. No, I think it was merely an informal meeting after the meeting of the directors of the Marine Trust Company.
>
> Q. In other words, this loan was never brought officially to the attention of the Board of Directors of the Trident Building and Loan? A. Not according to my recollection, so that there could be a minute made of it."

And Lord said (p. 89), that the step-father spoke of the property *as his own* and he has no recollection of the name of the step-daughter being used. The testimony is very indefinite. It is conceded that the property was *not* that of the step-father yet Lord would have him, in effect, stating that it *was* his property.

IV.

From page 19 to page 44 of his brief the step-father deals with the check of $500. We have considered the matter of this check (pp. 8 to 20 of our original brief) and have very little to add.

The testimony must be read as a whole. A correct understanding cannot be obtained from considering the excerpts quoted in the brief of the step-father.

On page 27 of his brief the step-father suggests that the existence of a photographic copy of the check in the possession of the step-father was a *great surprise* to the step-daughter and "necessitated an entire change in their defense." There is no evidence of any such surprise nor is there any evidence of any change in the defense and this notwithstanding the fact that the step-father, whether justifiably or not makes no difference, apparently started out with the deliber-

ate intent to mislead the step-daughter by his allegation in the fifth paragraph of the first bill (p. 4) in which he alleged that she paid him "the further sum of $250 *in cash* to be credited on account of the money advanced for the erection of the Savoy Apartments." While this allegation may be technically correct, it is not colloquially correct for a distinction is recognized, colloquially, between a payment in cash and a payment by check. The effect of the denials in the answers (paragraph 5, p. 10; paragraph 8, p. 20) is merely that she did not pay $250, or any other sum *"on account of the moneys advanced" for these improvements* and the criticism of the step-father of this answer at the bottom of page 35 of his brief, is, we submit, without warrant. She denied in her answers that she ever gave $250 in each case *on account of the repayment of any moneys advanced by the step-father for the improvements,* and persisted in that denial on the trial and still persists. An answer is supposed to set forth an ultimate fact and there was no obligation upon her part in her answers to set up the details—matters of evidence—with respect to this check.

The cross-examination of the step-father (pp. 72, 73) during which the fact that the step-father had made a photographic copy of the check was brought out, indicates that counsel for the step-daughter was in no wise surprised. On pages 326, 327 the step-daughter testified that she knew that her step-father had a copy of the check and had so informed her counsel.

Under subdivision 1, on page 27 of his brief, the step-father states that the bookkeeper of the Marine Trust Company flatly asserted that the check was returned to her when her book was balanced in February, 1929. Reference to the

testimony of Singer (p. 378) indicates that, while he stated that the check of December 15, 1928, for $500 was returned to the step-daughter when the account was closed, it is apparent that the witness is assuming a fact which was not proven, to wit, that *this* check for $500 went through the account. We have considered this lack of testimony at page 18 of our original brief. It is true that Singer said (p. 375) that *a check* of $500 was charged against the account of the step-daughter on December 24th but there is no identification of *this* check and it is highly significant that, while the step-father testified that he had deposited the check (p. 377), *he could not identify any deposit including that check nor could he produce a deposit slip.* While he stated that *he* did not keep a copy of his deposit slips, we know, as matter of fact, that these deposit slips are in the possession of the bank and can be produced and no attempt was made to produce them.

As an illustration of the fact that excerpts from the testimony quoted in the brief of the step-father and inferences drawn therefrom cannot be accepted without reference to the testimony as a whole, we call the attention of the Court to the statement made on page 43 of the brief of the step-father—"She (the step-daughter) declares that she never had the original check (p. 327, S. C., l. 33), and within ten questions admits that she got it back". The testimony does not warrant this inference. She did say on page 327, line 33, that she never had the original check, that is, after she gave it to the step-father. When her attention is directed to the fact that she closed her account on February 22, 1929, the following occurred (p. 328):

> "Q. At that time you, *of course,* must have gotten back this check? A. *I guess so.*"

This was not an admission that she had gotten the check but a process of reasoning in which she indulged induced by the form in which counsel for the step-father put the question.

She explained fully (p. 349) that she did not get this check back from the bank and her testimony is in no wise contradictory.

On page 44 of the step-father's brief we have the statement—"Either the complainant-respondent, Somers L. Doughty, must be believed, or the defendant Mrs. Isabel Naame, must be believed" and it is insisted that the step-daughter falsified as to the check and, because she so falsified, her testimony is to be wholly disregarded.

We insist that she did not falsify and we further insist that, because of the circumstances pointed out in our original brief, the testimony of the step-father is not to be believed and *the burden is on the step-father to prove his case with proofs equally satisfactory and explicit "with the proofs required to establish a resulting trust; the circumstances relied on must be convincing and leave no reasonable doubt as to the intention of the party"*. *Prisco* v. *Prisco*, 90 N. J. E. 289.

We have considered the testimony of the witness Lee Webster Melcher, mentioned on page 41 of the brief of the step-father, at page 16 of our original brief.

We have considered the testimony of the corroborating witnesses for the step-daughter which is mentioned at page 44 *et sequi* of the step-father's brief (p. 68 *et sequi* of our original brief) and have little to add. The inference indulged in by the step-father at the bottom of page 48 of his brief that, because Edith Crouch was on very intimate terms "with the defendant-appellant" she was prejudiced is unjustified. The fact is that Mrs. Crouch was as intimate with the step-father as she was with the step-daughter as her testi-

mony clearly indicated, page 193 *et sequi,* and at page 202, on cross-examination, counsel for the step-father brought out that she was *"almost like a member of the family",* and this was not denied.

The attack upon the witness Ella Mauser (p. 51 of the step-father's brief) is unwarranted. The step-father says—"This lady's position in this case was somewhat equivocal, to say the least * * * of uncertain age, and I think, a countenance concealed beneath a mask of rouge and powder". There is no justification for any such statement and resort to matters so outside of the record must indicate, indeed, a desperate case.

We have considered the testimony of this witness at pages 48, 49, 72, 73, 74, 75 of our original brief and have nothing further to add except to refer to what we said at page 75—"The cross-examination by complainant's counsel of this witness was, we submit, unfair".

The step-father's admitted conduct indicates that he is quite likely to have made the proposition which the witness said he made. We ask the Court to read both the examination and cross-examination of this witness in full.

Not only "on the surface", as conceded by the step-father (p. 60 of his brief) was this witness a disinterested witness but she was, in fact, a "disinterested witness", indeed, if the insinuations of the step-father with respect to her relations with Naame were justified she would be a "prejudiced" witness against the step-daughter. In one breath the step-father asserts that her relations with Naame were of such a nature as that she would be infuriated by his marriage with the step-daughter, and, in the next breath, he claims that, because of her relations, apparently with Naame, notwithstanding the marriage of Naame with the step-daughter, she is prejudiced in favor of Naame. Both cannot be correct.

VI.

The step-father, on page 62 of his brief, says: "Defendant did not produce the income tax returns to show that she had recorded the moneys as a gift."

We have considered this matter on page 79 of our original brief and we repeat that there is nothing in the income tax law which requires, or permits, the entry of a gift on an income tax return. If moneys are given as gifts, they are wholly omitted from an income tax return of the person to whom the gift is made.

It is *significant,* however, that the step-father did not produce *his income tax returns* for, if these moneys were advanced as loans and if, from time to time, he had received moneys on account of these loans, as he says he did, those items must have appeared upon his income tax returns.

We repeat here that his income tax returns were not produced when they were demanded and we refer the Court to page 55 of our original brief and we advert to the significance of the absence of *any* records on page 50 of our original brief.

The matter of the collection of the rents, mentioned on page 64 of the step-father's brief, we have considered, on page 58 *et sequi* of our original brief, and we have adverted to the testimony of Naame on pp. 61 and 62 of our original brief and have there indicated that any tangling up of the witness Naame was due to the putting of questions to the witness containing resumes of previous questions having been put to the witness by counsel for the step-daughter when, in fact, the questions actually put were of a different import (p. 62 of our original brief).

On page 67 of the step-father's brief we find the following statement:

> "While on the subject of Mr. Naame's testimony, we call attention to the fact that Doughty resisted Naame's attempt to marry the stepdaughter *at the utmost; that he threatened to shoot him* (p. 254); *that he assaulted him with a stick* (p. 256); *that he hit him in the jaw on another occasion;* that each time that Doughty assaulted him he said, 'You let go of my daughter—all you want is her money' and that Doughty repeatedly accused him of trying to marry his stepdaughter for her money."

The admission in the brief does not go so far as the testimony which we have set forth on page 78 of our original brief.

In connection with this *admitted* conduct of the step-father we repeat the testimony of the step-daughter as to how this $500 check was obtained from her (p. 306):

> "A. The morning that I gave him this check he nagged me and fought with me about Mr. Doughty from breakfast time until I finished dressing, followed me from room to room in a terrible temper, I was afraid of my life, he said if I was a man he would knock me down, then in the heat of anger he said, 'You will owe me money for that furniture.' He said, 'You still owe money. Can I have a check?' I said, 'Well, if that is the way you feel about it, how much do you want?' He said, 'I will take five hundred dollars', so I was so excited, I said, 'Come on downstairs'. He followed me downstairs and stood over me while I wrote this check and made me write on there, 'Ohio and Savoy Apartments to Somers Doughty, principal', and grabbed the check out of my hands, grabbed out of my hands, and came back later on very much calmed down, and laughed at me, 'Now I have got you. I will get everything I ever gave you. I will take it back from you if you marry Joe Naame.' I said, 'I don't see how you can do that.' He

said, 'I have got the evidence; you only borrowed my money; that is the evidence, I wanted to get and you did it for me.' Several days after that he came to the Ohio apartments and threatened to kill Mr. Naame with the club. The following week he followed me to the Savoy Apartments and threatened to kill Mr. Naame again and hit him on the jaw and broke his own knuckles."

In the face of the admission of the step-father is this testimony to be wholly disregarded?

VII.

On page 67 of his brief the step-father says:

"Witness (Naame) also admitted that his wife drank" (pp. 284 and 285).

This statement is in line with the vicious attack made by the step-father in his testimony considered on page 80 of our original brief.

Naame testified (and these are his *admissions*) among other things (p. 283):

"Now, then, you say that you never saw your wife during the time that you were attentive to her prior to your marriage, drunk or under the influence of liquor? A. Never did.

Q. Did she drink? A. *Occasionally.*

Q. What did she drink? A. We drink a little highball occasionally and we drink a little champagne, which a couple of friends of ours used to give us in the court room here, Mr. Henry Kuehnle, and we drink some of this so-called Syrian wine.

Q. How many drinks would she take a time? A. *I never saw her take more than two.*

Q. Did she ever drink any of that Syrian concoction? A. Yes, it is really a medicinal drink, very good for the stomach.

Q. What is the name of it? A. Arak.

Q. Did she ever drink any of that? A. Yes, very nice, medicinal.

Q. How much have you seen her drink of that at a time? A. *Couple of small whiskey glasses,* half size, filled like half size.

Q. That is equally as powerful as whiskey, isn't it? A. I never tested it, couldn't tell you; I know it is very mild.

Q. Doesn't take very many drinks to show its effect, does it? A. I have seen people drink it. It won't get you drunk quick as whiskey will, or any other wine; in fact, we drink it all the time the same way Italians drink wine. In fact, we mix it up with water some and makes a very delightful drink.

Q. But she did drink? A. *She drank like most everybody could occasionally,* never saw her drunk or intoxicated any time I have known her in five years or approximately five years I have known her.

Q. *Smoke, too?* A. *Very Seldom. Very seldom.*

Q. And you say you never heard her use any profanity? A. I never did.

Q. You don't know what she did when you were not around? A. No."

This is the only testimony in the case with respect to the step-daughter's drinking except her own which coincides with that of Naame and that of the step-father and the colored maid, Maude St. John, considered on page 80 of our original brief.

The attack by the step-father was vicious.

VIII.

Appellant's Brief.

Under this head the step-father takes up our original brief and starts out with the assertion that "The many misstatements or unsubstanti-

ated inferences contained in appellant's brief can only be excused on the theory that counsel who prepared the brief was not the one who tried the case."

It is stated that the statement in the step-daughter's brief, page 2, that "complainant-respondent was fond of his step-daughter 'all the time she was living there' " (p. 78) is incorrect.

The statement in the brief of the step-daughter is an exact excerpt from the record, but it is true that the testimony proceeded:

> "Q. Did there come a time when you ceased to be fond of her? A. Yes, sir.
> Q. When was that? A. When she got running around with Naame, running with Joe Naame and coming home drunk",

and that testimony should have been included, but it is likewise true that the subsequent conduct of the step-father, as indicated in the record, showed that he really continued to be fond of the step-daughter and permitted her to live with him and was not finally convinced that he could not prevent the marriage until the marriage, in fact, had taken place and, had he been able to prevent the marriage, the fondness would have continued.

IX.

In the light of the admitted conduct of the step-father towards Naame, the excuse given on page 78 of the step-father's brief as follows:

> "It is admitted that complainant-respondent objected to the marriage and that he called Naame a 'nigger'. The court should understand that Mr. Joseph S. Naame is either a Syrian or some similar race and his physiognomy and complexion are such that he might easily be mistaken for a person of negroid extraction, so that the term applied

by complainant-respondent *was not an epithet but a description,''*

is wholly without point, as is also the explanation, given on page 79 of the step-father's brief, for the service of process upon the step-daughter a few hours before the marriage.

The step-father says that the bill was filed February 4, 1929, and that the *lis pendens* was filed on February 5, 1929 (p. 79 of his brief). That means that the subpoenaes must have been delivered to the Sheriff either February 5, 1929, within twenty-four hours of the contemplated marriage of the daughter, or early on February 6th, 1929, within a few hours before her marriage. Assuming that no special instructions were given to the Sheriff, and we feel that no such assumption can be indulged in in view of the step-father's admitted attitude toward the marriage, it was reasonable for the step-father to assume that the Sheriff would perform his duty with dispatch and, if the Sheriff did perform his duty with dispatch, the papers, would, in the natural course of events, be served upon the step-daughter a few hours before her contemplated wedding. It is a fair inference, however, that there was much more to it than that and that the step-father specifically arranged for the service as it was made.

X.

No reference is made by the step-father (p. 78 of his brief) to the page of the step-daughter's brief in which the statement is said, to have been made that—''There is no evidence that defendant-appellant drank''. The evidence upon this subject was referred to by page number on pages 80, 81 of the brief of the step-daughter.

The step-father again goes outside of the record to get a basis for an inference that Naame desired to marry the step-daughter because of her money (p. 79). There is no evidence whatever in the record to justify any "suspicions" of the step-father.

XI.

On page 79 of his brief, the step-father says that the statement in our brief that the moneys to finance the building of the Ohio apartments came out of the mortgages raised on the Savoy and corner apartments is not substantiated by the proofs.

The statement made on page 3 of our original brief is: "No money was raised upon this property by mortgage which went into the improvements, the improvements being paid for by moneys raised on mortgages on the first properties conveyed *and* moneys given to the step-daughter by the step-father *and* moneys obtained upon notes of the step-daughter."

That statement is fully substantiated by the proof. While it is true that the proceeds of the second mortgage, dated July 15, 1927, of $25,000 were paid to the step-father by the step-daughter's check on July 20, 1929, as is stated, in the step-father's brief (p. 79) the step-father within a week, on July 26th, paid to the step-daughter the $25,000 together with an additional $374.50 for rents belonging to her (see pp. 20, 21, 22 of our original brief) at which points the pages of the testimony are mentioned, and see also the pages of the testimony mentioned on page 24 of our original brief.

On page 85 of his brief the step-father says: "Taking up the $25,000 if it was not intended

that he should receive the benefit of it, why did defendant-appellant pay it over to him (the step-father)? The fact that *he used* the money to go on with the improvement of the Ohio apartments does not mitigate against his claim that it was a repayment." The step-father overlooks that, at page 310, the *step-daughter gave the reason why this money was paid to the step-father* (see p. 21 of our original brief). It is not correct to say, as the step-father says (p. 85 of his brief) that *he* (the step-father) *used the money* to go on with the improvement of the Ohio apartments. *He* did not use the money. The money was paid to him on July *20,* 1927 (p. 310), and on July 26 (pp. 310, 379) he repaid the money *directly to the step-daughter* (p. 311) together with $374.50 which he had collected of the step-daughter's rents. *We do not find any other explanation for this payment back to the step-daughter.* He kept it *just about a sufficient length of time to answer the purpose which the step-daughter (p. 21 of our original brief) says he wanted it for.*

And how does the step-father reconcile his statement, repeated several times in his brief, that the moneys from *all* of these mortgages were paid to him on account of his indebtedness in the face of his testimony mentioned in our original brief at page 24 that he did not receive the proceeds of the last mortgage of $35,000 of October 15, 1927?

The proceeds of the $35,000 mortgage of October 15, 1927, were used for the making of the improvements upon the Ohio Avenue property, the step-father testifying (p. 49*) after referring to how moneys were obtained to build the Ohio apartments:

> "A. The rest of the money was obtained one of those loans, mortgages got on the Baltic Avenue property, balance of the money.

Q. Was that the $35,000 loan on 713 and 15 Baltic Avenue? A. Yes, sir, $35,000 loan, got $33,826.75; that money went to help pay the balance of the Ohio apartment.

Q. Now, a while ago, of course, you told me that you had been paid down to within $40,000— A. Forty some thousand.

Q. —by means of these various mortgages, but, as a matter of fact, *while you were so paid, you never actually did get the proceeds of this $35,000 mortgage, did you? A. No, sir.*

Q. Now, what did you do with that money? *A. I let her keep that money to go on to pay Naame for building the Ohio apartments and credited her with that, but didn't want her to give it to me, but just let her to use it to put it to her bank account.*

Q. So far as you know she paid Naame up to the amount of the proceeds of this mortgage, isn't that the fact? A. As far as I know."

This was on direct examination by his own counsel and hardly justifies the statement of the step-father on page 80 of his brief that, "The third mortgage (the mortgage of October 15, 1927, for $35,000 above referred to) was October 15, 1927, and *the money was paid to Doughty.* The Ohio apartments were not finished until January of 1928. The $71,000 of checks which cover the Ohio apartment's transaction, beginning on June 10, 1927, runs through June, July, September, October, November, December, to January 7, 1928. No other checks were produced by the defendant-appellant showing that she paid any moneys corresponding to the mortgage moneys to Naame, on account of the building of the Ohio apartments. On the contrary, it appears that Doughty got the money and afterwards advanced to her either his or other moneys that were in his bank account at the time to continue the improvements."

XII.

On pages 81 and 82 of his brief the step-father seeks to defend Maud St. John. It has been stipulated that the record in all cases may be considered in each. We have dealt with this witness on pages 13, 14, 15 and 64 of the brief in this case, and pages 14, 15, 16, 17, 18, 19, 20 and 21 of the brief in the other cases and we have nothing further to say upon the subject.

XIII.

At page 85 of his brief the step-father asserts that the admission of the step-daughter on page 23 of her original brief "seems to dispose of this case", and on page 87 insists that the step-daughter is taking inconsistent positions.

The step-daughter does not take inconsistent positions and the issue presented by the step-daughter on page 23, etc., of our original brief *is* in the case. All that the step-daughter ever said either in her answer, in the testimony or in her brief is that, to the extent that the step-father, in fact, advanced moneys to her for the improvements, those moneys were advanced as gifts. She never said and she does not now say that, to the extent that moneys used in the improvements of the property were, in fact, raised by the placing of mortgages upon the property, the step-father was obliged to make further advances to pay off those mortgages.

What she has always said and still says is that there was no arrangement that the step-father should advance the moneys and then be repaid out of the proceeds of mortgages placed upon the property and she has shown that, in fact, the

moneys raised upon the mortgages were *not used to reimburse the step-father for any moneys expended by him.* What moneys *were* raised were expended directly upon the improvements of the property, not to reimburse, and, notwithstanding the fact that it is conceded that the last moneys expended on improvements were paid out in January, 1928, no attempt was made by the step-father to secure a mortgage upon any of the properties to raise moneys to repay himself until, as he says, he negotiated with the Building and Loan Association for the $75,000 mortgage in the winter of 1928 and 1929. The trial took place on September 12, 1929 (p. 21), and Lord, the President of the Trident Building and Loan Association, said that he thought that it was in the late fall of the previous year or in the winter that the loan of $75,000 was discussed. *It is significant that this was after the step-father knew that the step-daughter contemplated marrying her present husband.*

XIV.

At page 88 of his brief under the title "The Law" the step-father refers to our reference to *Selover* v. *Selover,* 62 N. J. E. 761, as "unfortunate" and he states that, in that case, the Court below had recognized the established rule and that this Court reversed upon a finding of fact. We adopt the construction upon the decision of this Court in *Selover* v. *Selover* by the step-father, and we submit that this Court should, in this case, reverse upon the findings of fact. While the Vice Chancellor in the instant case recognized the existence of the rule stated by this Court in *Selover* v. *Selover,* 62 N. J. E. 761, and *Priscoe* v. *Priscoe,* 90 N. J. E. 289, it did not, we submit,

give the force and effect to the rule which it should have done.

The step-father, while he states these two cases hold that "the proofs which shall raise a resulting trust—must be of facts antecedent to or contemporaneous with the purchase", omits to state that those cases also hold that the proofs "*which shall rebut the presumption of a gift in favor of a child or wife shall be equally satisfactory and explicit with the proofs required to establish a resulting trust; the circumstances relied on must be convincing and leave no reasonable doubt as to the intention of the party.*" These cases do not support the statement of the step-father (pp. 88, 89 of his brief) "that the presumption of a gift may be rebutted by *ordinary* testimony".

We fail to find the statement in our brief criticized by the step-father at page 89 of his brief in the following language: "and there is no warrant in any of the cases for the assertion made by counsel that the 'presumption of a gift can only be rebutted by a resulting trust'." What we said was (p. 30 of our original brief): "We start out, therefore with the presumption of a gift which can only be repudiated by clear and convincing proof sufficiently strong to establish a resulting trust." The exact language of the cases was quoted on page 25 of our original brief and is again quoted on page 19 of this brief.

XV.

Under the head of argument (p. 89 of his brief), the step-father states that, after a dispute arose as to the question of the use of the word "profits" by counsel, the opening was amended to read "rents"; "this fact is not stated in the brief." The opening was *not* amended. It was attempted

to be amended (p. 60). What occurred was (p. 60):

> "Mr. Richards: I am quite certain I didn't use that word—if the stenographer took my opening, I want to object, I didn't use the word 'profit'. I wish that the stenographer would refer to my opening.
>
> (Part of counsel's opening read as follows): 'His agreement with his daughter was that he should advance the money initially and that he should be permitted to finance the improvement in any way that he saw fit and that she should repay him for the moneys so advanced *out of the profits of the apartment houses.* After the houses were erected, in pursuance of this agreement, Mr. Doughty procured two building and loan association mortgages upon the two apartment houses.'
>
> (Question admitted and repeated.)
>
> A. No, sir. I was to be paid out of——
>
> Q. You said, 'No'; that is the answer. A. All right.
>
> Mr. Richards: Now, if your Honor please, I wish an opportunity now to amend that opening and change the word 'profits' to 'rents' the word I intended.
>
> Mr. Cole: I never heard of that before, but I object to amending the opening.
>
> The Court: I will permit the record to remain with the statement of counsel."

It will be noted that counsel for the step-father was "quite certain" that he had not used the word. The record showed him to be mistaken.

XVI.

On page 89 and page 90 of his brief, the step-father argues that there is an inconsistency in the step-daughter continuing to pay on the $15,000 note which she discounted to raise moneys to pay

for improvements on the Ohio Apartment and her argument that the step-father "must have forced her to write the $500 check" and the question is put (p. 90) "if she knew, as she claims, that on December 15 her stepfather was claiming the advances were loans and not gifts, why did she recognize his contention by paying the balance of the notes?"

This is the first time anywhere that it has been suggested that either the fact that the step-daughter gave this note or the fact that she made payments on account was a recognition of the contention of the step-father that the advances were loans and not gifts and, of course, there could not be any such contention.

This note was dated December 5, 1927, and was the step-daughter's note and the proceeds of the note were *not used* for the purpose of reimbursing the step-father for moneys which he had advanced but for the purpose of paying off the mortgage which had been placed upon the property in April, 1926 (pp. 38, 39), (296), the proceeds of which mortgage in turn had *not* been used for the purpose of reimbursing the step-father but for the purpose of paying for the alterations to be made upon the Savoy Apartments and the funds were available from the mortgage before the alteration proceeded (pp. 24, 25 of our original brief).

This being the mortgage of the step-daughter there was nothing for her to do except to pay it off. She gave two notes, each for $15,000. One note she paid (p. 39). She made payments on account of the other note until there was but $8,000 left due and the only reason why she did not continue to pay was that her step-father ruined her credit (pp. 37, 38 of our original brief).

We repeat that it has never been the contention of the step-daughter that, to the extent that moneys were, in fact, raised to use in the improvement of these properties by the placing of mortgages upon the properties, there was any obligation upon the part of the step-father to pay off those mortgages but we insist that, with respect to the moneys which were, in fact, advanced by the step-father there was never any obligation upon the part of the step-daughter to repay in any manner whatever.

XVII.

Under the head of "Intimidation of Witnesses" the step-father suggests (p. 91 of his brief), that he was "joking". A man who will go to the length he did in attempting to intimidate his step-daughter and Naame as admitted on page 67 of his brief is not likely to be "joking" when he makes remarks to witnesses such as were proven to have been made in this case (p. 45 of our original brief).

It is claimed that the step-daughter's husband offered Burkett, one of the witnesses, a job, and coached the witness McGimpsey and "apparently also Mrs. Mauser" (p. 92 of his brief). An examination of the record will disclose that there was no "coaching" of witnesses by the step-daughter's husband. He spoke to the witnesses. The witnesses admitted he spoke to them. They were perfectly frank. It would be unusual if he had not spoken to the witnesses. We generally assume that, if a witness is called by a party and denies that he has spoken to that party about the case, he is falsifying, and that assumption in ninety-nine cases out of a hundred is correct. Had the witnesses of the step-daughter denied

that she or her husband had spoken to them the argument would have been made by the step-father that they must have been falsifying.

We have considered the testimony of the witness Burkett at page 65 of our original brief and have nothing to add.

XVIII.

Again, on page 92 of his brief, the step-father refers to the income tax returns and suggests that *his* income tax returns were not produced because the Court refused to receive them in evidence. The record reads (p. 289):

> "Q. Have you a copy of your income tax return for 1926 and 1927?
>
> Mr. Richards: *I object.*
>
> The Court: What is the objection?
>
> Mr. Richards: My objection is that there doesn't seem to be any probative value to whether he has or not. What is the purpose of it?
>
> Mr. Cole: The purpose of it is to try to show whether or not he has any record of the claim he is now making as to principal of moneys, whether he collected $500 he says he received on account, and that would be quite relevant, I think.
>
> Mr. Richards: The income tax return wouldn't show it to begin with, but, even if it did, it hasn't any probative value here.
>
> The Court: Sustain the objection."

We submit that in this the Court erred for the step-father does not deny (p. 92 of his brief) that the income tax return, if properly kept, would show "whether complainant treated the advances made to his step-daughter as loans or gifts". Counsel for the step-father in making his objection said "The income tax return wouldn't show

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it to begin with''. But the step-father makes no argument now that the income tax return, if properly kept, would not show it and if it did show it, then, why, was it not probative? It is then said (a matter of repetition) ''It is equally true that the defendant should have produced her income tax returns to show that she listed them as gifts.''

The answer is that the step-daughter's income tax return would not show these items listed as gifts or otherwise for there is no obligation to return gifts and they are not, in fact, returned. This was brought to the attention of the step-father in our original brief, page 79. No answer is made to it, but the bald assertion is repeated that the income tax returns would show whether she listed them as gifts.

Respectfully submitted,

PAUL SALSBURG,
MERRITT LANE,
Of Counsel for Appellant.

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New Jersey Court of Errors and Appeals

Between: SOMERS L. DOUGHTY, Complainant-Respondent, *and* ISABEL DOBBIN, Defendant-Appellant.	On Appeal from Chancery. Decree for Complainant-Defendant's Appeal. Sat below: Ingersoll, V. C.

(Italics, etc., ours, except where otherwise noted.)

BRIEF FOR APPELLANT.

Statement of the Case.

These are appeals by defendant from decrees of the Chancellor advised by Vice Chancellor Ingersoll (pp. 505, 508) upon conclusions (pp. 495, 500) after a hearing upon bills (pp. 1, 12) and answers (pp. 9, 18). The cases were heard together. The notices of appeal are printed (pp. 511, 513) and the petitions (pp. 515, 519). The cases are of such a nature as that they may be argued together.

The Issues.

Complainant was sixty-three years of age at the time of the trial, September 12, 1929 (p. 56). He married in 1914 (p. 57). His wife died in 1917 or 1918. At the time of the marriage his wife had a daughter, defendant, who was at the time of the marriage 17 years of age (p. 350). From the date of the marriage of her mother and com-

plainant, until defendant married on February 6, 1929, defendant lived with her stepfather. After the death of her mother, the stepfather and stepdaughter constituted the entire household with the exception of a colored maid. Complainant was very fond of the stepdaughter (p. 58) "all the time she was living there" (p. 58). About September, 1928, the stepdaughter began to go out with her present husband, Joseph S. Naame, who is a college graduate (p. 325), and who was the contractor who made the improvements upon the properties, the subject matter of this litigation. Complainant said that he objected to the marriage (p. 58) and he also said that his stepdaughter, after beginning to go out with Naame, came home drunk (p. 58). This was denied (p. 258, 308) and there is no evidence of probative value that the statement of complainant is true. Notwithstanding his objections to Naame, the father and stepdaughter continued to live together until the date of her marriage, February 6, 1929 (pp. 57, 300). On the day of her marriage, about an hour before it was scheduled to take place, the papers in these suits were served upon her at her stepfather's home (pp. 59, 302, 312). Complainant said that this was but a *coincidence* (p. 59)—an obvious falsehood.

It was conceded that, on December 30, 1922, complainant made a gift of one of the tracts involved in the first suit to defendant and that, on September 19, 1925, he made a gift of the other tract to her (first bill, paragraphs 2, *et sequi.*, p. 23). The first tract comprised about 65 or 85 feet on Baltic Avenue, on the corner of New Jersey and Baltic Avenues, Atlantic City (p. 23). There were buildings upon this tract (p. 24).

On March 19, 1927, in consideration of $30,000, legal title to a piece of property on the westerly side of Ohio Avenue was placed in complainant

and, on the same day, he conveyed the property to defendant, his stepdaughter (the second bill, paragraphs 1-4). He said that the consideration of $30,000 was paid, one-half by himself and one-half by his stepdaughter (the second bill, paragraph 2, pp. 13, 42, 43). The balance of the consideration was paid by a mortgage given by complainant (p. 43). There is a dispute as to whether complainant paid one-half of the $15,000, defendant insisting that she paid the entire $15,000 (pp. 297, 298). If complainant paid one-half of the consideration, there is no question but that that one-half paid by him was a gift to defendant (p. 44).

Subsequent to the conveyances the properties were improved. The moneys for the making of the improvements upon the first tract conveyed were paid by complainant. The improvements upon the first tracts conveyed commenced about December, 1926, and the apartment house thereon erected was called "The Savoy" (first bill, paragraph 3, pp. 3, 29).

After the conveyance of the property mentioned in the second bill on Ohio Avenue, Atlantic City (p. 12) that property was improved (p. 45), the apartment being known as the "Ohio Apartments" (p. 49).

While the building contracts for the improvement of the properties mentioned in the first bill were in the name of complainant (pp. 28, 29, 37), the building contract for the improvement of the land mentioned in the second bill was in the name of defendant (p. 47). No money was raised upon *this* property by mortgage which went into the improvements, the improvements being paid for by moneys raised on mortgages on the first properties conveyed and moneys given to the stepdaughter by the stepfather and moneys obtained upon notes of the stepdaughter.

These bills, in effect, allege that the contributions of the stepfather to the stepdaughter were loans rather than gifts and the charge made in the first bill is (paragraph 3, p. 3):

> "*She (defendant) approached complainant and sought his assistance and active aid and participation therein, which assistance and aid complainant consented to render;* whereupon it was agreed, *without writing,* between complainant and the said Isabel Dobbin that he, complainant, would advance money to pay for the erection of two separate apartment buildings and the remodeling of the third building upon said land, the buildings or apartments to be known as 'the Savoy'; that the money so advanced to pay for said contribution for said construction and remodeling should be repaid after the erection and completion of the remodeling of said buildings *from the proceeds of mortgage loans to be created thereon, and from the rents and incomes to be realized from said three apartment houses, when the same should be rented to tenants and become income-producing.*"

In the second bill the charge is (paragraph 5, p. 14):

> "and *as a part of the same transaction,* complainant, desiring to assist her, the said Isabel Dobbin, and at her request to improve said land in such a way as to render the same income producing and profitable and she being without the necessary money and credit to bear the cost of such improvement, it was thereupon agreed by and between complainant and said Isabel Dobbin that an apartment building should be erected upon said land, the cost of which erection should be advanced and paid in the first instance by complainant and *that repayment to him and reimbursement of the money so to be advanced and paid and disbursed should be from the proceeds of a mortgage loan of $75,000.00 secured upon the completed structure and land to be nego-*

tiated by complainant, and as to any unpaid balance of said cost of construction remaining after the application thereto of the proceeds of said mortgage loan that the same should be repaid by the application thereto of the rents and income thereafter arising out of and collected from the said completed apartment building or structure.''

In the first bill (paragraph 7, p. 5) the charge is further made that complainant had incurred a contingent liability as endorser of a promissory note for the sum of $8,000 made by her to secure funds in financing the erection of the building. At the time of the hearing, complainant had paid the balance due upon this $8,000 note (p. 39).

The prayers of the bills were that an account be taken and the amount due complainant be determined and paragraph 3 of the first bill (p. 7):

> ''3. That in default of the payment of the sum or balance so found and decreed to be due complainant, the same be decreed *to be a lien and charge on the said land and premises described in the bill of complaint in the nature of an equitable mortgage thereon; and that the rents and income thereof be sequestered for the benefit of and paid to the complainant in discharge or reduction of his said lien.''*

The prayers of the second bill are substantially the same (paragraph 3, p. 17).

The answers deny that there were any agreements to repay and allege that the contributions of the stepfather were gifts. Defendant admitted (paragraph 7, first answer, p. 11) that complainant was an endorser on a note for $8,000 and that the proceeds of the note were used in improving the property, but she denied that she did not intend to pay the note. At the hearing she said that she had not paid the note because her credit had

been ruined by the bringing of these suits, and the bank would not loan her any money to renew the note (p. 297). The answers also set up (1) the statute of frauds; (2) *an adequate remedy at law* (pp. 11, 20).

Voluminous testimony was taken (pp. 18 to 428).

The Vice Chancellor in his conclusions in the first suit (p. 495) did not recite the testimony but said that "it can be of little avail to recite it" (p. 496). He came to the conclusion that the moneys contributed by complainant were not intended as gifts because—

a. "He (complainant) received the proceeds of all of the mortgages."

b. Defendant paid to complainant a check of $500 from the bank account of the "Ohio Apartments" on the face of which appears "for account of Savoy & Ohio Apts. to Somers Doughty—principle" (p. 497).

We will seek to show from the proofs that complainant did *not* receive the proceeds of all or, for his own use, of *any* of the mortgages and that the check of $500, mentioned by the Vice Chancellor, was given by defendant under such conditions as that it is not probative evidence against a gift.

Because of what the Vice Chancellor conceived to be the untruthfulness of defendant's explanation as to the check and "her demeanor and manner of testifying" the Vice Chancellor was convinced "that her testimony can have but little weight."

He recognized the rule of *Selover* v. *Selover,* 62 N. J. E. 761, and *Prisco* v. *Prisco,* 90 N. J. E. 289, and said (p. 500):

> "I am satisfied that the presumption of a gift has been overcome by the evidence with

> that degree of certainty that is required in such circumstances."

In his conclusions in the second case although, as he stated, there were no mortgages ever placed upon that property, basing his determination *solely* upon the fact that he found that the explanation of defendant with respect to the giving of the $500 check was false and, therefore, that her testimony was entitled to little weight, he said (p. 504):

> "Although this case does not have the support of the fact that mortgages were placed upon the property, I am of the opinion that the presumption that the money advanced by Doughty was a gift has been overcome by the evidence with that degree of certainty required in such circumstances. I will advise a decree in accordance with these views."

Decrees were entered in each case directing an accounting and (p. 506):

> "It is further ordered, adjudged and decreed that in default of the payment of the sum or balance so found and decreed to be due complainant, *the same be decreed to be a lien and charge on the said lands and premises described in the bill of complaint in the nature of an equitable mortgage thereon; and that the rents and income thereof be sequestered for the benefit of and paid to the complaint in discharge or reduction of his said lien.*"
>
> * * * * * *
>
> "And it is further ordered, adjudged and decreed that such sum as shall be found to be due *shall be impressed as an equitable lien or mortgage against the following described premises:*" (And then follows a description of the premises.)

And page 507:

> "And it is further ordered, adjudged and decreed that such amount so found to be due from the defendant to the complainant *shall be due and payable immediately.*"

The second decree is in similar form (pp. 508, 510).

The petitions of appeal are found at pages 515, 519.

Before proceeding to a discussion of the law and the evidence, which latter will be necessarily extended because the Vice Chancellor has not summarized the case on the proofs in his conclusions, we desire to discuss the matter of this check for $500 upon the face of which appears the words "for account of Savoy & Ohio Apts. to Somers Doughty—principle" upon which check the Vice Chancellor places so much reliance.

The Five Hundred Dollar Check and the Fact That Proceeds of Mortgages Placed Upon the Properties Involved in the First Suit Were Used in the Improvement of the Properties and the Claim of Complainant, Denied by Defendant, That the Proceeds of the Mortgages Were Used to Reimburse Complainant for Moneys Expended by Him.

The Five Hundred Dollar Check.

Consider for a moment the language of the check relied upon by the Court (pp. 481, 482)—"for account of Savoy & Ohio Apts. to Somers Doughty, principle". Of what? How much? How indefinite!

This check, a photographic copy of which is printed (p. 481 as Ex. C. 17), was first mentioned by complainant at page 33. He said that he had received it December 14th or 15th, 1928. It is

dated December 15th (p. 481), 1928. The original check was called for (p. 33) but defendant could not produce it. Complainant said that $250 of this check was credited by complainant's lawyer on account of the Savoy Apartments and $250 on account of the Ohio Apartments (pp. 33, 51, 74). He said that: defendant gave the check to the maid to give to complainant and "I looked at it and laughed, laid it down on the desk and walked out and left that laying there, such a small amount"; it lay there for three or four days and finally he took it and deposited it. He recalled the words on the face of the check (p. 54). On page 71 he was cross-examined as to this check and stated that he had last seen it when he had deposited it and page 72:

> "Q. Did you make a copy of it? A. Did I make a copy of it? Yes, sure."

And page 72:

> "Q. What did you do with the copy of the check that you made? A. Give it to my attorney.
>
> Mr. Cole: Will you produce it, please?
>
> Q. Why didn't you—you ever had a photostatic copy made of it, didn't you? A. Yes.
>
> Q. Is that it? A. That is it.
>
> * * * * * *
>
> Q. Why did you make a photostatic copy of that check? A. *I thought I might want to use it.*
>
> Q. Why did you think you might want to use it? A. *Because she wasn't paying me.*
>
> Q. Well, you had other checks of hers before this, hadn't you? A. *No, very few. I don't know as I ever had any.*
>
> Q. Had you had any other checks of hers before this date? A. Not on payment of property.
>
> Q. I didn't ask you that? A. Yes.
>
> Q. There appears to be eleven checks of Isabel Dobbin to your order; I ask you to

look at them and say whether they are her checks and whether you got the money on them? A. Yes, sir; I must have got the money, endorsed them.

Q. Didn't have a copy made of those checks, did you? A. No."

And page 73:

"Q. Did you go to the Marine Trust Company and did they let you use that check to have the photograph made after you had been credited with the amount? A. *I don't think so. I can't remember.*

Q. You have said, in answer to counsel's question, when you first saw the original check, you laughed because it was so small? A. Yes, sir.

Q. Was that the reason you laughed or did you laugh because you thought you could catch her by having a copy of that check made? A. No, sir."

He then said that Fred Hess had made the photographic copy, and page 74:

"Q. Was that before you deposited the check? A. Yes, sir; to the best of my knowledge.

Q. Now, did you record as a credit anywhere this $500 check of Mrs. Naame? A. Did I give her credit?

Q. Yes. A. Yes, sir.

Q. Where did you give her the credit? A. My *attorney* gave her credit.

Q. I am talking about did you anywhere? A. $250 on each apartment.

Q. Where is your record of that credit? A. *No record of it.*"

On direct examination (p. 80) he stated that the making of a photographic copy of the check was his own suggestion (p. 80).

He said (p. 85) that his quarrelling with his stepdaughter began about November, 1928, and was caused by her going out with her present

husband, Naame, and that he was disgusted with her and *concluded to sue her* (p. 85).

And page 84:

> "Q. How do you manage to keep your records straight without records, if you please, with checks here for $1,125., $7,000., $5,000., $5 and $14., $368.33, $250., all of which were cashed by you? How do you manage to keep things straight? A. I suppose money I loaned her and when I got it back I reimbursed it in my pocket.
>
> Q. Suppose? *Is there anything to show that you loaned her the money represented by those checks? A. No, sir.*
>
> Q. Now, you felt pretty good when you saw written on this check with something stated about 'principal', didn't you? A. No, I don't know as I did.
>
> *Q. Did you think that you needed a copy of that for evidence? A. I suppose I did.*
>
> Q. Didn't you have any other evidence except that she owed you money? A. I thought I did.
>
> Q. What did you think you had? A. I thought creating these mortgages was evidence, my thought.
>
> Q. Well, if you thought that was all right, why did you have this check photographed? *A. I wanted more evidence, we all do when we are trying a case.*
>
> Q. *Did you anticipate this suit when you made a copy and photograph of this check? A. Yes, sir.*"

He said that his stepdaughter had never stated that she would not pay him until October, 1928 (p. 35), when she told him, "you old son of a bitch, I have paid you the last dollar I ever expect to pay you and I will never pay you any more" (pp. 35, 36).

Now, complainant asks the Court to believe that this stepdaughter, who had repudiated *any* obligation to him, in October, 1928, upon his *simple*

request and *without coercion,* gave him this check on December 15, 1928, containing language which he *claims* to be evidential in this case of an admission of an obligation to pay complainant the moneys advanced by him for the improvement of the properties, which check, immediately after he received it, he had photographed because he wanted it as evidence and that, notwithstanding the fact that he realized when he saw it that it was evidence, *he let it lay around for five days without taking it.*

He conceded that he was very fond of his stepdaughter and that there had been no trouble between them whatever, so fond of her that, *concededly,* he made her gifts of these properties, until she began to go out with a man, the result of which going out *might be her marriage which would result in her leaving her stepfather.* He attempted to paint a picture of defendant *after* October, 1928, which would lead the Court to believe that she was grossly unfair to him, calling him a "son of a bitch" and treating him in any manner but daughterly, and yet *he did not ask her to leave the house but permitted her to remain until the date of her marriage, February 6, 1929, on which date, and an hour before the scheduled ceremony, he caused the papers in these suits to be served upon her.*

It is significant that, until the actual marriage, or until a time so short of the actual marriage as that he realized that he could not prevent it, he continued the stepdaughter in his household and took no steps to enforce any claim against her and, *when he knew that he was to lose her,* he acted. He wants this Court to believe that this woman, whose picture he so paints, *voluntarily and without coercion and after having expressed,* as early as October, 1928, her irrevocable decision, with opprobrious words directed towards him,

that she would pay him nothing, gave him this piece of evidence upon which the Court below *solely* relied for its determination in the second case (p. 500) and upon which it *strongly relied* for its determination in the first case (p. 407). It is apparent from his own testimony that he deliberately went out to get a piece of evidence upon which he could rely.

He called, to corroborate him as to this check, the colored maid, Maude St. John (p. 124). We ask the Court to read her testimony in full. It defeats its purpose. She said (p. 125):

> "Q. What did she tell you about that? A. Well, one Friday morning she (defendant) carried me to the hospital and while we was going over there she said, 'I just got through giving the old son-of-a-bitch hell upstairs.' She said, 'Believe me, I gave him hell, too.' I said, 'What between you and Mr. Doughty now?' She said, 'He wanted me to get a $75,000 mortgage on my property, *but I will see him in Hell first before I will get any money on my property to pay the old son-of-a-bitch, and all I want him to do is to say the word to get out and I can have him at me and I will get out, because I am all packed and ready to go.'*
>
> Q. You remember when this conversation took place? A. Yes, fourteenth day of December, on Friday."

And she definitely fixed the date of this conversation as the 14th day of December, 1928, and yet she testified that *after the defendant had made this statement* (p. 126):

> "A. She gave me a check that Saturday morning, Mr. Doughty had gone out to her, gone out before she left for work, and she said, 'Give this to him', she say, *'He don't ought to have that.'*
>
> Q. Do you remember seeing the check? A. Sure; I read the check.

Q. I understand you are of some education, aren't you? Have you ever taught school or anything of that kind? A. Yes; have been a while, though.

Q. I show you Exhibit C-7 and ask you if that is a photograph of the check that she gave you? A. Yes.

Q. When was it that she gave you this check, with relation to this conversation? A. That was on Saturday the fifteenth.

Q. The day following it? A. The day after.

Q. The day after? A. Yes.

Q. What did you do with the check? A. She left the check on the desk and when Mr. Doughty came in I picks the check up and says, 'Here is a check Miss Doughty left for you,' and he say, 'All right, lay it down there.'

Q. Did you see the check after that? A. The check laid around there for four or five days and she asked me did I gave it to him; I told her yes, I gave it to him; she said, 'Why didn't he take it?' I said, 'I don't know, because I didn't ask him.'

Q. Then finally the check disappeared? A. Yes.

Q. You don't know whether Mr. Doughty took it or not? A. I don't know who taken it; I know it disappeared."

This maid was thirty-two years of age (p. 129) and indicated the highest degree of venom toward defendant. At the time of the trial, September 12, 1929, she was still living with complainant. She said that defendant had stated that money was missing around the house and that complainant had spoken to her about it and asked her if she had been taking it, to which she replied (p. 130):

"A. When did I first tell him? Well, he began to miss some money around there at all and she told him that I was taking it and he asked me did I take any, I told him no, I didn't know nothing about no money was missing around there, she (defendant) said I been stealing money from him."

A few seconds later she said that there was no intimation by defendant that she, the maid, had been taking the money, and (p. 130):

"Q. Did you think that she was charging you with taking it? A. I didn't know; it wasn't but me and her and Mr. Doughty in the house, so one of the three had to be responsible for it.

Q. Did you think perhaps she was saying that you had been taking the money? A. Liable to.

Q. What? A. Could have.

Q. Can't hear you. A. She could have."

And page 134:

"Q. Did you report to him what she was saying about him? A. No, not until this suit, because it didn't interest me.

Q. *After this suit came about, after you thought that you had been accused of stealing, then you told him all this, didn't you?* A. *Sure I did.*

Q. You want to get even, don't you? A. Get even?

Q. Yes. A. No, I want to clear myself and not be a thief."

She also was venomous toward defendant because defendant would not loan her money for a coat (p. 136) and because defendant had discharged her (p. 136), and (p. 137):

"A. Me and her had some words.

Q. Did she discharge you for drinking? A. Drinking?

Q. Yes. A. Not at that time she didn't.

Q. At anytime did she? A. No.

Q. Did she discharge you for being drunk? A. No.

Q. Had you been drunk? A. Yes, I used to drink."

The Vice Chancellor said that the explanation of defendant with respect to the giving of this

check, quoted by him (p. 497) and appearing on page 306 of the record, does not give the Court "the benefit of the true facts insofar as this check is concerned". He apparently based that conclusion upon his conception of the inherent improbability of the story and upon the testimony of a handwriting expert, a member of the Philadelphia Bar (p. 390) which was to the effect that the handwriting upon the check (he having only a photographic copy of it) did not exhibit any signs of excitement. He testified (p. 394):

> "A. The writing on Exhibit C-7 I found to be identical in nervous and muscular characteristics with the other writing of Isabel Dobbin. I found it to be the natural writing of the same party who did the other Isabel Dobbin writings, and to be in no respect abnormal or unusual, to follow in every respect the customary and usual writing habits of this particular writer.
>
> Q. Now, does it exhibit any signs of excitement at the time the check was written? A. None whatever.
>
> Q. If the writer had been in a hysterical condition would it have shown on that check? A. *I believe it would, although I doubt if I should give a positive answer to that question.* My belief is based on my experience with writing which has been done under coercion, and under peculiar and abnormal conditions.
>
> Q. And does such writing show evidence of it? A. It always has, in my experience.
>
> Q. And in this case the writing does not show any such evidence? A. Exactly."

On cross-examination, he said (p. 397):

> "Q. Is it possible for a person under excitement and under emotion to write the same as if they were not under excitement or emotion? A. That would depend on the extent of the excitement or the emotion, and

also on the nervous control of the individual.

Q. And the individual, wouldn't it? A. Absolutely.

Q. Depend very largely on the individual, wouldn't it? A. I should say so."

And page 399:

"Q. I have tried to have you tell me whether you knew of any case that you had been in and testified where the question was whether the admitted signature had been written under emotion, hysteria or excitement. Now, have you ever had such a case as that? A. No, not——

Q. That is all I want to know. You say no, do you? A. No.

Q. Very well, that is all."

This testimony, the Vice Chancellor said (p. 498) refutes "to some extent" defendant's story. We submit that testimony of this nature is precisely worthless.

To say the best for complainant, the explanation of defendant is no more unreasonable than that of complainant, for it is beyond ordinary credulity to believe that defendant, whom complainant said took such a definite position in October that she would pay him *nothing* and who, according to the alleged statement made by her on December 14th, the day before making the check, had said in very vigorous language that she would pay complainant *nothing,* should have, without coercion of any kind, drawn this check to complainant on December 15th with its alleged incriminating language and should have handed it to the maid to give to complainant and that complainant, seeing this check, should have permitted it to remain four or five days without taking it although he was after evidence and realized that this check was evidence, photographing it immediately after getting it.

The Vice Chancellor said (p. 499) that defendant was unable to find the original of the check although it had passed through her account in bank and had been returned to her. The evidence that it ever passed through her bank account is of the slightest.

Complainant said (p. 376) that, at the time he had the check photographed, there was no endorsement on it and that the photograph was made about a week after the check had been written. He said that he deposited it (p. 377) but he could not identify any deposit including the $500 check (p. 377).

It is true that defendant said that the check was cashed, she thought, on December 24th, at page 331, but it is apparent from her testimony at this point and also at page 349, that she did not know whether it had been cashed and she said (p. 349) that she never got the check back and that she presumed that complainant had it, if cashed, for he was a director of the bank and was in the habit of bringing checks home (p. 349).

There is no evidence, we submit, to support the statement of the Vice Chancellor in his conclusions (p. 499) that this check was returned to complainant.

There was no object in defendant concealing the check, if it had been returned to her, for she knew that her stepfather had made a photographic copy of it (p. 327) and she had told her counsel about it (p. 326). There may or may not be a reason, if the check is in the possession of complainant, for its non-production. He photographed the check when he got it (p. 376) but the photograph was only of the face of the check, his explanation being that, at the time the photograph was taken, "there was nothing on the back. It was plain" (p. 376). It may or may not be true that the back was plain at the time the photograph

was taken and it may or may not be true that there was *some* endorsement on the back of that check at the time the check was handed to him, or subsequently put thereon by complainant, which would have in some way militated against the claimed effect of the words upon the face of the check.

Defendant said that, after complainant had gotten the check, he came back the same day and said, "Now I have got you. I will get everything I ever gave you. I will take it back from you if you marry Joe Naame." He said, "I have got the evidence; you only borrowed my money; that is the evidence I wanted to get and you did it for me" (p. 306).

The effect of complainant's own testimony is that he wanted the evidence and that he went to get it and that the only trouble between himself and his stepdaughter was that she insisted upon marrying Naame and that he was doing everything he possibly could to prevent the marriage to Naame.

The words which defendant puts in his mouth are words which it is reasonable to assume he would have used. He attempted to coerce his stepdaughter into abandoning the marriage by the threat that he would take back from her all of the money which he had contributed to the improvements. *That* threat was ineffective. He then threatened to kill Naame (pp. 306, 256). The following week he threatened to kill him again and "hit him on the jaw and broke his own knuckles". So far as we have been able to discover this is not denied.

Joseph S. Naame, the husband of defendant, told a circumstantial story of these assaults and threats (pp. 256, 257) and, while complainant denied (p. 422) the story of defendant as to how this check was obtained by him and that he said to her

thereafter: "I have got the evidence, you only borrowed my money, that is the evidence I wanted to get and you did it for me", *he did not deny the alleged assaults on Joseph Naame.*

In the light of these determined efforts of complainant to stop the marriage by every means within his power, it is probable that defendant's story with respect to this $500 check represents the truth and that complainant, in fact, considered that he was *giving* these moneys to his stepdaughter as they were contributed but, when he found that his stepdaughter would not listen to him upon the matter of her marriage, he attempted to change his position and commenced these suits by service upon her at his home an hour before the time scheduled for the wedding.

The Mortgages.

The Vice Chancellor in the first case laid stress upon the fact that, after the completion of the buildings three mortgages were obtained and that complainant received the proceeds of the mortgages (p. 496). He stated that complainant had received the proceeds of *all* the mortgages. We insist that he received none of the proceeds of any of the mortgages for his own benefit or to reimburse himself for moneys advanced. With respect to the $25,000 mortgage obtained from Trident Building and Loan Association July 15, 1927 (p. 32), upon the property with respect to which complainant said that the money was paid to him on account of the moneys advanced by him in the improvements, it appears that, while the $25,000 was paid to him, *it was immediately turned over by him to the stepdaughter on July 26* (pp. 310, 379). The check to complainant from defendant for $25,000, the proceeds of the mortgage, was given July 20, 1927 (p. 310). The stepdaughter

said that the reason she paid this $25,000 to complainant was (p. 310):

> "A. I had just gotten my mortgage and at that time Father was buying stocks and bonds—I had just received the mortgage money and my father was buying stocks of Barnes and Loffland in Philadelphia and wanted the loan of that money for a few days and I gave it to him. My bank book shows he immediately returned it."

The testimony continued (p. 311):

> "Q. Now in this Marine Trust deposit book we have offered under date of seventh month, twenty-sixth, is a credit of $25,374.50; do you know what that represents? A. *$25,000 loan and $374.50 for my rents.*"

The explanation of complainant is found on page 379:

> "Now, I show you this $25,000 check, Exhibit D-10, and ask you whether or not you got that as the result of exchange of checks? A. No, sir. This twenty-five thousand that she turned over to me on the mortgage that she got out of the Trident Building & Loan on one of the Savoy Apartments.
>
> Q. Now, a few days after you got this, you rechecked it, apparently rechecked it to your daughter, did you? A. Yes, sir.
>
> Q. How did that come about? A. For her payments on the Ohio Apartments.
>
> Q. Now, were you in the habit of exchanging checks with your daughter? A. No, sir.
>
> Q. Did you ever exchange checks with her? A. *Not to the best of my knowledge, no, sir.*"

And, yet, on his first examination there had been shown him a series of checks, eleven in number, marked Ex. D-2 for Identification, aggregating more than $16,125 drawn by defendant to the order of complainant, with respect to which he testified (p. 72):

"Q. Well, you had other checks of hers before this, hadn't you? A. No, very few. I don't know as I ever had any.

Q. Have you had any other checks of hers before this date? A. Not on payment of property.

Q. I didn't ask you that? A. Yes.

Q. There appear to be eleven checks of Isabel Dobbin to your order; I ask you to look at them and say whether they are her checks and whether you got the money on them? A. *Yes, sir; I must have got the money, endorsed them.*"

He said that these checks were *not given to him as payment on account of any moneys which he had advanced for the improvement of the building* and with respect to that he said (p. 389):

"Q. Here are five checks clipped and marked as one exhibit, D-2. I ask you to look at those checks and tell me, if you can—they are Miss Dobbin's checks to you—what they were given for? A. *I couldn't tell you.*

Q. Have you given her any credit on account of these alleged loans for the amounts of these checks? A. I don't know if they were on loans.

Q. You don't know what they were for? A. No, sir.

Q. The checks aggregate $16,125., and you mean to say that you don't know what they were for? A. I said that.

Q. When these checks were given to you, did you make a memorandum of them anywhere, what they were about? A. No.

Q. You expect to carry it in your mind, what they were for? A. Yes.

Q. But now you don't know? A. I don't know what they were for.

Q. You haven't any idea what this check of Miss Dobbin, dated August 6, 1926, to your order, for $7,000. is for? A. No, sir.

Q. But you do know you haven't given her any credit for any of it, don't you? A. No, sir; I don't.

Q. You haven't given in this suit, have you? A. I think so, if she is entitled to a credit, I have given it to her, it might be money I have loaned her, I don't know. I will show you if she is entitled to a credit I given it to her.

Q. The trouble is, you don't know, do you? A. You heard my answer.

Q. All right. But you had such confidence in her that you didn't need to keep an account with her, did you? A. At that time, yes, sir."

It was not contended by defendant that complainant had agreed to supply her with *all* the moneys needed to make these improvements. On the contrary it was conceded that, to the extent that moneys were, in fact, raised by mortgages upon the property those moneys were to be used in the improvement of the property, but it was also claimed that, to the extent that complainant had advanced moneys for the improvement of these properties over and above the amounts received upon the mortgages, those moneys so advanced *were pure gifts to her and that contention created the issue in these cases.*

The fact that moneys obtained from mortgages placed upon the property were used in the improvement of the property was not probative evidence, in any manner, upon the question as to whether the moneys actually contributed *in cash* by complainant to the stepdaughter were gifts or otherwise, and yet the fact that moneys obtained from mortgages were so used was considered by the Vice Chancellor in the first case as evidence that *all* of the moneys advanced by complainant in the first case was advanced upon a promise of repayment in some way or another (p. 496).

In the second case the Vice Chancellor based his conclusion that the moneys advanced by com-

plainant were advanced as loans *solely* upon the language upon the face of the $500 check.

The Vice Chancellor we submit erred in his conclusions (p. 496) in the first case when he said that *after the completion of the buildings* defendant secured three mortgages aggregating $91,-895.73, the proceeds of which complainant received and credited on account of the moneys advanced by him. Complainant did not even so claim. There are three mortgages mentioned. One dated April 12, 1926, Atlantic City Building and Loan Assn. for $35,000; one dated July 15th, 1927, Trident B. & L. for $25,000; one dated Oct. 15, 1927, Atlantic City B. & L. Assn. for $35,000.

While complainant said (p. 31) that he received the proceeds of the $35,000 mortgage dated October 15, 1927, to Atlantic City B. & L. Assn. and (p. 32) the proceeds of the $25,000 mortgage to Trident B. & L. dated July 15, 1927, and credited those proceeds on account of the $100,000 which he said he had advanced on the improvement of the first properties, he testified at pages 49, 50 (still on direct) that he never got the proceeds of the $35,000 mortgage of October 15, 1927, because he *let his stepdaughter* keep the proceeds to pay for the improvements on the Ohio Ave. property, and we have already shown (p. 20 of this brief) that he did not get the proceeds of the $25,000 mortgage of July 15, 1927, to Trident B. & L. Assn. but that those proceeds were also used in improving the Ohio Ave. property. (See also the testimony of Naame, pp. 249, 250, 251, 252; defendant, pp. 299, 303, 340, 310, 379.) Complainant therefore did not receive the proceeds of either of these mortgages to reimburse him for moneys advanced.

Nor did he receive the proceeds of the mortgage of $35,000 of April 12, 1926, to Atlantic City B. & L. Assn. to reimburse him. Complain-

ant said (p. 41) that he received the proceeds of this mortgage but it appeared from the testimony of defendant (p. 296) that this mortgage was placed to obtain funds to make alterations and Naame testified (pp. 265, 266) to this mortgage being obtained on the uncompleted building to obtain funds to pay *him* for alterations *to be made* by him and he said that he did not go ahead until the funds were available.

There is no probative proof that complainant received one cent from the proceeds of any one of these mortgages on account of any advances made by him.

This brings us to a discussion of

The Law.

A case peculiarly in point is *Prisco* v. *Prisco,* 90 N. J. E. 289, in this Court, a unanimous affirmance of the decree below upon the opinion of Vice Chancellor Leaming. The Court said (p. 290):

> "The proofs which shall raise a resulting trust, or rebut the presumption of a gift or settlement in the case of a child or wife, must be of facts *antecedent to or contemporaneous with the purchase,* or else immediately afterwards, so as to be in fact part of the same transaction; *a resulting trust cannot be raised from matters arising ex post facto.* 1 Lead. Cas. Eq. 223; Cutler *v.* Tuttle, 4 C. E. Gr. 549. It is also well settled that the proofs which shall rebut the presumption of a gift in favor of a child or wife *shall be equally satisfactory and explicit with the proofs required to establish a resulting trust; the circumstances relied on must be convincing and leave no reasonable doubt as to the intention of the party. Peer* v. *Peer, supra.*"
>
> "This rule is again stated by our court of errors and appeals in McGee *v.* McGee, 81 N. J. E. 190, as follows:

> 'The rule in this State is well settled that where a husband procures real estate to be conveyed to his wife, he paying the consideration, a presumption arises that he intends to settle the property on her, and while such presumption may be rebutted, the proof offered to accomplish it *must be certain, definite, reliable and convincing, leaving no reasonable doubt of the intention of the parties'.*''

The Court further said (p. 291):

> ''The marriage of the son shortly before he reached his majority obviously was the act *which occasioned the parents' dissatisfaction and led to the attempted repudiation of the gifts; but for that act it may well be doubted whether any controversy would have arisen.*''

Here, also, it was the anticipated marriage of the stepdaughter which occasioned the stepfather's dissatisfaction ''and led to the attempted repudiation of the gifts; but for that act it may well be doubted whether any controversy would have arisen.''

The Court proceeded, page 291:

> ''This view is equally applicable to the improvements subsequently made on the land by the father. *The improvements will be presumed to be gifts to the son unless that presumption is sufficiently overcome by the proofs.* Selover *v.* Selover, 62 N. J. E. 761, 763. The notion that the residence was personalty and was designed to be removed by the father for his own use is clearly untenable. It was no part of the intention of anyone to ever have the building removed from the lot on which it stood except upon the possible contingency of a defective title to the lot. As between the father and son the building was clearly intended as a permanent improvement to the lot.''

Selover v. *Selover,* 62 N. J. E. 761, also in this court, was a unanimous reversal of the Court below, the opinion in that court being written by the present Chief Justice, then Justice.

It was conceded by the Court below that the stepdaughter in the case at bar stood in the same position as a daughter. She became a member of complainant's household after leaving a convent in which she had been for upwards of six years (p. 350) at the time of her mother's marriage to complainant in 1914 (p. 57) and continued as a member until the death of her mother in 1918 (p. 57) and still continued until the date of her marriage, February 6, 1929, occupying the position as a daughter of whom he was extremely fond.

In *Wolters* vs. *Schraft,* property was held in trust for an adopted daughter, the Court saying (69 Eq. 215, 66 Atl. 399):

> "This argument (the argument being that since the father held the property by deed 'in trust for Rosa', the statute of uses executed the use in the father, and a resulting trust arose in his favor) will not bear a moment's consideration, even if we assume, as I think without warrant from the authorities that, although Wolters stood *in loco parentis,* the principle of advancement applied to a wife or child (citing cases) would not have applied to him, had the conveyance of the legal title been directly and in terms to Rosa."

In 39 Cyc. 143 the following statement is made:

> "A purchase of property by a parent with his own funds or assets in the name of a child of such parent will be presumed * * * to be an advancement or gift to the child, and not a resulting trust in favor of the parent, * * * *and the same rule applies where the purchase money is paid by one who stands in loco parentis to the person in whose name the purchase is made."

And the *Wolters* case is cited by the author as a New Jersey authority for this statement.

In *Cole* vs. *Thompson,* 169 Fed. 729, a deed made to a son-in-law was sustained as an advancement on the ground that the father-in-law was *"in loco parentis"* to the son-in-law, the Court saying:

> "It has been held that: When one pays for land, and the title is made to a stranger, the presumption is that he who paid intended to own; but if the person invested with title is the wife, son or near relative, *or one to whom the purchaser has placed himself in loco parentis, there is no resulting trust.* Also that a conveyance to a son-in-law by deed absolute, as an advancement to his wife, does not create a trust in her favor."

Perry on Trusts (7th Ed.) Sec. 143, p. 228, says:

> "* * * If the purchaser take the conveyance in the name of a wife or child *or other person, for whom he is under some natural, moral, or legal obligation, to provide* the presumption of a resulting trust, is rebutted, and the contrary presumption arises, that the purchase and conveyance were intended to be an advancement for the nominal purchaser. The transaction will be regarded *prima facie* as a settlement upon the nominal grantee; and if the payer of the money claims a resulting trust he must rebut this presumption by proper evidence."

One who undertakes the duty of maintaining and supporting a person is deemed to be "in *loco parentis*". The absence of any real distinction between a natural child and parent and one where the parent stands in *"loco parentis"* is pointed out in the case of *Powys* vs. *Mansfield,* 3 My. & Cr. 360, 40 Eng. Reprint 964, where the Court held that a niece for whom the testator had provided, was to be deemed the same as a child for

the purpose of determining whether the gift which went to her was an ademption for the legacy left for her in the will of the testator, the Court saying:

> "It is not disputed that if Miss Julia Barrington had been a daughter, instead of being a niece of Sir John Barrington, the provision made for her by him upon her marriage would have been an ademption of the legacy given to her by his will of 1817. I do not understand the Vice-Chancellor to doubt this * * * if that be so, it is, I apprehend, equally clear, and so I understand the Vice-Chancellor to assume, that the same consequence would follow if Sir John Barrington ought to be considered as having placed himself *in loco parentis.* * * * The first point, therefore, to be considered is, whether that be correctly so assumed; and no doubt the authorities leave, in some obscurity, the question as to what is to be considered as meant by the expression universally adopted, of one *in loco parentis.* Lord Eldon, however, in Ex Parte Pye (18 Ves. 140, 154) has given to it a definition which I readily adopt, not only because it proceeds from his high authority, but because it seems to me to embrace all that is necessary to work out and carry into effect the object and meaning of the rule. Lord Eldon says it is a person 'meaning to put himself *in loco parentis;* in the situation of the person described as the lawful father of the child'; but this definition must, I conceive, be considered as applicable to those parental offices and duties to which the subject in question has reference, namely, to the office and duty of the parent to make provision for the child. The offices and duties of a parent are infinitely various, some having no connection whatever with making a provision for a child; and it would be most illogical, from the mere exercise of any of such offices or duties by one not the father, to infer an intention in such person to assume also the duty of providing for the child. The relative situation of the

friend and of the father may make this unnecessary and the other benefits most essential.''

Complainant had no children and unquestionably regarded the stepdaughter as his nearest relative (p. 78).

There is nothing in the case which brings into play the doctrine of independent advice or a presumption of unfairness or undue influence. Complainant was sixty-three years of age at the time of the trial (p. 56). The gifts to his daughter began as early as 1922, when he was but fifty-six. He was a wealthy man (p. 56). His income was large (p. 305). He could not tell the amount of his wealth (pp. 78, 79).

We start out, therefore, with the presumption of a gift which can only be repudiated by clear and convincing proof sufficiently strong to establish a resulting trust. Are those proofs present in the cases at bar?

Argument.

Complainant has made various conflicting statements of the alleged agreement.

In his bill in the first case he alleges the agreement as follows (paragraph 3, p. 3):

> ''She approached complainant and sought his assistance and active aid and participation therein, which assistance and aid complainant consented to render; whereupon it was agreed, without writing, between complainant and the said Isabel Dobbin, that he, complainant, would advance money to pay for the erection of two separate apartment buildings and the remodeling of the third building upon said land, the buildings or apartments to be known as 'the Savoy'; that the money so advanced to pay for said contribution for

> said construction and remodeling should be repaid after the erection and completion of the remodeling of said buildings *from the proceeds of mortgage loans to be created thereon, and from the rents and incomes to be realized from said three apartment houses, when the same should be rented to tenants and become income-producing.''*

In his bill in the second case, paragraph 5, page 14, he alleges the agreement as follows:

> ''and as a part of the same transaction, complainant, desiring to assist her, the said Isabel Dobbin, and at her request to improve said land in such a way as to render the same income producing and profitable and she being without the necessary money and credit to bear the cost of such improvement, it was thereupon agreed by and between complainant and said Isabel Dobbin that an apartment building should be erected upon said land, the cost of which erection should be advanced and paid in the first instance by complainant and that *repayment to him and reimbursement of the money so to be advanced and paid and disbursed should be from the proceeds of a mortgage loan of $75,000.00 secured upon the completed structure and land to be negotiated by complainant, and as to any unpaid balance of said cost of construction remaining after the application thereto of the proceeds of said mortgage loan that the same should be repaid by the application thereto of the rents and income thereafter arising out of and collected from the said completed apartment building or structure.''*

In opening the case to the Court his counsel alleged the agreement as follows (p. 60):

> ''His agreement with his daughter was that he should advance the money initially and that he *should be permitted to finance the improvement in any way that he saw fit and that she should repay him for the moneys so*

advanced out of the profits of the apartment houses. After the houses were erected, in pursuance of this agreement, Mr. Doughty procured two building and loan association mortgages upon the two apartment houses."

In his testimony on direct examination complainant said (p. 37) that the agreement with respect to the building of the apartment house on the property involved in the first suit was as follows (p. 27):

"A. Well, she asked me to build the apartments. I said, 'Why you wouldn't want to attend to them, would you?' 'Oh, yes,' she says, 'I want something to do. I want to go to work.' I said, '*suppose they are not successful, paying rent, how could you pay me for them?*' '*Oh,*', *she said, 'I get an income from my father's estate,' but never would tell me what it was.* I asked her several times but she would never tell me what that was, so finally, after talking on me a long while she says, 'You can finance those buildings in any way however that suits you and *I will see that you are paid, if you loan me the money, you can put a mortgage on them, building association, any way that you think best.*' I built them for her and created the mortgages after a long while, then they were finished, I thought she had her furniture paid for, she paid for the furniture by me going security with Lit Brothers.

Q. How did she say she would pay you back? A. *From the rents.*

Q. Now, with that understanding, did you proceed to build the apartment houses? A. I did."

He said that the agreement with respect to the building of the second apartment house was as follows (p. 37):

"A. Why, she thought that the fact that I had built her that building pretty nicely and

the corner property, the four houses, she thought if that was remodeled and turned into apartments it would be a better paying investment for her and she insisted upon my making the alteration, which I did, saw Mr. Naame, made a contract with him to make the alteration."

* * * * * *

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"Q. Now, what was the understanding with your daughter, concerning the repayment to you of that money? A. She was to pay me *out of the rentals or I could mortgage it, finance it in any way suited me.*"

He said that the agreement with respect to the building of the apartment upon the property involved in the second suit was as follows (p. 45):

"Q. In any event you agreed that you would build an apartment house for her on this property? A. Yes, sir.

Q. Colored apartment house of the same general description as these others? A. The same as the other.

Q. How was she to, or was she to repay you for the money you advanced? A. She was.

Q. How was she to repay you? A. *Same as the other apartments.*"

* * * * * *

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"Q. You better tell us in detail again, Mr. Doughty, what conversation you had with your stepdaughter concerning this particular deal? A. Why, the conversation was after I was going to build for her on a property at Maryland and Drexel Avenues but when Mr. Naame bought to build on Indiana Avenue near Atlantic I said to her, 'What is the use of building out there, apartment at Drexel and Maryland Avenue will never pay with this

big apartment house on Indiana Avenue near Atlantic,' because Harris had built one on Tennessee Avenue out near Sewell that was apparently vacant, and I says, 'if you want another apartment house' and she said she did 'I had better buy the Smith Estate off the Guarantee Bank on Ohio Avenue and build you an apartment there instead of giving you this lot at Maryland and Drexel Avenue.' 'All right,' she says, 'Father, I think that would be a good idea and I think an apartment would pay there, so you can build it and you can put a mortgage on there *and I will collect the rents and pay you back.*'

Q. So that, with the understanding that she would pay you back out of the rents, you proceeded to build this apartment house, to procure this land and build this apartment house? A. Yes, sir.

Q. And so far as what money you put in the land that was a gift? A. Yes, sir.

Q. *In fact in all of these cases you gave her the land, there is no question about that at all?* A. I *did; no question about it.*''

It will be noted that there are different versions coming from complainant as to the agreements and that the agreements as alleged in the bills and in the testimony do not at all agree with the agreements as stated by counsel for the stepfather in his opening, wherein counsel stated that the moneys advanced by complainant ''should be repaid out of the *profits* of the apartment houses'' and this statement was made by counsel although *complainant had informed counsel of the terms of the agreement* (p. 61). On cross-examination complainant testified with respect to the agreement (p. 63):

''A. She said she had an income enough with the rentals to take care of it, to pay me.

Q. *To pay you back?* A. *Yes, sir.*

Q. *And you accepted that as being true?* A. *Sir?*

Q. *Did you accept that as being true?* A. *I did.*

Q. *You believed her, didn't you?* A. *Yes, sir.*

Q. *Now, I understand you to say that the agreement was that she was to pay you from the rental, is that correct?* A. *No.*

Q. *That is not right?* A. *No, you misunderstood, from the mortgages created.*"

But he also testified on cross-examination (p. 75):

"Q. She ever loan you any money? A. *Yes, we used to loan each other money.*

Q. *Did she ever loan you any money?* A. *Yes.*

Q. *You exchanged checks, didn't you?* A. *Yes. Always paid her back.*

Q. You were very friendly? A. Yes.

Q. You were fond of her? A. Yes.

Q. Your relations were very intimate? A. Yes.

Q. *And you were willing to help her?* A. *At that time.*

Q. *To get an income?* A. *Yes.*"

After stating (p. 75) that their relations were very intimate and that he had been willing to help her get an income he said (p. 75):

"Q. Now, can you fix the time in the year and month *when you reached the conclusion that you didn't want to help her any longer?* A. Well, Judge, *I always helped her as long as she needed that help; she didn't want any more help.*

Q. When did the time come she didn't want any more help? A. Sir?

Q. When did the time come she didn't want any more help? A. About a year ago this month.

Q. Now, you said that she was to pay you back from the rentals? Was she to pay you back from the gross rentals or the net rentals? A. *From the gross rentals.*

Q. *From the gross rentals?* A. *Yes.*
Q. Sure? Was that word used when you made the agreement, she said, 'Gross?' A. *No, that word wasn't used.''*

The various stories with respect to the purport of the agreements were inconsistent. In no place in his testimony does complainant say that *he* was to have a mortgage upon the premises nor can his testimony be construed as meaning that there was to be an absolute debt created from defendant to complainant.

He said, with respect to the first building erected, that she would pay him *''from the rents''* (p. 28) and, with respect to the second, that (p. 38) ''she was to pay me *out of the rentals or I could mortgage it,* finance it *in any way suited me,''* and, with respect the third improvement, he first said that she was to repay him *''same as other apartments''* (p. 45) and then (p. 46)—''You can build it and you can put a mortgage on there and I will collect the rents and pay you back'' (p. 48). But on page 76 he said that the payment back was to be made ''from the gross rentals'' and immediately followed with the statement that the word ''gross'' was never used.

The only statement he made on direct with respect to mortgaging the property was with reference to the second building, as to which he said (p. 38) that ''she was to pay me out of the rentals or I could mortgage it, finance it in any way suited me''.

This assertion fits in with the contention of defendant which was that moneys might be raised by mortgaging the property, the proceeds to be used in improving the property, and complainant's reference to the mortgaging of the property is not at all inconsistent with the contention of defendant to the effect that the moneys contributed by complainant voluntarily over the amounts

actually raised by mortgage *during the course of the improvements* were *gifts* to defendant. Mortgages *were* raised upon the property *during the course of the improvements* and the proceeds *applied to the cost of improvements,* the last of which was obtained on October 15, 1927 (p. 4). *No part of the proceeds of any one of the mortgages was used to reimburse complainant for any monies advanced by him* (see p. 25 *et sequi* of this brief). The piece of property involved in the second suit was acquired in March, 1927, and *that* property was improved and *no mortgage was placed upon it.* According to complainant it was not until November, 1928, or two months after the stepdaughter commenced going out with her present husband, to which he vigorously objected, that he asked her to sign another mortgage on the property for $75,000 (p. 52) *not to raise monies to pay for improvements but, rather, to reimburse him for monies voluntarily paid by him.* She did not pay him any of the rents of the property (p. 52).

As to the $8,000 mentioned in paragraph 7 of the first bill (p. 5) complainant testified as follows (p. 39):

> "A. She gave me two fifteen thousand dollar notes. I have one discounted in the Marine Bank and the other one in my friend, Cole's, bank, Guarantee, and she paid the one off in the Marine Bank but the one in the Guarantee Bank she didn't pay off, only $7,000. on it, and I had to take the balance of $8,000. out of the Guarantee Bank."

* * * * * *

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> "Q. Now, I show you a note dated October 29, 1928, $8,000., four months after date I promise to pay to the order of Somers L. Doughty, at the Guarantee Trust Company,

$8,000., signed Isabel Dobbin, and endorsed Somers L. Doughty and paid and there is pinned to it a waiver of notice of protest signed Somers L. Doughty; is that the note to which you refer? A. Yes, sir.

Q. Now, did your daughter pay that note? A. This note you got in your hands?

Q. Yes. A. No, sir.

Q. Did you take it up at the bank? A. I did.

Q. So that apparently she owes you $8,000. on this note?. A. She does.''

* * * * * *

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''Q. Have you asked your daughter to repay you the amount due on this note? A. No, sir.

Q. You haven't asked her to pay it? A. No, sir.

Q. Why not? A. I haven't talked with her.

Q. You mean since the note became due? A. No, sir.''

There is nothing in all of this, we submit, which would permit *a court of equity* to determine that there is an absolute debt due from defendant to complainant or to determine that there is an equitable lien upon the property in favor of complainant, and yet that is what is accomplished by the decrees below.

The Decrees Below.

We have already quoted the provisions of the decrees below at page 7 of this brief.

The first decree is found on page 505 and the second at page 508.

Both decrees adjudicate that the amounts which may be found due upon an accounting are equitable liens or mortgages upon the properties and that the debts are immediately due and payable.

Included in the amounts to be accounted for in the first decree is the amount which was paid by complainant of $8,000 on account of the note of which he was the endorser.

We submit that upon complainant's own case there is nothing here involved but an action at law and the Court of Chancery had no jurisdiction.

Certainly, the matter of the promissory note was purely of law and, upon the theory that the amounts advanced by complainant for the benefit of defendant were *loans,* which seemed to be the theory of complainant (p. 49), an action at law lay for their recovery.

If the theory of the decrees is that there was some agreement for a lien upon the property, then we submit that the proofs do not support any such theory and there is nothing in writing of probative value.

And if the proofs do support any such theory, *then* the Court is limited to the specific performance of the agreement and no agreement was proven that the advancement of these moneys was to be considered as a loan and that it should be *immediately* due and payable, and that it should constitute an equitable mortgage upon the premises.

Section 5 of the Statute of Frauds, 2 C. S. of N. J., page 2612 applies.

The Statute of Frauds applies to an agreement to make a mortgage.

27 Corpus Juris, p. 218, title "Statute of Frauds", sec. 198.

In *Gales Executors* v. *Morris,* 29 N. J. E. 222, the Vice Chancellor Van Fleet, said at page 224:

> "An equitable mortgage will arise from the non-payment of purchase-money (1 Hill. on Mortg. 660); and it may also be created by a

deposit of title-deeds (Griffin *v.* Griffin, 3 C. E. Gr. 104; Brewer *v.* Marshall, 4 C. E. Gr. 537); *but a mere parol promise to make a mortgage for money lent will not create a lien.* 4 Kent's Com. 154).

We do not mean to assert that there may not be circumstances present which will permit a Court of Equity to impose a lien upon premises for moneys spent in improvements but we submit that there are no facts present in the case at bar which would permit the Court to create such an equitable lien. There is not in the case at bar an agreement to give a lien but if there were it could not be enforced because of the provisions of the Statute of Frauds.

The answers pleaded the Statute of Frauds (pp. 11, 20). It is said that that portion of the answers was stricken ( ). That is immaterial, for the answer also denied the agreement and defendant was entitled to the benefit of the Statute of Frauds.

Harrop vs. *Cole,* 85 N. J. Eq. 32.

The Statute was relied on at the trial (p. 27).

The purpose for which the conveyances were made by complainant to defendant and of the making of the improvements, as expressed by complainant and as proven in the case, would be defeated if the advances by complainant are to be considered as loans.

The story of complainant is that the reason why the conveyances were made to defendant was that, after her mother died, the stepdaughter pleaded with him that "she didn't want to go out and go to work in case, I was getting old and if I should pass away she might probably have to go in the five and ten and go to work and she didn't want to disgrace herself to do that and she

would like for me to *make her a present of this property''* (p. 23), and he said that he had conveyed the piece of property to her in 1922, which had a corner building with a saloon and two living apartments next door (p. 24), and that, in 1925, he gave her the property adjoining, which was vacant, at her request (p. 25) and that shortly thereafter the stepdaughter ''started in on me immediately to improve this land for her'' (p. 26) and that he improved the next property because ''she thought if that was remodeled and turned into apartments it would be a better paying investment for her and she *insisted upon my making the alteration,* which I did * * *'' (p. 37), and he testified on cross-examination, after reference was made to the fact that the Ohio Avenue property when conveyed to her had five houses erected on it, as follows (p. 65):

> ''Q. *Did you think that this land you were giving her where the buildings were on was of sufficient income to take care of her?* A. *No.*
>
> Q. You thought she would have to have some more income, didn't you? A. *The buildings were no good.*
>
> Q. What? A. The buildings were worthless.
>
> Q. *And you wanted to see she got more income, didn't you?* A. *Yes, sir.*
>
> Q. Willing to assist her to that end, were you? A. That was the agreement when I bought it.''

With reference to another piece of property which is involved in the third suit, entitled ''Isabel Naame against David H. Best'', here also on appeal, which he said he had intended to give to his stepdaughter and had had a deed executed, he stated that he had taken the deed fully executed and put it in a drawer, and (p. 77):

"Q. What did you intend to do with it? A. *Intended to give it to her if we built on that property.*

Q. Intended to give it to her if you built? A. Yes.

Q. That is, you mean built on that property? A. On that property.

Q. Did you intend to give it to her after you had built on it or before? A. *After we built on it.*

Q. *You intended that the title to that property should go to her after you had built on it?* A. *Yes, sir.*

Q. *You intended to build on it?* A. *At one time.*

Q. So that, having in mind that you at one time were going to build on this piece of ground, *you made a deed to her and intended to deliver it to her after the building was completed?* A. *Yes.*"

And (p. 81) he said that he had not given the deed to his stepdaughter "*because we didn't build on the property.* I suggested to her instead of building up there I had better go down and buy the property on Ohio Avenue *and build there* instead of building at Drexel and Maryland. Q. Was the Ohio Avenue deal in *lieu* of the Drexel Avenue deal? A. Yes."

Note that on page 77 he had stated that he had intended *to build on this Maryland and Drexel Avenue property* and *then* deliver the deed to his stepdaughter "*after the building was completed*", and on page 81 he said that the Ohio Avenue property was given to her *in substitution for the Maryland and Drexel Avenue property,* and yet he said that, with respect to the Ohio Avenue property, the amounts which he advanced for improvements were to be considered as loans. If he had built on the Maryland and Drexel Avenues property, as he said he intended, and then, *after he had built,* had delivered the deed to his stepdaughter,

it is obvious that there would have been a gift of *both the land and the improvements.* So if the Ohio Avenue property was conveyed to her *in substitution* for the Maryland and Drexel Avenue property, it would seem that the moneys which he expended for improvements upon the Ohio Avenue property were not to be considered as loans but as gifts.

The story of defendant, the stepdaughter, as to how the gifts of the land and improvements came to be made is found on page 290, *et seq.* She said (p. 299):

> "A. On my mother's death-bed he requested my mother to let me remain with him and not return to my father. She promised him I would stay if he would look after me as a daughter, which he always has. From time to time he gave me different moneys, he built these houses and gave them to me. It was a gift, that was all there was to it."

This answer was stricken out as not responsive (p. 300). The right to strike out as not responsive is *in counsel propounding the question,* but counsel who propounded this question *was counsel for defendant.*

The question was, we submit, improperly stricken out, and the Court erred also in sustaining the objections on pages 300, 301, to questions designed to get from defendant the conversations between complainant and his deceased wife, the proffer being "to show that on that occasion the wife requested Mr. Doughty, in consideration of her remaining with him, that he make proper provision for her support and to give her financial assistance, and that he promised to do so." On cross-examination, without objection, complainant had testified (p. 64):

> "Q. Had you promised your wife, when she was on her deathbed, that you would make

provision financially for her daughter, your stepdaughter? A. No, sir.

Q. Nothing like that ever occurred? A. No, sir."

Defendant was not permitted on pages 300, 301 to show that this testimony of complainant was false. The testimony overruled on pages 300, 301, was proper, if for contradiction purposes alone, but it was also proper as probative evidence for it would have thrown light upon the intent of complainant when he advanced the moneys to make the improvements upon the properties which he had transferred to his stepdaughter.

Edith Crouch, a witness for defendant (pp. 195, 196) testified that complainant had said that he had promised his wife to take care of her daughter.

Defendant denied (p. 313) that it was she who suggested the improvements. She said:

"A. It was his suggestion.

Q. His suggestion that he would improve it for you? A. He would build these houses and give them to me.

Q. And give them to you? A. Yes.

Q. Well, you understood then that he would cause houses to be built and make you a present of them? A. Positively.

It is obvious that, if these large sums of money advanced by complainant to defendant should be considered loans, he was not in fact accomplishing the purpose of the making of the transfers, to wit, placing his stepdaughter in an independent position and giving her an income, for, if this large sum of money is to be considered an equitable lien upon the premises, aggregating as claimed upwards of $150,000, and that lien should be enforced, the properties will be taken away from defendant.

Complainant will be permitted to carry out the threat which he made to defendant (p. 321), when he said, "If you marry Naame I can break you because I can make you give back every cent that I have *given* to you".

The commencement of this suit made it impossible for defendant to raise moneys to pay the $8,000 note upon which complainant was endorser (p. 297).

Joseph S. Naame testified, page 283:

> "Q. When was that? A. Why, I think—I couldn't tell the date, it was some time after we got married, there was an eight thousand dollar note due in the Guarantee which she tried to raise money to pay off, which Mr. Doughty was endorser on, when she went to make the loan the bank granted the loan, but told her under the circumstances they couldn't give it to her; that was the only loan she ever applied for."

Complainant, at one place in his testimony, said that he was to be repaid from the *gross* rentals (p. 76). How could defendant repay him from the "gross rentals" and still have an income? and yet complainant said that he made the transfers and put on the improvements at her request because she stated that she wanted to be protected and *to have an income*, and he said that he was willing to do that thing for her.

We have already stated that he was a wealthy man with a large income, although apparently he can tell neither the amount of his wealth nor the size of his income, notwithstanding the fact that he, undoubtedly, has had to file Federal income tax returns each year.

The intimidation by complainant of witnesses for defendant casts a doubt upon his whole case.

Defendant's witness, Harry F. Riley, Jr. (p. 150), testified (p. 152):

"Q. Now has Mr. Doughty said anything to you within the last twenty-four hours about your testifying in this case? A. Well, he made some comment about '*you better not get on the stand.*'

* * * * * *

Q. What did he say to you? A. *He came over there and said I better not get on the stand; I don't know just exactly what he had reference to.*

Q. What did he say? I don't care what he had reference to, what did he say to you? A. *Told me I better not get on the stand, that is all.*

* * * * * *

Q. Did you hear him say anything to any other person about testifying? A. Well, there was a young lady sitting there, this young lady in the far corner.

* * * * * *

Q. What did you hear him say to her? A. *Well, he said he had something on her and when the testimony was over he was going to have her arrested if she testified.*"

Complainant's counsel in cross-examination suggested that complainant was joking. The testimony is (p. 158):

"Q. Now, as a matter of fact, when Mr. Doughty talked to you and these other witnesses there, he was joking, wasn't he? A. I couldn't say that.

Q. You couldn't say that? A. No, sir."

James E. McGimpsey, a witness for defendant (p. 165), testified (p. 168):

"Q. Mr. Doughty say anything to you yesterday? A. Yes, he came over there——

Q. Wait a moment, did he say something to you? A. Yes.

Q. What time in the day was it? A. It was just after recess.

Q. After lunch or at the close? A. After lunch.

Q. Had we adjourned for lunch? A. Just adjourned, yes, sir.

Q. What did he say to you? A. He said, 'You God damn Scotchman, I got something on you if you go on that stand', that is all I heard him say."

* * * * * *

Again, complainant's counsel suggested that complainant was joking and (p. 169):

"Q. Well, as a matter of fact this was all kidding conversation, wasn't it? A. I don't know. I would like to know what he has got on me."

And (p. 170):

"Well, if you had thought Mr. Doughty had meant this seriously you would have resented it wouldn't you? A. I did resent it anyhow, sir.

Q. You didn't say anything, did you? A. What was the use?

Q. As a matter of fact, you said you smiled? A. Certainly; what else could you do?

Q. Is that the way you resent a question like that, by smiling? A. I am not going to cry about it, sir."

Defendant's witness, Morris R. Ost (p. 182), testified (p. 190):

"Q. Mr. Ost, did Mr. Doughty talk with you yesterday? A. Why, out in the hallway.

Q. Out in the hall? A. Yes.

* * * * * *

Q. Was it during the progress of this trial? A. Yes, or at noon time.

Q. Was it while the Court was in session or when the recess had been taken? A. Why, it was about, I don't know, after we left the room here.

Q. What did he say to you? A. Well, he said, that I had to better be careful what I say on the stand, and I said, 'Well, I certainly am. I am going to tell the truth.'

Q. He just walk up to you and say that to you? A. Well, I wasn't the only one there. He said to all within hearing.''

Defendant's witness, Edith Crouch (p. 192), testified (p. 196):

''Q. Were you in court yesterday? A. Yes.

Q. Did Mr. Doughty talk to you or say anything in your presence? A. He talked to me.

Q. What did he say to you? A. He said, 'If you testify against me I will'—I don't know—'have you locked up' or something like that, but I thought he was joking.

Q. Where were you when he said that? A. Sitting right there.

Q. In the court room? A. Yes, it was after lunch.

Q. What? A. It was after lunch.

Q. Was it before Court had reconvened? A. I think it was.

Mrs. Ella Mauser, who had known complainant and his stepdaughter for some six years and who was a friend of the stepdaughter's husband Naame, testified (p. 215) that, after the trouble started, she had a conversation with Doughty and (p. 215):

''Q. Give us the substance of what he said? A. Well, the substance of that was that he said he didn't like Mr. Naame, he said he was a nigger, he wasn't a white man, and he said that he would like to see his body crushed on the ground, he said and like to wallow in his blood, and he rubbed his feet like that.

Q. Anything more at that time? A. I said, 'Why, Mr. Doughty,' I said, 'I always thought you liked Mr. Naame.' 'Like him, hell,' he said, 'I never liked him.' And then he went on cursing. I said, 'You oughtn't to

> talk that way.' He was saying how he didn't like him, how he was going to get every God damn cent back—pardon me—he was going to get every cent back *he had given to her.*
>
> Q. He had ever what? A. *Ever given to Isabel.*''

which, if true, makes it more probable that he should have made the statement attributed to him by his stepdaughter (p. 306).

This witness testified that complainant called her on the telephone and (p. 217):

> ''A. He called me up, yes, and he came down to the house and my daughter opened the door and he came upstairs and we first talked about boating—I live in a boat house—talked about the water outside, about boating and things like that and then he turned to me and he said, 'You know' he said, '*I think you and I have gotten a damn rotten deal.*' And I said 'What do you mean?' 'Well,' he said, 'I think' he says '*we ought to stick together.*' I said, 'How stick together, Mr. Doughty?' He said, 'I will tell you what I think.' He said, '*You ought to sue Isabel for alienation of affections.*' *I said 'I couldn't do that because after all Mr. Naame has just been a friend of mine, a friend of my husband's and I have known him for a good many years. There is no question of affection outside of friendship.*' And then he swore some more and said I was too damn soft.''

The witness and Naame had been friends for about eight years (p. 217).

We do not find in the record any denial of the testimony with respect to intimidation.

The fact that there were no notes given by defendant, no records made by complainant of the indebtedness, no account kept of the manner in which the transactions were handled indicates that there was no thought of a loan.

No records of his transactions with his stepdaughter were kept by complainant nor was any memorandum or obligation taken from her and there is not a scrap of written evidence which would indicate the existence of the alleged loan unless it be the check for $500, dated December 15, 1928 (p. 481), obtained under the circumstances hereinbefore related, and complainant is without ability to identify the purpose of various checks given by him to his stepdaughter and various checks given by the stepdaughter to him. Complainant stated that he had a memorandum book with reference to the transactions (p. 66) but that it was burned "with my other stuff", and, while he said that he did not say that defendant had burned the book, he said "she was burning up a lot of stuff that day, (in December, 1928) and I seen my checks and one thing another and I never seen them since" (p. 66).

With respect to the alleged burning he testified (p. 74):

> "Q. Did you see her burn up a lot of your checks? A. No, sir.
>
> Q. Did you say that she did? A. I did not.
>
> Q. What? A. I said she was burning up a lot of checks, I didn't say they were mine; I thought they were.
>
> Q. Do you know whose checks they were? A. Some of hers. Nobody else had any checks around the house.
>
> Q. She burn some of yours? A. They disappeared; I didn't say that she burned them. They disappeared at that time."

The fact with respect to the burning of stuff is indicated by the testimony of defendant (p. 309):

> "Q. Did you ever burn up any checks of Mr. Doughty's? A. I did not.
>
> Q. Did you ever burn up any books of his? A. I did not.

Q. Did you burn up anything at any time while you were there? A. When I was moving I had fourteen years' accumulation of truck that I burned.

Q. What did you burn up? A. Old stockings, gloves, lace, postal cards, belts, old things that I had was no good.

Q. Ever burn up any of his checks? A. *No, he stood by the barrel while I burned them.*

Q. Was he there all the time? A. He was in the house that day.

Q. How long was that before you left? A. The Sunday previous.

Q. Did you ever burn up or destroy this $7,500. check he is talking about? A. I did not."

The suggestion of complainant that defendant might have burned his memorandum book, without really charging her with it, and that she had burned his checks is absurd upon the face of his own testimony, for he said that he *saw the burning* (p. 66). Did he protest when he saw his evidence being destroyed? He did not say so. This alleged burning was after he had made up his mind that he intended to get the money back from his stepdaughter. On page 67 he said that he did not get a note because she never offered any, and "Did you ever ask for one? A. Sure." And when he was asked when he asked her for one he said that it was the last of the year 1928, and (p. 67):

"Q. Have you no idea about that date? A. After the building was finished, in November, some two or three months, I started to ask her for money but she always had an excuse that she had use for it.

Q. Which year had you in mind? A. 1928.

Q. 1928? A. 1927 and the Ohio apartment, the Ohio apartment was finished in *1927*.

Q. Then in 1927, when all the buildings were completed, you began to ask her for a

note, is that correct? A. *No, ask for money.*

Q. A little while ago didn't you say you asked for a note? A. Afterwards, yes, sir.

Q. When was it you asked for a note? A. Couldn't give you the date.

Q. How much did you ask her to give you a note for? A. Any amount she liked.

Q. How much was that? A. *Any amount suited her.*

Q. *What?* A. *Whatever she could spare.*

Q. On a note? A. *No. For money I am talking about now.*

Q. I am not talking about that. You said you asked her for a note? A. Five thousand dollars.

Q. On account that was? A. Yes.

Q. And she wouldn't give it to you? A. No, sir.

Q. Tell you why? A. No.

Q. Did you need the money? A. Yes."

He said (p. 69), that he had kept no books and that he "can remember all of my incomes and outgoes". Then, when it was brought to his attention that he was a stockholder in various institutions and received dividends from about a dozen and owned seven pieces of real estate from which he collected rents he said (p. 70):

"Q. Don't keep any books with them? A. Sure.

Q. Where are the books? A. Down home.

Q. I thought you said you didn't keep any books? A. That was in regards to the Dobbins matter, was it not?

Q. No, my question whether you kept any books at all? A. I keep my rents in my check book, I deposit my checks, I can tell my rentals by the leases.

Q. The books you said you kept a while ago in your check book? A. Yes."

When eleven checks, marked D-2 for Identification, drawn by defendant to him were presented

to him (p. 72) he said that they were not on account of payment of property and "I must have got the money, endorsed them" (p. 73).

On page 75 he said that "we used to loan each other money" and that they exchanged checks, he always paying her back. One of the checks from the stepdaughter to complainant, dated October 15, 1927, for $15,000 was shown him (p. 81) and he said that he could not tell what it was for, nor could he tell what the check, dated March 5, 1927, for $5,000 or the check of October 6, 1926, for $7,000 or the check of January 4, 1926, for $1,125 was for. He said page 84:

> "Q. How do you manage to keep your records straight without records, if you please, with checks here for $1,125, $7,000, $5,000, $5 and $14, $368.33, $250, all of which were cashed by you? How do you manage to keep things straight? A. I *suppose* money I loaned her and when I got it back I reimbursed it in my pocket.
>
> Q. Suppose? Is there anything to show that you loaned her the money represented by those checks? A. No, sir."

As to the purchase of the Ohio Avenue property his contention was that he paid one-half of the $15,000 paid in cash or $7,500 and that she paid the other $7,500 and that, when he transferred the property to her, he made her a gift of his interest in the property. Defendant's contention as to this property was that she paid the entire purchase price. It was shown that the $3,000 deposit was paid by defendant and the check of the defendant for $12,005.94 in payment of the balance of the cash which was paid was produced (p. 144).

Complainant was examined as to this by his counsel (p. 144) and said that he gave her a check for $7,500 as a gift (p. 144) *but that check is not produced.* It is missing (p. 145). Complainant

did not have his pass book. Testifying as to the $500 check he said (p. 145):

"Q. You have your pass book at the time that you got this five hundred dollar check from Miss Dobbin? A. Have I what?

Q. Have you your pass book? A. No, I haven't.

Q. Do you know when that check was actually deposited? A. No, sir.

Q. You are a director of the Marine Trust Company, aren't you? A. Yes, sir.

Q. That is where you deposited it? A. Yes, sir.

Q. Won't you produce— A. I am not positive about that. It may have been deposited in the Guarantee.

Q. It doesn't have any endorsement. You didn't get that photographed? A. *I forgot it.*

Q. *Forgot what? That?* A. *Yes.*

Q. Would you mind trying to find out between now and tomorrow morning where you did deposit that and then have the bank produce the sheet showing when that check was deposited? You will do that, will you? A. I will try to."

On page 287 complainant testified:

"Q. Have you the papers I asked you yesterday to produce today? A. What papers did you ask me for? A. Don't you remember? A. I will answer your question. Tell me what papers.

Q. Do you remember what papers I asked you to produce? A. You didn't ask me for any papers.

Q. Then you have none to produce, have you? A. You asked me for books, not papers.

Q. Have you any books? A. I have.

Q. Where are they? A. In my pocket.

Q. Let me see them."

He then produced pass books, one on the Marine Trust Company and the other on the Guarantee Trust Company, Exhibits D-6 and D-7 (p. 288),

the book of the Guarantee beginning January 17, 1928. But these books were useless as evidence, it being impossible to determine anything with respect to the subject matter from them and, with particular reference to the check of $7,500 which complainant claimed to have given to defendant to reimburse her for one-half of the $15,000 paid as consideration for the Ohio Avenue property, he testified (p. 289):

> "Q. You said that you had passed a check for $7,500, which check you couldn't find, on account of the $15,000 note; is that correct? A. Yes, sir.
>
> Q. Now, you have been to the Marine Trust Company, of which you are a director, since yesterday, to ask them to produce a statement which would show that you drew a check for $7,500 on your account? A. I have not.
>
> Q. Of course, you are a business man enough to know that there would be a statement there showing that check? A. Yes, sir.
>
> Q. And you haven't asked for it? A. No, sir."

Complainant was then asked to produce copies of his income tax returns for 1926 and 1927, but, upon objection of counsel for complainant, the witness was not required to produce the papers. *These income tax returns might have disclosed whether complainant treated the advances made to his step-daughter as loans or as gifts.*

At no time could he pick out the deposits (p. 377) which he said included the $500 (p. 377). On page 377 he testified:

> "Q. Now, did you testify that you had nothing other than the checks that may be here to show what moneys have been paid back to you by your stepdaughter? A. You asked me if I had testified?
>
> Q. If you testified so? A. I don't recall.
>
> Q. *What is the fact? Have you any record*

anyhere other than the checks to show— A. *Not that I know of.*

Q. *Did you ever have?* A. *No, sir.*

Q. Where is the check book or stubs from which your checks were drawn? A. I guess they are around home. I don't know where they are.

Q. Will the stubs of your checks show for what the checks were given? A. I suppose they will if I can find them.

Q. That is your practice, isn't it, to put on the stub what it is for? A. Yes, sir."

And (p. 378), examined by his own counsel:

"Q. Mr. Doughty, referring to your testimony of a minute ago, you said you had no other account. Did you have such another account at one time? A. You mean bank account?

Q. No, account showing your transactions? A. Yes, sir.

Q. What happened to that account? A. *I don't know, disappeared.*

Q. That is the one you think was burned? A. Burned up, yes, sir.

Q. Will you find those check stubs and bring them here? A. Will I bring them?

Q. Yes. A. If I can find them. They may be burned up."

On page 82 he said that he could not tell what the check made by defendant to him on October 15, 1927, for $15,000 was for, and *then* he said (p. 82) that it was with reference to the note transaction, and, *then,* recalled (p. 379) the following occurred:

"Q. Now, Mr. Doughty, while you are on the stand I want to ask you about this $15,000 check. Did you borrow that $15,000 from your daughter? A. No, sir.

Q. How did you come to get the $15,000? A. If I remember right, this is the loan on the mortgage on one of the properties, she had

the money and she turned it over to me on account of what she owed me.

Q. This is part of the proceeds of one of the Savoy mortgages? A. Yes, sir."

The fact is that he did not know anything about the $15,000 check as he had *first* testified. He did not produce any check stubs or any memorandum or other writing with respect to these transactions and (p. 388):

"Q. Have you made any effort to find any records with relation to these transactions with your stepdaughter since you filed this bill? A. Yes, sir.

Q. Haven't you found anything? A. No, sir.

Q. What? A. No, sir.

Q. Did you hunt for anything before you filed the bill? A. Yes, sir.

Q. And you couldn't find it? A. And couldn't find it."

He had no knowledge of checks aggregating $16,125 given to him by defendant (p. 389) and had made no memorandum when the checks were given to him but expected to carry them in his mind, and: "Q. But now you don't know? A. I don't know what they were for." And, with respect to the check for $7,000 dated August 6, 1926, made by defendant to complainant, he said:

"Q. You haven't any idea what this check of Miss Dobbin, dated August 6, 1926, to your order, for $7,000 is for? A. No, sir.

Q. But you do know you haven't given her any credit for any of it, don't you? A. No, sir, I don't.

Q. You haven't given in this suit, have you? A. I think so, if she is entitled to a credit, I have given it to her, it might be money I have loaned her, I don't know. I will show you if she is entitled to a credit I have given it to her."

And then he said (p. 390) that he had such confidence in his stepdaughter as that he kept no account with her.

This method of handling the transactions is *only* consistent with the thought that the *real* transaction was as claimed by defendant, that is to say, that moneys would be raised through the means of mortgages to go into the improvement of the property, but that, to the extent that moneys were not so raised, complainant would give her the moneys necessary.

On page 303 defendant testified:

> "Q. Did he ever tell you he was loaning you the money for the Ohio Apartment? A. He did not; he told me whatever I was short he would give me.
>
> Q. Did you ever promise to pay the money back to him? A. I did not."

The manner in which the rents were handled.

Complainant said that, after the properties included in the first bill were transferred to defendant, he continued to collect the rents and keep them until the alteration was made in January or February, 1926 (p. 24), and that they were collected by C. J. Adams Company, and he also said that he collected and kept the rents, through C. J. Adams Company, of the apartments upon the property conveyed in 1925 until defendant married and he said that that was his understanding when he gave her the property (p. 25).

He said there was a record of the rents in C. G. Adams' office (p. 71).

Conover (p. 93) employed by C. J. Adams Company, testified that C. J. Adams Company collected rents for the property on New Jersey Avenue and on Baltic Avenue except from the two new buildings that were put up and except from the corner saloon which he thought were collected

by complainant (p. 93). He ceased to collect from any of the properties after they were improved (p. 94) and continued only to collect from 206-208 North New Jersey Avenue, which rents he collected until March, 1929 (p. 95); with this exception, all of the rents were collected by defendant.

Defendant said that, before the improvements on the properties in New Jersey and Baltic Avenue first conveyed and involved in bill No. 1, C. G. Adams Company collected three rents on the small apartments and turned the money over to complainant who, in turn, paid defendant her monthly allowance and she collected the rent directly from the tenant of one apartment and used it herself; after the improvements she collected the rents from the new houses (p. 293) and used them herself, but C. G. Adams Company continued to collect the three rentals which it had been collecting before the improvements and turned the money over to complainant. She said that, after the deed was turned over to her for the Drexel and Maryland Avenue property which contained a gasoline station on it, she collected the rent from Headley, who was the tenant, and that complainant received none of the rents until she was married in February, 1929, when complainant directed Headley no longer to pay her (p. 295). This is the piece of property which complainant said he *intended* to deed to his stepdaughter and had the deed executed but did not deliver it, because the Ohio Ave. property was substituted. Nevertheless, the lease to Headley was made in the name of defendant, and defendant said that she received the rents (p. 295). When defendant sought to prove the facts through Headley upon the objection of complainant, the testimony was excluded, we submit, erroneously. We quote the colloquy (p. 360):

"Mr. Cole: Please, your Honor, the relation between Mr. Doughty and his stepdaughter is such that any evidence that would throw any light on whether the money he is now claiming is a loan, was, in fact, a gift, and what he did with relation to other property at or about the time that he made these deeds, and, as we claim, gave this money, certainly reflects what his mental attitude was toward her with respect to this property. It is a matter that is collateral in a sense, but it is certainly evidential.

Mr. Richards: If your Honor please, we not only admitted he gave her these other properties, but he even contends he gave her properties which she says he didn't give her, in the case of the Ohio Apartments, we say that we gave her a very substantial interest in that property. She denies it, but what other properties he may have given her certainly are not evidential in this case because the question here is whether or not he gave her this money, this one hundred and forty odd thousand dollars.

The Court: I will sustain the objection to this question.

Mr. Cole: I want to put on the record the proffer is to show by this witness that Mr. Doughty negotiated with him for the leasing of the property at Baltic and Adriatic Avenue——

The Court: That has been admitted and is evidence.

Mr. Cole: That Mr. Doughty prepared the original lease, delivered it to the witness. The written lease was between the witness and Mr. Doughty, that the rent that he paid was always paid by check to Miss Dobbin, now Mrs. Naame, and that there came a time when Mr. Doughty told him to stop paying the rents to her, and he then stopped paying the rents and surrendered the lease to Mr. Doughty.

The Court: Objection sustained."

On page 311 defendant testified:

> "Q. Now, in this Marine Trust deposit book we have offered under date of seventh month, twenty-sixth, is a credit of $25,374.50; do you know what that represents? A. $25,000 loan (that is to say, the return by her stepfather of a loan made by her to him, p. 20 of this brief) and *$374.50 for my rents.*"

Joseph S. Naame, the husband of defendant, prior to his announcement that he intended to marry defendant, was a friend of complainant (p. 252) and kept records for complainant (p. 252) and he testified (p. 252):

> "Q. Now, do you know, of your own knowledge, from—to whom the rents on these properties uptown were being paid at the time you made your contract? A. All the rents were collected by my wife and handled solely by her.
>
> Q. Do you know what she did with them? A. Yes, I could tell you what she was doing with the money.
>
> Q. Did they go into her bank account? A. Oh, yes, positively into her bank account, yes.
>
> Q. Now, was there any change made, and if so, what, if you know, touching the collection of rents from the original properties after you made your contract for the improvement? A. There was no change in the new apartments that I constructed because the minute they were finished my present wife operated and ran them and handled all the money, deposited to her own credit and used the money toward her own use and disposed of it in her own way.
>
> Q. I am assuming you are talking now what you know. Do you know whether, after these buildings were completed, any of the rents were being collected by Mr. Doughty? A. Yes, there was, only thing was collected by Mr. Doughty is the three rents out of the four in the back of the original saloon building.

Q. What do you mean by the three rents? A. There were four apartments in those two houses, two separate houses next to each other, each one had an upstairs and downstairs, which made four families living in those houses. The three houses that he collected the rent and also did because they were rented by C. J. Adams Company prior to even giving the land to my present wife and continued the same way, but the money, always, Mr. Doughty, gave back to her all the time.

Q. Gave what money back to her? A. The check that he collected from the C. J. Adams Company.

Q. How do you know that? A. I kept all the books for her.

Q. You knew it from keeping the books? A. Yes."

He was cross-examined upon these statements (p. 269). The testimony he gave on cross-examination is not inconsistent with that which he gave on direct (p. 252). He was misled by the question asked by the cross-examiner (p. 269) as follows:

"Q. You were asked this question by Judge Cole, do you know of your own knowledge who collected the rents, referring to that building, before you made this contract, and you answered, my wife. Now, do you mean that?"

A comparison of the question which the cross-examiner assumed to have been put by Judge Cole on direct with the question actually put by Judge Cole (p. 252) will clearly indicate how the confusion arose.

He said he knew that the rents which were collected by C. G. Adams Company were turned over to defendant because he saw some of the checks and deposits entries (pp. 272, 273, 274, 275, 276, 277, 278).

The matter of these rentals is in a state of some confusion but there is no serious claim that complainant was *entitled* to the rentals after the transfers for the very purpose of the transfers, as complainant himself conceded, was to make the stepdaughter independent and to supply her with an income.

The evidence from other witnesses as to whether the advances made by complainant were gifts or loans.

Complainant called Daniel A. Stewart, who stated (p. 107) that: defendant had told him that "father was building the houses for her and as soon as she had father paid off, why, that is when she was going to take a trip to California and probably to Europe"; the first conversation he had with defendant was, when he drove to English Creek with complainant and defendant and at a time when complainant was in the garden, "she" (defendant) "told me that he had not made no will or had not made no provision in the way of her getting anything if he was to happen to die" (p. 108); shortly after "she told me that Mr. Doughty had given her the ground up there anyway, corner of New Jersey Avenue and Baltic, and then it wasn't long before she told me that he was going to finance her money and build them houses and she says 'that will save me from working in the five and ten, anyhow.'" (This on direct examination.)

The witness had known complainant fifty or sixty years and has always been friendly with him and complainant had loaned him money upon numerous occasions, and he said, "Mr. Doughty is a *bosom friend* of mine". The conversation which he related he thought occurred in 1926. He got a loan of $1,500 from complainant (pp. 110, 111).

He got this loan the next day after the statement was made to him by defendant which he testified to on page 109, but he did not tell complainant about the statement until afterwards (pp. 112, 114). We ask the Court to read the cross-examination of this witness (p. 113 to p. 119), and we submit that, from what he said upon cross-examination, it appears that his testimony is in no wise to be relied upon.

The only other corroborating witness is the colored maid, Maude St. John, whose testimony we have already mentioned and considered in detail on page 13 *et sequi* of this brief. She is venomous and her testimony is entitled to no consideration whatever. Besides speaking of the $500 check, she said that, when she wanted defendant to get her a coat, "she told me she didn't have no damn money because taking all her money to pay Father off what she owe him after these damn apartment houses and she needed a coat herself and took all her money to pay for these apartments." This conversation is alleged to have taken place in January, 1927, and (p. 128):

> "Q. Did you ever have any other conversation with her about this money transaction up there? A. Sure, several times I asked her to loan me money, she said she didn't have any because she pay out all the money to her father, he was taking every cent she could rake and scrape, and she owed money, and when she getting out of owing him money, she take a trip to Europe, it would be 1930."

This witness as usual goes too far. Complainant said that defendant paid him on account of his advances but $500.

Notice the similarity between the statement defendant is alleged to have made to Stewart (p. 107) that when she had "father paid off, why, that is when she was going to take a trip to Cali-

fornia and probably to Europe'', and that alleged to have been made to this maid, ''and when she is getting out of owing him money, she take a trip to Europe, it would be 1930.''

This is *all* the testimony produced by complainant to corroborate complainant's story that the advances were loans rather than gifts with the exception that, on rebuttal, a witness, Enoch H. Burkett, was called (p. 401). He was a janitor of the Savoy Apartments in 1927 and he said that he borrowed $75 from defendant, and (p. 402):

> ''She said she will have to see Father because she owes him money and she couldn't loan us such money as that without his say so.
>
> Q. Now, at any other time, did she say anything about owing her father any money? A. Yes, she said she owed a lot of money, but the amount she didn't say, but she don't know how she is going to pay him.
>
> Q. When was that conversation? A. This was in 1928.
>
> Q. When? A. Along in June.
>
> Q. Did you ever have any conversation with her subsequent to the Fourth of July, 1928? A. Yes, and 4th of July, 1928, was on, I wanted to go out crabbing, that is the only time I had off, and she used to come early in the mornings, and she wanted to go out on the boat, and she told me if I would stay there she would let me go Monday; you see, there was on a Sunday, she said wanted to go out on a boat and if I stayed there 4th of July——
>
> Q. What was the conversation? A. She said she owed a lot of money, if any way she could get out she certainly would, she don't know how going to pay him, and she not going to give him any more money.''

He then related an alleged conversation between himself, Naame and defendant, on the Friday before he testified after the case was over for the day, when he went down to the Savoy apartments,

his daughter living there. We ask the Court to read the cross-examination of this witness (p. 405). He said that: when defendant would not loan him money he telephoned to complainant and complainant would tell defendant to give him money (p. 407); the lawyer for complainant must have known that he knew something about the case "because Mr. Doughty must have told him". It then appeared that he had never told Doughty and, on direct examination, he said, in effect, that *no one knew* that he knew anything about the case until the morning after he is alleged to have had the conversation with Naame and defendant (p. 412), after which he went to the office of counsel for complainant and was there examined and a statement was dictated (p. 417). The reason why this janitor went to the Savoy Apartment and saw Naame and defendant was that defendant had testified in the presence of the witness, who was sitting in court, that she went bail for Burkett (p. 335) which aroused Burkett to such an extent as that he went to the Savoy Apartments and saw Naame and herself and the following occurred:

> "I asked her when she got me out of jail, she said she didn't say so; I said, 'Yes, you did'. She says, 'I didn't'. I said, 'Yes, you did, Miss Doughty'. I said, 'You certainly said that. Did you take notice of anything of me?' I says, 'No, when you was talking'. I said, 'I was looking right straight at you'. 'You said I was your nigger janitor and you got me out of jail'. He said, 'Enoch, I went your bail'. I said, 'Miss Doughty, ten o'clock now, and court close four'. I said, 'Yes, if you can't think of what you say from four o'clock to ten, what are you going to do next Friday', that was this Friday!"

To say the least the witness was extremely prejudiced.

Defendant denied that she had told Burkett that she could not loan him money because every cent that she got out of the apartments she had to give to complainant but she said (p. 334):

> "Q. Did you ever tell anybody any language of that import? A. I said that all the money that I got from the apartments I used to pay for the expenses on the apartments after my own personal expenses.
>
> Q. To whom did you say that? A. I have told that to many people.
>
> Q. Did you ever tell anybody, however, that you had to use the money to pay Mr. Doughty back? A. No."

And she said that she may have told Burkett that he was better off than she was because he had no worries (p. 335).

Defendant (p. 337) said that this janitor, after she had testified, came to her office in the apartment house that evening and "he said he understood I was going to have him arrested and he wanted to know why." She denied the statements attributed to her by Burkett in his testimony, (pp. 404, 412), and she was supported in her denial by the testimony of Naame (p. 425). Naame testified (p. 426):

> "Q. Was there anything said on that occasion by him in which he charged your wife with having said that she had got him out of jail and he wanted to know when that was? A. That was the first thing he said, yes. He did say that.
>
> Q. What was the conversation about that? A. The first thing, when he walked in there, I heard him say, 'You swore, you said on the stand that you took me out of jail, and you only went my bail,' and he says, 'How do you know what I am going to testify on the stand? I have been subpoenaed here.' And I said, 'Subpoenaed from New York?' He says 'Yes.' So I told my wife, 'We better get out

of here, that is merely a plan set by Mr. Doughty, obvious on the face of it, he was sent down there;' we beat it out of there fast as we could go.

Q. In his presence? A. Yes.

Q. You said that? A. No."

This testimony was stricken out.

In the light of the conduct of complainant with respect to the intimidation of witnesses and the like Naame's fears were not imaginary.

On behalf of defendant several witnesses were called to corroborate her claim that the moneys advanced by complainant were gifts.

Harry F. Riley, Jr., a sub-contractor, in stone, tile and concrete (pp. 150, 151), worked on the improvements on the New Jersey and Baltic Avenues properties; complainant was on the job every other day inspecting and joking with the workmen and (p. 152); "He told me he was building the apartments for his daughter". This witness is one whom complainant sought to intimidate (p. 152).

Robert Casey, a carpenter foreman, knew complainant for about six years and worked upon the improvements. Complainant was on the job, back and forth and spoke to Casey several times, and (p. 161):

"A. Well, he used to be around, wanted to know how I was making out and stuff about the apartments I was building, *and told me he was building it for his daughter, giving it to his daughter.*

* * * * * *

Q. Do you recall how he came to say that he was giving it to his daughter? A. *Well, he came to me and told me he was building it for his daughter and wanted to know how the apartment was going next there. He came to me I think the first one there and he asked me how he could get in touch with Mr. Naame about building apartments.*"

This witness was friendly with complainant, drank with him, complainant doing the treating (p. 163). On cross-examination he said (p. 164):

> "Q. Now then the expression that you say Mr. Doughty used, he was building this for his daughter, that he was giving it to his daughter. Are you sure that he said he was giving it to her or that he was building it for her? A. *Giving it to her.*
>
> Q. That was before the operation started, wasn't it? A. Before and afterwards; it was going on.
>
> Q. How did he come to use this phrase, how did he say this anyhow? Let's get this, I mean to say his exact words. A. Well, he wanted to know who the builder was on the job I was working on, that was the apartment further from the other apartment; I told him Mr. Naame. Asked me where he could get in touch with him. I told him Segal Building. So he got in touch with him and told me he was going to put up a couple of apartments on the corner for his daughter.
>
> Q. That is what he told you, going to put them up for his daughter? A. Build for his daughter.
>
> Q. He didn't say at that time he was going to give them to his daughter, did he, going to put them up for his daughter? That is right, isn't it? A. Yes.
>
> Q. You say that after you started work he talked to you about it again. What were the exact words the second time? A. Well, he said, he was going to build the apartments, put up for his daughter, the only thing I could say.
>
> Q. That is what he said the second time, he was putting them up for his daughter? A. Yes.
>
> Q. You took that to be that he was giving them to his daughter, wasn't that right? A. Naturally."

James E. McGimpsey, plasterer, who had known complainant for five or six years, did plastering work on the Ohio Ave. apartment and talked with

complainant several times and said that he was building the apartment for his daughter (p. 166). He is another witness whom complainant sought to intimidate (p. 168).

Morris R. Ost, who is a druggist, and has been a builder (p. 182), had known complainant and, about the time the witness completed the construction of some apartments at Delaware and Baltic Avenue, he had a conversation with complainant (p. 184):

> "A. Why he called around the place Delaware and Baltic and asked me who was building the apartments for me, that *he wanted to build the same kind for his daughter,* and I told him it was Mr. Naame but I asked him whether he wouldn't be better off if he sold us the piece of ground, because I had an agreement with Mr. Robinson, my partner, that we would try to acquire the adjoining piece of property, if we were able to do so, on desirable terms, and he said no, it wasn't for sale, *it was his daughter's and he was going to put the same thing on the lot as we had on ours. Of course, it was he didn't want to sell it.*
>
> * * * * * *
>
> A. Why, no, it was on several occasions. I spoke to him once about the rents, that there was some vacancies there and whether it would be well——
>
> Q. Vacancies where? A. Vacancies in my building, whether it wouldn't be well to lower the rents; *he said he had nothing to do with it, to see his daughter.*
>
> * * * * * *
>
> Q. You said that rents were spoken about? A. Well, we leased these apartments, Mr. Robinson and I owned 179 apartments on the corner Delaware and Baltic, running 200 feet on Baltic Avenue, and when he, Mr. Doughty —I spoke over with Mr. Robinson about reducing the rents or doing something about

filling up the apartments and he suggested that I speak to the people who owned the building next door, that is, the Savoy Apartments. Well, I always felt that Mr. Doughty was the principal and I spoke to him, *and he told me that he had nothing to do with it, that it was his daughter's,* and I, of course, went to speak to her and I spoke to his daughter about it."

And on cross-examination (p. 188):

"Q. At the time that he talked to you and told you that he was contemplating building an apartment similar to yours for his daughter? A. He did.

Q. You just took that meant that he was going to give it to his daughter, didn't you? *A. No, he as much as told me that it was his daughter's, and that he was going to build the apartment for his daughter because they showed such a good income and he wanted his daughter to have a good income.*"

And (p. 189):

"Q. And then he told you that they were going to improve it so his daughter could get an income? A. That is it exactly."

This witness complainant also sought to intimidate (p. 191).

Edith Crouch, who knew complainant several years before complainant's marriage to defendant's mother (p. 192) and who, during the life of the wife, visited the home about once a day or night and who, when complainant's wife died, was living next door (p. 193), and who often ate at complainant's house describes a situation which indicated clearly that defendant had taken the place of a daughter to complainant, and (p. 193) testified:

"Q. Did Mr. Doughty ever say anything to you as to what he was doing for Mrs. Naame

in a financial or property way or what he intended to do for her?

* * * * * *

A. He said he was giving her the houses because he wanted to make her financially independent of anyone.''

She said that he made this statement one night at the dinner table and on another occasion coming in an automobile from Philadelphia, and (p. 195):

''Q. At any of the talks you had with him or he had with you did he make any reference to his deceased wife or any promise he had made her? A. He had promised * * *. He had promised to take care of her daughter if anything happened to her.

Q. Did he tell you that, Mr. Doughty? A. I heard him say it.

Q. Was anyone present when he told you? A. His daughter.

Q. And where was that statement made? A. In his home, Indiana Avenue.''

The relations of this witness with complainant have always been friendly and yet she is another whom complainant sought to intimidate (p. 196).

On cross-examination she went into the details of the conversations (pp. 210, 211).

Mrs. Ella Mauser knew defendant and had been a friend of Naame, her husband, for some time. She apparently had a boat upon which Naame went out with her (pp. 223, 224), and he had visited her at her bungalow where he stayed for some time. He lived at her house for three years. He was a part owner of the boat upon which they went off on trips (p. 224). Apparently complainant and his counsel conceived the idea that Naame and this witness were intimate and that his marriage to defendant was a great shock to her. In fact, she knew Naame had known defendant for

almost a year before Naame married defendant (p. 225) and it did not affect her in the least and she is still friendly with Naame who had been a friend of her husband (p. 217). Having this idea that Mrs. Naame would be incensed at defendant (apparently realizing that in such cases the ire is directed against the innocent party) complainant called the witness up and (p. 217):

> "A. He called me up yes, and he came down to the house and my daughter opened the door and he came upstairs and we first talked about boating—I live in a boat house—talked about the water outside, about boating and things like that and then he turned to me and said, 'You know' he said, 'I think you and I have gotten a damn rotten deal.' And I said, 'What do you mean?' Well, he said, 'I think', he says, 'we ought to stick together.' I said, 'How stick together, Mr. Doughty?' He said, 'I will tell you what I think.' He said, 'You ought to sue Isabel for alienation of affections.' I said, 'I couldn't do that because after all Mr. Naame has just been a friend of mine, a friend of my husband's and I have known him for a good many years. There is no question of affection outside of friendship.' And then he swore some more and said I was too damn soft."

On a previous occasion complainant had met the witness at the bank (p. 214) and had asked her whether she knew the trouble that he was having with defendant. He was very much excited and said that he did not like Naame and that Naame was a nigger and was not a white man and a great deal more along the same line and that he was going to get back every cent he had given to defendant (pp. 215, 216). On another occasion before the trouble, the witness and complainant and defendant went on a boat trip together with the witness' daughter and her brother and his

wife and complainant started to talk to the witness about the trouble she was having about her husband's estate and he said to her "for that reason I haven't made a will, *I have taken care of Isabel during my life, so if I die she will be well provided for*" (p. 218).

And (p. 221):

> "Q. Then what was it that made you remember that he said that he was going to get every cent back that he had given Isabel? A. Well, I told him I didn't think that was very nice or very kind.
>
> Q. What did you think he meant by that? A. Well, I felt that he was sore about the whole thing and I said, 'Why that isn't nice to take that away, Mr. Doughty', and I tried to calm him down, because I have always been fond of Mr. Doughty.
>
> Q. Did he say he loaned her a lot of money? A. No.
>
> Q. Did he say he had given her a lot of money? A. No.
>
> Q. He just said he was going to get his money back? A. Yes, he said he was going to get every God damn cent he had ever given her, back.
>
> Q. Are you sure that he said 'given'? A. Yes."

And (p. 222):

> "A. Well, she had been a daughter to him and he had no children of his own, he had no wife, why shouldn't he give her anything?
>
> Q. Were you particularly interested in her? A. Well, I pride myself on being a little broad-minded.
>
> Q. Quite true, but being broad-minded, what did you think about it was unfair if he wanted his money back? A. Well, *I adopted a daughter of my own* and I feel as long as she treated me right I would want to do right by her and I felt Mr. Doughty should do the same thing."

And further (p. 222):

"Q. All right, then, what was so unfair in Mr. Doughty getting his money back? A. Why should he get it back. Hadn't she done everything for him?

Q. What had she done for him? A. What had she done for him?

Q. Yes. A. Well, her mother was his wife.

Q. And that would make her the stepdaughter? A. Responsible, I should say.

Q. There was no blood relationship between them, was there? A. No, not that I know of.

Q. What was it then that his daughter or stepdaughter had done for him that you thought it was unfair for him to get his money back? A. *Well, if he had thought enough of her to give her the money, what had she done to make him want her to give it back, I couldn't see any crime in her marrying a splendid fellow, I couldn't see any crime in that.*

Q. You didn't know what the reason for that was, did you? A. No."

The cross-examination by complainant's counsel of this witness was, we submit, unfair (p. 230):

"Q. You can't remember what Mrs. Naame, about six months ago, paid you for your interest in the boat? A. No.

Q. Did the boat go with Mr. Naame? A. Pardon?

Q. I say did the boat go with Mr. Naame? A. I don't quite understand.

Q. When Mr. Naame left you or your house and went and married Miss Dobbin, why it seems that the boat changed ownership, too?"

Harry Riley, sixty-one years old and a sick man, a contractor in tile, stone and concrete, who had known complainant for upwards of twenty years and was friendly with him (p. 362) said (p. 363):

"A. Well, we were talking there, and had been standing there for some time in a friendly way, and he told me that *he had got*

his daughter fixed up now, he had given her those properties up there, and had everything all straightened out, papers all made out and everything, properties New Jersey and Baltic, he referred to them because he knew that I had been working out there, I had done work there for him.

Q. *Now, then, were those properties completed, the improvements, at the time he so talked with you?* A. *Yes.*"

Jacob Salsburg (p. 367) met complainant for the first time about two years before he testified on a boat on a Sunday in Great Bay. At the same time he met defendant (p. 367). He recited the conversation between himself and complainant:

"He asked me how long I have lived in Atlantic City, where I originally came from and I told him that I, as a boy, I was brought up and lived in Wilkes-Barre, that is the coal regions, in the early days my father dealt in cattle and horses, and that interested him, and he said that was his line of business, and he said he knew a good many people up there, in fact, I think he told me that he had been up there. I asked him how long he has lived in Atlantic City and he told me that he had lived here about forty years, told me that he got into the livery stable business here, ran a livery stable, and then we got to comparing ages, and he told me his age and I told him my age, and then finally I complimented him on his young wife, thinking that this lady here was his wife, and he said, no, she was his stepdaughter, she was the daughter of his wife that he had lost about eight or nine years ago, but he is taking the place of her father, he says, *so much so that he has given her over two hundred thousand dollars and expected that she will have more after he is gone, and I complimented him on his feeling in that way, and we talked, and we spent a very pleasant day together, and after that time I never saw him or spoke to him.*

Q. Who else were on the boat? A. Well, to my best recollection, was a couple by the name of Mr. and Mrs. Rosswell, Mr. Paul Salsburg and his wife, Mrs. Naame or Mr. Naame, Mrs. Mauser, my wife and myself, Mr. Doughty and his daughter.''

Naame testified (p. 257):

''Q. Did Mr. Doughty at any time ever talk to you as to what he was doing for his stepdaughter in a financial way or what he intended to do? A. Positively.

Q. Well, you tell what he said to you, state the occasions if you can remember it and give us the time? A. I wouldn't attempt to state the occasion. I was at their house practically every afternoon during the construction of all these buildings and in between the time they weren't being constructed he invited me for dinner, in fact, he made special clam chowder and everything else, on best of terms, continuously told me what a fine business girl Isabel was, *when he first gave her these properties he had doubts as to whether she could handle them, but after the Savoy Apartment he had no doubt that she could handle them. He was giving her these properties because she is the only one he had who lived with him since the death of his wife,* only companion he had, she kept the house for him, attended to him, and drove him around and did everything practically a dutiful daughter should do. That wasn't only one occasion, that was the usual understanding every time and he was praising her to me.

Q. Were any of those statements made after the Savoy Apartments or Ohio Apartments had been completed? A. They were made; he began to make those statements to me, I would say, within a week after he began the original contract until I met her and went there for the first check and met his daughter and ever since that time that was the talk, I couldn't begin to tell you of the time because it was on so many occasions.

> Q. Was there ever any time he told you he was loaning her the money? A. Never. In fact, I would go to him and ask him. 'How much did you *give* her now?' so I can make some kind of report when the income tax came around."

Naame also explained (p. 247) how the buildings were erected and how the mortgages were placed on the properties and the purposes for which the proceeds of the mortgages were used. He testified also (p. 254), as to the trouble which arose as soon as complainant knew that he, Naame, was going to marry defendant and to statements made by complainant to the effect that all that Naame wanted "is her money and you keep away from her or I will take every so and so, a long string of oaths, and there was a stick, good sized club, standing in the corner, which he picked up and deliberately tried to kill me with it, if I hadn't been so quick in jumping, getting out of the way he would have hit me with it." This was in December, 1928, and he testified to another later occasion (p. 256).

This is not denied.

Although there is no proof to support it, complainant at the time of the trial was still inbued with the idea that Naame had married defendant only for her money. On cross-examination this question was put to Naame by counsel for complainant:

> "Q. Were you marrying her for her money? And the answer was: A. I don't consider that I am marrying her for her money because I have always made a living and I can still make my living, and I think I have as much as she has" (p. 280).

Complainant's counsel intimated that the effect of Naame's testimony that the moneys given to defendant by complainant were gifts is destroyed

by the fact that the gifts were not mentioned in income tax returns of defendant prepared by Naame (p. 268). The *witness* was quite right that it is not necessary to return gifts in an income tax return. A gift is one of the very few increments of one's possession that one does not have to report to the Federal government.

Complainant meets this testimony in most part by blank denials. He said (p. 380): "* * * never spoke to Mr. Salsburg in regard to my business. Why should I?"; he never had a conversation with Riley concerning the gift of anything to his daughter; he talked with Riley, but not about his daughter; he never had a conversation with Riley, Jr., to the same effect; he never told anyone that he had given the properties to his daughter, although he did say that he had given the "land" to his daughter; he never said "to either of the Rileys or Mrs. Crouch, or Mr. Ost or Mr. Naame, or Mr. Salsburg or Mrs. Mauser that he had given the properties to his daughter (p. 382); he never told Mrs. Crouch that he was giving the houses to his daughter because he wanted to make his daughter financially independent; he never discussed the matter of the properties at New Jersey Avenue with Mrs. Crouch or the giving of the land to his daughter; he never told Ost that he was building the apartment for his daughter (p. 383); he had a conversation with Mrs. Mauser after she returned from Florida in the Marine Trust Company but he did not tell her that she and himself had gotten a rotten deal nor did he advise her to sue defendant nor did he say that he was going to get every cent that he had given Isabel back nor did he tell Mrs. Mauser that he had taken care of Isabel in his life time, for he said that he did not have a will." (Counsel for complainant was mistaken with respect to Mrs. Mauser's testimony. She did not say that com-

plainant had told her that he had taken care of his stepdaughter in his will. On the contrary she said that he had told her that, because of the trouble which arises over wills, he had *not* made a will, and "I have taken care of Isabel during my life, so if I die she will be well provided for" (p. 218).); he never told Naame that he was giving the money to his daughter; he never had any conversation with Naame about the advancing of money for the construction of the houses; he never told his stepdaughter that he was giving her the money (p. 387). He admitted (p. 387) that he was present on one occasion with Salsburg on a boat (p. 387) and that defendant and Naame and other people, who were strangers to him, were also present, including Mrs. Mauser and her daughter.

He denied that he was at Mrs. Mauser's house on the day that she said he was there (p. 388). He did not deny that he was at her house on some other day.

The daughter of Mrs. Mauser, who is a married woman (p. 423), was called by defendant and testified that she had seen him at her mother's house upon two occasions, and on the second occasion she had let him in (p. 424).

Complainant's claim that he objected to defendant drinking.

A vicious attack was made by complainant on defendant when he said that he objected to defendant going out with Naame because "They were down to a woman's house; down by the name of—we will get her name out after a while, I can't remember. She was so drunk, vomited all over the bath room and everything. I says, "My God, has she come to this? I guess I better begin to get my account in'" (p. 85).

There is no corroboration of his statement.

Equally vicious is his statement that she called him opprobrious names (p. 35). There is no corroboration of this except what comes from the venomous lips of the colored maid, Maude St. John. The drinking habits of defendant are explained by Naame (pp. 258, 283, 284). It would seem that counsel for complainant thinks that it is not quite "lady like" to smoke (p. 285).

Conclusion.

We submit that there is no question in this case but that the only thing that turned complainant from a loving father into a bitter stepfather was the fact that defendant made up her mind to marry in October, 1928. It was the anticipated resultant effect of that marriage upon the close relationship theretofore existing between the stepfather and his stepdaughter that has created the deplorable situation we have here to deal with. There is nothing quite so bitter as love turned to hate. This stepfather, who had had the companionship of this stepdaughter after the death of his wife in 1918 to 1928, a period of some ten years, could not comprehend that that close relationship should be disturbed by a marriage. She persisted and refused to yield to his demand that the marriage should be broken off and he immediately *then* attempted to do all in his power to ruin her, descending to the service of the papers in these suits an hour before the scheduled marriage ceremony. The language of Vice Chancellor Leaming, approved by this Court, in *Prisco* v. *Prisco,* 90 N. J. E. 289, at p. 291: "The marriage of the son shortly before he reached his majority *obviously was the act which occasioned the parents' dissatisfaction and led to the attempted repudiation of the gifts; but for that act it may well be doubted whether any controversy would have arisen*" is peculiarly applicable here.

Upon the whole case, assuming the jurisdiction of the Court of Chancery, which we deny, as this is but, in essence, a suit to recover money, and assuming the inapplicability of the statute of frauds, which we deny, we submit that complainant has not shown by such evidence as is "equally satisfactory and explicit with the proofs required to establish a resulting trust; the circumstances relied on must be convincing and leave no reasonable doubt as to the intention of the party", that these advances were made by him in the nature of loans, and not as gifts, and has not rebutted the presumption of gifts.

It is respectfully submitted that the decrees below should be reversed and the record remitted to the Court of Chancery with directions to enter decrees dismissing the bills.

Respectfully submitted,

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MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY
Court of Errors and Appeals

Between
SOMERS L. DOUGHTY,
Complainant-Respondent,
and
ISABEL DOBBIN,
Defendant-Appellant.

On Appeal from Chancery.

BRIEF FOR COMPLAINANT-RESPONDENT

THE ISSUE

Complainant was the owner of two parcels of land adjoining each other at the corner of Baltic and New Jersey Avenues. The first property, called for convenience in this brief the Corner property, had a saloon and dwelling erected upon it and in the rear a separate building containing four apartments. The second parcel, hereafter called the Savoy property, was a vacant lot.

Complainant's wife died in 1918, leaving a grown daughter by a former marriage. This step-daughter had lived with complainant and his wife since their marriage, and so continued to live with complainant after his wife's death until February 6, 1929. This step-daughter, Isabel Dobbin, is the defendant in this action.

Prior to 1922 the defendant, knowing that complainant had made no will in her favor, importuned him to

give her some of his property in order that she would be taken care of in the event of his death.

> "A. Well, after her mother died she was all the time pleading that she didn't want to go out and go to work in case, I was getting old and if I should pass away she might probably have to go in the five and ten and go to work, and she didn't want to disgrace herself to do that, and she would like for me to make her a present of this property so she would have something in case I passed away, and in 1922 I give her a deed for the corner property, which was about 65 or 85 feet on Baltic Avenue, the corner of New Jersey and Baltic." (P. 23, state of the case.)

On December 30, 1922, complainant gave defendant the corner property. This did not satisfy defendant, and she importuned him for the adjacent vacant lot, and on September 19, 1925, he gave her the Savoy lot.

> "A. I don't remember the dates exactly, but some time after I give her the other, probably about a year, no, it was longer than that, after I give that to her, the other was in 1922, I don't think I give her this land until long about '24 or '5."
>
> (p. 25, ll. 21 to 25.)
>
> "Q. There appears a deed for this land from Somers L. Doughty to Isabel Dobbin, dated September 18, 1925, would that probably be the deed?
>
> "A. Probably about the date, yes, sir."
>
> (p. 25, ll. 26 to 29.)

The deeds in both cases were for a nominal consideration and there is no dispute that the properties were intended to be gifts. In the fall of 1926, the Savoy lot was improved by building two apartment houses thereon and in the Spring of 1927 the corner lot was improved by remodeling the saloon property into a similar apartment house. The three apartment houses were designed to be rented furnished to colored people and the return upon the investment was admittedly high, being in the neighborhood of 25%.

Page 26—S. C.:

Q. To what class of people are they rented and under what conditions?

A. Colored people rented by the week.

Q. Is there a rather high or is there a low margin of profit in these apartment houses?

A. Well, I think there is a very good profit myself.

Page 52 (Bottom):

A. The first year it was open she took in, in there, in the neighborhood of about $27,000.

(This refers to the Ohio Apartment which was similar to the Savoy Apartments.)

Page 190:

Q. The time that Doughty got the idea of building these apartments for his daughter, that was the situation, about twenty-five per cent investment?

A. That was the situation or pretty nearly as high, came up to the picture of the prospectus of the proposition.

Complainant and defendant learned of the profitable character of this type of apartment house through complainant's association with a building and loan association in Atlantic City. It appears from the testimony that complainant was investigating the value of a similar apartment which had just been erected adjacent to the Savoy lot by Morris Ost, who had applied to the building and loan association for a mortgage. Defendant drove complainant to the Ost apartment house in their automobile and in this manner learned of the profitable character of the apartments.

Page 26. Complainant testified:

A. Yes, she heard the conversation and after we got home we were talking over about this loan and I thought it was a very good proposition, those houses, to grant the loan for the building association, and I think we granted the loan and then she

started in on me immediately to improve this land for her.

Defendant testified:

A. My father was on the committee of the building and loan to which I believe Mr. Ost applied for a loan, and one afternoon we were driving around and he said we will stop. We did, went into the office and Mr. Ost took us through the last building; he had just furnished it. When we came out my father thought it was a very good idea; being in the bank, he knew of the best rentals, and he decided he would build a couple of those houses for me, to give me something to do. * * *

The dispute between the complainant and the defendant arises out of the financing of the apartment built on the Savoy and the Corner lot and later the Ohio Apartments. Complainant says that he made an agreement with defendant whereby he was to advance the money to make the improvements and was to be repaid by placing mortgages upon the properties and from the rents. Defendant denies that there was any such agreement and says that the moneys advanced by complainant were gifts to her. The total amount advanced by complainant is not actually in dispute. The amount advanced is:

Savoy Lot	$102,000
Corner Lot	36,000
Total	$138,000

Before these improvements were completed, complainant bought a lot on Ohio Avenue for $30,000, giving his bond and mortgage for $15,000, and defendant gave her checks for the balance of $15,000. Complainant testified that he repaid to defendant one-half of the cash paid by defendant, by his check for $7500. This check for $7500 was admittedly a gift and does not enter into this case. After the Ohio Avenue lot was purchased it was improved by building another colored apartment house similar to the Savoy apartments. Complainant contends

that this improvement was pursuant to an agreement similar to that which obtained in the case of the Savoy and corner apartments. In the case of the Ohio apartment complainant advanced $104,000 making the total advanced of $242,000. Defendant denies the contract in the case of the Ohio apartment and alleges that this also was a gift.

Was this $242,000 a loan or a gift?

The vice chancellor held that it was a loan. An attempt will be made to marshal all of the evidence tending to support both the complainant and the defendant's intentions.

Doughty testified, p. 27:

A. Well, she asked me to build the apartments. I said "why you wouldn't want to attend to them, would you?" "Oh, yes," she says "I want something to do. I want to go to work." I said "supposing they are not successful, paying rent, how could you pay me for them?" "Oh," she said, "I get an income from my father's estate," but never would tell me what it was. I asked her several times but she would never tell me what that was, so finally, after talking on me a long while she says *"You can finance those buildings any way however that suits you and I will see that you are paid, if you loan me the money, you can put a mortgage on them, building association, any way that you think best."* I built them for her and created the mortgages after a long while, then they were furnished, I thought she had her furniture paid for, she paid for the furniture by me going security with Lit Brothers.

Q. How did she say she would pay you back?

A. From the rents.

Q. Now with that understanding, did you proceed to build the apartment houses?

A. I did.

Page 45 referring to the Ohio Apartment.

Q. In any event you agreed that you would build an apartment house for her on this property?

A. Yes, sir.

Q. A colored apartment house of the same general description as these others?

A. The same as the other.

Q. How was she to, or was she to repay you for the money you advanced?

A. She was.

Q. How was she to repay you?

A. Same as the other apartments.

Page 46:

A. Why, the conversation was after I was going to build for her on a property at Maryland and Drexel Avenues but when Mr. Naame bought to build on Indiana Avenue near Atlantic I said to her, "what is the use of building out there, apartment at Drexel and Maryland Avenue will never pay with this big apartment house on Indiana Avenue near Atlantic," because Harris had built one on Tennessee Avenue out near Sewell that was apparently vacant, and I says "if you want another apartment house" and she said she did "I had better buy the Smith Estate off the Guarantee Bank on Ohio Avenue and build you an apartment there instead of giving you this lot at Maryland and Drexel Avenue." "All right," she says. "Father, I think that would be a good idea and I think an apartment would pay there, so you can build it and you can put a mortgage on there and I will collect the rents and pay you back."

Q. So that, with the understanding that she would pay you back out of the rents, you proceeded to build this apartment house, to procure this land and build this apartment house?

A. Yes, sir.

Q. And so far as what money you put in the land, that was a gift?

A. Yes, sir.

Q. In fact in all of these cases you gave her the land, there is no question about that at all?

A. I did; no question about it.

Page 63:

A. She said she had an income enough with the rentals to take care of it, to pay me.

Q. To pay you back?

A. Yes, sir.

Page 79 and Page 80:

Q. Now, why was it that you wanted to know how much your stepdaughter was getting from her father, out of his estate?

A. Why did I want to know? I wanted to know because if these apartments wasn't successful in the rentals that she was getting enough out of her father's estate to pay me.

Q. Did you make that inquiry before you made the agreement to finance the apartments or after you made the agreement?

A. Before I made the agreement.

Doughty is supported by several witnesses who testified that defendant admitted that the moneys advanced were loans and by the further fact that defendant repaid complainant to the extent of $85,500. (Note: The figures here are round numbers disregarding the actual settlement proceeds of the mortgages hereinafter referred to.) These repayments were as follows: The improvements on the Savoy lot consisted of two separate apartment buildings. Upon one building a building and loan mortgage of $25,000. was negotiated by Doughty and upon the second building a mortgage of $35,000. was obtained. A mortgage of $35,000. was likewise obtained on the corner property. About a year later this last mortgage was paid off as follows: Defendant negotiated two $15,000. notes, one in the Marine Trust Company and one in the Guarantee Trust Company. These notes were guaranteed by Doughty. Defendant paid off the note in the Marine Trust Company and at the time of the suit had reduced the note in the Guarantee Trust Company to $8,000. Since the suit, Doughty has been obliged to take up this note.

The $500. payment is the proceeds of the check which enters so largely into this controversy and which will be referred to at length later on in this brief.

The negotiations for the mortgages were conducted by Doughty but the bonds and mortgages themselves were executed by the defendant-appellant. The supporting verbal testimony intended to prove the contract is as follows:

Daniel A. Stewart, an intimate friend of the family, testified at page 107 S. C.:

> Q. Now, did Miss Dobbin ever tell you anything with relation to how the houses were built for her?
>
> A. Yes, sir.
>
> Q. What did she tell you?
>
> A. Well, she told me that Father was building the houses for her and as soon as she had Father paid off, why, that is when she was going to take a trip to California and probably to Europe.
>
> * * *
>
> Q. When was this conversation that you refer to?
>
> A. Well, it was on the front porch, I think we happened to be, she has mentioned it to me and him on several different occasions.
>
> Q. Can you remember about when it was she first mentioned it to you?
>
> A. Well, the first conversation ever I had with her in regards to anything was over at Burr Dennis's, English Creek; I drove over there with her and Mr. Doughty and Mr. Doughty went out in the garden and she told me at that time that she had not made no will or had not made no provision in the way of getting her anything if he was to happen to die.
>
> * * *
>
> A. And shortly afterward, why, she told me that Mr. Doughty had given her the ground up there anyway, corner New Jersey Avenue and Baltic, and then it wasn't long before she told me that he

was going to finance her money and build them houses and she says, "that will save me from working in the five and ten, anyhow."

* * *

Q. Now, what did she say on that occasion?

A. Well, she said it would take her a long time to pay Father back but she would finally do it.

* * *

Q. Is there any other conversation before that relative to the financing of the New Jersey Avenue properties that you recall.

A. Yes, sir. I went to Mr. Doughty to borrow fifteen hundred dollars and Mr. Doughty wasn't home and I told Miss Dobbin what my errand was and she told me that it was taking about all of Father's money at the present time to build them houses, but just as soon as she could get them finished and make a loan on them, get a loan on them, he would have plenty of money.

Maude St. John, the colored maid who had lived with them for the past eight years, testified as follows on page 126: S. C.:

Q. What else did she say at that time about the money?

A. She said she owed him, she admit that she owed and that he told her to get out he wouldn't get a God damn cent.

This conversation took place on December 14th, 1928, and on the same morning, the witness, Maude St. John said: P. 125, S. C.:

A. Well, one Friday she carried me to the hospital and while we was going over there she said, "I just got through giving the old son-of-a-bitch hell upstairs." She said, "Believe me, I gave him hell, too." I said, "What between you and Mr. Doughty now?" She said, "He wanted me to get a $75,000 mortgage on my property, but I will see him in Hell first before I will get any money on my property to pay the old son-of-a-bitch, and all I

want him to do is to say the word to get out and I can have him at me and I will get out, because I am all packed and ready to go."

* * *

P. 127, S. C.:

Q.——in relation to the uptown apartments, the Savoy Apartments?

A. Well, I wanted her to get me a coat, stand for the rest money owing on a coat, and she told me she didn't have no damn money because taking all her money to pay Father off what she owe him for these damn apartment houses and she needed a coat herself and took all her money to pay for these apartments.

Q. When was this conversation?

A. 1927, in January.

* * *

Q. Did you ever have any other conversation with her about this money transaction up there?

A. Sure, several times I asked her to loan me money, she said she didn't have any because she pay out all the money to her father, he was taking every cent she could rake and scrape; and she owed him money, and when she getting out of owing him money, she take a trip to Europe, it would be 1930.

On cross-examination, she repeated substantially that the contract concerned the $75,000 on the Ohio Apartment. P. 132, S. C.:

Q. You tell us, please, again, what you say Miss Dobbin told you about this $75,000 mortgage?

A. I didn't ask her that morning, she told me her own free mouth, when she was carrying me over to the hospital, she said, 'I just got through giving that old son-of-a-bitch hell,' and she said, "Believe me, I give him plenty this morning." I said, "What is the trouble between you and Mr. Doughty now?' She said, "He is trying to get my houses from me unknown to me, but he think I

don't know it; come ask me for $75,000 mortgage," and she said, "I owe him and all I want him to do is to say the word and get out, and he can take his damn key and go to Hell with it, and I am ready to go any time he says and he won't get a damn cent."

Then at P. 134, S. C.:

Q. Did she tell you that she owed him money that he had paid to Lit Brothers for the furniture?

A. No, she never said nothing about what she had done; all she said she owed her father and she had to pay him back every cent she owe him.

* * *

Q. You understood her to say, when you wanted to borrow from her, it took all the money she had to pay Mr. Doughty?

A. Everything, didn't have nothing.

Q. Because she was paying Mr. Doughty?

A. Yes.

Q. Is that the way you understood it?

A. Yes.

Enoch H. Burkett, witness, was the janitor at the Savoy Apartments in 1927. Witness borrowed $75.00 from the defendant-appellant for the funeral expenses of his sister-in-law. At p. 402, S. C., he testified as follows:

Q. How much did you collect from Miss Dobbin?

A. I collected $75; she said she will have to see Father because she owes him money and she couldn't loan us such money as that without his say-so.

Q. Now, at any other time, did she say anything about owing her father any money?

A. Yes, she said she owed a lot of money, but the amount she didn't say, but she don't know how she is going to pay him.

Q. When was that conversation?

A. This was in 1928.

Q. When?

A. Along in June.

On July 4th, 1928, witness had a conversation with the defendant-appellant, p. 403, S. C.:

> A. She said I had work and I got paid for it, and she had to do it and she wouldn't get nothing, she said I was better off than she was, I worked and get paid, and she worked and get nothing until she gets Father paid, she said she didn't know when that will be.

The documentary evidence to support complainant's contention that the money was a loan consists of the three mortgages that were created by the defendant-appellant and the proceeds of which the complainant-respondent got; the execution of two $15,000. promissory notes by the defendant-appellant the proceeds of which complainant-respondent got with the exception of $8,000. still remaining unpaid on one of the notes, and the $500. check upon which was written by the defendant-appellant: "For account of Savoy and Ohio Apartments. To Somers Doughty. Principal." Mr. Doughty testified at p. 30, S. C.:

> A. I saw Mr. Slape of the Atlantic City Loan and Building Association.
>
> * * *
>
> Q. Did you procure from him a loan upon one of these apartment houses?
>
> A. Yes, sir.
>
> Q. Building and loan?
>
> A. Yes, sir.
>
> Q. How much did you procure?
>
> A. $35,000.
>
> Q. Did you make all the arrangements for that?
>
> A. With Mr. Slape?
>
> Q. Yes.
>
> A. Yes, sir.
>
> Q. Did your stepdaughter make the bond and mortgage to the Atlantic City Loan and Building Association?
>
> A. Signed the application, yes, sir.
>
> Q. Upon your request?

A. Yes, sir.

Q. There appears to be of record a mortgage in the sum of $35,000 from Isabel Dobbin to the Atlantic City Loan and Building Association dated October fifteenth, 1927; is that the mortgage to which you refer?

A. At that time, yes, sir.

Q. Was that money turned over to your daughter, the proceeds of it?

A. Yes, sir.

Q. WHAT DID SHE DO WITH IT?

A. TURNED IT OVER TO ME.

Q. So you got that $35,000?

A. Yes, sir.

Q. That was on one of the two apartment houses?

A. Yes, sir.

Q. Did you raise a loan on the other apartment house?

A. Yes, sir.

Q. With whom did you negotiate for that?

A. The Trident Building and Loan Association.

Q. How much did you get?

A. $25,000. * * *

Q. There appears to be of record a mortgage from Isabel Dobbin to the Trident Building and Loan Association of Atlantic City dated July 15, 1927, to secure $25,000; is that the mortgage to which you refer?

A. Yes, sir.

Q. Now, what became of—was that the money paid to your stepdaughter by the Building and Loan Association?

A. Yes, sir.

Q. WHAT DID SHE DO WITH IT?

A. GAVE ME A CHECK FOR IT.

Q. That means apparently that out of the $100,000 that you paid to Mr. Naame for those buildings you got back $60,000?

A. Yes, sir.

* * *

At p. 38, S. C.:

Q. How much did you raise on that?

A. $35,000.

* * *

Q. Where did that mortgage come from?

* * *

Q. Atlantic City Loan and Building Association?

A. Yes, sir.

Q. Did your daughter comply with your request and make that mortgage?

A. She did.

Referring to the settlement sheet, p. 39 S. C.:

Q. That shows here, "balance due mortgagor paid to Isabel Dobbin, $33,617.46;" was it paid to her?

A. Yes, sir.

A. SHE GAVE IT TO ME, GAVE ME A CHECK FOR IT.

* * *

Q. I am going to ask you, Mr. Doughty, was that mortgage subsequently paid off?

A. Yes, sir.

Q. How was it paid off?

A. She gave me two fifteen thousand dollars notes. I have one discounted in the Marine Bank and the other one in my friend, Cole's, bank, Guarantee, and she paid the one off in the Marine Bank but the one in the Guarantee Bank she didn't pay off, only $7,000 on it and I had to take the balance of $8,000 out of the Guarantee Bank.

Note: The difference between the face of the mortgage and the notes is due to the installments for two years that the defendant-appellant had paid on the mortgage out of the rents.

P. 40, S. C.:

Q. Now, as I understand it, your daughter paid off the one $15,000 note?

A. She did.

* * *

Q. And the second note in the Guarantee Trust Company was reduced from time to time?

A. Yes, sir.

Q. Until but $8,000 remained, is that right?

A. Yes, sir.

Q. Now, I show you a note dated October 29, 1928, $8,000, four months after date I promise to pay to the order of Somers L. Doughty, at the Guarantee Trust Company, $8,000, signed Isabel Dobbin, and endorsed Somers L. Doughty * * * is that the note to which you refer?

A. Yes, sir.

Note: Defendant-appellant admits that she owes the note. The $15,000 note in the Marine Trust Company was guaranteed by the complainant-respondent as shown on p. 41, S. C.:

Q. I show you a paper dated December 5, 1927, which appears to be a guarantee signed by you to the Marine Trust Company of a note of Isabel Dobbin dated December 5, 1927, at demand for $15,000, payable at the Marine Trust Company and credited to the account of the Savoy Apartment, Somers L. Doughty, and there is stamped across it, "cancelled January 12, 1929, Marine Trust Company, Atlantic City, New Jersey." Is that the guarantee that you gave to the bank?

A. For that fifteen thousand dollar note, yes, sir.

The proceeds of the $35,000 mortgage on the Savoy lot was not retained by Doughty but was immediately re-loaned to the defendant-appellant to make payments on the Ohio Apartments, as found on p. 50, S. C.:

Q. Now, what did you do with that money?

A. I let her keep that money to go on to pay Naame for building the Ohio Apartments and credited her with that, but didn't want her to give

it to me, but just let her to use it to put it to her bank account.

Q. So far as you know she paid Naame up to the amount of the proceeds of this mortgage, isn't that the fact?

A. As far as I know.

In the case of the Ohio Apartments, complainant-respondent advanced a total of $104,000, as found on p. 51, S. C. line 3-4:

Q. But you did pay or did advance the money by which she paid all of the $104,000 dollars on that apartment?

A. I did.

* * *

Q. Now, did your daughter ever pay you back any of the $104,000 that you advanced?

A. No, sir. $250.

Q. That was part of the $500. check that you referred to?

A. On December, 1928, 14th or 15th.

In the Fall of 1929, after the Ohio Apartments were completed, complainant-respondent negotiated with the Trident Building and Loan Association for a $75,000 mortgage on the Ohio Apartments and the building and loan association was willing to loan the money but the defendant-appellant refused to execute the mortgage. See p. 52, S. C.:

Q. Did they agree to loan you some money on that?

A. Yes, sir.

Q. How much?

A. $75,000.

Q. Did you ask your daughter to execute a mortgage for the $75,000?

A. I did.

Q. When was that?

A. I couldn't give you the date but it was in the month of last November.

Q. November, 1928?

A. Yes, sir.

Q. What reply did she make to you?

A. That she wouldn't place a mortgage on that. What was I trying to do, get the property away from her? And she absolutely refused to create the mortgage.

Mr. Ernest A. Lord, President of the Trident Building and Loan Association testified that Mr. Doughty negotiated for the $75,000 loan on the Ohio Apartments and that the Board of Directors informally agreed to make the loan.

Mr. John Slape testified that Mr. Doughty negotiated the two mortgages given to the Atlantic City Loan and Building Association on the Savoy and corner properties and that the mortgages were given by the defendant-appellant and the proceeds turned over to her.

Frank Singer, bookkeeper of the Marine Trust Company, testified to the $25,000 realized from the Trident mortgage on the Savoy that was put in defendant-appellant's account, Savoy Apartments, Isabel Dobbin, and a check drawn by her to the order of the complainant-respondent, her father, on July 20, 1927, which went to his account. He also testified that the proceeds of the $35,000 mortgage on the corner property was deposited to defendant-appellant's same account on October 15, 1927, and on October 17 (See p. 96 & p. 97, S. C., & p. 98 S. C.) she paid complainant-respondent by check, "Pay to the order of Somers L. Doughty," and signed by Isabel Dobbin. Singer also testified concerning the $15,000 note discounted December 5th, 1927, which was guaranteed by the complainant-respondent and which was paid off by a series of checks given by the defendant-appellant during the years 1928 and 1929.

There then remains the $500 check (Ex. C-17, pp. 481-2, S. C.), which so absolutely repudiates defendant-appellant's contention that these moneys were gifts.

Matters were reaching a crisis.

The builder of the original colored apartment house for Ost was Joseph Naame, and when it came to building similar apartments for the defendant-appellant, the complainant-respondent engaged the same builder.

Joseph S. Naame, during the course of the building operations, became acquainted with the defendant-appellant; and by the time the Ohio Apartments were nearing completion they had become intimate. Testimony referred to later at more length shows that as the defendant-appellant came under the influence of Naame, her conduct changed. She smoked, drank, got drunk, swore at her step-father, and when her father for apparently good reasons undertook to prevent a contemplated marriage between Naame and his step-daughter, she defied him; and then, for the first time, refused payment upon the moneys advanced.

The intimacy with Naame came to complainant-respondent's attention in the summer of 1928, and in the Fall when complainant-respondent demanded additional payments and the creation of the $75,000 mortgage on the Ohio Apartments, was met with a refusal.

It must be noted at this point that complainant-respondent's agreement with his daughter, the defendant-appellant, did not contemplate that she would be liable in all events for the payment of the moneys advanced. The agreement was that complainant-respondent was to be repaid out of the money raised by the mortgages and the balance from the *rents*. Complainant-respondent knew that defendant-appellant was using the rents to pay for the furniture, the taxes, the building and loan dues, and the reduction of the two $15,000 notes, and that, consequently, there was little left for him to receive in additional payments at that time. He began, however, to press for payments in the Fall of 1928, and after a somewhat heated quarrel on December 15th, defend-

ant-appellant made out the $500 check, upon which she wrote, "For account of Savoy and Ohio Apartments. To Somers Doughty. *Principal.* Ohio Apartments, Isabel Dobbin."

See p. 33, S. C.:

A. That check was made out for $500, $250 each on account of the Savoy Apartments and $250 on account of the Ohio Apartments, which made $500 all in one check.

A call was then made to produce this check.

Mr. Cole: The client says she can't locate that check.

Mr. Richards: Are we to understond that she denies there is such a check or can't locate it?

Mr. Cole: I don't know.

* * *

Q. Now, have you or did you at any time request your daughter to repay to you the $40,000?

A. Yes, sir.

Q. When?

A. Well, it has been so many times I couldn't tell you, several times; the last time was on December fourteenth or fifteenth, 1928.

Q. Now, on these occasions when you asked your daughter to repay this money to you, what reply did she make?

A. "I have no money; I have no money. I do no business; I have no money. I have other use for it."

* * *

Q. Did she ever tell you that she was paying off on the building and loan?

A. I knew that. Yes, she told me that.

Q. Did she ever tell you that she was paying the taxes on the property?

A. Yes.

Q. As I understand it, these apartments were rented furnished? Did she make arrangements to buy the furniture for them?

A. She did.

Q. Did you make any arrangements to guarantee the payment?

A. I did.

Q. Who did you guarantee the payment with?

A. Lit Brothers.

Q. Do you know whether she has diverted any part of the income from the property to the payment for the furniture?

A. She did. She paid for all the furniture outside of five hundred dollars that I had to pay for the contract; they wouldn't make the contract unless they got a check from me and I would guarantee the payment of it, and I give them my check for $500.

Q. Now, did she at any time prior to December fourteenth ever tell you that she wasn't going to repay you?

A. Yes, sir.

Q. When did she first tell you that?

A. In October last.

Q. *As I understood it, she was to repay you out of the rents?*

A. *Yes, sir.*

Q. Well, now, before October of 1928, when you asked her for money, what did she tell you?

A. You want the exact words?

A. Yes.

A. She says, "you old son of a bitch, I have paid you the last dollar I ever expect to pay you and I will never pay you any more."

* * *

Q. On these previous occasions when you asked her for money, what did she say to you?

A. She had no money; she had bills to meet; she had her building association to pay; she always had an excuse that she had use for the money and she had none for me.

Q. What I am getting at is did she, before this incident in October, ever tell you that she wouldn't pay you?

A. Not before then, no, sir.

Q. Up until that time she had acknowledged her indebtedness to you?

A. Yes, sir.

* * *

Q. What I am getting at is this, up to that time had you any suspicion that she did not intend to pay you?

A. No, sir, not up to that time.

* * *

Q. Had she ever said or led you to believe, up until that time, that she wouldn't pay you?

A. No, sir.

Q. Just in October she made this declaration in which she said that she wouldn't pay you any more money?

A. Yes, sir.

At p. 53, S. C.:

Q. Coming to that November you applied, you asked her to sign the mortgage, the same as she had in the case of the other apartment houses, that is correct, is it?

A. Yes, sir.

Q. And she refused to do it?

A. Yes, sir.

Q. Now, did you continue to request her to execute this mortgage?

A. Yes, sir.

Q. What did she say to that?

A. She refused; she said she wouldn't do it.

Q. NOW, WHEN WAS IT THAT SHE GAVE YOU THIS CHECK?

A. DECEMBER THE FOURTEENTH OR FIFTEENTH, I DON'T REMEMBER THAT, IT IS 1928.

Q. THAT WAS AFTER SHE HAD REFUSED TO MAKE THE MORTGAGE?

A. YES, SIR.

Q. Now, how did she give you the check?

A. She left it, she give it to the maid to give to me, gave it to the maid and the maid gave to me after I left her, after I asked her for it.

Q. What happened to the check?

A. Why, the maid give it to me, when I came home, and I looked at it and laughed, laid it down on the desk and walked out and left that laying there, such a small amount.

Q. How long did you leave it lay there?

A. Three or four days.

Q. Then what did you finally do about it?

A. What did I do with it?

Q. Yes.

A. I took it and deposited it.

Q. And was it paid?

A. Yes.

P. 67, S. C.:

A. After the building was finished, in November, some two or three months, I started to ask her for money but she always had an excuse that she had use for it.

On cross-examination, complainant-respondent, Doughty, further testified concerning the check for $500:

Bottom p. 71, S. C.:

Q. When did you last see that check?

A. When I deposited it.

Q. Did you make a copy of it?

A. Did I make a copy of it? Yes, sure.

* * *

A. Give it to my attorney.

Mr. Cole: Will you produce it, please?

Q. Why didn't you—you even had a photostatic copy made of it, didn't you?

A. Yes.

* * *

Q. Why did you make a photostatic copy of that check?

A. I thought I might want to use it.

Q. Why did you think you might want to use it?

A. Because she wasn't paying me.

* * *

Q. Had you any other checks of hers before this date?

A. Not on payment of property.

Note: Counsel kept referring to the check as a "photostatic copy." It was in fact a photograph.

P. 80, S. C.:

Q. Now, I show you this photograph of the five hundred dollar check and ask you is that an exact reproduction of the face of that check as it was when you received it?

A. Yes, sir.

Q. Who made the photograph?

A. Fred Hess.

* * *

Q. After looking at the check, does it refresh your memory now as to what was written on the check other than what you told me when I inquired?

A. No, sir; I didn't read the check then.

Q. Well, read it.

A. $500, Savoy and Ohio Apartments to Somers Doughty, principal.

Q. Now, then was there written on there in addition to Savoy and Ohio Apartments to Somers Doughty the word "principal?"

A. Yes, sir.

Q. That is after the printed words "for account of?"

Note: Another call was made for the production of the check and then the photographed copy was received in evidence. (P. 84, S. C.)

P. 84, S. C.:

Q. Didn't you have any other evidence except that she owed you money?

A. I thought I did.

Q. What did you think you had?

A. I thought creating these mortgages was evidence, my thought.

Q. Well, if you thought that was all right, why did you have this check photographed?

A. I wanted more evidence, we all do when we are trying a case.

Q. Did you anticipate this suit when you made a copy and photograph of this check?

A. Yes, sir.

Q. You had quarreled then, hadn't you?

A. Yes, sir.

Q. Your quarreling began about what time?

A. About November.

Q. Had you thought of bringing a suit before November?

A. No.

Q. What brought it about in November?

A. What brought it about? What brought it about? She was out one night with Joe Naame and Mr. Kuehnle sitting there and come home so drunk she could hardly get upstairs. They were down to a woman's house; down by the name of—we will get her name out after a while, I can't remember. She was so drunk, vomited all over the bath room and everything. I says, "My God, has she come to this? I guess I better begin to get my account in."

Q. Then you concluded to sue her?

A. Sure.

Q. Of course, you were very much disgusted with her then?

A. Sure. Who wouldn't be?

P. 147, S. C.:

Q. With reference to this $500 check, C-7 (C-18?) had you on that date prior to the making of this check, had a quarrel with your step-daughter?

A. Oh, not exactly a quarrel, just a few words in regards to money.

Q. You had what you might describe as a fuss, didn't you?

A. Yes, a little home fuss, yes, sir.

P. 376, S. C.:

Q. When did you have it photographed?

A. Well, I should judge about a week, probably, after it was written.

Q. Who photographed it?

A. Fred Hess.

Q. Did you have any reason for holding it for a week after its date?

A. It laid on the desk.

Q. Before you photographed it?

A. It laid on the desk. I didn't pick it up.

Q. Well, did you deposit this check or get the cash on it?

A. To the best of my recollection I deposited it with other money.

P. 385, S. C.:

Q. Referring to this $500 check, C-7 (Ex. C-18?) did you coerce your daughter into writing that check?

A. I did not.

Q. Did you compel her to write on there, "Savoy and Ohio Apartments, to Somers Doughty, principal"?

A. I did not.

Q. Did you threaten her with bodily harm if she did not?

A. I did not.

Q. Was she excited at the time that she wrote it?

A. I didn't see her when she wrote it. I don't know.

Q. You didn't stand over her and compel her to write that?

A. I did not. I wasn't in the house.

Maude St. John, the colored maid, testified as follows:

P. 126, S. C.:

Q. Now, after that did she give you a check to give to Mr. Doughty?

A. She gave me a check that Saturday morning, Mr. Doughty had gone out to her, gone out before she left for work, and she said, "Give this to him," she say, "He don't ought to have that."

Q. Do you remember seeing the check?

A. Sure; I read the check.

* * *

Q. I show you Exhibit C7 (C-18?) and ask you if that is a photograph of the check that she gave you?

A. Yes.

Q. When was it that she gave you this check, with relation to this conversation?

A. That was on Saturday the fifteenth.

* * *

Q. What did you do with the check?

A. She left the check on the desk and when Mr. Doughty came in I picks the check up and says, "Here is a check Miss Doughty left for you," and he say, "All right, lay it back down there."

Q. Did you see the check after that?

A. The check laid around there for four or five days and she asked me did I gave it to him. I told her yes, I gave it to him; she said, "Why didn't he take it?" I said, "I don't know, because I didn't ask him."

Q. Then finally the check disappeared?

A. Yes.

Q. You don't know whether Mr. Doughty took it or not?

A. I don't know who taken it; I know it disappeared.

In view of the Vice Chancellor's finding to the effect that he did not believe the testimony of the defendant-appellant, we will at this point discuss the conflict between her testimony and that of the other witnesses. Defendant-appellant's pleadings declared that all of the money given by Doughty was gifts. At the trial, defendant-appellant produced every check that was relevant to the money transactions between complainant-respondent and herself *except the $500 check.* When Doughty, complainant-respondent, first testified concerning this check, a call was made by counsel for its production by the defendant-appellant, and she declared that she did not have it.

On cross-examination, defendant-appellant's counsel developed the fact that complainant-respondent's counsel was in possession of a photographed copy of this check. Unquestionably, this was a great surprise to the defendant-appellant and to her counsel, and necessitated an entire change in their defense:

(1st) An attempt was made by the defendant-appellant on the stand to account for the non-production of the check by alleging that her stepfather had used his position as a Director in the Marine Trust Company to obtain possession of the check.

(2) By attempting to attribute the check as repayment upon the furniture.

(3) That complainant-respondent coerced her into writing the check and the words "For account of Savoy and Ohio Apartments. Principal."

This testimony was met by complainant-respondent as follows:

(1) The bookkeeper of the Marine Trust Company, Frank E. Singer, flatly asserted that the check was returned to her when her book was balanced in February, 1929.

(2) The second defense is met by the wording of the check itself.

(3) Complainant-respondent testified that he was not present when the check was written. Maude St. John supports him in this testimony and her testimony at the trial antedated that of the defendant-appellant and therefore could not have been an afterthought. The handwriting expert, Melcher, testified that the check was not written under duress or coercion and his qualifications were admitted by the defendant-appellant.

(4) The actions of the defendant-appellant after the check was wrtiten repudiate the theory of duress. The check was admittedly drawn on December 15th and did not pass through Miss Dobbin's account in the bank until December 24th, a period of ten days. This is accounted for by the fact that Doughty, complainant-respondent, refused to accept the check for several days and then, unquestionably, some time was consumed in having it photographed before it was presented for payment.

Defendant-appellant, in support of her claim of coercion, testified that complainant-respondent had returned later on on the 15th and had admitted that he had tricked her into signing the check so that he would have the evidence against her; that she informed her prospective husband, Joseph S. Naame, that night of the occurrence, and notwithstanding the fact that, as we will show later, he was her advisor, guide and mentor in all her difficulties with her stepfather, he knew that complainant-respondent Doughty was in possession of a fatal piece of evidence, made no attempt to stop the check or to repudiate it. Their silence on this aspect of the case is most eloquent; and undoubtedly led the Vice Chancellor to say in his conclusions: "I am convinced that the testimony of Mrs. Naame does not give the Court the benefit of the true facts insofar as this check is concerned. * * * her testimony cannot be relied upon when narrating incidents (the truth of which is essential to her defense), which lie solely within her knowledge."

The testimony bearing upon the claims of the defendant-appellant upon the question of the check is found in defendant's appellant's testimony and that of her husband.

Defendant-appellant testified as follows:

P. 306, S. C.:

> A. The morning that I gave him that check he nagged me and fought with me about Mr. Doughty from breakfast time until I finished dressing, followed me from room to room in a terrible temper, I was afraid of my life, he said if I was a man he would knock me down, then in the heat of anger he said, "You still owe me money for that furniture." He said, "You still owe me money. Can I have a check?" I said, "Well, if that is the way you feel about it, how much do you want?" He said, "I will take five hundred dollars," so I was so excited I said, "Come on downstairs." He followed me downstairs and stood over me while I wrote this check and made me write on there, "Ohio and Savoy Apartments to Somers Doughty, principal," and grabbed the check out of my hands, grabbed out of my hands, and came back later on very much calmed down, and laughed at me, "Now I have got you. I will get everything I ever gave you. I will take it back from you if you marry Joe Naame." I said, "I don't see how you can do that." He said, "I have got the evidence; you only borrowed my money; that is the evidence I wanted to get and you did it for me."
>
> * * *

P. 307, S. C.:

> Q. Was it true, as stated on this check, that you were paying him $500 principal on account of the Savoy Apartment real estate?
>
> A. Furniture, that is what the argument was about, furniture.

A cross-examination of the witness upon the question of this check as found on page 318 S. C. is typical of

the witness who is not telling the truth and who, when shown his position, is not tenable, immediately changes his position to that of another, and from that to a third.

P. 318, S. C.:

A. He asked me for five hundred dollars on account of the *furniture that he paid for.*

Q. There is no mistake about that, is there?

A. No, sir.

Q. You owed him five hundred dollars on the furniture?

A. He said I did.

Q. Did you know whether you did or not?

A. I did not.

Q. Did you dispute it?

A. I never disputed any money that he said *I owed him,* money I paid him.

Q. Well, why did you think you owed him money on the furniture?

A. He said I did.

Q. Hadn't he given you the furniture as well as the houses?

A. No, I bought that from the rentals.

Q. Why didn't you get him to give you the furniture if he gave you the houses?

A. I was perfectly willing to buy the furniture myself.

* * *

Q. * * * Why did you write the word "principal" on there if this was given for furniture?

A. He dictated it.

Q. Why did you write it?

A. I always did everything he told me to.

Q. Why would you write the word "principal" there? You knew what "principal" meant, didn't you?

A. PRINCIPAL OF FURNITURE. I thought he was going to treat me right.

Q. There is no principal about furniture; that was for furniture, wasn't it?

A. Why, the word meant was principal, isn't it?

Q. When you wrote a check to Mr. Doughty after conditions got unpleasant around there didn't you always write on it exactly what it was for?

A. Not always.

Q. Did you on some occasions?

A. ON SOME OCCASIONS.

Q. Why didn't you write on this thing for furniture?

A. He pulled it out of my hands before I was through.

Note: Photographic copies of the check are inserted in the brief. The Court can determine the veracity of this statement by a mere examination of the check.

P. 320, S. C.:

Q. You had a serious misunderstanding with him that morning, hadn't you, or serious quarrel with him that morning?

A. I was so excited I didn't know what I was doing.

Q. That is your only explanation?

A. It is.

Note: This is the second explanation.

P. 320, S. C.:

Q. * * * before this photograph had made its appearance I asked you for the original of this check and, I think, you told me across the table that you didn't have it. Now, have you found it since?

A. No, I can't find a lot of my checks.

Q. What explanation have you for the absence of this check?

A. Not any for that particular one. In the excitement of moving and the conditions under which I was married, the strain, I don't know where half of my things are.

Witness then intimated that she had left the check at complainant-respondent's house when she went to be married.

See p. 321, S. C.:

Q. When he came in he told you that he had tricked you?

A. He did.

Q. And that now he had the proof of the fact that these moneys were a loan to you, didn't he?

A. He did.

P. 322, S. C.:

Q. There was no dispute about that in your mind at all? Your mind is perfectly clear about it?

A. Absolutely.

Q. As I have recited this and you have affirmed it took place?

A. Yes.

Q. A few minutes ago, in answer to Judge Cole's question, you said that Mr. Doughty never made any demand upon you for this money until your wedding day?

(Judge Cole's question and answer was)
(Q. I mean any demand from him to pay any)
(money on acount of what he had spent on)
(those properties?)
(A. No.)

A. For the return of the money on the buildings.

Q. What was this return for?

A. Furniture.

Q. He had just said to you that he had tricked you, that he had now the proof by which he could get back the money that he had given to you, on the fifteenth of December, and in view of that statement I ask you now to explain why you told Judge Cole that he never made any demand on you until your wedding day?

A. Judge Cole asked me if he made a demand for the return of the money on the buildings, as I understood it.

Q. What was he talking about when he said he tricked you?

A. This check.

P. 323, S. C.:

Q. Then he had demanded the money from you, hadn't he?

A. That morning he took my check.

* * *

Q. Was it going to break you if you paid him back for all the furniture?

A. I was under the impression I had paid him.

Note previous testimony that he had paid for all the furniture.

Q. It was only five hundred dollars or a little bit more, wasn't it?

A. Yes.

Q. Then how had he broken you?

A. By getting me to write that on that check.

Q. Well, the only trick was, if he had tricked you, was that he had gotten you to write the word "principal" there?

A. Yes.

Q. And it referred to the money that he had advanced on the buildings, didn't it?

A. He told me that night.

Q. *Then he did tell you, according to your story, that he claimed that you owed him this money and he had the proof of it, on the fifteenth, didn't he?*

A. *Yes.*

Q. Then I want again to ask you why it was that you said to Judge Cole that there was no demand made on you until your wedding day.

A. I MUST HAVE MADE A MISTAKE.

* * *

Q. Did you tell anybody after Mr. Doughty came back and told you that he had tricked you with this check about it?

A. My future husband.

Q. That night, didn't you?

A. Yes.

(Before this witness admitted that she had experience with ordinary bank affairs.)

Q. You made it your business to say to Mr. Naame that Mr. Doughty had tricked you into signing a check which acknowledged your indebtedness to him for the money he had loaned to you on the promise that if you persisted in marrying him he was going to break you if it cost him a million dollars?

A. I did.

* * *

Q. Is there any additional things you told him that you want to put in the record?

A. No.

Q. That fairly tells the tale?

A. Yes.

* * *

Q. (Naame) Had been taking care of your business for you?

A. Yes.

Q. Keeping your books for you?

A. Yes.

* * *

Q. And you knew he was a college graduate, didn't you?

A. Yes.

P. 326, S. C., Line 4:

Q. Now, Madam, I want to ask you why, in view of the fact that you thought he had tricked you, that this check was evidence that he could use against you, as he has used it against you in this case, to deprive you of this large sum of money, you didn't stop the check?

A. Never gave it a thought.

Q. And Mr. Naame never gave it a thought?

A. No.

Q. And Mr. Naame didn't even give it a thought to testify concerning this thing when he was on the stand today, did he?

A. I didn't listen to all his testimony.

Witness then testified on pages 326 and 326, S. C., that she told her counsel about the check when the law suit was first instituted, that she told both Judge Cole and Mr. Salsburg.

* * *

Q. And it would probably turn up in this case?
A. Yes.
Q. To be used against you?
A. Yes.

P. 327, S. C.:

Q. Your counsel then knew from sometime in February last that this check with this word "principal" on it was some place at large?
A. I presume so.
Q. You told him so, didn't you?
A. I did.
Q. Did you make any effort to find this?
A. I did.
Q. What effort did you make?
A. Hunted in my office.
Q. Is that all?
A. Yes.
Q. Why didn't you go to the bank and see if it could be cancelled?
A. I knew he had it. What was the idea of that?
Q. He had what?
A. I knew my father had the replica of it.
Q. The photograph of it?
A. Yes.

Note: Paragraph 5 on page 10 S. C. in the Answer, she denies that she paid him $250.00 in cash or any other sum to be credited on account of moneys advanced by him. She repeats that any money that passed to her from complainant-respondent was a gift, but as to the amounts she cannot state and *asks proof*. If she remembered the check and knew her stepfather had the photograph of it and had told her counsel about it, why is this statement made in the Answer? This is in re the first suit, D71-496.

In re the second suit, D-72-154, page 20, of the Answer, paragraph 8, line 20, she also denies that she ever paid the complainant-respondent the sum of $250. If her statement on the witness stand was true, she would have stated in the answer the true fact to be either that the check was signed under duress or that it was in payment of the furniture.

Next comes another statement which is beyond belief and which is flatly contradicted by the officials of the bank.

P. 327, S. C., Line 31:

Q. I know, but you wanted the original, didn't you?

A. *I NEVER HAD THE ORIGINAL.*

Q. Why didn't you go to the bank and get it, can you tell us that, Madam?

A. Why didn't I go to the bank? I had withdrawn my account.

Q. What?

A. I had withdrawn my account.

* * *

Q. When?

A. Sometime in February, first part of February.

Q. All right, you withdrew your account in the first part of February. Was that before you got married?

A. No, after I was married.

Q. And had you not stated—when was it you were married, Madam?

A. Sixth of February.

Q. You were married on the sixth of February. When did you close your account?

A. I just don't remember. I didn't use it for quite some time after I was married.

Q. It seems to have been on the twenty-second day of February, 1929.

A. Yes, there were no deposits after the fifth.

Q. So that you closed and got your book balanced on the twenty-second day of February, didn't you?

A. Yes.

Q. *At that time, you, of course, must have gotten back this check?*

A. I GUESS SO.

Q. That was after you had been sued and after you had told your counsel about the circumstances of the check, wasn't it?

A. No, I don't think I had told my counsel at that time.

Q. When did you tell your counsel about the circumstances of that check?

A. I visited him several times and I don't just remember the dates.

Q. You said a little while ago it was right after you were married?

A. We went on a honeymoon you know.

Q. How long were you gone?

A. A week.

Q. Then you were back about the thirteenth or fourteenth, you saw your counsel right after that, didn't you?

A. Several days after that.

Q. You did arrange for the filing of a defense in this case, didn't you?

A. Yes.

Q. You said a little while ago that you told him about this?

A. I did.

Q. *Then that must have been before you got it back from the bank, wasn't it?*

A. *I PRESUME SO.*

Q. Even having told your counsel about the importance of this check, having told them how you had been tricked in writing the word "principal" in there, you got the check back from the bank and then proceeded to lose it?

A. No, I moved several times since then.

Q. THAT IS THE ONLY EXPLANATION YOU HAVE?

A. NO, NOT NECESSARILY.

* * *

P. 330, S. C.: Line 1.

* * * didn't you think it was worth while taking care of it?

A. I DIDN'T PUT THAT MUCH SIGNIFICANCE TO IT.

Q. You didn't think that this statement unexplained, might be controlling evidence in this case?

A. No.

Note: Read in the light of previous testimony, that is a flat repudiation of her former statements.

Q. Has your counsel told you that it would be damaging?

A. He said he would have to produce it.

Q. He said that he told you that you would have to explain it, too, didn't he, I guess?

A. I JUST DON'T KNOW.

Q. But you said you would have to produce it, he told you it was important, didn't he?

A. Yes.

Q. Yet after you got it back from the bank, you proceeded to lose it.

A. Not of my own free will.

Note: On page 331, S. C., lines 10 to 20, defendant-appellant admits the check was outstanding from the 15th to the 24th.

P. 331, S. C., line 23.

* * * by the way, did you ever see the check after he snatched it out of your hand?

A. No.

Note: The ring incident found on pages 332, 333, and 334 S. C. is also eloquent of defendant-appellant's lack of candor and veracity while on the witness stand.

The examination concerning the check returns on p. 348, S. C.:

Q. And at the time you were greatly excited?

A. I was. I thought he would do me bodily harm, the way he carried on.

Q. You were nervous?

A. I was so hysterical I didn't know what I was doing.

Q. And that is your explanation of this?

A. Yes.

Note: Witness has now changed her ground from that the check was for furniture to that of hysteria and coercion. Asked if she had searched for the check, she said she had.

P. 349, S. C.:

Q. You mean that you never got this check back?

A. No, I presume my father had it. He was in the habit of taking checks out of the bank, being a director he had access to everything.

Q. You mean to say that the bank did not return, Marine Trust Company did not return your cancelled check?

A. I didn't see it in the checks?

Q. Did you look for this check?

A. I looked for it when I got my statement, yes.

Q. When it wasn't there, why didn't you go to the bank and inquire about it?

A. I presume my father had it.

Against this evidence we have the testimony of Singer, the bookkeeper of the bank, as follows:

P. 373, S. C.:

Q. Now, Miss Dobbin's account was closed on February either 17th or 19th, 1929. When that account was closed, was all of the checks that had been cashed against that account returned to her?

A. Every one but the last check that closed the account for $69, we have that here.

Q. Is there in your files anywhere any checks that were not returned to her?

A. No, sir.

Q. Were any checks, drawn on her account, given to anybody else?

A. No, sir.

Q. Were any of her checks given to Mr. Doughty?

A. No, sir.

Q. Mr. Doughty ever ask for any of the checks?

A. Not that I recall.

Q. Was the check of December 15th, 1928, for $500 returned to her when the account was closed?

A. It was returned before the account was closed, when the book was balanced. Book couldn't be balanced without that check, which would show on it.

Q. Miss Dobbin says this check was not returned to her by the bank. Would that be possible?

A. No, sir. We wouldn't return the book showing a $500 difference. We wouldn't return the book showing a penny difference.

The court took a hand at this point. P. 375, S. C., Line 20:

Q. Have you the Ohio Apartment sheet here?

A. Yes, sir.

Q. When was that closed?

A. March the 2nd, 1929, the Ohio Apartment was closed.

Q. Have you that sheet here?

A. I have the sheet here.

* * *

Q. Are there any checks on these sheets between December 15th and the date of closing the account in the amount of $500?

A. There is one drawn on December 24th charged up to Miss Dobbin.

Q. On December 24th, one for $500?

A. Yes, sir.

P. 376, S. C.:

By Mr. Richards:

Q. I show you the pass book, Exhibit D-9, for the Ohio Apartments, when was that balanced last before it was closed?

Note: Exhibit D-9 not included among the exhibits.

A. On February 27th, 1929.

Q. Now, at that time, would the $500 check of December 15th have been returned to Miss Dobbin?

A. Yes, sir.

The testimony concerning defendant-appellant's hysterical condition was also met by the testimony of Lee Webster Melcher, who was admitted by the defense to be an expert in the examination of disputed documents. Melcher testified that from his experience that a disputed document written under stress, excitement, hysteria or coercion would exhibit evidence of this fact.

P. 394, S. C.:

A. The writing on Exhibit C7 (C. 18?) I found to be identical in nervous and muscular characteristics with the other writing of Isabel Dobbin. I found it to be the natural writing of the same party who did the other Isabel Dobbin writings, and to be in no respect abnormal or unusual, to follow in every respect the customary and usual writing habits of this particular writer.

Q. Now, does it exhibit any signs of excitement at the time the check was written?

A. None whatever.

Q. *If the writer had been in a hysterical condition would it have shown on that check?*

A. *I believe it would, although I doubt if I should give a positive answer to that question. My belief is based on my experience with writing which has been done under coercion, and under peculiar and abnormal conditions.*

Q. *And does such writing show evidence of it?*

A. *It always has, in my experience.*

Q. *And in this case the writing does not show any such evidence?*

A. *Exactly.*

On cross-examination, at p. 397, S. C., line 20, witness said:

Q. It doesn't follow, then, because someone may be excited or under emotion, that they can't write so it wouldn't be discovered; is that so or not?

A. I think as an abstract proposition that is true.

By Mr. Richards:

Q. As an abstract proposition, but as a practical proposition, is it true?

A. Not in my experience; *I have never seen a document, which I knew to have been written under an unusual condition, not to indicate it.* Request writing of guilty parties, that is coercion in a sense, of course not in the sense that we have in this case, but it always indicates abnormal emotional condition.

Counsel for the defendant-appellant was then called upon to produce the check book from which the check had been written, found on p. 398, S. C., line 29, etc., to which was answered by Mr. Cole:

Note: All the other check books were produced.

P. 398:

Mr. Cole: Of course, I haven't the check book.

From this rather lengthy but necessary examination on the question of the $500 check, we are driven irresistibly to the same conclusion as that arrived at by the Vice Chancellor, that the defendant-appellant was not telling the truth.

She first pretends that the check was for the furniture, although she testified that she bought the furniture and complainant-respondent nowhere made a claim in this case for any money due on furniture.

She says that he grabbed the check out of her hand, and photograph of the check will show not the slightest

wrinkle or indentation in it except the two creases where it was folded. She says complainant-respondent grabbed the check out of her hand. He says that he wasn't in the house and Maude St. John says that she, defendant-appellant, gave the check to her.

Defendant-appellant says that she was so hysterical that she didn't know what she was doing, that he compelled her to write the word "principal" on the check. The hand-writing expert says there is no evidence whatsoever of hysteria or coercion. A photograph of the check shows from the writing that the whole sentence was a continuous one and that the word "principal" was not added as an afterthought.

She testified that her stepfather paid for the furniture when it is admitted that he did not. The contention is that all of the money given by her stepfather was gift. She admits in the cross-examination she owed him money. P. 318, S. C., she admits that in giving her stepfather checks she wrote on the check what it was for.

She did not produce the check nor the check book from which it came, although repeatedly requested to do so.

She denies in her direct examination that her stepfather had ever made a demand for the money due him. On cross-examination she had to admit that he did make such a demand and that her testimony was "a mistake."

She says complainant-respondent, Doughty, boasted that he had tricked her into signing the check. The check was not cashed for ten days thereafter. She made no effort to stop payment on it.

She says she told her counsel about the check. The answer negatives this idea, nor did counsel support her statement.

She declares that she never had the original check, p. 327, S. C., line 33, and within ten questions admits that she got it back.

She says she told counsel of the check before she got it back from the bank and that counsel advised her she must produce it, yet she "lost" it. She says that she didn't put that much significance to it, although she knew

it was going to be used against her at the trial. Her conversation with counsel occurred before her pass book was balanced and she received the check. When she realized this in her examination, she again shifted and said her stepfather had the check, that he had a habit of taking checks out of the bank of which he was a director. She then says that she looked for the check when she got her book balanced. Could anyone believe this statement, in view of her declaration that she knew of its damaging character? The bookkeeper of the bank flatly contradicts her and says that she got the check back.

The hand-writing expert contradicts her when she says that she was hysterical.

Her whole statement concerning this check is such a mass of contradictions, impossibilities and absurdities as to leave no other conclusion but that on December 15th, after her stepfather had nagged her for a payment of the moneys due, she did give him the check, payment on the moneys loaned by complainant-respondent on the Savoy and Ohio Apartments; that she later realized the damaging character of the check and that she either destroyed it or withheld it as evidence; and if it had not been for the photograph, of which she knew nothing until the day of the trial, her suppression of the check would have aided materially in her defense. When it became necessary to explain this suppression, we find her unable to give any excuse that would bear examination. We must come inevitably to the same conclusion as the Vice Chancellor, that she was not telling the truth in this respect, and for this reason her testimony on other phases of the case was of little value.

Either the complainant-respondent, Somers L. Doughty, must be believed, or the defendant, Mrs. Isabel Naame, must be believed.

If she falsified in her testimony on what she considered a vital matter, this necessarily compels us to believe in the truthfulness of the complainant-respondent's testimony. His testimony is supported in every respect by the outside witnesses, who had nothing to gain from the

result of this suit. On the other hand, defendant-appellant's testimony was not so supported. Her witnesses were: Harry F. Riley, Jr., a sub-contractor of defendant-appellant's husband. He was admittedly friendly with defendant-appellant's husband, Joseph S. Naame, worked as a contractor for Naame, who owed him $13,-500 at the time of the trial, and who undertook to testify to declarations of the complainant-respondent. He said at

P. 152, S. C., line 1:

A. He told me he was *building* the apartments for his daughter.

P. 156, S. C., line 1:

A. I had Mr. Naame's word for the fact that Mr. Doughty was the owner, as far as I was concerned.

Q. Well, you had his word for it that Mr. Doughty was the builder, wasn't he, that is the man, he was the man with whom the contract was made?

A. So far as I know, yes, sir.

This testimony in no sense contradicted Doughty. Admittedly, he had made the contract for the building of the Savoy Apartments, and he undoubtedly said to everyone that he was building it for his daughter. This does not contradict the fact that she was to repay him for the money advanced in the building.

Robert Casey, an employee of defendant-appellant's husband, testified as follows:

P. 161, S. C.:

Q. Do you recall how he came to say that he was giving it to his daughter?

A. Well, he came to me and told me he was *building* it for his daughter and wanted to know how the apartment was going next there.

* * *

Later, on direct examination, Casey said:

P. 132, S. C.:

A. Well, before he started building he was going to *give* it to his daughter.

* * *

On cross-examination, Casey, after stating that he knew the contract was between Doughty and Naame, said:

P. 164, S. C.:

Q. And you knew both from Mr. Naame and from the contract and from Mr. Doughty that he was BUILDING it for his daughter, didn't you?

A. Yes.

Q. And that is what he said, wasn't it?

A. That is what he said, yes, sir.

Witness admitted that he would like to help Naame win this case. He then again uses the word "give", on line 26, S. C., p. 164, and he changes again to "build" on p. 165, S. C.:

Q. That is what he told you, going to put them up for his daughter?

A. *Build* for his daughter.

Q. He didn't say at that time he was going to give them to his daughter, did he, going to put them up for his daughter? That is right, isn't it?

A. Yes.

Q. You say that after you started work he talked to you about it again. What were the exact words the second time?

A. Well, he said he was going to *build* the apartments, put up for his daughter, the only thing I could say.

* * *

Q. You took that to be that he was giving them to his daughter, wasn't that right?

A. Naturally.

Therefore, this testimony does not contradict the complainant-respondent.

James E. McGimpsey, a plastering sub-contractor of the defendant-appellant's husband, on direct examination, testified:

P. 166, S. C., line 28:

Q. What did he say to you?

A. General conversation, talking about the buildings going over, he said he was *building* them for his daughter.

This referred to the Savoy Apartments.

Counsel, on direct examination, tried in vain to get McGimpsey to say "give" without success.

On cross-examination, p. 172 S. C., witness testified:

Q. And it was on that occasion that he said he was *building* the houses for his daughter?

A. Yes.

There is one significant thing about McGimpsey's testimony in view of the labored effort made by counsel in his brief to show that the complainant-respondent undertook to coerce the defendant-appellant's witnesses, because on p. 173 S. C. we find witness admitting that defendant-appellant's husband, Naame, had coached him in his testimony.

* * * He said, "Do you remember about the conversation of Mr. Doughty building the apartments for his daughter?"

Q. Then he did suggest it to you, didn't he?

A. I don't know what you call a suggestion.

Q. Well, he asked you, when he talked to you about the case, he started in by saying, "You will remember, don't you, that Doughty said he was building these houses for his daughter?"

A. Yes, sir.

Q. That is the way he started?

A. Yes, sir.

Q. Then you remembered it, didn't you?

A. Naturally, yes.

Q. You hadn't had any occasion to fix this conversation in your mind, had you?

A. No, sir.

Witness was trying to remember a conversation six years old.

P. 174, S. S., line 25:

Q. Yes; now in this case, as I understand it, Mr. Naame suggested to you that this conversation took place, didn't he?

A. If you call it a suggestion.

* * *

When asked to give Naame's exact conversation held admittedly but a few days before the trial, he could not recall what Naame had said.

It then developed that witness was a partner of Naame's.

Morris R. Ost testified, p. 184 S. C.:

A. Why, he called around the place Delaware and Baltic and asked me who was building the apartments for me, that he wanted to *build* the same kind for his daughter * * *

On cross-examination, he said:

P. 189 S. C.:

Q. And then he told you that they were going to improve it so his daughter could get an income?

A. That is it exactly.

Q. Now the details of how he was going to improve it* he didn't tell you?

A. No, that is, only he wanted to know who my builder was, who was putting them up for me and he wanted to put up the same thing.

Q. Same proposition?

A. Same proposition, yes.

Edith Crouch, who was admittedly on very intimate terms with the defendant-appellant, testified that she was in the house daily, frequently ate with them, and she says at p. 194 S. C.:

A. One night at the dinner table he said he was giving his daughter these houses.

---

* (Savoy)

The statement is improbable on its face. There was no indication of how the conversation arose, nor in view of the fact that the witness knew every detail of their business affairs, was it probable that he would make such a declaration even if it had been true. Witness, on cross-examination, admits that defendant-appellant told her she was creating the mortgages on the Savoy and corner properties but did not tell her that she was turning the money over to the complainant- respondent.

P. 202, S. C. line 20:

Q. First time I think you said that he had given her the houses, now, that conversation is that he was *building* the houses, and when I repeated that you say he was building them and giving them to her, which one of the three is the statement you want to stand by?

A. Well, he built them for her and he gave them to her.

Q. He said both?

A. He did.

Q. What I don't understand is this, Mrs. Crouch, you were almost like a member of the family, weren't you?

A. Yes.

Q. You were in and out there all the time. Why did Mr. Doughty have to tell you that he was giving these houses to his daughter?

A. I don't know why he told me, but he said it in her presence and my presence.

Q. Had Miss Dobbin talked to you about these houses time and time again?

A. Only thing she said, she wanted the houses, wanted him to *build* the houses.

Q. Now, at the very beginning, before the houses were built or anything, didn't she tell you that she was going to try to get her father to *build* these houses for her?

A. Yes.

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Q. Did she ever tell you about how it happened that she heard about being very profitable, these colored apartments?

A. She had gone through the buildings next door, she said.

Q. She came home and rightaway she was full of the idea wanting to build these colored apartments, wasn't she?

A. Yes.

Q. And didn't she say she was going to try to get her father to do it for her?

A. Yes.

A reading of the witness's cross-examination beginning at the bottom of page 203 S. C. and continuing on through pages 204, 205, 206, 207, 208 and 209 is convincing that the witness was not telling the truth. Like all witnesses who have something to conceal, or who are fabricating a story, she denied that she had talked to anybody about her story. She was then compelled to admit that she had talked both to Mrs. Naame and to Judge Cole. After first denying that she had talked to anyone, she admitted that she talked to the defendant-appellant. She told defendant-appellant that Doughty had said he was giving her the houses although she did not know that this was the defense. P. 205-204 S. C. She volunteered this and other information to Judge Cole without his asking her and finally the examination winds up as follows:

P. 209 S. C. line 33:

Q. * * * I started out, Madam, by asking you whether you had talked to anybody about this case and you said you had not. Now, how is it that after a lengthy cross-examination I draw out of you the fact that you did talk to Miss Dobbin about it? Why couldn't you remember that and tell me that in the first place?

A. I don't know.

Q. Is there anything the matter with your memory?

A. Not that I know.

And finally, when pressed to repeat the declarations of the complainant-respondent, Doughty, she says on p. 211 S. C.:

> Q. Now, then, he was sitting at the table and he and the daughter were discussing about how well these houses were going to pay and suddenly, out of a clear sky, he says, "I am giving these houses to my daughter." Is that what you want us to understand the conversation was?
>
> A. *No, he was talking about the houses and he knew I knew that she had got the land, so he said he was BUILDING them for his daughter and giving them to her.*
>
> Q. *Now, wasn't that what he said, that he was BUILDING them for her?*
>
> A. *Yes, he said* ***that.***

So that ultimately, the witness let it slip out that the conversation was that Doughty was *building* the apartmens not "giving" them to his stepdaughter.

We now come to the interesting testimony of Ella Mauser. This lady's position in this case was somewhat equivocal, to say the least. She appeared to be a lady of considerable means, dealing extensively in real estate on her own account, of uncertain age, and I think, a countenance concealed beneath a mask of rouge and powder.

Mrs. Mauser did not maintain a boarding-house, nevertheless for several years up until within six months of his marriage to Miss Dobbin, Mr. Joseph S. Naame lived in the witness's home. Witness also had a yacht. At least, she did in the beginning. Towards the end of Mr. Naame's stay at her house, her interest in the yacht appears to have diminished in proportion to the length of Mr. Naame's stay, until finally according to her testimony, she only had a small interest in it. In any event, she was in the habit of taking crusises with Mr. Naame in the yacht. She said that she would like to see the Naames win this law suit.

P. 226, S. C.:

Q. When you talk about this being an Indian gift, would you still like to see Mr. Naame share in this money if the Naames can hold on to it?

A. I don't quite understand your question.

Q. You don't? Well, you would like to see them win this case, wouldn't you? You would like to see them succeed in this lawsuit?

A. Well, surely.

She then tells the tale of her visiting Mr. Doughty at his office in the Marine Trust Company. Her explanation of why she visited Mr. Doughty is somewhat curious. She went to Doughty about fire insurance, although he is not in the fire insurance business.

The conversation relates more to Joseph Naame than to defendant.

Page 215:

A. Well, the substance of that was that he said he didn't like Mr. Naame, he said he was a nigger, he wasn't a white man * * *.

A. He was saying how he didn't like him, how he was going to get every God damn cent back—pardon me, he was going to get every cent back he had given to her.

Then Doughty is recorded as having come to the Witness's house where this conversation took place:

Page 217:

A. * * * "You know," he said, "I think you and I have gotten a damn rotten deal." And I said "What do you mean?" Well, he said, "I think," he says "we ought to stick together." I said "How stick together, Mr. Doughty?" He said, "I will tell you what I think." He said "You ought to sue Isabel for alienation of affections." * * * And then he swore some more and said I was too damn soft.

On Page 218, Line 35:

Q. You knew that he had deeded these various properties to her?

A. Yes.

Q. And you knew it was that to which he referred?

A. I judged so.

On Page 221, Line 27:

Q. Did he say he loaned her a lot of money?

A. No.

Q. Did he say he had given her a lot of money?

A. No.

Q. He just said he was going to get his money back?

A. Yes, he said he was going to get every God damn cent he had ever given her, back.

The witness then testified concerning her relations with Joseph Naame:

Page 223:

Q. How long had you known Mr. Naame?

A. About seven or eight years.

Q. Knew him very well?

A. Yes.

Q. Before he married Miss Dobbin he was in your company a great deal, wasn't he?

A. Yes.

Q. Visited down there at your bungalow?

A. Yes.

Q. How long?

A. Well, I should say from the time that they rented their home and they took a smaller house and there wasn't room, enough bedrooms and then he came down to stay at our house.

Q. How long did he stay there?

A. Well, I should say from that time on he was there about three years.

Q. Three years he lived in your house?

A. Yes.

Q. He was a frequent visitor on board your boat, wasn't he?

A. Yes.

Q. And you and he took trips together on the boat, didn't you?

A. He owned more of the boat than I did.

Q. He was a part owner of the boat, wasn't he?

A. Yes.

Q. This was a cabin cruiser?

A. Yes.

Q. You and he went off on trips in the boat?

A. Yes.

Q. Stayed some length of time?

A. Surely.

Page 225:

Q. When did he leave there before he married Miss Dobbin?

A. Oh, I should say about six months or eight months.

At the beginning of the witness's direct testimony on line 36, page 214 she tells about Mr. Doughty showing her some papers, asking her, "Do you know about the trouble I am having with Isabel?" and gave her the papers to read. When asked what he read, she answered:

A. Why, it was about some lot that she had claimed that he had given her, this lot, and she was trying to get the lot back, I think, and some improvements made, I just couldn't get head or tail of it.

On Page 227 the defense counsel directed her attention to this paper from which Mr. Doughty read:

Q. * * * Do you recall there was anything said in that about a boat?

A. Yes.

Q. Was the name of Mr. Satanov used, if you can recall?

A. I believe it was.

She then gives the conversation with Doughty as follows:

A. I don't recall that he mentioned Mr. Satanov's name in connection with the boat but he just said, he said there was a case came up, he said, "You have been in Miami, haven't you?" I said, "Yes, I have been away, I have been South." He said, "There was a case here, they said you were in Miami, and the case came up, something about a boat, and folded up the paper and put in his pocket and that is about all was said about that.

The conversation as first given and then repeated by the witness is irreconcilable. She first says that the paper related to a suit between himself and his step-daughter and in the second place to a suit between a stranger and Mr. Naame, and when pressed on cross-examination, she said:

Page 228:

Q. Mrs. Mauser, how was it that you couldn't remember when I asked you about this paper that the controversy related to a boat until Judge Cole called it to your attention?

A. I had really forgotten it, but I remember now.

She then said that she sold the boat to Mrs. Naame.

Q. How much did Mrs. Naame pay you for the interest in the boat?

A. I don't just remember.

Q. You can't recall that?

A. No.

Q. When did she buy it from you?

A. Possibly six months ago, five months ago, I can't just recall exactly.

Q. You can't remember what Mrs. Naame, about six months ago, paid you for your interest in the boat?

A. No. * * *

Q. I say did the boat go with Mr. Naame?

A. I don't quite understand.

Q. When Mr. Naame left you or your house and went and married Miss Dobbin, why it seems that the boat changed ownership, too?

A. Well, I will tell you, Mr. Naame had paid all the expenses on the boat and he had kept it up and he had used it where, within the last year and a half, I hadn't used it at all, so I really didn't consider that it was mine.

She had just previously said that Mrs. Naame had bought her interest in the boat. Then continuing:

Q. Did you have any kind of a lien on the boat?

A. Yes.

Q. What was it?

A. A mortgage.

Q. Chattel mortgage on the boat, wasn't it?

A. Yes.

Q. What happened to the chattel mortgage?

A. Oh, I cancelled everything.

Q. You did?

A. Yes.

Q. How much was the chattel mortgage for?

A. *I really don't remember.* * * *

Q. Who gave you the chattel mortgage?

A. I think Mr. Naame.

Q. Why did he give you a chattel mortgage on the boat?

A. Well, I—he owed me some money.

Q. How much did he owe you?

A. I couldn't say.

Q. You can't remember that?

A. No.

Q. Perhaps, Madam, I can refresh your memory, was it $22,500?

A. I really couldn't say.

Q. Was it twenty thousand dollars?

A. I couldn't really tell you.

Q. Was it fifteen thousand dollars?

A. I really couldn't tell you.

Q. Was it twenty-five thousand dollars?

A. I can't tell you. I don't remember.

* * *

Q. And you couldn't remember whether it was a thousand dollars or twenty thousand dollars?

A. No.

The witness became more and more confused about how much Naame owed her, as the testimony on pages 234 and 235 shows. She couldn't even tell whether the loan was more than $22,000 but did not *remember* to put it in her income tax return. Notwithstanding her failing memory on such an important matter, she could remember that Doughty had said that he would like to wipe his feet in Naame's blood, and that he was more of a nigger than a white man, and that he was going to get back the money he had given to Isabel.

Page 236, line 13: She denied that she had ever told this conversation to either Mr. or Mrs. Naame, but did tell it to Mr. Salsburg, an uncle of defendant's counsel, and then two pages further on contradicts herself as follows:

Page 238, line 19.

A. I really, *to be quite honest with you,* I was out of town last week and when I came home late at night, *Mr. Naame* called me up and asked me *if I would be a witness for him.* I said, "Yes, can you tell me what it is about?" and he said, "Oh the same old trouble," or something to that effect and I said, *"All right, I will do what I can for you."* "I will tell the truth," so I went up to Judge Cole's office yesterday morning to find out what it was about." * * *

A. * * * and so I told Judge Cole several little things. He said, "Well," he said, "now I don't think we will need you today." He said, "If we need you at any time we will send for you."

Q. The Judge say to you that wasn't the case he was interested in?

A. No, I don't recall that he made any comment. I may not even have mentioned the Satanov case, I may have said I don't know just what case it was.

Q. What, you haven't told us—was—the question I asked you and that is I asked you what you told Judge Cole about this case?

A. Well, I told him that if there was anything that I could do for either side, I said, "I like Mr. Doughty, I like Mr. Naame and Mrs. Naame, I have nothing against them, but," I said, "I am willing to tell what is right."

Q. Did Judge Cole ask you some questions then?

A. Yes.

Q. What did he ask you?

A. He asked me when I had had any conversation with Mr. Doughty and I told him the first conversation that I thought I had with Mr. Doughty on the boat in 1927 * * *"

Q. * * * What did you think Judge Cole meant, what kind of conversations?

A. Well, I didn't really think.

Q. But you told him that you had a conversation with Mr. Doughty on the boat and that he had said that he was going to take care of Isabel, is that right?

A. Yes, that is right.

Q. And then he said go on?

A. No, he didn't say go on.

Q. Didn't he? What did he say?

A. He said, "If we need you we will let you know."

Q. Is that all the conversation?

A. That was practically all.

On the next page, 241, she then says that she told Judge Cole about the conversation with Doughty at the Marine Trust Company, and also about Doughty coming to her home.

Question, page 241, line 21:

Q. Now, Madam, you see if I am stating fairly what happened; if I don't, why you stop me. Mr. Naame asked you to go up to Judge Cole's office. You went up to Judge Cole's office and you were

invited into his private office and the Judge asked you or you told the Judge, as I understood you to say, that you were willing to testify to anything you knew. Is that correct?

A. Yes.

Q. Had, up to that time, Judge Cole said anything to you?

A. I can't recall that he did. *He sat back in his chair just looking at me.*

Q. For which I don't blame him. *But you knew what case you was there about, didn't you?*

A. *Oh, yes, surely.*

This was a direct contradiction of her former testimony.

Page 242, Line 1:

Q. You knew that it was about the controversy between Mr. Doughty and his stepdaughter?

A. After I got there I knew it.

Although she had previously denied knowing what the controversy was about, as previously quoted in the testimony, it developed this interview was on the day previous to the trial.

At line 26, page 243, she gives a different version of what Judge Cole asked.

Q. What were the words he asked? I thought that was what you told me a minute ago.

A. He asked me what I knew as regards any conversations I had had with Mr. Doughty as regards *Mr. Naame's affairs.*

The court's attention is directed to the conclusion of cross-examination on page 244 and 245 which clearly shows that this witness was not telling the truth. She had let it slip out on page 238 that Mr. Naame had called her up. Unquestionably, Naame had coached her concerning her testimony, and when pressed upon this subject under cross-examination she undertook to shield him by denying first that she had talked to anyone about the case; then admitting that she had talked to Salsburg,

then admitting that she had talked to counsel, that she was unable to remember what she had told counsel, and gives several different versions of what she told counsel, both as to the extent of the conversations and the subject matter. On the surface Mrs. Mauser is a disinterested witness, but on the witness stand she talked too much, and undoubtedly the real state of affairs developed. Joseph Naame owed her and apparently still owes her a large sum of money—how much she was unwilling to recall—although the chattel mortgage was for $22,500, and she thought the amount was much greater. Unquestionably, she thought that if the Naame's succeeded in this litigation that she would have a better chance to get her money back. Now would it seem as if her interest in Naame was disinterested as she would have it appear, from another aspect. In relating her conversation with Doughty at her home, she seemed to feel that she was called up to explain her relations with Naame, although Mr. Doughty had made no remark that called for explanation.

Page 227:

A. Well, I thought possibly he misunderstood the situation.

Q. What did you think he misunderstood?

A. *Well, I thought possibly he was under the impression that Mr. Naame was more than a friend to me, which he was not.*

Q. You thought Mr. Doughty thought that during the time that Mr. Naame had lived at your house that you had been on intimate terms?

A. Yes.

Q. How do you suppose he got that impression?

A. Well, I don't know what made him think that.

Q. And when he rather boldly suggested that was the fact and that is what you understood him to mean, you didn't resent it?

A. Yes, I did.

(*Note:* On page 226 witness had said that when Doughty left she was in a pleasant frame of mind; that there was no coolness between them, and that she was not provoked at anything he had said.)

Q. I know, but you say you left on friendly terms?

A. Surely.

Q. When an almost stranger comes to you and suggests that you have been living on intimate terms with another man, do you mean that you can part with that gentlman on friendly terms?

A. Yes.

Q. You can?

A. Yes.

(*Note:* The innuendo had actually been suggested in his cross-examination and by nothing that witness testified Doughty had said.)

From this testimony it can be seen that Mrs. Mauser may have had a maternal interest in young Mr. Naame that led her readily to assent to the coaching that Naame instigated. That she was not a good liar is evidenced by the numerous traps in which she fell in both the direct and cross-examination, and the fact that her testimony is so clearly fabricated is persuasive of the fact that the defendant and her husband both knew that the moneys advanced by Doughty were loans and not gifts.

We then have the testimony of Joseph Naame, husband of the defendant. On page 257 in a lengthy answer he says:

* * *

A. He was giving her these properties because she is the only one he had who lived with him since the death of his wife, only companion he had

* * *

Page 258:

Q. Was there ever any time he told you he was loaning her the money?

A. Never. In fact, I would go to him and ask him, "How much did you give her now?" so I can make some kind of report when the income tax came around.

(*Note:* Defendant did not produce the income tax returns to show that they had recorded the moneys as a gift.)

Witness repeated in his cross-examination that Doughty had declared the money he had advanced was a gift. Witness also said that after he met the defendant he took charge of her affairs and kept her books for her. The witness is vitally interested in the outcome of the suit, and in both his direct and cross-examination, made many admissions which are damaging to the defendant's contentions. For an example, on direct examination in his answer that begins on page 249, line 17, on page 250, he says:

A. * * * We mortgaged those properties in 1927 (Savoy and corner), I believe one was placed in July and one in October, to the best of my recollection, in the summer and fall of 1927, and that was to defray the difference in the cost of the Ohio Apartments, I mean by difference, the rest of the money.

It is undisputed that Doughty gave his checks to the defendant to the extent of $104,000 to give to Naame to pay for the cost of building the Ohio Apartment. If the $95,000 was raised in the three mortgages in the Savoy and corner properties, was used to pay for the building of the Ohio Apartment, only $9,000 of Doughty's money would be in the Ohio Apartment. Even the defendant admits that Doughty gave her checks covering all the money used in building the Ohio Apartment, and this statement of Naame's, if true, destroys defendant's whole case, because it admits that defendant's money and not Doughty's money went into the building of the Ohio Apartment, or that Doughty was repaid for the money advanced on the Ohio Apartment by the mortgages. The witness uses the words, "defray

the difference in the cost of the Ohio Apartment." This can only be an admission so far as the witness could admit that the money advanced by Doughty was a loan.

Again on page 262, line 1:

Q. Now, you say that right after he placed this building and loan mortgage he told you about it?

A. Why, no, I didn't say that at all. I said he discussed it even before he started to build that apartment as to the financing of it.

Q. That he was going to put a building and loan mortgage on it?

A. Yes.

Q. Before he started to build it?

A. Yes.

Q. And as soon as the building got under way he put the building and loan mortgage on it?

A. That is right.

This referred to the Savoy and corner properties. If the money advanced by Doughty on these properties was gifts, as contended by the defendant, why the building and loan mortgages even before the work was started?

Again on page 266:

Q. Now, you knew that your wife owned the property, she had title to it?

A. Positively.

Q. And of course, you knew that she must have made this mortgage?

A. Positively.

Q. And you knew that you got the money and expended it on the building?

A. Yes.

Q. Now, she ever get that money back from Mr. Doughty?

A. Get the money back?

Q. She ever get the money back?

A. What money back?

Q. This thirty-five thousand dollars.

A. *She never got it from him.*

Defendant testified he kept her books, page 267, line 27:

Q. Did you set up in the income tax returns the gift of this $100,000?

A. I don't know what the accountant may have done. I didn't consider it for the simple reason I knew it was a gift, had nothing to do with anything whether he set it up or not, that isn't up to me.

Q. Didn't your figures show this $100,000 as a gift?

A. No. * * *

Q. Do you know whether there were copies kept of this income tax return?

A. * * * I think there is some, yes.

Q. Now, what I am getting at is this: does this income tax return sheet show this money reported to the government as a gift?

A. No, because if——

Q. They don't?

A. No.

Page 269, line 3:

Q. Do you know whether it was necessary to report to the government this $100,000 was a gift and pay income tax on it?

A. I couldn't tell you that. All I know, I didn't think it was necessary. * * *

Witness got very much tangled up in discussing a rather extraneous matter, to wit: who collected and kept the rents on the corner properties. It appears that while Doughty gave his stepdaughter the corner property in 1922, he always collected and kept the rents. They were collected through C. J. Adams Company, who paid the rents to him. This continued up until the time of the marriage. Both the defendant and Naame undertook to dispute this fact, and testified that while complainant collected the rents through C. J. Adams Company, that he always gave the money back to his stepdaughter.

Page 253:

Q. Gave what money back to her?

A. The check that he collected from the C. J. Adams Company.

On page 269 of cross-examination, witness said:

Q. You were asked this question by Judge Cole, do you know of your own knowledge who collected the rents, referring to that building, before you made this contract, and you answered, my wife. Now, do you mean that?

A. I don't think I said my wife, Senator. I said C. J. Adams collected the rents.

(*Note:* This referred to the corner saloon.)

On page 271, line 13:

Q. Then you don't mean to say that you have any knowledge whatsoever as to who collected the rents when there was tenants in this house, do you?

A. No, that I don't know.

Page 272, line 28:

Q. Did you ever see him give these checks back to his daughter?

A. I don't remember that.

Q. You say they were given back; how do you know that?

A. Because from the very beginning, when I first built the first apartment, I saw several checks, $114, $112, my wife said it is the rent for the apartments in the back.

Page 273, line 32:

Q. Why would he give his own check?

A. Because the original check was made out to C. J. Adams under the old arrangement to Mr. Doughty was never changed, that was all; the arrangement was made before he even give her the property, same tenants were there, same man collected the rents, same man received the rents.

On page 274, witness testified that he checked up on her deposit books for years prior to her taking over the possession of the property—obviously an untruth.

Page 275, line 1:

Q. You say you asked what these checks were, is that right?

A. Yes.

Q. Were the checks there? * * *

A. I remember on two occasions when I was building there, Mr. Doughty came along and says, "Here, Isabel, here is a check for the rent I just got from C. J. Adams." * * *

Q. Well, did you say a few minutes ago and all through this examination you have spoken about these checks; now, what checks do you refer to?

A. I am referring to several checks that I have seen Mr. Doughty hand my present wife and say, "Here are the rents from C. J. Adams Company." * * *

Q. What I am talking about is what you have testified to was with relation to checking back on her accounts?

A. Yes, I started several months back in order to catch a different foothold somewhere, and I ran across these checks, and I said, "What are these checks?"

Q. Now we are down to a showdown. *You did see the checks?* (Page 276, Line 3.)

A. I did see some of them. I didn't see all of them.

Q. You asked your wife what those checks were?

A. That is right.

Q. She told you they were checks from Mr. Doughty to her for the rent?

A. That is correct.

Q. And you put them down as amount received?

A. That is right.

Q. That is all correct?

A. So far.

Q. Now then, inasmuch as these were Mr. Doughty's checks, how did they come into her possession?

A. Because, as I explained to you, when he gave her the property, understand, he started to turn over the checks to her, but he didn't tell Mr. C. J. Adams, "Here, I have gave my property," probably, he just turned over the check, just naturally.

Q. Mr. Naame, the cancelled checks would have been in either in the bank or in Mr. Doughty's possession; now how could you have gotten those checks?

A. *I didn't say that. I didn't say I seen the checks*, or rather I saw the check when Mr. Doughty had gave it to my wife. * * *.

Witness's former testimony was read to him:

A. I believe you misunderstand me when I said checks, *I mean the deposits.*

It is apparent that his whole testimony concerning the check incident was not only improbable on its face, but it was admittedly downright perjury. While on the subject of Mr. Naame's testimony, we call attention to the fact that Doughty resisted Naame's attempt to marry his stepdaughter at the utmost; that he threatened to shoot him (page 254); that he assaulted him with a stick (page 256); that he hit him in the jaw on another occasion; that each time that Doughty assaulted him he said, "You let go of my daughter—all you want is her money" and that Doughty repeatedly accused him of trying to marry his stepdaughter for her money.

Witness also admitted that his wife drank (pages 284 and 285).

Defendant's case concludes with the testimony of the defendant which is substantially as follows: She admitted on direct examination that she paid off the mortgage on the corner property with the two $15,000 notes.

Page 296, *Line* 29:

Q. Where did you get the money with which to pay the note in the Marine Trust Company?

A. From the rentals for my apartments.

Q. Where did you get the money with which to reduce the note in the Guarantee Trust from fifteen thousand to eight thousand?

A. From my apartments.

Defendant confirms Doughty when she speaks of income from her father's estate, page 298, line 1:

Q. Did you have any other source of income, other than what you were getting from the rents on these properties?

A. I have.

On page 301 she tells of the visit to Ost, and the idea of building the apartment, and then, page 301:

Q. Did you ever ask him to loan you any money?

A. I did not.

Q. Did he tell you he was loaning you the money?

A. *He told me he had given me those houses.*

This testimony negatives all the testimony that complainant had made the gift of the money prior or contemporaneously with the building of the houses. In the case of the Ohio Apartments the Answer alleges that all of the money advanced by Doughty was gifts. Defendant testifies, page 303, line 1:

Q. Did you borrow the money from him to build that? (Ohio.)

A. From whom?

Q. From Mr. Doughty?

A. No, I put two mortgages on the Savoy and he gave me the rest.

A direct variance with the answer.

The defendant-appellant did not undertake to deny the colored maid's version of the check incident or other conversations. Page 308, S. C. line 1:

Q. Well, this maid says that you admitted to her that you owed Mr. Doughty money?

A. I don't discuss my business with servants.

Note: This was an evasion, not a denial.

She made a like reply concerning Mr. Stewart's testimony. Page 309, S. C. line 13:

> Q. He said that you told him that Father built the buildings for you and that when you got him paid off you were going to take a trip to California; did you say that to him?
>
> A. I have no recollection.

And on cross-examination, the defendant-appellant stated that her position was that the moneys advanced were gifts and not loans. Page 312, S. C. line 30:

> Q. If I understand, it Madam, you deny that the various sums of money that were advanced by Mr. Doughty were loans?
>
> A. I do.
>
> Q. And that the moneys advanced were in the nature of a gift?
>
> A. Positively.

Page 313, line 17:

> Q. Now, when you wanted these properties uptown improved, you asked him, as I understand your testimony, to improve it for you?
>
> A. *It was his suggestion.*

This testimony is in direct conflict with Edith Crouch, who said that defendant-appellant suggested the idea to her stepfather.

> * * *
>
> Q. Well, you understood then that he would cause houses to be built and make you a present of them?
>
> A. Positively.
>
> * * *

Q. Now, when it came to building the first one of the houses, he advanced the money, made the contracts, advanced the money and when it was completed you took possession of it?

A. I did.

Page 314, S. C. line 1:

Q. And you thought that constituted a gift to you of the moneys that had gone into building the houses?

A. Yes.

Q. That was what you thought when you moved into it, is that right?

A. Yes.

Q. You did take possession of them, you rented them to these colored people and ran them as your property?

A. I did.

Q. And you hadn't any suspicion that Mr. Doughty was to get any of that money back?

A. No.

Q. *When did you first find out that he did expect to get it back?*

A. *When he sued me.*

Q. And that was the first time that you knew that he expected to get the money back?

A. Yes.

Q. Never before?

A. No.

Q. Now, when it came to improving the corner property, when you asked him to improve that for you, didn't you?

A. No. I created the mortgage for the improvement.

Q. Why didn't you get him to give that to you?

A. He said at that time he had given me all he could, for me to get the money and *he would pay me back.*

Q. Then you expected him to give you the money the other way around, then, is that right?

A. No sir; I expected him to give me that.

Q. Did you ever get it back?

A. No.

* * *

Q. Now, then, when it came to the Ohio Apartment, you bought that land yourself according to your story?

A. I did.

Q. Mr. Doughty didn't pay any part of the purchase price, did he?

A. No, sir.

* * *

Q. He made the arrangements for it but it was your deal?

A. Yes.

Witness testifies that she made the purchase through Doughty.

Page 316, S. C. line 1:

Q. So far as you were concerned it was your property?

A. Positively.

Q. And Mr. Doughty didn't figure in it at all?

A. No.

Q. In no way?

A. No.

Q. *So that you bought the thing entirely on your own hook?*

A. *I did.*

Q. *Now then, will you explain to us why it was that Mr. Doughty gave the mortgage and went on the bond for fifteen thousand dollars?* * * *

A. IT WAS HIS TRANSACTION AND HE JUST SIMPLY DID THAT FOR ME.

Q. But you went up there and put down the money the cash at the time the contract of sale was

signed, you put up the balance of the cash, you have just told us that it was your deal why did he take the property in his name, why did he gave the mortgage for fifteen thousand dollars and why did he go on the bond?

A. I HAVE NO RECOLLECTION WHY HE DID.

Having just testified that all the moneys were gifts, she was asked, p. 316, S. C., line 34:

Q. Now, you got 35,000 on the corner property, $35,000 ($25,000?) on the next apartment and $35,000 on the third apartment? Will you explain to us how it was that in each case the proceeds of those three mortgages were paid to Mr. Doughty?

A. Was paid to him?

Q. Yes.

A. He attended to all my business.

Q. But these properties, Madam, were your properties, you owned the fee to them?

A. I know.

Q. And initially the building and loan company gave a check to you for them?

A. Yes.

Q. Every case, didn't they?

A. Yes.

Q. Then what was the necessity for your turning around and giving the check to Mr. Doughty?

A. He paid the checks to Mr. Naame.

Q. Why?

A. I DON'T KNOW WHY.

Resuming on page 338, S. C., line 34:

Q. I want to see if I understand correctly your contention about the moneys that went to build these apartment houses. The first two apartments were built out of moneys advanced by Mr. Doughty is that correct?

A. Money given by Mr. Doughty.

Q. Well, at least, paid in cash to Mr. Naame the total amount of the cost of the houses; is that correct?

A. Yes.

Q. Which was $100,000, was it not?

A. I think it was.

Q. Now, he then paid to Naame some $36,000 in cash for the remodeling of the corner apartment, is that correct?

A. I borrowed the money for *him to pay it.*

Q. Wait a minute. He paid that in cash?

A. Yes.

Q. You then borrowed $35,000 on the corner apartment?

A. Yes.

Q. Now, what do you contend you did with that money?

A. I contend I made the alteration with that money.

Q. WELL, OBVIOUSLY, MADAM, THE CHECKS SHOW THAT MR. DOUGHTY PAID THE $36,000 DIRECTLY TO MR. NAAME, HOW DO YOU MEAN THAT YOU GAVE THIRTY-FIVE OF IT BACK, BY RAISING THE MONEY ON THE MORTGAGE AND PAYING IT TO MR. DOUGHTY?

A. YES.

Q. SO THAT IT IS YOUR CONTENTION THAT, AS FAR AS THAT TRANSACTION IS CONCERNED, THAT MR. DOUGHTY WAS PAID ALL BUT THE THOUSAND DOLLARS? IS THAT CORRECT?

A. I PUT THE MORTGAGE ON THERE TO PAY FOR THE ALTERATIONS.

Q. WILL YOU PLEASE ANSWER MY QUESTION?

A. YES.

The contention is now made by counsel that there is no dispute about the actual amount of money due. This is admitted by the defendant-appellant.

P. 340, S. C., line 14:

Q. * * *; I say if that was the fact, if it was a loan and not a gift, there would still be $100,000 due to Mr. Doughty from you on these apartments?

A. If it was a loan, but it was a gift.

Q. I am trying to find out what your contention is in this case. And it is also your contention that you raised the money necessary to build the Ohio Apartments from the proceeds of the two mortgages placed upon the new apartments?

A. Yes.

Q. They amounted to $60,000?

A. Yes.

Q. Now, the Ohio Apartments cost about $104,000. Where did the balance of the money come from?

A. I had notes, when I was short he gave me money.

* * *

P. 341, S. C., line 4:

Q. Can you tell us how much money was either advanced or given to you by Mr. Doughty to complete the building of the Ohio Apartments?

A. No.

Q. The amount of cash you were short was about $44,000?

* * *

A. There may have been.

Defendant-appellant was then shown the checks, Exhibit C-1, from Doughty to Naame and questioned:
Page 341, S. C., line 32:

Q. Now, then, those thirty checks approximate within four thousand dollars the total amount of the Savoy contracts?

A. One hundred and thirty-six thousand, yes.

Page 344, S. C., line 6:

Q. Of the $71,000 of total checks that we have here, it is your claim that $40,000 of that represents repayments to you of money loaned to Mr. Doughty?

A. Yes, sir.

Q. And thirty-one thousand, then would be the amount which was either loaned or given to you by Mr. Doughty?

A. Given to me.

Q. Either one, these figures, we are trying to arrive at the figures now.

A. Yes.

Q. So that, then, would make a total of $132,000 that was either loaned or given to you by Mr. Doughty on the whole series of apartment houses?

A. Yes.

Q. And in addition to that, of course, you don't contend that Mr. Doughty gave you the $8,000 which he paid on the promissory note; that you admit you do owe?

A. I do.

On page 346, S. C., defendant-appellant was again careless of the truth.

Page 345, last line and 346, line 1, S. C.:

Q. How do you explain the fact that the contracts for the erection and remodeling of the Savoy Apartments were in Mr. Doughty's name?

A. He built them and gave them to me.

Q. Well, according to your story he gave you a part, at least, of the money he used to use the Ohio Apartments, why wasn't that in his name?

A. He thought that I was capable of attending to that myself at that time. THAT WAS SEVERAL YEARS AFTERWARDS.

When pressed, defendant-appellant had to admit that it was only six months afterwards.

Her counsel tried to get her to identify a series of checks of which the $15,000 repayment check was one.

Page 352, S. C., line 23:

Q. * * * Will you look at those and tell me whether you can recall what those checks were given for?

A. NO, I CAN'T.

Then shown the $15,000 check, she answered:

Page 353, S. C. last line on page:

A. Temporary loan, he was short and needed, and I had some extra money.

Page 354, S. C., line 7:

Q. Can you presently recall whether he paid it back in one payment or more than one payment?

A. *One check was for ten thousand and the other was smaller amounts.*

On cross-examination, page 354, line 19, S. C.:

Q. About this $15,000 check. How soon after you gave him this check was it that he gave you the $10,000 back?

A. Why, I presume only a short time.

Q. Then, I show you these checks, C-1, and point out to you that there is only two $10,000 checks, one of them is dated October 5th, 1927, and the other January 7th, 1928. Which one was the repayment check?

A. Why, most likely, wasn't either of those.

* * *

Q. It wasn't any of these checks, then?

A. Evidently not.

Q. SO, THEN, THAT YOUR CONTENTION THAT OF THIS SERIES OF CHECKS OF $71,000, FORTY THOUSAND WAS PAID BACK, IS NOT CORRECT BY AT LEAST TEN THOUSAND DOLLARS, IS IT?

A. NO.

Witness could not match up the remaining checks to make $5,000 and had to take refuge in "I don't remember."

Page 355, S. C., line 20:

Q. Now, Madam, can you take these checks, any of them, and find any stubs that will exactly reach $5,000?

A. Exactly reach five thousand?

Q. Yes.

A. No.

* * *

Q. None of these checks, as far as you can recollect now, were any repayment checks for this $15,000?

A. I guess they are missing.

Q. So that none of the $15,000 repayment is included in the series of checks produced in evidence as C-3?

A. NOT IN THAT PARTICULAR SERIES.

Page 356 S. C., line 16:

Q. * * *—what I am getting at is this, of course, whichever side is right, they were either given or advanced to you?

A. Yes.

Q. All but the twenty-five thousand?

A. Yes.

Q. That is clear, is it?

A. And the fifteen.

Q. The fifteen is not represented by any of these checks?

A. No * * *

So that there remains $100,000 due on the Savoy Apartments, $8,000 on the corner plus the $1,000 making $9,000, and $46,000 on the Ohio Apartments, making a total of $155,000.

The complainant-respondent's contention is that there is due on the Ohio Apartments $104,000, $44,000 on the Savoy and corner apartments, and $8,000 on the note, making a total of $156,000, substantially the same total as recognized by the defendant-appellant.

APPELLANT'S BRIEF

The many mis-statements or unsubstantiated inferences contained in appellant's brief can only be excused on the theory that counsel who prepared the brief was not the one who tried the case. It will be easiest for the court to take up these statements, not necessarily in their logical order, but in the order in which they appear in the briefs.

Page 2 of the appellant's brief: it is admitted that complainant-respondent was fond of his step-daughter but not as quoted "all the time she was living there" but up to the time he became disgusted with her conduct with Naame. It is admitted that complainant-respondent objected to the marriage and that he called Naame a "nigger". The court should understand that Mr. Joseph S. Naame is either a Syrian or some similar race and his physiognomy and complexion are such that he might easily be mistaken for a person of negroid extraction, so that the term applied by complainant-respondent was not an ephithet but a description.

The brief says that there is no evidence that the defendant-appellant drank. There is the evidence of the complainant-respondent, Maude St. John, the admissions of Joseph S. Naame and the admissions of the defendant-appellant. These admissions were that she drank cocktails, champagne and a Syrian wine called Arak.

Complainant-respondent's further objection was that Naame wanted to marry his step-daughter for her

money. Defendant-appellant's counsel strove most earnestly to keep out of the record the fact that at the time of his courtship and marriage, in December and January of 1928 and '29, Naame was desperately in need of money. This Court knows this to be true, because in *Satinof Realty Company* vs. *Naame,* decided in this Court at the June term, it developed that he needed $28,000 to avoid the foreclosure of the Lincoln Apartments mentioned in this cause. He failed to get this money because the Lis Pendens filed in this suit prevented raising money upon his newly acquired wife's property. Doughty may have well been justified in his suspicions.

He, complainant-respondent, knew about Mrs. Mauser, and the sudden departure from the Mauser domicile and the equally rapid courtship of Isabel Dobbin closely follows and parallels the efforts in the Satinof suit.

Counsel makes much of the fact that papers in this suit were served on defendant-appellant's wedding day, and says that complainant-respondent's testimony that this was a coincidence is "an obvious falsehood."

Defendant-appellent has not printed the endorsement on the bill of complaint showing when it was filed, but it was actually filed on the 4th of February, 1929. The Lis Pendens was filed on the 5th of February, 1929. The fact that the sheriff served the papers on her wedding day was wholly within that official's control, and not that of the complainant-respondent.

Page 3 of the brief: the statement that the moneys to finance the building of the Ohio Apartments came out of the mortgages raised on the Savoy and corner apartments is not substantiated by the proofs. The first mortgage was raised on April 22, 1926. The Ohio Apartments were not started until the summer of 1927. The Savoy Apartments were finished on April 29, 1926, the release of liens given that date. Ex. C-8 and C-9, S. C., p. 457 and 462. The second mortgage was dated July 15, 1927, for $25,000 and was paid to Doughty by defendant-appellant's check. The third mortgage was

October 15, 1927, and the money was paid to Doughty. The Ohio Apartments were not finished until January of 1928. The $71,000 of checks which cover the Ohio Apartments transaction, beginning on June 10, 1927, runs through June, July, September, October, November, December, to January 7, 1928. No other checks were produced by the defendant-appellant showing that she paid any moneys corresponding to the mortgage moneys to Naame, on account of the building of the Ohio Apartments. On the contrary, it appears that Doughty got the money and afterwards advanced to her either this or other moneys that were in his bank account at the time to continue the improvements. Pages 3 and 4 set out sections of the bill of complaint.

Pages 5 and 6 of the appellant's brief set out the contentions of the parties and the conclusions of the Vice-Chancellor.

Counsel then proceeds, beginning on page 8, to discuss and try to explain away the $500 check; after quoting selected sections of the evidence, argues, page 11, that it is improbable that after the stepdaughter "had repudiated any obligation to him in October, 1928, upon his simple request and *without coercion,*" she would give him this check. Why is it improbable? As late as the 19th of December, 1928, she gave him another check admittedly for money she owed him for money for jewelry. (P. 333, S. C.)

Complainant-respondent did not say that he had the check photographed "immediately" after receiving it, but before he deposited it.

The argument is then implied, p. 12 of appellant's brief, that he only sought the return of his money when he found he could not prevent the marriage of his stepdaughter and Naame.

The testimony both on the subject of drinking and that of profanity, smoking, etc., is that this did not start until defendant-appellant came under the influence of Naame in October, 1928, and grew steadily worse until February, 1929. Admittedly, complainant-respondent

was fond of his stepdaughter and unquestionably he reasoned that, could he remove the baleful influence of Naame, his stepdaughter would return to a normal life such as she had led before meeting this Arabian Don Juan. He strove to break this influence by every means at his command, even with the desperate but feeble strength of an old man to attack and try by forceful physical means to prevent Naame from consummating his purpose.

Again returning to the argument, page 13, that because she said she would pay him nothing, he must have obtained the check through coercion, we call attention to the fact that she gave other checks after this date and that she only set up the claim of coercion after having had to change her testimony on cross-examination from her first claim that the check was in payment of the furniture.

An attack is then made on the veracity of Maude St. John. It is submitted that every undisputed fact fits in with her testimony. She gives the date when defendant-appellant said she would "see him (her stepfather) in hell before he will get any money on my property." She went to the hospital that morning, Friday, December 14th, which was the day before the check incident and the check is dated the 15th of December. A lengthy cross-examination failed to shake Maude St. John's testimony in the slightest. Nor was her demeanor on the stand one of anything save the utmost frankness. Witness admitted that she did not feel kindly towards the defendant-appellant because the defendant-appellant had inferentially accused her of stealing some gold pieces; and she asserted that she was given one of the gold pieces for a Christmas present by Miss Dobbin and that the gold piece was afterwards seen by Mr. Doughty, who questioned about it and she told him that Miss Dobbin gave it to her. This statement is not denied by Miss Dobbin. Obviously the witness was put in an embarrassing position by this incident and of which she had properly a right to complain. If she had anything

to conceal, there was no reason for her having told the incident at all on the witness stand.

Judge Cole thought it his business to inquire into any violations of the Volsteadian conduct of the witness and was met with the frank reply that she drank, got drunk, and that Miss Dobbin got drunk with her, which the defendant-appellant, Dobbin, did not deny. Certainly all of this testimony, relevant or irrelevant, was exceptionally frank and aboveboard, and does not go to impeaching her veracity.

The important testimony of the hand-writing expert is not printed on pages 16 and 17 of appellant's brief, but it does not require a hand-writing expert to know that this check was not written under conditions of excitement, hysteria, coercion or duress. The Court can look at it and judge of that fact for itself.

On page 17 of appellant's brief, counsel argues again that defendant-appellant, having declared she would pay him (complainant-respondent) nothing, must have been coerced to have given him the check. Yet when asked, page 332, S. C., line 14:

> Q. Is that the last check you ever gave him?
>
> A. I don't know whether it was or not. I have given him many checks.
>
> Q. After this row and after he had told you that he had tricked you, did you venture on giving him any more checks for any purpose?
>
> A. I think he asked me to pay for a ring he had bought for me.
>
> Q. Did you do it?
>
> A. I did.
>
> * * *
>
> Q. You paid him for that?
>
> A. I did.
>
> * * *

Page 333, S. C.:

> Q. If it was afterwards did you write anything on that check that you remember?
>
> A. I was very careful after that.

But witness could not remember what she wrote. The money was for a ring and platinum chain. When confronted with what she wrote on the check, it read:

Page 333, S. C., line 27:

Q. Now, I will show you what you wrote, "For account of, paid in full for diamonds purchased by S. L. D. for I. D."

A. Yes.

Page 334, S. C., line 8:

Q. And you paid him this check on the nineteenth of December, didn't you?

A. I don't remember the date.

Q. Well, that is the date on it, isn't it?

A. It is.

Q. And that is four days after he had served notice on you that he had tricked you with the other check?

A. He didn't serve notice. He told me.

Q. Well, after he told you?

A. Yes.

On page 18, counsel argues that the Vice Chancellor said that the defendant-appellant was unable to find the original of the check although it had passed through her account in bank and had been returned to her. *"The evidence that it ever passed through her bank account is of the slightest."*

The evidence on this point has already been summarized and consists in the statements that Doughty deposited it, that Singer, the bookkeeper of the Marine Trust Company, returned it when her book was balanced in February of 1929, and her admission that she received it. Quite evidently, counsel is not willing to believe the testimony of his own client. We submit that the evidence of the bank records left the Vice-Chancellor no choice but to believe that the check had gone through her bank account and been paid, and as a matter of fact, the entry appears on the ledger sheets which were offered in evi-

dence and which are not printed in the State of the Case, showing that the $500 check did go through the account on December 24th as admitted by the defendant-appellant.

It is then ingenuously offered that there was no object in the defendant's concealing the check for she knew that her stepfather had made a photographic copy of it and that she had told her counsel about it. We submit that not only was there no such evidence, except her statement, but that she did not and could not have known that Doughty had the photograph * * * not even her counsel knew it until Doughty testified that he had a copy of it and produced it, and counsel then proceeded to call it a "photostat" copy, not even realizing that it was a photograph.

Defendant-appellant was compelled to admit that her counsel had warned her, if her story was true, that she must produce the check at the trial. As before stated, neither Judge Cole nor Mr. Salsburg would support her statement that she had told them of the check in February, or at any other time. On the contrary, their silence is indicative that she did not so tell them, and the record cannot picture the situation in the court room when the photograph of the check was produced, nor the astonishment, chagrin and embarrassment that registered on counsel's countenance. Knowing the importance of the check, when she got it back on February 19, 1929, why didn't she give it to her counsel or carefully preserve it? She had a safe deposit box. She said she attached no importance to it although her counsel told her it was important, and she alleges complainant-respondent told her she was going to use it to get all of his money back; and if the check had been withheld from her by the bank, as she implies, at the instigation of her stepfather, why did she not demand it from the bank, who was responsible to her for it? Not only, however, could she not produce the check but she could not produce the check stubs that corresponded with it. Why? Isn't it reasonable to presume that the check stubs also contained the entry concerning the loan?

It is argued that perhaps there was some restrictive endorsement on the back of the check. Photographer Hess could have been called to clear this matter up if it had been raised at the time.

Page 19, counsel now begins to argue that complainant-respondent wanted the check more to break up the marriage than as evidence of repayment. He records all of the coercive steps that complainant-respondent did use to try to prevent the marriage: "He attempted to coerce his stepdaughter into abandoning the marriage by the threat that he would take back from her all of the money which he had contributed to the improvements. The threat was ineffective. He then threatened to kill Naame. The following week he threatened to kill him again and 'hit him on the jaw and broke his own knuckles'."

Then, if defendant-appellant was able to withstand this coercion, threats and a witness to actual bodily assaults, why was she unable to withstand the alleged coercion in the signing of the check? The fact is that no threats of any description were strong enough to bend her to complainant-respondent's will. This is the best evidence of her resistance to coercion, and a complete repudiation of her statements that she was coerced into signing the check.

Now, counsel undertakes to refute the Vice-Chancellor's finding that complainant-respondent received the benefit of all the mortgages. Taking up the $25,000, if it was not intended that he should receive the benefit of it, why did defendant-appellant pay it over to him? The fact that he used the money to go on with the improvement of the Ohio Apartments does not mitigate against his claim that it was a repayment. It repaid him in par on the Savoy job, and transferred the obligation to the Ohio Apartments.

Page 23, *at this point counsel makes an admission which seems to dispose of this case.* "It was not contended by defendant that complainant had agreed to supply her with all the moneys needed to make these improvements. On the contrary it was conceded that,

to the extent that moneys were, in fact, raised by mortgages upon the property those moneys were to be used in the improvement of the property, * * * and above the amounts received upon the mortgages, those moneys so advanced were pure gifts to her and that contention created the issue in these cases." We submit that there never was any such issue. The bills of complaint asserted that the money was loaned and the answer flatly denies it and said that the moneys, all the moneys, were gifts. Parallel this admission with paragraph No. 5 of the answer, page 10, S. C., * * * She denies that the moneys borrowed from the respective building and loan associations was a result of any promise or agreement upon her part to do so or that the proceeds were to be paid by her to him under said agreement or was applied as a credit, as alleged. * * * She repeats that *any moneys* which passed to her from complainant were a gift, * * *." Paragraph 5 of the second answer found on page 10, S. C., says " * * * and that he would give her the necessary money for that purpose. She denies that she was to repay or reimburse him for the money so given to her; and she denies that she was to create a mortgage loan for $75,000 or any other sum, or *ever agreed to repay him the amount given out of the proceeds of any mortgage loan.* * * * Defendant-appellant herself in her testimony never made any such admission as counsel now makes. She contended, as heretofore quoted in the testimony, that all of the moneys given to her were gifts and tries to explain away the mortgages on the theory that she raised the money on the mortgages to finance the Ohio Apartments and not as repayments to the complainant-respondent.

The argument is then advanced that the fact that mortgages were placed upon the property was not "probative evidence," * * * "upon the question as to whether the moneys actually contributed in cash by complainant to the stepdaughter were gifts or otherwise." This is an argument addressed to a situation not found in this case.

The issue was: had the complainant-respondent and defendant-appellant agreed that complainant-respondent would build the apartment houses and reimburse himself through mortgages and an application of the rents? Defendant-appellant denied that there was such an agreement. What the Vice-Chancellor found was that, combating and overcoming her denial, was the inconvertible fact that she had partially repaid her stepfather out of the mortgages. A significant fact in this case is that before the defendant-appellant became intimate with Naame, she permitted her stepfather to make the contracts for the buildings and to take directly the proceeds of the mortgage loans. See Exhibit C4 where the South Jersey Title Company check was directly endorsed over to Doughty. (Page 454 S. C.) The second mortgage was likewise paid over, but in the case of the third mortgage made much later, we find that defendant-appellant keeps the money in her bank account and expends it on the Ohio Apartments, also that she makes the contract for the Ohio Apartments in her own name. By this time Naame was beginning to work.

The brief then proceeds, on pages 24 and 25, to show that Doughty got none of the money from any one of the three mortgages, and winds up with this statement: "There is no probative proof that complainant received one cent from the proceeds of any one of these mortgages on account of any advances made by him." How is this to be reconciled with counsel's statement on page 23 of the brief that "it was not contended by defendant that complainant had agreed to supply her with all the moneys needed to make these improvements," * * * only those moneys above the mortgages? Obviously, counsel cannot maintain the two positions, or to ride both horses, which are going in opposite directions. He cannot first say that on the new apartments, the mortgages were gifts and then say there was no proof that complainant-respondent got any money from the mortgages.

THE LAW.

(90 N. J. E. 289)

The case of *Prisco* v. *Prisco,* cited in the brief, has no application. The facts were entirely different, this being an attack by third parties upon the presumed gift; nor do we have this quarrel with the rule as set out by the Vice Chancellor, that "the proofs which shall raise a resulting trust * * * must be of facts antecedent to or contemporaneous with the purchase." The resulting trust in this case arose immediately upon the complainant-respondent's advancing his money to the defendant-appellant. It is undisputed that the money was so advanced, leaving only the question of whether or not it was a loan. If it was a loan, then the trust arose; if it was a gift, then there was no trust.

The citing of *Selover* v. *Selover,* 62 N. J. E. 761, in appellant's brief is particularly unfortunate since the reversal of the court below was not based upon his failure to recognize the well-established rule; but the Court of Errors did say, "It is true that the presumption that such expenditures are made by way of a gift to the wife may be rebutted by proof that such was not the intention with which they were made, but we find no such proof in the case before us. The improvements were made by the husband, not at the request of the wife, but of his own volition; and, although frequent conversations took place between them, regarding their character and cost, nothing was said at any time by him which suggested the idea that he expected to be reimbursed by the complainant for his outlay; nor was anything said by her to induce such a belief on his part." Upon this finding of fact, the Court reversed so much of the decree as imposed a lien upon the wife's property already given to her by the husband.

This case recognizes the principle we are contending for in the instant case, to wit, that an equitable lien may be impressed where the facts warrant it, and that the

presumption of gift may be rebutted by ordinary testimony.

Walters vs. *Schraft* throws no light upon the situation whatsoever. It is considered that a deed of land when made from one *in loco parentis* is indicative of a gift, but as said in the Selover case this presumption may be rebutted, and there is no warrant in any of the cases for the assertion made by counsel that "the presumption of a gift can only be rebutted by a resulting trust."

ARGUMENT

Pages 30 and 31 are consumed in quoting the two bills to the effect that defendant was to be repaid out of mortgages and from the rents and quoting an apparent violation in counsel s opening that he should be repaid out of the mortgages and out of the profits of the apartment house. Later on when a dispute arose as to the question of the use of the word "profits" by counsel, the opening was amended to read "rents". This fact is not stated in the brief, but it is submitted that "rents, issues and profits" are always considered synonymous and the word "profits" used by counsel was synonymous with "rents".

After quoting testimony on pages 32, 33 and 34 it is stated that there are different versions coming from the complainant as to the agreements and the opening of counsel, in that counsel used the word "profits" instead of "rents". We submit that does not tend to break down the complainant's testimony. On page 36 it is argued that the agreements did not state that complainant was to have a mortgage, nor was there to be an absolute debt created from complainant to defendant. To this we accede. It is our contention that complainant was to reimburse himself for mortgage moneys he was to procure from others, and the balance from the income by way of rents from the properties. Nor was this an unreasonable arrangement. Of the $242,000 loaned by complainant, he got back in mortgage money $87,000, and if the defendant had executed the $75,000 mortgage

on the Ohio Apartments he would have had returned to him immediately $162,000, leaving a balance of only $80,000 still owing to him. The rents on the Ohio Apartment amounted to $27,000 a year. Since the Savoy Apartments were the same size and leaving out of consideration the income from the corner properties which might have been applied to taxes, etc., we find that the income was $54,000, and that complainant could have been reimbursed for his entire expenditure in a year and a half after the apartments were built. As a matter of fact he was being indirectly reimbursed by paying off the $22,000 on the $30,000 notes and by the paying off of the furniture, and the building and loan dues on the other mortgages. Another piece of documentary evidence that destroys the argument that the moneys advanced were gifts and not loans is the actions of the defendant in paying off the $15,000 note in the Marine Trust Company. As before stated, counsel argued strenuously that having in October and again on the 14th of December declared in forceful language that she would not pay her stepfather anything more, that he must have forced her to write the $500 check. But what argument is advanced concerning the two payments made upon the $15,000 note? Exhibit D-3 on page 490 has endorsed upon it the various payments and shows that on December 31, 1928, defendant paid $700 upon the note, and on January 12, 1929, the balance of $3,300. Both of these payments were made after the $500 check, and like all other payments upon the note, are acknowledgment of her debt to her stepfather. If she knew, as she claims, that on December 15 her stepfather was claiming the advances were loans and not gifts, why did she recognize his contention by paying the balance of the notes?

Page 39. The argument that the complainant has an adequate remedy at law is without foundation and arises out of the misconception of the contract. Since we only had the right to create mortgages and be paid from the rents under our contract, we could not sue at law to

recover as a debt. Our right to relief in the Court of Chancery is based upon the theory that we are entitled to an equitable lien upon the property to secure our payment from the rents in the face of the denial of the contract by the defendant. Otherwise, there would be a multiplicity of suits, since we would have to be suing daily to recover the rents; and upon the theory of equitable mortgage arising out of the fact that the complainant's money went into this property for the purpose of improving it, and that he is entitled to attach his lien to that which he created.

THE STATUTE OF FRAUDS

The cases cited in the appellant's brief concerning the application of the statute of frauds, is disposed of by *Willig* vs. *Friedberg,* 108 N. J. Eq., Regular Reports and printed in the New Jersey Advance Sheets, March 14th, 1931, at page 17. The reasoning of Mr. Justice Daly in this case applies with equal force and effect to the case at bar.

The argument pursued at pages 44 and 45 that if an equitable lien is impressed it would defeat the contract is not tenantable. The equitable lien originally extended only to the rents, but when the contract was breached by defendant by refusing to place the mortgages and by denying the contract, then because of the breach the loans became due.

The Intimidation of Witnesses

The appellant's brief does not set out all of the evidence upon this point. It is not clear whether the statement which was to the effect that the witnesses "better tell the truth" was made in the courtroom or outside of it in the hallway. The witnesses vary. It is agreed, however, that all the witnesses who were so addressed were in one place or the other or in a group conversing, and that the statement was considered a joke. Even Mrs. Crouch said she thought complainant was joking—

"but I thought he was joking," page 196, line 32. The other witnesses "smiled". But if this be of importance in the cause, then what about the actions of Naame in the case of Burkett, where they offered him a job and intimated "that he could do them a lot of good"; Naame's coaching the witness McGimpsey, and apparently also Mrs. Mauser?

At pages 49 and 50 the complaint is made that complainant kept no records of the loans. We submit that his checks to Naame were a sufficient record. He testified that he had other records in notebooks. It is undisputed that shortly before his stepdaughter left to get married, she burned in the backyard a lot of her belongings and it would appear that complainant was justified in believing that she burned some of his checkbooks and other memoranda as well.

At page 55, complaint is made that complainant did not produce his income tax returns which "might have disclosed whether complainant treated the advances made to his stepdaughter as loans or gifts." Counsel does not state the reason why income tax returns were not produced. It was upon objection by counsel the court refused to receive them in evidence. Moreover, it has already been pointed out that if this is an argument, then it is equally true that the defendant should have produced her income tax returns to show that she listed them as gifts.

The matter of rents is such an extraneous matter as to be a waste of time to marshal the evidence on this subject, except that investigation of the defendant's testimony and that of her husband discloses that they admitted that Doughty got the rents from the corner properties up until the time of the alterations.

We have already discussed the evidence of the supporting witnesses on both sides and no further comment is necessary here. The only witness that we have not discussed is that of Jacob Salsburg, whose testimony, while harmless, is most interesting in that it shows how desperately in need of evidence the defense was when it

used this witness. Salsburg says that on a boat trip Doughty said that he had given his daughter over $200,000, and expected that she would have more after he is gone. This was no evidence in support of the theory of a gift of these moneys, since it is admitted that complainant gave defendant in lands, what represented a large sum of money, the exact amount not being in evidence. But the worthlessness of this witness' testimony is exemplified in his cross-examination on page 370:

Q. How did you come to inform counsel in this case of this conversation?

A. Well, when I was in the courtroom here the other day leading up to this trial, and hearing a great many witnesses, that has come to my recollection that Mr. Doughty and I spoke about it.

Q. What were you doing in court, Mr. Salsburg?

A. What is that?

Q. What were you doing in the courtroom?

A. What was I doing in the courtroom?

Q. Yes.

Note: The witness is sparring for time to think up the answer.

A. Well, once in a while when I have time I kind of get interested in these cases *and one thing another.*

Q. Well, did you know that this case was coming up?

A. Did I know that this case was coming up?

Q. Yes.

A. Yes, I did.

Q. And you came up here to listen to the trial?

A. Part of it, yes.

Q. Didn't expect to be a witness at that time?

A. No, sir, I did not.

Q. You are an uncle of Mr. Paul Salsburg, the counsel of record in this case, are you not?

A. Yes, sir.

Stripped of its rhetoric appellant's concluding argument, pages 81 and 82, is that complainant only sought the return of his money in order to either prevent his stepdaughter's marriage to Naame or in revenge for her marriage. Such an argument presupposes that complainant took this position only when the marriage became imminent. This was in the fall of 1929, November, December and January, but the evidence upon which complainant's contract is founded is the evidence of the mortgages created in 1926 and 1927, and the payments on the notes up until 1929.

This case is wholly one of fact. The appellant seeks a reversal largely on the ground that all of complainant's witnesses lied and all of defendant's witnesses told the truth. At the outset he is met with the embarrassment that the Vice Chancellor finds that the defendant herself lied on the witness stand, and that her demeanor inspired no confidence in him. Her supporting witnesses either gave testimony which did not help her cause, or in the case of Crouch, Mauser and her husband, contradicted themselves in so many important particulars as to make their testimony worthless. On the other hand, the complainant's testimony was not impeached, nor was that of his supporting witnesses, even in the slightest degree. It is also noteworthy that at every time the documentary evidence supports the contention of the complainant's, while on the other hand in order to make their contention good, the defendants are compelled to either attack or excuse the weight of this evidence. The $500 check is dispositive of the whole defense. The fact that the theory of the defense had to be shifted from one in which all the moneys advanced by complainant were alleged to be gifts, to one in which only the moneys above the mortgages were gifts, the statement that the $500 check was given in payment of the furniture had to be abandoned in favor of the assertion that it was given under duress.

It is respectfully submitted that the decrees of the Court of Chancery should be affirmed.

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