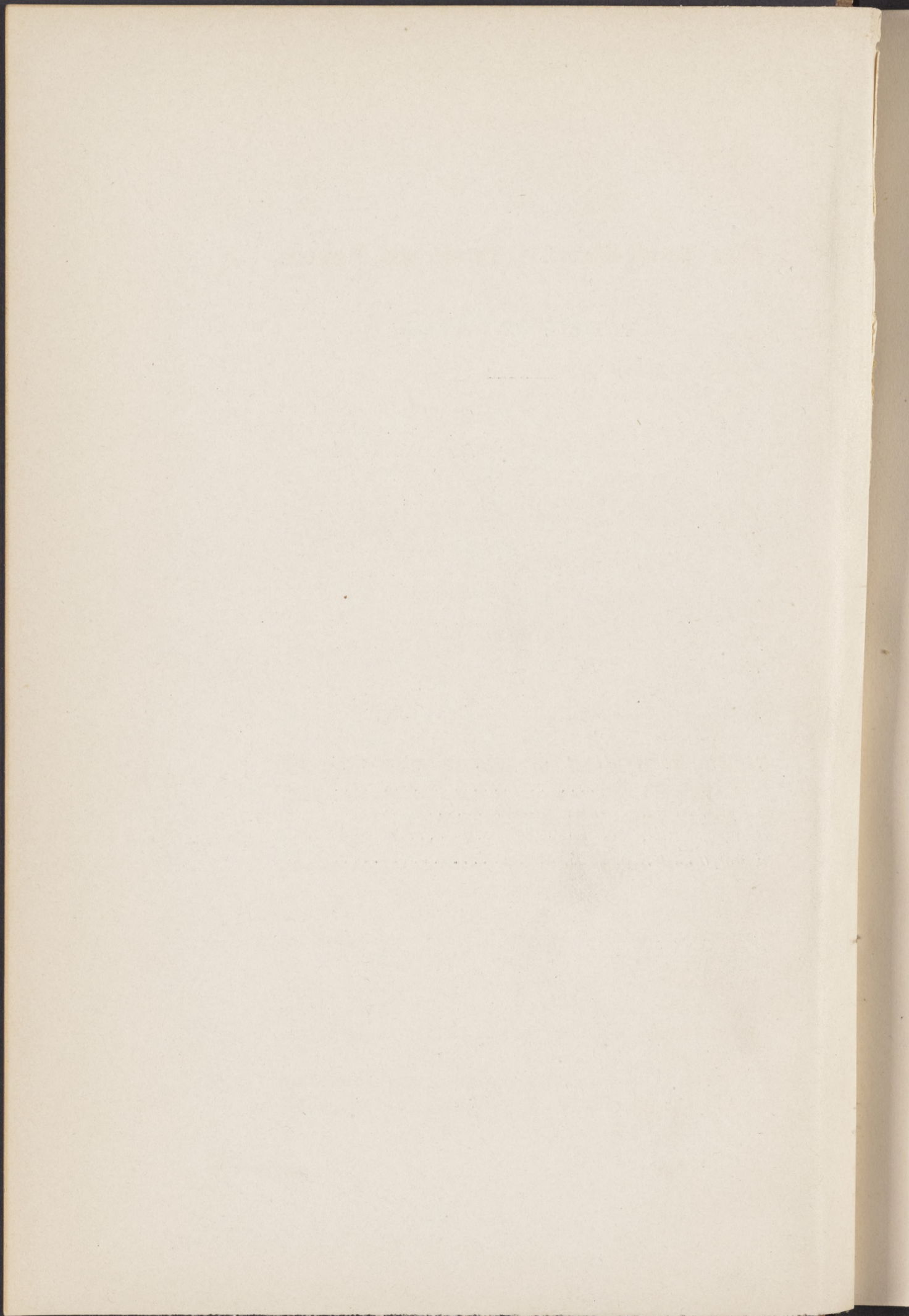


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New Jersey Court of Errors and Appeals.

Between

THE EAST RUTHERFORD SAVINGS
LOAN AND BUILDING ASSOCIA-
TION,

Complainant,

AND

MARGARET STEWART MCKENZIE,
et al.,
Defendant-Appellee,

AND

HENRY MANCHESTER LADD, Ex-
ecutor, etc.,
Defendant-Appellant.

On Bill of Inter-
pleader.

On Appeal from
Decree in Chan-
cery.

**BRIEF ON BEHALF OF HENRY MANCHESTER
LADD, EXECUTOR OF WILLIAM MCKENZIE,
DECEASED - THE APPELLANT.**

This is an interpleader suit involving the ownership of the 500 instalment shares and of the 200 prepaid shares of the complainant Building and Loan Association mentioned in its bill of complaint as originally issued to William McKenzie. The 60 prepaid shares mentioned therein as originally issued to the defendant, Margaret Stewart McKenzie, have been delivered to her by consent and no longer figure in the case.

The shares in question are respectively claimed by the said Margaret Stewart McKenzie—the appellee,

who is the widow of the said William McKenzie, and by his executor—the appellant. After an interlocutory decree determining the complainant's right to relief had been granted, proofs in the case were submitted to Halsey M. Barrett as Advisory Master. Mr. Barrett being unable, by reason of illness, to render an opinion, the case was then referred to Vice Chancellor Howell, who advised a decree in favor of Mrs. McKenzie. From this decree Mr. McKenzie's executor has appealed. In order to fairly present the matters in dispute, an extended statement of the evidence seems essential.

The Facts.

The complainant Association was formed in 1895 under the Building and Loan Association laws of the State of New Jersey. Mr. McKenzie then became its president and continued as such until the time of his death on April 12, 1914 (Case, pp. 28-29; p. 171, line 27). He would have been 73 years old on his next birthday (Case, p. 95, line 9).

The Association has two classes of stock; (1) its instalment shares, and (2) its prepaid shares. The instalment shares call for the payment to the Association of one dollar per month a share and mature at \$100. per share. They are represented by pass-books in the form of ordinary bank books, in which the amounts deposited or withdrawn are entered by an officer of the Association, who also enters therein semi-annually the dividend then declared on such shares. The prepaid shares are represented by certificates and are paid for in full at their par value of \$100. per share at the time they are issued. Dividends are paid thereon semi-annually at the rate of 5 per cent. per annum, a check being mailed to the shareholder in payment of each such dividend. Any or all of the amount to the credit of instalment shares can be withdrawn at any time, but a withdrawal upon prepaid shares must be of one or more such shares in full (Case,

pp. 33-35; pp. 43-46; pp. 47-49; Ex. L-7). No withdrawals of amounts paid on the instalment shares can be made without the production of the pass-book and the entry therein by an officer of the Association of the amount withdrawn. In the case of the prepaid shares a withdrawal can be effected only by the surrender to the Association of the certificate or certificates representing the shares to be withdrawn. This has been the uniform and unvaried practice of the Association (Case, pp. 37-41; p. 50; Exhibits L-5 and L-6).

Mr. McKenzie and the defendant, Margaret Stewart McKenzie, were married in 1905 (Case, p. 175, line 33). At that time Mr. McKenzie was the owner of the 500 instalment shares involved herein, represented by pass-book No. 156 issued in his name, and also the owner of the 200 prepaid shares involved herein, represented by 20 prepaid certificates issued in his name (Case, p. 36, line 3; p. 43, line 18; p. 51). Shortly after their marriage Mrs. McKenzie became the owner of 100 instalment shares, represented by pass-book No. 918, issued in her name, and of the above mentioned 60 prepaid shares, represented by 6 prepaid certificates issued in her name (Case, p. 54, line 13; pp. 56-57).

On May 12, 1913, the amount to the credit of these various accounts was as follows:

Mr. McKenzie's 500 instalment shares.....	\$47,838.88
Mr. McKenzie's 200 prepaid shares.....	20,000.00
Mrs. McKenzie's 100 instalment shares....	2,630.97
Mrs. McKenzie's 60 prepaid shares.	6,000 00

(Case, p. 36, line 24; p. 47; p. 57, line 26; p. 54.)

All of the withdrawals theretofore made against Mr. McKenzie's 500 instalment shares had been made by him, and all of the withdrawals on Mrs. McKenzie's 100 instalment shares had been made by her. No withdrawals had been made on any of the prepaid shares of either of them (Case, p. 35, line 34; p. 67; pp. 144-147). The semi-annual dividends declared

on each of their instalment shares had been regularly credited to the respective books representing such shares, and the semi-annual dividends of 5 per cent. declared on their respective prepaid shares had been paid by the mailing to them respectively of the dividend checks. Mr. McKenzie's pass-book No. 156 for his 500 instalment shares had always been kept in his private safe in his office at the Standard Bleachery, of which corporation he was the president, and to which safe he alone had access. Each month when the meeting of the Association was held it was his practice to obtain this book from the safe and when the entry therein had been made to return the book to his safe (Case, pp. 68-69; pp. 74-75; pp. 86-88). The record does not disclose where he then kept the certificates for his 200 prepaid shares, but presumably they were kept in the same safe, and Mrs. McKenzie does not claim to have ever had the custody of them prior to May 12, 1913. She did however have possession of the pass-book No. 918 for her 100 instalment shares and from time to time made withdrawals against this account, and she has testified without contradiction that she kept the certificates for her 60 prepaid shares in the Tiffany Safe Deposit Box hereinafter mentioned (Case, p. 158, line 9).

It will be observed, therefore, that prior to May 12, 1913, Mr. and Mrs. McKenzie each had the custody of the pass-book and certificates representing the instalment and prepaid shares which they respectively owned.

On May 12, 1913, the following transactions occurred:

1. Mr. McKenzie, unaccompanied by his wife, went to the Building and Loan Association's office, having with him his pass-book No. 156 for his 500 instalment shares, with a then credit of \$47,838.88, and his certificates for his 200 prepaid shares of the face value of \$20,000.

8. On the back of all the cards was printed with a rubber stamp by the Secretary of the Building and Loan Association the words:

“The shares in our joint names are payable to either or both, and to the survivor on the death of the other.”

To this declaration Mr. McKenzie appended his signature on all four cards, and Mrs. McKenzie's signature was similarly subsequently appended.

9. The two old pass-books were then surrendered to the Association and also all the certificates for prepaid shares, both Mr. and Mrs. McKenzie's, which were thereupon marked, “canceled”, and two new books and 26 new certificates were issued and delivered to Mr. McKenzie therefor.

10. Each of 20 of the new certificates declared that—

“This certifies that William and/or Margaret Stewart McKenzie have paid the full sum of one thousand dollars as appears by the coupons hereto attached on ten shares of the capital stock of the East Rutherford Savings Loan and Building Association, transferable only on the books of the Corporation on surrender of this certificate in person or by attorney, etc.”

11. Each of 6 of them read the same way, except that the names were reversed, so as to read Margaret Stewart and/or William McKenzie.

12. The new pass-book No. 156 was headed thus,—

“Name—William and/or Margaret Stewart McKenzie.

Book No. 156

Shares 500.”

Below this heading were appropriate columns in which to enter dates, amounts paid to the Association and withdrawn therefrom, and the initials of the person making the entries. The initial amount appearing as “From old book” was \$47,838.88.

13. The new pass-book No. 918 was headed thus,—

“Name—Margaret Stewart and/or William McKenzie.

Book No. 918

Shares 100.”

The initial credit in this book “From old book” was \$2,630.97. In other respects both books were identical.

14. Entries were then made upon the books of the Association closing the old accounts of the surrendered shares and opening new accounts for the new shares in the names of William and/or Margaret Stewart McKenzie, as to the 500 instalment shares, and in the names of Margaret Stewart and/or William McKenzie as to the 100 instalment shares. Entries were also made recording the fact that William and/or Margaret Stewart McKenzie were the holders of 20 of the prepaid certificates for 200 shares, and that Margaret Stewart and/or William McKenzie were the holders of the other 6 for 60 shares.

15. The two new pass-books and the 26 newly issued certificates, together with the four application cards, were then taken away by Mr. McKenzie, who subsequently returned the four cards with Mrs. McKenzie’s signature, as above indicated, upon the face and back of each of them.

The preparation of the application cards, the surrender of the old pass-books and certificates, the preparation and issuance of the new pass-books and certificates, and the entries made in the Association’s records, was all accomplished at Mr. McKenzie’s direction, and when Mrs. McKenzie was not present (Case, p. 41, line 4; p. 47, line 12; p. 55, line 10; p. 57, line 31; p. 63, line 30; p. 65, line 15; p. 66, line 5; pp. 68–73).

The evidence with regard to the custody, dominion

and control thereafter exercised over these new pass-books and certificates is as follows:

Mrs. McKenzie says that from about May 13th until June 2nd, 1913, the 26 new certificates for the 260 prepaid shares were kept in a chiffonier drawer in the room which Mr. McKenzie and she occupied as their bedroom, and that on the last mentioned day she took them to New York and placed them in a box in the safe deposit vault of Tiffany & Company in which the only other things ever kept were her jewels and laces, where they remained until after Mr. McKenzie's death. This box was No. 630 (Case, pp. 157-158; pp. 166-167). In 1907 Mr. and Mrs. McKenzie had rented in their joint names the adjoining box No. 631. At that time there were given to them the usual duplicate large keys to open the outside door and the usual duplicate small keys to open the inner tin box. Under the contract of letting, Mr. and Mrs. McKenzie each had the same right of access to this box, the rental charge of which was made to them jointly (Case, p. 105; pp. 112-113). About a year later the lock to the outside door of the box became out of repair and the contents of the box were transferred to Box 630. This was done when Mrs. McKenzie alone was present and at that time she was given the two duplicate large keys and the two duplicate small keys for the new box, but only surrendered one set of the keys to the box thus vacated (Case, pp. 105-106; pp. 124-127). So far as the evidence shows, Mr. McKenzie never had any knowledge of this last transaction. Mrs. McKenzie exercised her right of access to the box from time to time, but Mr. McKenzie never did so (Case, pp. 106-107; pp. 115-116). She says that she retained custody of the four keys so given to her at the time the box was changed from No. 631 to 630; that in December, 1913, these keys were separated by her into two sets, and that thereafter she kept one set in her handbag and the other set in the bedroom chiffonier drawer above mentioned which was kept locked and

to which she had the key (Case, pp. 167-169). Mrs. McKenzie also testifies that after May 12, 1913, the pass-book No. 156 for the 500 instalment shares was kept in the same chiffonier drawer and that on the occasions when Mr. McKenzie desired it she would secure it from this drawer and give it to him and that thereafter it would be returned to the same drawer (Case, p. 170; p. 185).

The undisputed evidence of Mr. Duncan, the secretary of the complainant association, and its records show as follows:

The usual semi-annual dividend of \$500. was paid in November, 1913, to Mr. McKenzie on the 200 prepaid shares originally issued to him, and the same course was followed with regard to its payment as uniformly existed prior to May 12, 1913, that is, the dividend check was issued in his name and mailed to him and received and endorsed by him (Case, pp. 52-53). In the same way and in accordance with the former uniform practice a dividend check for \$150. was then drawn to the order of Mrs. McKenzie and mailed to and received by her in payment of the usual semi-annual dividend on the 60 prepaid shares originally issued in her name (Case, p. 56). These were the only dividends paid on these shares between May 12, 1913, and the date of Mr. McKenzie's death. At about the same time a dividend of \$1,360.14 declared on the 500 instalment shares was credited on the new pass-book No. 156, and a dividend of \$66.65 declared on the 100 instalment shares was credited on the new pass-book No. 918, this also being in accordance with the uniform previous practice (Case, p. 42, line 14).

On May 14, 1913, or two days after the alleged transfer was made, Mr. McKenzie produced at the Association's office the new pass-book No. 156 for the 500 instalment shares originally issued in his name and withdrew \$3,000. On May 16th of the same year he produced the book again and paid in to its credit \$2,500. On December 16th, he again produced the same book and withdrew from the ac-

count represented thereby \$3,000. and paid in to the credit thereof a similar amount (Case, pp. 41-42; pp. 64-65; pp. 76-78). Shortly after his death there was credited to this account a further semi-annual dividend of \$1,400.97, so that the account at the time of the institution of the suit amounted to \$48,099.99 (Case, p. 43, line 1). Mrs. McKenzie from time to time after May 12, 1913, produced at the Association's office or sent there by one of her employes the new pass-book No. 918 for the 100 shares originally issued in her name and made withdrawals against it. She continued so to do until January, 1914, when the withdrawals thus made exhausted the account and it was closed, and the pass-book surrendered to the Association (Case, pp. 59-60; pp. 78-79). It will be observed therefore that no change was ever made in the method of making payments to or withdrawals on any of the accounts, or the dividends declared thereon. Mr. McKenzie continued after May 12, 1913, as before, to make the payments and the dividends thereon were credited and paid exactly as theretofore. He made payments aggregating \$6,000. and withdrawals aggregating \$5,500. on book No. 156 for the 500 instalment shares, and Mrs. McKenzie continued her practice of making withdrawals on book No. 918 for the 100 instalment shares until the account was exhausted and closed as just stated (Case, p. 77; pp. 144-147).

On or about March 16, 1914, Mr. McKenzie had a stroke of apoplexy, as a result of which he was confined to his bed, and from which he never recovered. Between Friday, March 27th, and Saturday, March 28th, he had a second stroke. Dr. Sullivan, a reputable physician of Passaic, who testified on behalf of Mrs. McKenzie, says that he saw Mr. McKenzie from two to four times a day from March 16th until April 12th, when he died; that from March 16th until the night of March 27th, when he had the second stroke, his mind was rational and clear in every respect; that thereafter until April 7th his mental condition varied; that dur-

ing this period he was sometimes incoherent and misunderstood questions asked him and his mind would be cloudy; that at other times he seemed to be quite clear and to comprehend fully, and that he became totally unconscious on April 7th and remained so until the time of his death. Mrs. McKenzie fixes the day after which her husband never recovered consciousness as April 8th (Case, pp. 131-134; p. 183, line 29).

Shortly prior to Saturday, March 28th, James McKenzie, the oldest son of Mr. McKenzie, who was associated with him in the business conducted by the Standard Bleachery, obtained from his father the keys to the above mentioned private safe so that he might draw some checks for the latter (Case, pp. 89-90). On Saturday, March 28th, Mrs. McKenzie sent for the family coachman, Widows, to come to the room where Mr. McKenzie was in bed, and what then happened in their presence and that of Mr. McKenzie and the trained nurse, Miss Machinter, is related by Widows without contradiction as follows:

“ Q. Did Mrs. McKenzie say anything to you at that time?

A. She said Mr. McKenzie had some orders for me and I leaned over to him but I couldn't catch what Mr. McKenzie said. His voice was kind of hoarse, kind of going away and Mrs. McKenzie said 'Did you understand what Mr. McKenzie said?' And I said 'No', so she repeated what he had said, that I should go to Mr. James McKenzie and ask for a hundred dollars in cash, an envelope belonging to Mrs. McKenzie and the key to the safe.

Q. Who was it said that to you?

A. Mrs. McKenzie repeated what Mr. McKenzie had said and she told me to lean over again and get the order from Mr. McKenzie himself and she says 'I have a witness here, Miss Machinter' and that time I did hear what Mr. McKenzie said.

Q. On the first occasion you did not hear?

A. I could not understand him on the first occasion.

Q. And after he had said something which you were not able to understand what was it Mrs. McKenzie said?

A. She said to Mr. McKenzie 'You told Widows to go down and ask James to get \$100. in cash, an envelope addressed to myself and the key to the safe.' And she says 'You bend over and he will tell you that order' and I did and when I stood up again she said 'Now do you swear you heard that? I have the witness here. Do you swear you heard Mr. McKenzie say that?'

Q. Did she say who the witness was?

A. Yes, Miss Machinter, and I repeated what Mr. McKenzie said to me.

Q. Then you went to the mill?

A. Then I went to the mill and saw Mr. McKenzie and gave him my orders" (Case, pp. 91-92; pp. 136-137).

Thereupon James McKenzie went to Mr. McKenzie's safe and finding there an envelope sealed and marked in Mr. McKenzie's handwriting "Mrs. Margaret McKenzie, private or personal", gave it with \$100. in bills to the coachman to take to Mrs. McKenzie (Case, p. 101, line 8; p. 138). Both James McKenzie and the coachman testified that the envelope thus found in Mr. McKenzie's safe was the size of a large business envelope and that with its contents it was three-quarters of an inch or an inch thick. The size and thickness of this package were what they would have been if in addition to Mr. McKenzie's will the envelope had contained the certificates for the prepaid shares. Mrs. McKenzie however says that the envelope was no thicker than it would have been if it contained the will alone, and that only the will was in it. Upon his return to the house the coachman gave this sealed envelope to Mrs. McKenzie who declared that it had been tampered with, but such was not the case (Case, pp. 92-93; pp. 95-96; pp. 138-139).

Mr. Duncan, the complainant's secretary, who was an impartial and very intelligent witness, says that on the following day, Sunday, March 29th,

Mrs. McKenzie sent for him and that while he was at the house *asked him if he had the pass-book and if he knew where the certificates were.* He replied that he had not seen them since he had given them to Mr. McKenzie and she answered: "*I must get them; I must have them*" (Case, pp. 79-81). The pass-book mentioned must have been the book for the 500 instalment shares, as the account to the credit of book No. 918 for the 100 instalment shares originally issued to Mrs. McKenzie had in January, 1914, been closed as the result of her withdrawals, and surrendered to the Association. Mr. Duncan says that on this occasion Mrs. McKenzie spoke of some things having been taken from a chiffonier drawer, but that he did not recall any reference being made to the pass-book as having been taken out of there (Case, pp. 83-84). Mrs. McKenzie's statement as to the time of this conversation with Mr. Duncan and what was then said is hereafter given herein.

Mrs. McKenzie claims that the chiffonier drawer above mentioned was opened on a day which she fixes as Monday, March 30, 1914, and that the pass-book No. 156 for the 500 instalment shares, together with one set of the keys for the Tiffany Safe Deposit Box, was then abstracted therefrom. She says that the lock was not broken or forced; that her attention was attracted to the alleged theft by finding the drawer open about an inch; that shortly thereafter she found on the floor of the bedroom the small key for the inner safe deposit box No. 630, but that the large key for the outer door of the box and the pass-book were missing (Case, pp. 169-170).

On Sunday, March 29th, while Mr. Duncan was at the house, Mr. McKenzie's will was given him for safekeeping. Mrs. McKenzie insists that Mr. Duncan retained this will until after Mr. McKenzie's death, and also that the will was not delivered to him until Sunday, April 5th (Case, p. 188). In both of these statements she is however clearly wrong, for it appears by the respective receipts

which she and Mr. Duncan signed that the will was given him for safekeeping on Sunday, March 29th, and returned by him to Mrs. McKenzie at her request on Thursday, April 9th (Case, p. 200; pp. 203-205). *This it will be observed was the day following the one upon which Mrs. McKenzie says that her husband sank into an unconsciousness from which he never escaped. On the same day that she obtained the will from Mr. Duncan she went to the safe deposit vaults of Tiffany & Company and caused the box No. 630, which up to that time had stood in the names of Mr. McKenzie and herself, to be transferred to her own name* (Case, p. 108, line 30; pp. 116-117).

Mr. James McKenzie says that his father always kept the pass-book No. 156 in his private safe in the Bleachery office; that frequently he would stop at the office on his way to the Building & Loan Association meeting and obtain his pass-book from the safe and return to the office on his way home to replace the book in the safe; that he repeatedly saw his father have the building and loan books on his desk and did so on one occasion a week or so before his father was taken ill (Case, pp. 86-89).

Within a few days after Mr. McKenzie's death, his private safe in his office at the Bleachery was opened by James McKenzie, who found there the pass book No. 156 for the 500 instalment shares, and in addition to the inner keys of the safe one large key and two small keys (Case, p. 94). The large key opens the outer door of Box 630 of the Tiffany Safe Deposit vault. Of the two smaller keys one is a key which was manufactured for Tiffany & Company to fit one of the inner boxes in its safe deposit vault, but it does not fit the inner lock to Box 630. The other of these small keys is not of a kind supplied by Tiffany & Company (Stipulation, Case, p. 222). Mr. James McKenzie says that he never saw any of these keys until after his father's death and did not know at the time he found them in the safe that his father

ever had a safe deposit box with Tiffany & Company (Case, pp. 154-155). At the time of Mr. McKenzie's death there was in the possession of his wife the other large key for the Tiffany box No. 630 and both of the two small keys fitting that box (see Stipulation, pp. 222-224).

The only other evidence in the case bearing either upon the custody, dominion, or control exercised over the 500 instalment shares and the 200 prepaid shares involved in the suit or as to Mr. McKenzie's intention in making the alleged transfer thereof is as follows:

Mrs. McKenzie fixes the time when she told Mr. Duncan that some articles had been taken from the chiffonier drawer as Sunday, April 5th, and not Sunday, March 29th, as does Mr. Duncan. She also gives a different version of the conversation, saying that she told him that the pass-book had been taken from the drawer but did not mention the subject of the certificates at all (Case, p. 190).

Miss Guy says that on Sunday, June 1st, 1913, while visiting at the McKenzie home, she had a talk with Mr. McKenzie about investing some of her money in building and loan shares, and that he then said to her: " 'To prove to you that I believe in *mine*, my wife and I have put our money in it', and he went on in his nice little way and said '*if he should die his wife would have the money to tide her over until things were all settled.*' That thereupon Mrs. McKenzie came down almost immediately and put something in my hand and closed it over, and she said 'How do you feel having \$26,000. in your hand' "? (Case, p. 140; p. 153, line 9).

Miss Guy was, however, unable to state the character or appearance of the papers which Mrs. McKenzie then placed in her hand or even to say whether they were printed blanks filled in (Case, pp. 156-157), but Mrs. McKenzie testified that they were the certificates for the 260 prepaid shares which had been issued on May 12, 1913 (Case, pp. 162-163).

Mrs. Jane L. Butland, who terms herself a "scientific helper", says that on January 1, 1914, she had the following conversation with Mr. McKenzie:

"I asked him why he didn't get out of active business and let his sons run his mills. And I said 'Why, you have enough in that Building & Loan Association to take care of you', and he said 'Oh, that all belongs to my wife', and that was news to me and I said 'Is that so?' and he said 'Oh, yes, but it is in our joint names'" (Case, p. 215, line 14).

ARGUMENT.

I.

The transaction of May 12, 1913, did not create Mr. and Mrs. McKenzie joint tenants of the legal title to the shares in question. On the contrary, neither the legal nor the beneficial ownership of them was thereby changed or became vested in any one other than Mr. McKenzie, the then owner thereof.

In the court below it was the appellee's primary contention that the transaction of May 12, 1913, operated to create an estate in joint tenancy in all the shares in question in Mr. and Mrs. McKenzie, and that no question of delivery of the indicia of title thereto, or of the dominion thereafter exercised over the shares, was involved in determining the rights created by such transaction. It was there urged that the mere form of the papers then executed and of the pass-books and certificates then issued fixed beyond controversy that Mr. and Mrs. McKenzie thereafter held the shares in dispute in joint tenancy, with the resultant right of survivor-

ship. This view was adopted by the learned Vice-Chancellor, who in his opinion said:

“ A delivery to one of two joint tenants must, in the nature of things, be a delivery to both. * * * It is undoubtedly true that the changing of the title to the shares from individual ownership to joint ownership effected no change whatever in the manner in which the parties to the transaction dealt with the shares. Mr. McKenzie remained president of the Building & Loan Association, and, to all outward appearances, there was no change. Even supposing that there had been no actual physical delivery of the evidences of the property to Mrs. McKenzie, Mr. McKenzie, as joint tenant with the right of survivorship, had such an interest in his right of survivorship as permitted him to hold and manage the joint property to the best advantage of all concerned. I am, therefore, of opinion that by virtue of the transaction above recited the title to the said shares and pass-book, and the fund represented by them, vested in Mr. and Mrs. McKenzie as joint tenants on May 12, 1913” (Case, pp. 239, line 28; 241, line 25).

This finding is, I submit, erroneous, and must have been due to a failure to give due weight to certain highly significant and important elements of the transaction mentioned. The view that in such transaction Mr. McKenzie had an intention to make a present gift of any interest whatsoever is a conjecture clearly negatived by the writings that were made and signed. On the other hand, the view that he had no such intention, but purposed to make a testamentary gift, a purpose which it was legally impossible for him to effectuate in the manner which he employed therefor, is consistent with all of the credible evidence in the case. In the first place, it should be noted that it was Mr. McKenzie who applied for the issuance of the new shares in lieu of those then owned by him, and in connection therewith agreed to be bound by the constitution of the Association (Exs. L-12 and L-13,

p. 230). Mrs. McKenzie simply signed her name to each of his applications at the place designated for "wife's name". In the next place, it should be observed that the new certificates issued in lieu of those then held by Mr. McKenzie for his prepaid shares, certified not that he *and* his wife, but that he "and/or" his wife had paid for them; that the new pass-book issued in lieu of his old pass-book for his 500 instalment shares in like manner purports to contain an account not with him *and* his wife, but with him "and/or" his wife, and that the entries on the books of the Association by his direction contained the like discriminating words.

It is also a significant circumstance that in the case of the certificates and pass-books issued for the shares then owned by and surrendered for Mrs. McKenzie the order of the names was reversed, the transaction being otherwise the same. That is to say, in that case she applied for the new shares to be issued in lieu of her old ones, her husband simply affixing his signature in the blank opposite "Husband's Name", and the new entries, new certificates and new pass-book were directed to read to her "and/or" her husband.

It is further important to note that the writing on the back of the application cards that "the shares in our joint names are payable to either or both, and the survivor on the death of the other", in view of the fact that the names were at that very time being entered in the way they were, uses the word "joint" in a manifestly inexact sense, and that the whole phrase indicates a purpose to declare an agency rather than an ownership. The writing was manifestly made to declare that the Association would be warranted in paying either without the other's signature or assent. This was an authority which it needed in case of so making payment if Mr. McKenzie continued sole owner of the shares which represented those he had surrendered, and if Mrs. McKenzie continued sole owner of the shares which

represented those surrendered for her. It would have been wholly unnecessary, however, if a joint tenancy as to all of the shares had been created, for one of two joint tenants has a legal right to withdraw a part or the whole of a joint fund, and if such right is exercised the depository is *pro tanto* discharged of further liability toward either (Kent's Com., Vol. 2, p. 350). The concluding words of the same declaration, namely, that the shares were payable "to the survivor upon the death of the other", would unmistakably express one of the incidents of a joint tenancy if it otherwise appeared that such a tenancy had in fact been created and was being spoken of. But *that* is the very thing which not only does not appear, but the contrary of which is, instead, otherwise manifested. And the words can be adequately accounted for by supposing that a gift in the nature of a testamentary disposition was in contemplation. That such was the nature of the gift intended to be made by Mr. McKenzie to his wife appears when all of the evidence in the case is considered.

The determination that the transaction of May 12, 1913, created the estate in joint tenancy contended for by the appellee, overlooks the repeated conjunction of the words "and/or". If we attempt to read these writings with the idea that the transaction was in effectuation of an intention on the part of Mr. McKenzie to effect an immediate change of ownership in the shares represented thereby, we are at once involved in insuperable difficulties unless we can entirely disregard the important conjunction of the words "and/or", or can exclude one or the other of them. We cannot say that the writings declare that the shares are owned by Mr. and Mrs. McKenzie and/or jointly because by the word "or" they equally declare that the shares are at the same time owned by the one or the other of the two in severalty, although the writings are silent as to which of the

two is such owner. It is, however, possible to say that they may declare that one or the other is the owner in severalty of the shares because both words can be satisfied by assuming that the names of the parties are disjoined to indicate that only one of them is the owner, while they are conjoined to indicate that the other is such owner's agent. The converse of this assumption would not be permissible because if the names were conjoined to indicate joint ownership there could be no reason for declaring the one the agent of the other.

The conjunction of these words cannot properly be disregarded. The repeated occurrence of them precludes the possibility that either of them was used inadvertently, and the conjunction of them unmistakably manifests that "and" is to be given its conjunctive, and "or" its disjunctive meaning. The solution of the difficulty is to be found by discarding the idea that Mr. McKenzie ever had, or that the transaction of May 12, 1913, indicated that he then had, any intention of changing the ownership of these shares during his lifetime. When that idea is discarded there is no longer any difficulty in giving all the words of the various writings their usual meaning and full force, or, after so doing, of reconciling them with the remaining evidence in the case.

If this view be rejected, I am nevertheless certain that the mere form of the words thus employed should not be regarded as creating the joint tenancy contended for. In addition to considering the words employed in the accounts, pass-books or other papers involved in a matter of this kind, it has always been the practice of our courts to ascertain whether the initial transaction had been followed by an actual or symbolical delivery of the indicia of title, and whether the alleged donor had completely stripped himself of the dominion which he had theretofore had over the property.

Thus in *Dennin v. Hilton*, 50 Atl. 600 (Court of

Chancery, 1901; not in the official reports), the employment of the phrase:

“ This account and all money to be credited to it belongs to us as joint tenants, and will be the absolute property of the survivor of us, either and the survivor to draw.”—

was held insufficient to create a joint tenancy in the account and money referred to therein.

The same was true in *Hoboken Bank for Savings v. Schwoon et al.*, 62 N. J. Eq. 503, where the phrase used was:

“ Helena Roche or Henry Schwoon in account with Hoboken Bank for Savings, payable to either or survivor.”—

and this notwithstanding the alleged donor and donee had signed a contract in a book, kept by the bank for that purpose, reading in part as follows:

“ I, Helena Roche, hereby authorize, empower and direct The Hoboken Bank for Savings, in the City of Hoboken, to place the account now in my name on the books of said bank, in the name of Henry Schwoon, jointly with mine. And we, the said Helena Roche and Hy. Schwoon, do hereby agree with each other to become and be co-partners in the ownership of said moneys, and of all accrued and accruing interest thereon, and of all moneys hereafter to be deposited to said account.”

In *Schick v. Grote*, 42 Eq. 352, the entry was:

“ Bank for Savings, in account with August Grote and wife, Edvina, or either,”

and the Court said:

“ The form of the account to which the deposit was made, is not evidence of gift to the wife.”

In *Gordon v. Toler*, 83 N. J. Eq. 25, the alleged donor not only signed a paper reading:

“ The Bloomfield Savings Institution is hereby authorized and directed to add the name of my

sister, Ella R. Toler, to my account No. 10,884, giving equal and joint rights and privileges in said account and make the funds now on deposit or hereafter deposited payable to either of us or to the survivor",

but there was added to her name in the pass-book the words "or Ella R. Toler", and stamped under both names the further words "payable to either and to the survivor".

In *Gorman v. Gorman*, 39 Atl. 1038 (Court of Appeals of Md., 1898), the entry made in the pass-book was as follows:

"Theresa McConnell and Maggie S. Gorman, joint owners, payable to the order of either or the survivor."

The Court said:

"In this case the contention is that the words 'joint owners' mean exactly what they imply, namely, ownership, and not mere agency with authority to draw. But the question before us is not as to the meaning of the word 'owners' or the words 'joint owners' in themselves and apart from the connection in which they are used in the entry in the bank book. And while we may admit that these words have an ascertained legal meaning in themselves, yet we entirely agree with the learned judge below that they are not used here in the definite legal sense imputed to them by the appellant."

It was argued in the court below that cases of the character just cited were not in point as against Mrs. McKenzie's claim, because it related to the ownership not of a bank deposit, but shares, and transfers of such securities are ordinarily evidenced by a formal transaction of the kind here discussed. There is, I submit, no force in this contention. Sections 38 and 39 of the building and loan law of this State under which the complainant association operates (Comp. Stat., Vol. 1, p. 347) provides that a member may withdraw the value of his shares and terminate his membership at his pleasure, on

such written notice only as the constitution of such association requires, and that withdrawals shall be paid in the order that notices are given to the extent of half the monthly receipts. Article II of the constitution of the complainant association (Ex. L-2) enables a member to withdraw all of his shares, or any number of them, *or any part of the amount standing to the credit of his shares without reducing the number of shares themselves*. It does not require that the notice shall precede the payment by any fixed period of time. The 19th Annual Report of the Association (Ex. L-3) indicates that such withdrawals are paid as soon as they are filed, and shows that for the year 1913-1914 the withdrawals aggregated 60 per cent. of the receipts. Mrs. McKenzie's instalment account was used by her practically as a savings bank account is ordinarily used (Exs. L-9 and L-10; Case, pp. 59-60). And the same was true, although to a lesser extent, in the case of the account represented by Mr. McKenzie's pass-book No. 156 (Ex. L-11, p. 64).

II.

Whatever contract rights in favor of Mrs. McKenzie as against the complainant association may have been created by the transaction of May 12, 1913, they were not sufficient to constitute a transfer to her of any interest in the shares then owned by Mr. McKenzie in such association.

It was also contended in the court below, on Mrs. McKenzie's behalf, that as a result of the transaction of May 12, 1913, the Association made itself liable to Mrs. McKenzie for the full amount to the

credit of both the instalment and the prepaid shares theretofore standing in the name of her husband, in case she duly demanded payment thereof, and that this obligation served to make the gift claimed effective, even if no joint tenancy in these shares had been created.

Reliance for this claim was placed upon the decision of Vice-Chancellor Stevenson in *Dunn v. Houghton*, 51 Atl. 71 (Court of Chancery, 1902, not reported officially). In that case it appeared that although no delivery of the pass-book had been made, Mary Kane, the alleged donor of the account represented thereby, had caused the account to be changed so as to read "Mary Kane or niece Katie Pender", and that both she and her niece placed their signatures in the usual way upon a book kept by the bank for the signatures of its depositors. The learned Vice-Chancellor said at page 73 *et seq.*:

"Both of these persons entered into the usual depositor's contract with the bank, and the bank entered into such contract with both of them. * * * The problem to solve is whether in that transaction Mrs. Kane used her property so as to vest in her niece a contractual right against the bank of potential money value, with intent that her niece should hold that right for her (the niece's) own use as a pure donation. * * * Where the donative purpose is sought to be accomplished by procuring a third party, such as a savings bank, to contract directly with the donee, or for his benefit, the whole law as to delivery seems to be in a large degree inapplicable. There is nothing to deliver. The donation is actually effected when the donor delivers his property to the savings bank, and thereby procures the savings bank to contract with or for the benefit of the donee. * * * In my judgment, when a man with donative purpose converts a part of his estate into an obligation of a savings bank to another person, the discharge of which obligation may, however, contingently benefit that person, and which that person can enforce in case the contingency occurs, which makes such enforcement advantageous, a case is presented of a complete

gift. The external form of the gift is the absolute conversion of the donor's property into a binding obligation of a third party, the performance of which, according to its terms, may upon certain contingencies benefit the donee. There is nothing, however, contingent about the gift. The gift is absolute. The right is vested beyond recall in the donee. * * * The retention of the book, therefore, did not leave the gift incomplete. * * * In this case I think the proof is clear that the savings bank entered into a contract with Mrs. Kane and the complainant jointly with the usual incident of survivorship. * * * All the evidence in this case fully establishes a formal joint contract between Mrs. Kane and the complainant on the one hand, and the bank on the other."

It will be observed that this decision was rendered almost concurrently with that of Vice-Chancellor Gray in *P. R. R. Co. v. Stevenson*, 63 N. J. Eq. 634. A comparison of the opinions in these cases discloses that they are each based upon the same fundamental error, namely, that a donative purpose having been established, the donor was bound by his acts, notwithstanding he had not deprived himself of control over the subject matter of the alleged gift. In the following year this court in *Stevenson v. Earl*, 65 N. J. Eq. 721, speaking through the present Chief Justice, unanimously reversed the decree of Vice-Chancellor Gray, holding that no matter how clear the donative intention may be if the donor fails to surrender or strip himself of his control over the subject matter of the alleged gift, it is incomplete and fails of accomplishment. When this decision was rendered *Dunn v. Houghton* ceased to be an authority in favor of the position taken by the appellee herein.

III.

There is no basis for a claim that if the creation of a joint tenancy in the shares in question did not result from the transaction of May 12, 1913, an assignment thereof to Mrs. McKenzie can be supported upon the basis of her having given a valuable consideration therefor.

Whether the writings then executed are treated as covering one or two transactions, one relating to Mrs. McKenzie's shares and the other to her husband's shares, is immaterial. For what followed demonstrated that whatever was then done was not intended to take effect until the death of one of the parties. Mrs. McKenzie intended to and did retain full dominion and control over her shares. That she did not intend to vest her husband with any interest therein, and did not regard him as having done so is shown by the fact that she continued to receive the dividends declared on her 60 prepaid shares and entirely withdrew the amount to the credit of her 100 instalment shares and surrendered the book representing them for cancellation (Case, pp. 55-56; pp. 59-60). This was undoubtedly done with Mr. McKenzie's knowledge, since he was the president of the Association and must have signed the checks by which this was accomplished. He in turn received the dividend declared on his 200 prepaid shares and from time to time deposited moneys to the credit of and made withdrawals against his 500 instalment shares (Case, pp. 51-52; p. 64). After May 12, 1913, each of them just as before then regarded and treated the shares which had theretofore been his or her individual property as continuing to be such. He obtained nothing and she gave nothing for or as a result of the alleged transfers, and none were in fact made for a valuable consideration or otherwise.

IV.

If no joint tenancy in the shares resulted from the transaction of May 12, 1913, there was no completed or effective gift of the shares in question.

Before a gift of the kind that the appellee contends was made to her results, three things must be established. "There must be a donative intention, a delivery of the gift, or what amounts to a delivery, and the donor must rid himself of all control over the subject matter." This quotation is from the opinion of the learned Vice-Chancellor in this case. It is in accord with the rule firmly established by the decisions of this Court in *Cook v. Lum*, 55 N. J. L. 373; *Stevenson v. Earl*, 65 N. J. Eq. 721; and its affirmation upon the opinions of the Court of Chancery of the decrees rendered in *Nicklas v. Parker*, 71 N. J. Eq. 777, and *Swayze v. Huntington*, 82 N. J. Eq. 127; 83 N. J. Eq. 335.

(a) *There was no delivery, or what amounted to a delivery, of the gift.*

It will be remembered that Mrs. McKenzie's testimony with reference to the custody had after May 12, 1913, of the pass-book for the 500 instalment shares was as follows: That it was kept in a chiffonier drawer in the bedroom which she and Mr. McKenzie occupied; that she had what she believed to be the only key to this drawer and gave the book to Mr. McKenzie when he desired it, who thereafter always returned it to her to be placed in this drawer again; that after her husband was stricken this drawer, although not broken into, was surreptitiously opened and the pass-book stolen (Case, pp. 169-170; p. 185). The inference is plain that it is claimed to have been stolen from the

chiffonier drawer by Mr. McKenzie's oldest son, for, a few days prior to the time of the alleged theft, his father had given him the key to the latter's private safe at the Standard Bleachery mill and the pass-book was found in this safe when it was opened with this key a few days after Mr. McKenzie's death (Case, p. 89; p. 94). In addition to the inherent improbability of the story of this theft, there is the further improbability of Mr. McKenzie's having changed his proven practice of always having kept the book in his private safe at the mill by thereafter entrusting its safety to a chiffonier drawer. Mr. James McKenzie denies that his father ever did do so (Case, pp. 84-86; p. 89). But if he did, this, I submit, in no way tended to constitute a delivery of this pass-book to his wife. The bedroom referred to was occupied by both Mr. and Mrs. McKenzie, and the fact that the drawer in question was kept locked and she carried the key is of no significance, because Mr. McKenzie was able to secure possession of the pass-book and did so whenever he desired. The most that can be said is that he entrusted the locking of the drawer to Mrs. McKenzie.

If it be the fact that the certificates for the 200 pre-paid shares were always kept in the Tiffany Safe Deposit Box after June 1, 1913, this is not sufficient to prove a delivery thereof by Mr. McKenzie to his wife. The box had been taken and stood in both of their names and he had the same right of access thereto as she did (Case, p. 105, line 10, line 30; pp. 112-113). His failure to ever exercise this right of access in no way impaired his power to do so at any time. The undisputed testimony of the family coachman, Widows, hereinabove quoted at length, as to the circumstances under which during Mr. McKenzie's last illness he was sent to the mill for an envelope that was in the latter's private safe; his evidence with that of Mr. James McKenzie as to the size and thickness of the envelope which was found there and brought to Mrs. McKenzie; her

inquiry of Mr. Duncan on the following day as to the whereabouts of the certificates, coupled with her insistence that she must secure them, and the fact that the day after Mr. McKenzie sank into the unconsciousness from which he never recovered his wife went to New York and then caused the Tiffany Safe Deposit Box to be transferred to her own name, constitute cogent evidence that Mr. McKenzie intended to retain custody of the certificates until the time of his death (Case, pp. 136-139; pp. 83-84; p. 183, line 29). In *Farrow v. Farrow*, 72 N. J. Eq. 421, this Court said:

“ A gift of personal property from husband to wife must be clearly proved; there must be clear and convincing evidence of a delivery of the property by the husband with the intention of divesting himself of all dominion and control of it, and of vesting title in the wife.”

This is but a reiteration of the rule stated by Chancellor Green in *Dilts v. Stevenson*, 17 N. J. Eq. 407, where he said:

“ Even in equity, where a widow seeks to establish a gift from her husband in his lifetime, she must adduce sufficient evidence beyond suspicion.”

This the appellant contends Mrs. McKenzie has not done with reference to the essential point of the delivery to her of the pass-book and certificates in question.

(b) *Mr. McKenzie did not completely strip himself of all dominion or control over the shares in question.*

As was said by this Court in *Cook v. Lum*, *supra*, and repeated in *Stevenson v. Earl*, *supra*, this is the crucial test. Applying it to the present case the alleged gift cannot be sustained because the undisputed evidence establishes that Mr. McKenzie never

intended to, and never did, part with his dominion over his shares or the money they represented. That this is true with regard to the 500 instalment shares would seem to be beyond controversy. He not only from time to time produced at the Association's office the pass-book without which any of the money standing to the credit of these shares could not be withdrawn, but on two occasions, one within a few days after May 12, 1913, and the other in December, 1913, he withdrew therefrom sums aggregating \$5,500. On the second of these occasions he caused a deposit of the sum withdrawn to be made. Thus he evidenced his complete control of the amount which at any time remained to the credit of these shares, and also his intention not to have them mature, which latter result would have been accomplished before his death except for the withdrawals so made by him. His remaining president of the complainant Association after the alleged gift was made is another evidence of his intention not to part with his shares, and of his belief that he had not done so, for under the provisions of Section 8 of the Building and Loan Association law he would have thus been disqualified from holding this office (Comp. Stat., Vol. 1, p. 337). As long as he held this office Mrs. McKenzie could make no withdrawals against either the 500 instalment shares or the 200 prepaid shares which she had caused to be placed in their joint names without his knowledge. Nor could she have done so without his consent without first establishing that she had such right. He, therefore, continued his control over the prepaid shares as well even if the certificates therefor were in Mrs. McKenzie's sole custody, as distinguished from their joint custody.

V.

Mr. McKenzie's gift to his wife was not intended to take effect until after his death, and it was, therefore, nugatory because not effected in accordance with the requirements of the Statute of Wills.

It is conceded on behalf of the appellant that Mr. McKenzie intended to make a donative transfer of the shares now claimed by his widow, but only one that should become effective upon his death. It was therefore not a valid transfer because not carried out in accordance with the mandatory provisions of the Statute of Wills (*Stevenson v. Earl, supra*, at p. 726).

The first expression of this intention is indicated by the last ten words of the declaration on the back of each of the application cards which he signed and delivered to the complainant association on May 12, 1913, for use in the transaction that was then had in so far as it related to the instalment and prepaid shares which he then owned. These words were, "and to the survivor on the death of the other". By the repeated use of the words "and/or" in the entries that were then made in the new pass-books and certificates issued and in the complainant's books of account as a result of these applications Mr. McKenzie also guarded against an inference that any immediate change of or in the ownership of his shares was intended. Any attempt to find an intention on Mr. McKenzie's part on May 12, 1913, to make Mrs. McKenzie an immediate gift of the shares in question or of a present interest therein requires the forcing of this written evidence, certainly the most reliable evidence on this point of the case, to declare an intent to which it is repugnant. Giving the words, which were undoubtedly used advisedly, their clearest meaning, we see that if

they declare anything as to a change in the ownership of the shares, or of any interest therein, it is that this change was not intended to be effective in Mr. McKenzie's lifetime.

The conclusion that the only donative intent that Mr. McKenzie had was the abortive one already referred to is the one conclusion consistent with all of the evidence in the case with the possible exception of that of Mrs. Butland. It harmonizes with the dominion which he continued to exercise over the shares which he admittedly owned prior to May 12, 1913, and with the same exercise of power which Mrs. McKenzie after that date exerted over the instalment shares which she admittedly owned prior thereto. It is also in harmony with the important testimony given by Miss Guy, a niece of Mr. Justice Guy, of the New York Supreme Court, and one of the only two persons to whom Mr. McKenzie, so far as the record shows, ever spoke of what he had intended to accomplish by what he did on May 12, 1913. It will be recalled that the conversation which he had with Miss Guy occurred within three weeks after that date or on or about June 1, 1913 (Case, pp. 148-149). Mr. McKenzie was then talking with Miss Guy about a possible investment by her in building and loan shares, and said that he thought the complainant association was of the best (Case, p. 150). Miss Guy thereupon told him that she never had had much faith in building and loan associations and he thereupon replied " 'To prove to you that I believe in mine, my wife and I have put our money in it', and he went on in his nice little way and said that if he should die his wife would have the money to tide her over until things were all settled" (Case, p. 153, line 9). Mrs. McKenzie testified positively that the shares which she owned had been purchased with her own money, and it is abundantly proven that Mr. McKenzie's money paid for his shares. His statement thus made to Miss Guy not only failed to show that he had not conferred or attempted to confer any immediate bene-

ficial interest upon his wife in respect to the shares which his money had purchased, but on the contrary that she would only become entitled to this money and the shares which it represented from and after the time of his death, and then only because he wanted her to have it "to tide her over until things were settled".

Mrs. Butland, the other of the two witnesses just mentioned, is a person who practices what our law terms a "crafty science" (Comp. Stat., p. 1926, Sec. 1). In plain English her occupation is to practice deceit by means of palmistry, crystal gazing and soul sensing, and such practices in this state are accordingly made unlawful. Her conversation with Mr. McKenzie is alleged to have occurred at his office in Boston where she testifies she had from time to time advised him with reference to his business affairs as the result of reading his palm or having him hold a crystal (Case, pp. 213-218). The conversation in question occurred on January 1, 1914, or only about three months before Mr. McKenzie's death. It is said to have been as follows:

" And I said, ' Why you have enough in that building and loan association to take care of you,' and he said, ' Oh, that all belongs to my wife.' That was news to me and I said ' Is that so?' and he said, ' Oh, yes, but it is in our joint names.'"

This story is intrinsically improbable, and the relation most highly artificial. It is most unlikely, if there ever was any conversation, that it has been reproduced with any approach to reliable accuracy. The most that can be reasonably believed is that Mr. McKenzie may have said to Mrs. Butland something similar to what he did to Miss Guy, namely, that *both* he and his wife had their money invested in the association and that he had arranged by putting their shares in their joint names that she should have the benefit of it upon his death. Op-

posed as this testimony is to all of the other evidence in the case bearing upon the time that Mr. McKenzie intended to have his donative intention carried out, and coming from such an unreliable source, but little, if any, weight can properly be given to it. The cross-examination of this witness emphasizes how unsafe it would be to give it the slightest credence, let alone to permit it to control the disposition of this suit.

For the reasons stated it is respectfully submitted that the decree appealed from should be reversed, and the Court of Chancery instructed to award the shares in question to Mr. McKenzie's executor and direct the delivery to him of the pass-books and certificates by which they are represented.

Respectfully submitted,

FREDERIC J. FAULKS,
Of Counsel with Appellant.

November Term, 1916.

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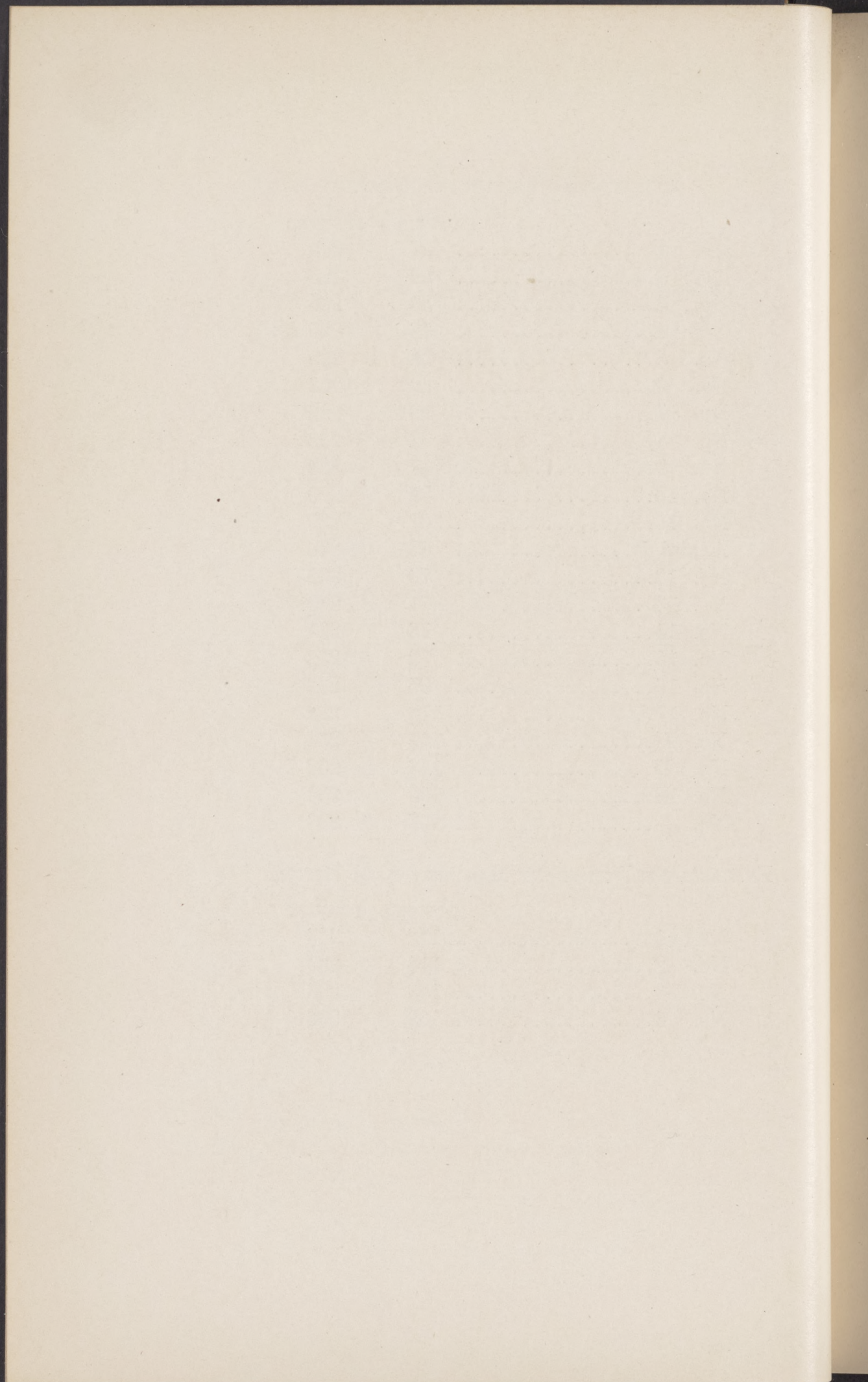
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Bill of Complaint.

Bill of Complaint.

Filed July 15, 1914.

In Chancery of New Jersey.

10

*To the Honorable the Chancellor of the State of
New Jersey:*

Complaining shows unto your Honor, your orator, The East Rutherford Savings Loan and Building Association,

1. That it is a corporation created by the State of New Jersey on the twenty-third day of May in the year eighteen hundred and ninety-five; and that at all times since said date it has been, and still is, doing business as a domestic building and loan association within this State, having its principal office and place of business in the Borough of East Rutherford in this State: 20

2. That its capital consists of the accumulated savings of its members with the profits arising from the investment thereof:

3. That it has several classes of members, of which one class is known and designated as instalment shareholders, and another class is known and designated as prepaid shareholders; and that the par or maturity value of the shares of each said class is the sum of one hundred dollars: 30

4. That an instalment shareholding member becomes such upon applying for one or more instalment shares and paying the first month's dues thereupon, which are the sum of one dollar per share: 40

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5. That a prepaid shareholding member becomes such upon applying for one or more prepaid shares and paying therefor the full face or maturity value thereof:

10 6. That instalment shareholders, after making the first payment on their shares, are required, if they are borrowers from the Association, to pay, on the second Friday of each month, to your orator the monthly dues of one dollar per share on each of their shares, and they may be allowed, and, by the customary practice of your orator, are allowed, to make such payments as they may desire in excess of said required payments; but, if not such borrowers, they may make payments in like manner as though they were borrowers, but are not required to do so,
20 and may decrease, or altogether omit, the said monthly dues, normally payable on their shares:

7. That on the thirtieth day of April and the thirty-first day of October in each year the books of your orator are balanced and the net earning for the preceding half year ascertained and thereupon and prior to the second Friday of the next ensuing month the profits earned by the shares of each shareholder, whether instalment or prepaid, are ascertained, apportioned, and
30 credited to his shares. Profits apportioned to prepaid shares are thereupon paid to the holders thereof; but profits apportioned to instalment shares are credited thereto, and accumulated as principal:

8. That any shareholding member, whether instalment or prepaid, is entitled, subject to the conditions prescribed by law and the constitution of your orator at any time, to withdraw all or
40 any of his shares, if unpledged, or he may, with-

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out reducing the number of his shares, withdraw any part of the amount standing to the credit of such shares for principal and profits, if said shares are unpledged; and upon withdrawing a share or shares, the member is entitled to receive, per share the amount standing to its credit for principal and profits, at the end of the preceding semi-annual term, plus any dues since then paid thereupon and less its *pro rata* share of any net losses sustained by the association since the end of said term: 10

9. That each instalment shareholder, upon becoming such, receives from your orator a pass book which is numbered and in which are entered from time to time, in appropriate columns the payments made by him, the profits credited to his shares, and the moneys withdrawn by him; and it is, and at all times hitherto has been, the custom and practice of your orator to require any such shareholder to produce said pass book to your orator's proper officer and have entered therein the amount of any moneys withdrawn by such shareholder, before permitting such moneys to be withdrawn by him: 20

10. That each prepaid shareholder, upon paying for his shares, receives from your orator a certificate, under its seal and attested by the signatures of its secretary and president, or other proper official, which certifies the amount that he has paid for such shares and the number of the shares so purchased, and in case the holder thereof desires to withdraw or transfer such shares, he is required by your orator to produce and surrender such certificate to your orator: 30

11. That on the twelfth day of May in the year nineteen hundred and thirteen, William 40

Bill of Complaint.

McKenzie of the Borough of East Rutherford aforesaid, and Margaret Stewart McKenzie, his wife, were each shareholding members of your orator's Association, holding respectively shares therein as follows: The said William McKenzie was the owner of two hundred (200) prepaid
10 shares of the value of twenty thousand dollars (\$20,000.). His wife, Margaret Stewart McKenzie, was the owner of sixty (60) prepaid shares of the value of six thousand dollars (\$6,000.), and the said William McKenzie was the owner of five hundred (500) instalment shares of the then withdrawal value of forty-seven thousand, eight hundred and thirty-eight dollars and eighty-eight cents (\$47,838.88), but
20 your orator is credibly informed and believes that all the moneys received by your orator for the said shares so respectively held and owned by the said William McKenzie and by the said Margaret Stewart McKenzie, his wife, had been paid by and were the moneys of the said William McKenzie.

12. That on the twelfth day of May in the year nineteen hundred and thirteen, the said William McKenzie surrendered to your orator his pass book for the said five hundred (500)
30 shares of instalment stock owned by him and directed a new pass book to be issued in the name of himself and of his said wife, Margaret Stewart McKenzie, which was accordingly done, and a new account was thereupon opened on the books of your orator in the names of William McKenzie and of Margaret Stewart McKenzie, which was credited with the said withdrawal value of five hundred (500) shares, to wit: The
40 sum of forty-seven thousand, eight hundred and thirty-eight dollars and eighty-eight cents (\$47,-

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838.88) and the new pass book was delivered to the said William McKenzie. At the same time, the said William McKenzie and Margaret Stewart McKenzie, his wife, signed and filed with the secretary of your orator a signature card, on the face of which, it was stated that they thereby made application for five hundred (500) instalment shares in your orator's Association book No. 156, and upon the back of which card, they both signed the following statement, to wit: "The shares in our joint names are payable to either or both and to the survivor on the death of the other." That thereafter, the said William McKenzie paid in on account of said instalment shares in May in the year nineteen hundred and thirteen, three thousand dollars (\$3,000), in December in the year nineteen hundred and thirteen, three thousand dollars (\$3,000), and withdrew in May in the year nineteen hundred and thirteen, fifty-five hundred dollars (\$5,500), and in December, nineteen hundred and thirteen, three thousand dollars (\$3,000). That profits were credited to said shares as follows, to wit: in November, nineteen hundred and thirteen, thirteen hundred and sixty dollars and fourteen cents (\$1,360.14), and in May in the year nineteen hundred and fourteen, fourteen hundred dollars and ninety-seven cents (\$1,400.97), so that at the present time the withdrawal value to the credit of the said shares is the sum of forty-eight thousand and ninety-nine dollars and ninety-nine cents (\$48,099.99). That no moneys other than those of the said William McKenzie have ever been paid in on account of said shares and no moneys have ever been withdrawn from the moneys to the credit of said shares except by the said William McKenzie as above stated. That

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Bill of Complaint.

the said William McKenzie died on the twelfth day of April in the year nineteen hundred and fourteen. That the said pass book No. 156 at the time of his death, as your orator is credibly informed and believes, was in his private safe, to which his said wife did not have access, and that the said pass book No. 156 was always within his sole custody and control, as your orator is credibly informed and believes, from the time that the same was delivered to him as aforesaid to the time of his death.

13. That on the twelfth day of May in the year nineteen hundred and thirteen, the said William McKenzie surrendered his certificates for the said two hundred (200) prepaid shares owned by him and directed twenty (20) new certificates, each for ten (10) shares and numbered consecutively from 1409 to 1428, both inclusive, to be issued to the joint names of William McKenzie and or Margaret Stewart McKenzie, which was done, and the said certificates were delivered to the said William McKenzie, and at the same time the said William McKenzie and Margaret Stewart McKenzie, his wife, signed and filed with your orator's secretary a signature card stating that they thereby made application for two hundred (200) prepaid shares, certificates numbered 1409 to 1428 inclusive, on the back of which said card, they both signed the following statement: "The shares in our joint names are payable to either or both and to the survivor on the death of the other." That the said twenty (20) certificates, each for ten (10) prepaid shares and each of the value of one thousand dollars (\$1,000.) which were so issued were thereupon delivered to the said William McKenzie, and your orator

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is credibly informed and believes that thereafter, the said William McKenzie lodged the said twenty (20) certificates in a safe deposit box at Tiffany & Company's in the City of New York, to which both he and his said wife, or either of them without the other, had access, each of them having keys thereto; and that on the ninth day of April and three days before the death of the said William McKenzie, and while he was confined to his bed with his last illness, the said Margaret Stewart McKenzie caused the said safe deposit box at Tiffany & Company's to be transferred, so that thenceforth it stood only in her name and so that thenceforth she only had access thereto. That the profits accruing on the said last mentioned prepaid shares, prior to the death of the said William McKenzie, were paid to the said William McKenzie, the same being paid by a check drawn to the order of William McKenzie. That the profits thereon accruing since the death of the said William McKenzie are still in your orator's hands and amount to the sum of five hundred dollars (\$500).

14. That on the twelfth day of May in the year nineteen hundred and thirteen, the said Margaret Stewart McKenzie surrendered her certificates for the said sixty (60) prepaid shares owned by her and directed six new certificates, each for ten (10) shares and numbered consecutively from 1403 to 1408, both inclusive, to be issued to the joint names of Margaret Stewart McKenzie and or William McKenzie, which was done, and the said certificates were delivered to the said William McKenzie, and at the same time, the said Margaret Stewart McKenzie and William McKenzie signed and filed with your orator's secretary a signature card

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stating that they thereby made application for sixty (60) prepaid shares, certificates numbered 1403 to 1408, both inclusive, on the back of which said card, they both signed the following statement: "The shares in our joint names are payable to either or both, and to the survivor on the death of the other." That the said six (6) certificates, each for ten (10) prepaid shares and each of the value of one thousand dollars, which were so issued, were thereupon delivered to the said William McKenzie; and your orator is credibly informed and believes that the said sixty (60) prepaid shares last aforesaid were thereafterwards delivered by the said William McKenzie to the said Margaret Stewart McKenzie and were by her placed in the said safe deposit box at Tiffany & Company's in New York City, where they remained until the death of the said William McKenzie; and your orator further shows that the profits apportioned to the said sixty (60) prepaid shares since the twelfth day of May last aforesaid, have been paid as they accrued, to the said Margaret Stewart McKenzie.

15. That the said William McKenzie, upon his death, left him surviving his widow, the said Margaret Stewart McKenzie, and as his only next of kin the following children, all of whom are of full age, namely: James J. McKenzie, Kenneth M. McKenzie, William McKenzie, Jr., Bertram D. McKenzie, and Rachel Pearson; that he also left a last will and testament which was duly admitted to probate by the Orphans Court of the County of Bergen on the twentieth day of June in the year nineteen hundred and fourteen, a copy whereof is hereto annexed and referred to and made part

Bill of Complaint.

of this bill of complaint, wherein as will appear, he appointed Henry Manchester Ladd his executor and that the said Henry Manchester Ladd thereafterwards duly qualified as such executor and took upon himself the administration of the estate of the said decedent.

16. That the said William McKenzie, from the organization and incorporation of your orator as aforesaid, to the time of his death, was your orator's president, and that both he and the said Margaret Stewart McKenzie, his wife, had full and actual knowledge and notice, at all the times aforesaid, of all and singular the customs, practices, usages, rules, regulations, and requirements observed by your orator in the conduct of its said business, and particularly of all and singular such as are above, in the introductory paragraphs of this bill of complaint numbered from 1 to 10, both inclusive, set forth and alleged.

17. That the said Henry Manchester Ladd, as executor as aforesaid, claims, and as your orator is credibly informed and believes, is directed by the said children and next of kin of the said decedent, to claim, that the said two hundred and sixty (260) prepaid shares aforesaid, and the said five hundred (500) instalment shares aforesaid, and the withdrawal value of the same, were the property solely of the said William McKenzie during his life time and at the time of his death, and since his death, are the property of the said Henry Manchester Ladd, as executor as aforesaid. Whereas, on the other hand, the said Margaret Stewart McKenzie claims that all of the said prepaid shares and the withdrawal value of the same are, and prior to the death of the said William McKenzie and from thenceforth hitherto, have been her sole property, and

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that all of the said instalment shares and the withdrawal value of the same are, and from and after the death of the said William McKenzie, have been her sole property; and that each of the said claimants, to wit: the said Henry Manchester Ladd as executor as aforesaid, and the
 10 said Margaret Stewart McKenzie have respectively demanded of your orator payment of the said withdrawal value of all and singular the said shares, which said withdrawal value of the said sixty (60) prepaid shares is the sum of six thousand dollars (\$6,000.), of the said two hundred (200) prepaid shares is twenty thousand, five hundred dollars (\$20,500), and of the said
 20 five hundred (500) instalment shares is forty-eight thousand and ninety-nine dollars and ninety-nine cents (\$48,099.99), making a total in all of seventy-four thousand, five hundred and ninety-nine dollars and ninety-nine cents (\$74,599.99).

18. That your orator has always been and now is, ready and willing to pay the said several withdrawal values and the total thereof as aforesaid, to such person or persons as should be lawfully entitled to receive the same, and to whom it could pay the same with safety, and
 30 hereby offers to pay the same into this court.

19. That your orator does not in any respect collude with either of the said claimants, to wit: the said Henry Manchester Ladd and the said Margaret Stewart McKenzie touching the matters in this case and has not been indemnified by them, or either of them, but brings this suit of its own free will and to avoid being molested and injured touching the matters contained in the bill.

Bill of Complaint.

Therefore, and as your orator can only have adequate relief in this court, to the end that the said defendant, Henry Manchester Ladd, as executor as aforesaid, and Margaret Stewart McKenzie may without oath answer this bill and interplead and settle their right to the said several shares and to the said several sums of money, the withdrawal value thereof, and that your orator may be at liberty to pay the said sums of money, the withdrawal value of said shares, into this court, and that your orator upon the payment into this court of such amount and upon procuring said claimants to interplead according to the course of this court, may be decreed to be discharged of all liability to such defendants, or to either of them in the premises, and may have all of its counsel fees and costs therein and may have such other and further relief as may be agreeable to equity and good conscience.

May it please your Honor to grant unto your orator, not only the State's writ of injunction issuing out of and under the seal of this honorable court to restrain the said claimants, and each of them, from proceeding at law against your orator touching the matters aforesaid, but also a writ or writs of subpoena also issuing out of and under the seal of this court, to be directed to the said Henry Manchester Ladd as executor as aforesaid, and to the said Margaret Stewart McKenzie, therein and thereby commanding them and each of them on a certain day and under a certain penalty to be therein inserted, to appear before your Honor in this honorable court, and then and there to answer all and singular the premises aforesaid and to stand to and perform

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and abide by such order, direction and decree therein as to your Honor shall seem meet.

And your orator will ever pray, etc.

E. J. LUCE & W. A. KIPP.

10 EDWARD J. LUCE,
Of Counsel.

I, William McKenzie, of East Rutherford, in the County of Bergen, State of New Jersey, do make and publish the following, as and for my last will and testament:

20 First. I give and bequeath to my wife, Margaret Stewart McKenzie, all articles of personal, domestic or household use, or ornament, including my furniture, plate, books, pictures and prints, rugs, carpets, curtains, jewelry, works of art, china, glass, provisions, consumable stores, and all household effects, which at the time of my death, shall be in, about or belonging to the house in which I may reside at my decease.

“Rugs, carpets, curtains” inserted by me before being signed. WILLIAM MCKENZIE.

30 Second. I give and bequeath to my wife, Margaret Stewart McKenzie, all the horses, carriages, wagons, harness, saddles, blankets, robes, whips and stable implements of every kind, hay, grain, feed and all stable furniture which shall belong to me, and which at the time of my death shall be in my possession, or in, or about, or belonging to any stable, barn, shed or house used by me at the time of my decease. The above bequests to my wife, Margaret Stewart McKenzie, are in addition to any rights of dower which she may have in my real estate, and in addition to any statutory rights which she may have in
40 the distribution of the remainder of my personal

Bill of Complaint.

estate, it being my will that my said wife should, as to the rest and remainder of my estate, real, personal and mixed, have and retain her full right of dower in any real estate belonging to me, and also the right to such share or portion of my personal estate as she would, under the laws of this State, have received if I had died intestate. 10

Third. I hereby nominate, constitute and appoint Henry Manchester Ladd, of Rutherford, New Jersey, executor of this my last will and testament.

In witness whereof, I, the said William McKenzie, have hereunto set my hand and seal this _____day of _____, one thousand, nine hundred and six.

(L. s.) WILLIAM McKENZIE. 20

NEW JERSEY, ss.

George A. Duncan, of full age, being duly sworn on his oath according to law, deposes and says: That he is the secretary of the complainant corporation in the foregoing bill mentioned and has personal knowledge of all and singular the matters shown and alleged therein and that the said bill is exhibited by the said complainant against the defendants therein, without any fraud or collusion between the complainant and the said defendants, but merely of complainant's own accord, for relief in this court; that said bill is not exhibited at the request of said defendants, or of any or either of them, and that the complainant is not indemnified by the said defendants, or by any or either of them, and further that said bill is exhibited with no other 30 40

Bill of Complaint.

intent but to avoid being sued or molested by the said defendants touching the matters contained in said bill.

GEO. A. DUNCAN,

10 Sworn and subscribed before
me this 14th day of July, A. D.
1914.

MAUD EDGAR,
Notary Public of N. J.

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Answer of Margaret Stewart McKenzie.

Answer of Margaret Stewart McKenzie.

Filed July 17, 1914.

IN CHANCERY OF NEW JERSEY.

Between

THE EAST RUTHERFORD SAV-
INGS LOAN AND BUILDING
ASSOCIATION,

Complainant,

and

MARGARET STEWART MCKENZIE
et al.,

Defendants.

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On Bill, etc.

*Answer of
Margaret
Stewart Mc-
Kenzie.*

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The answer of Margaret Stewart McKenzie, defendant, to the bill of complaint of The East Rutherford Savings Loan and Building Association, complainant.

This defendant for answer to said bill of complaint or to so much and such parts thereof as she is advised it is material or necessary for her to make answer unto, answering says that:

1. She admits paragraph 1. 30
2. She admits paragraph 2.
3. She admits paragraph 3.
4. She admits paragraph 4.
5. She admits paragraph 5.
6. She admits paragraph 6.
7. She admits paragraph 7.
8. She admits paragraph 8.
9. She admits paragraph 9, but says that it is no part of the contract between said complainant and its instalment shareholders that 40

Answer of Margaret Stewart McKenzie.

before moneys are withdrawn by the shareholders his or her pass book shall be produced and the amount of the moneys withdrawn be entered therein.

10. She admits paragraph 10.

11. She admits paragraph 11, except that she
10 denies that the moneys received by said complainant for the 60 shares of which it is admitted in said paragraph this defendant was the owner on May 12, 1913, were the moneys of William McKenzie in said paragraph mentioned, and says that the same were the moneys of this defendant.

12. She admits paragraph 12, except that she
20 says that the said William McKenzie received the new pass book mentioned in said paragraph, not for himself alone, but in pursuance of the contract made with said complainant recited in said paragraph; and except that she denies that the said pass book was always within the sole custody and control of said William McKenzie, but on the contrary thereof she alleges that although at the time of the death of said William McKenzie said pass book was in the private safe of said William McKenzie, to which she did not have access (except under his direction), the
30 same was customarily kept in a drawer of a chiffonier in a room jointly occupied by the said William McKenzie and this defendant in their homestead in East Rutherford, and was only taken therefrom for the purpose of having an entry made therein by the proper officer of the complainant, and afterwards it was deposited for safe keeping by said William McKenzie in the safe mentioned in said paragraph.

13. She admits paragraph 13, except that she
40 says that she and not the said William McKen-

Answer of Margaret Stewart McKenzie.

zie—though with his assent—lodged the 20 certificates mentioned in said paragraph in the safe deposit box at Tiffany & Company's in the City of New York mentioned in said paragraph; that the original safe deposit box at Tiffany & Company's was taken in the name of both the said William McKenzie and this defendant, and both of them, or either of them without the other, had access thereto—each of them having keys thereto—but that several years ago another box was substituted because of some defect in the lock of the original box, and to the new box this defendant alone had the keys; that the new box like the original box was taken in the joint names of said William McKenzie and this defendant, but that she had a separate right of access to each of them; that each of said boxes was mainly used for the safekeeping of the personal effects of this defendant, and that the transfer of the second box to her own name was made earlier than the time mentioned in said paragraph and was within the right of this defendant; that while it is true that said William McKenzie (she does not know whether by check or otherwise) collected the profits accruing on the shares mentioned in said paragraph prior to his death, he nevertheless shared such profits with this defendant.

14. She admits paragraph 14, except that she says that the delivery in said paragraph mentioned to said William McKenzie of the certificates for the 60 shares mentioned in said paragraph was for account of this defendant, and she admits that the information of said complainant alleged in said paragraph, to the effect that the said shares were delivered by said William McKenzie to this defendant and were by her

Answer of Margaret Stewart McKenzie.

placed in a safe deposit box at Tiffany & Company's in New York City, where they remained until the death of the said William McKenzie, is correct—said box being the one to which she alone had the keys, as above stated.

15. She admits paragraph 15.

10 16. She admits paragraph 16, except that her knowledge and notice of the custom, practices, usages, rules, regulations and requirements observed by said complainant in the conduct of its business was of a very general character derived from her husband, who was president of said complainant; and she submits that no such custom, practice, usage, rule, requirement or regulation can have any effect upon the legal rights of this defendant in the premises.

20 17. She admits that she makes claim as stated in paragraph 17, but has no knowledge as to any claim made by the defendant Henry Manchester Ladd as executor of said William McKenzie, deceased, either by direction of the children and next of kin of said decedent or otherwise.

30 18. As to paragraph 18, this defendant can only say that the said complainant has refused to pay her the withdrawal values of the certificates of shares mentioned in said paragraph, and she submits that said complainant can, with perfect safety, pay the same to this defendant and should be compelled to do so by the decree of this honorable court.

40 19. She admits that the said complainant does not in any respect collude with this defendant, and has not been indemnified by her; but otherwise she has no knowledge of the statements of paragraph 19.

Answer of Margaret Stewart McKenzie.

All of which matters and things this defendant is ready to aver, maintain and prove when and where this honorable court shall direct, and humbly prays that by the decree of this honorable court said complainant may be compelled to pay her the withdrawal value of the 500 shares of instalment stock issued May 12, 1913, as stated in paragraph 12 of said bill of complaint, the withdrawal value of the 200 shares of prepaid stock issued May 12, 1913, as stated in paragraph 13 of said bill of complaint, and the withdrawal value of the 60 shares of prepaid stock issued May 12, 1913, as stated in paragraph 14 of said bill of complaint, together with all profits that have accumulated on said shares respectively.

And this defendant will ever pray, etc.

COLLINS & CORBIN,
Solicitors of said defendant.

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Statement of Henry M. Ladd, Executor, &c.

**Statement of Henry Manchester Ladd,
Executor, &c.**

Filed August 11, 1914.

IN CHANCERY OF NEW JERSEY.

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Between

THE EAST RUTHERFORD SAV-
INGS LOAN AND BUILDING
ASSOCIATION,

Complainant,

and

MARGARET STEWART MCKEN-
ZIE, *et al.*,

20

Defendants.

On Bill, etc.

Statement of defendant, Henry Manchester Ladd, executor of William McKenzie, deceased.

Henry Manchester Ladd, executor of William McKenzie, deceased, one of the defendants in the above entitled cause, hereby states as follows:

30 1. He does not contest the complainant's right to decree of interpleader in this suit.

2. Except as hereinafter stated he admits that the allegations of the bill of complaint herein are true.

40 3. He denies that the defendant, Margaret Stewart McKenzie, is or ever was the owner of the 60 prepaid shares of the complainant mentioned in paragraph 11 of the said bill of complaint as owned by her on the 12th day of May, 1913, or of any thereof, or that she is or ever was the owner of the other 200 prepaid shares

Statement of Henry M. Ladd, Executor, &c.

or the 500 instalment shares of the complainant in the said bill of complaint mentioned, or of any thereof. He claims that all of such 260 prepaid shares and all of such 500 instalment shares were purchased by William McKenzie with his money; that all of the payments made on the said shares were made by the said William McKenzie out of his money, and that all of such shares, together with all moneys due or to grow due thereon, were the sole property of the said William McKenzie at the time of his death, and passed to and are now the property of this defendant as the executor of the said decedent. 10

4. He claims that at the time or times of the surrender of the 200 prepaid shares and the 500 instalment shares mentioned in the 11th paragraph of the said bill of complaint as owned by William McKenzie on May 12, 1913, the said William McKenzie made application to the complainant for the issuance in his own name of a like number of such prepaid shares and a like number of such instalment shares; that the twenty new certificates of the complainant for ten shares each, numbered consecutively from 1409 to 1428 both inclusive, then made out in the joint names of William McKenzie and or Margaret Stewart McKenzie, were by the direction of the said William McKenzie issued and delivered to the said William McKenzie; that by like direction pass book No. 156 of the complainant for the said 500 instalment shares, which was thereupon made out in the names of William McKenzie and or Margaret Stewart McKenzie, was issued and delivered to the said William McKenzie; that the certificates for the said 60 prepaid shares were surrendered to the complainant on the said 12th day of May, 1913, 20 30 40

Statement of Henry M. Ladd, Executor, &c.

not by the said Margaret Stewart McKenzie but by the said William McKenzie, and that by the direction of the latter the six new certificates for ten shares each, numbered consecutively from 1403 to 1408, were then made out in the names of Margaret Stewart McKenzie and or William
10 McKenzie, and issued and delivered to the said William McKenzie.

5. He claims that all of the certificates originally issued for the said 260 prepaid shares from the time when they were respectively issued until the time of their surrender to the complainant, and the new certificates issued under date of May 12, 1913, for such prepaid shares from the time they were issued until the time of the death of the said William McKenzie, were
20 either in and subject to the exclusive custody, possession and control of the said William McKenzie, or the custody, possession and control of the said William McKenzie and Margaret Stewart McKenzie. He claims that the said William McKenzie never parted with his dominion or control over the said prepaid shares, or any thereof, or delivered, surrendered, transferred or parted with the said certificates, or any of them or any of the shares of the complainant
30 represented thereby, or intended so to do within his lifetime. He claims that if at any time the said certificates, or any thereof, were deposited or kept in a safe deposit box of Tiffany & Company in New York to which the said William McKenzie did not have access, such deposit was made and effected without the knowledge, consent or approval of the said William McKenzie and without right on the part of the said Margaret Stewart McKenzie, and that if the contrary thereof is true, such deposit or keeping of
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Statement of Henry M. Ladd, Executor, &c.

the said certificates did not deprive the said William McKenzie of his ownership of or title to the shares represented thereby or any thereof.

6. He claims that the pass book of the complainant originally issued on account of the said 500 instalment shares from the time of the issuance thereof until the time of its being surrendered to the complainant, and the new pass book No. 156 issued on account of such shares from the time of the issuance thereof until the death of the said William McKenzie were respectively in the exclusive custody, possession and control of the said William McKenzie, being kept by him in his private safe to which he alone had access, and were only removed therefrom or kept elsewhere occasionally or temporarily for the convenience of the said William McKenzie. He claims that the said William McKenzie never parted with his dominion or control over the said instalment shares, or any thereof, or delivered, surrendered, transferred or parted with the said pass books, or either of them, or any of the shares of the complainant represented thereby. 10
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7. He claims that the said William McKenzie never made or intended to make a gift of either the said prepaid or instalment shares, or any thereof, or of any right, title or interest therein, or in any thereof, to the said Margaret Stewart McKenzie; that the said William McKenzie never made a valid gift *inter vivos*, transfer, assignment or other conveyance of the said shares, or any thereof, or of any right, title or interest therein or in any thereof to the said Margaret Stewart McKenzie and never created any trust in said shares, or any thereof, for or in favor of the said Margaret Stewart McKenzie. He claims 30
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Statement of Henry M. Ladd, Executor, &c.

that if it was the intention of the said William McKenzie that subsequent to his death the said Margaret Stewart McKenzie should be or become the owner of the said shares, or any thereof, such intention was not validly or effectively carried out by the acts or transactions mentioned
10 in the said bill of complaint or in the answer thereto heretofore filed herein by the said Margaret Stewart McKenzie, or in any way whatsoever, and that if such was the purpose of the said acts and transactions they were insufficient and ineffective to accomplish the same because of the requirements of the Statute of Wills of this State relating to testamentary disposition of property.

8. He denies that his claim to the said shares
20 as the executor of the said William McKenzie is made at the direction of the children and next of kin of the said decedent or in any way or for any purpose other than the performance of his duties as such executor.

In answer to the claims of the defendant Margaret Stewart McKenzie based on affirmative defenses set forth in the answer heretofore filed by her herein, this defendant in addition to what is hereinbefore stated, says as follows:

9. He denies that the new pass book No. 156
30 issued on account of the said 500 instalment shares was received by the said William McKenzie from the complainant for anyone other than himself or that said pass book was customarily kept in a drawer of a chiffonier in a room jointly occupied by the said William McKenzie and the said Margaret Stewart McKenzie in their homestead in East Rutherford. He denies that any of the certificates for said prepaid
40 shares were with the consent, approval or know-

Statement of Henry M. Ladd, Executor, &c.

ledge of the said William McKenzie ever lodged or kept in a safe deposit box of Tiffany & Company to which the said William McKenzie did not have the right of access or to which only the said Margaret Stewart McKenzie had access, or that the transfer of the second box in the safe deposit vaults of the said Tiffany & Company to the name of the said Margaret Stewart McKenzie was made earlier than at the time mentioned in said bill of complaint or with the knowledge, approval or consent of the said William McKenzie. He denies that the profits accruing on any of the shares of the complainant mentioned in said bill of complaint were shared by the said William McKenzie with the said Margaret Stewart McKenzie and claims that if the contrary thereof is true, this would not establish or tend to establish the ownership of such shares, or any thereof, in the said Margaret Stewart McKenzie. He denies that the said 60 prepaid shares mentioned in the 14th paragraph of the said bill of complaint were delivered by the said William McKenzie to the said Margaret Stewart McKenzie except for the purpose of depositing the same in a safe deposit box at Tiffany & Company in New York City to which both he and she should have right of access.

LINDABURY, DEPUE & FAULKS,
*Solicitors for and of counsel with
 Defendant, Henry Manchester
 Ladd, executor of William Mc-
 Kenzie, deceased.*

Dated August 10, 1914.

George A. Duncan, direct.

IN CHANCERY OF NEW JERSEY.

	<i>Between</i>	
10	THE EAST RUTHERFORD SAV- INGS LOAN AND BUILDING ASSOCIATION,	}
	<i>Complainant,</i>	
	<i>and</i>	
	MARGARET STEWART MCKENZIE <i>et al.,</i>	
	<i>Defendants.</i>	<i>On Bill of Interpleader, &c.,</i>

CHANCERY CHAMBERS, NEWARK, N. J.

20 Wednesday, October 7th, 1914.

Before Honorable Halsey M. Barrett, Advis-
ory Master, pursuant to order of September
25th, 1914.

Appearances:

Gilbert Collins, Esq. (Collins & Corbin), for
the defendant, Margaret Stewart McKenzie.

30 Frederick J. Faulks, Esq., (Lindabury, Depue
& Faulks), for the defendant, Henry Manchester
Ladd, executor, etc.

GEORGE A. DUNCAN, sworn on behalf of the
defendant Ladd.

Direct examination by Mr. Faulks.

40 *Mr. Faulks.* I desire first to offer in evi-
dence a copy of the will of William McKen-
zie being the William McKenzie referred to
in the bill of complaint, and to ask Judge
Collins to agree that we may use a copy in-

George A. Duncan, direct.

stead of the certified copy and also to agree that the will was duly admitted to probate by the Orphans Court of Bergen County, on or about the 20th of June, 1914.

Judge Collins. I so admit.

Mr. Faulks. The will is dated in 1906 without day or month and I will read it. 10

(Mr. Faulks read the will and the same was marked Exhibit No. 1 for defendant Ladd, October 7th, 1914.)

Q Where do you live? A East Rutherford, N. J.

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

Q Did you know William McKenzie of East Rutherford? A I did. 20

Q For how long a time before his death did you know him? A For about nineteen or twenty years.

Q You are connected, are you not, with the East Rutherford Savings, Loan and Building Association, the complainant in this suit? A I am.

Q In what capacity? A Secretary.

Q How long have you held that position? A Six years and a half, over six years and a half.

Q As such secretary do you give all of your time to the Association affairs? A I do. 30

Q This Association has a building of its own which is occupied exclusively by its officers, of which you are in charge? A Yes.

Q Prior to the time you became secretary were you connected with the Association? A I was, for seven years prior to that, treasurer of the Association.

Q Are you a member of the Board of Managers of the Association—Board of Directors? 40

George A. Duncan, direct.

A I am. The secretary and treasurer are *ex officio* directors and prior to my time as treasurer I had been a director.

Q You have been a director for how long?

A For about fifteen years and a half, I believe.

10 Q Was Mr. William McKenzie connected with this Association? A He started it, yes, sir.

Q What was his official connection? A He was president from the beginning up to the time of his death.

Q From the time of its organization up to the time of his death? A Yes, sir.

Q When was this Association organized? A 1895.

20 Q Was it organized under the laws of the State of New Jersey— A It was.

Q —with reference to building and loan associations? A I believe it was.

Q Under our building and loan laws? A I believe it was. We are operating under that law now.

30 Q I take it then that by reason of your connection with the Association and Mr. McKenzie's connection with it as president you came into contact with him frequently with reference to the Association's affairs? A I did, yes, sir.

Q I show you a copy of the constitution and by-laws of the East Rutherford Savings, Loan and Building Association; does that pamphlet contain the constitution and by-laws of the Association, with the various amendments made thereto from time to time? A Yes, sir, right up to date; a copy of that was filed with the Banking Department at Trenton.

Judge Collins. This has no date.

40 *Witness.* Yes, right in front of it.

George A. Duncan, direct.

Judge Collins. Oh, yes, 1909.

Then this was in force—

Witness. At the time of Mr. McKenzie's death.

Judge Collins. At the time that the shares were taken out which are in controversy here. 10

Witness. There has been quite an amendment made since then. It was revised June 17th, 1909 and amended on January 11th, 1912.

Judge Collins. These shares were taken out after 1909?

Witness. Oh, well, yes, they were taken out in 1913.

Judge Collins. I want to know what was in force—yes—on the 12th of May, 1913. 20

Witness. Yes; there has been no change since then, no sir.

Q The date of any changes that were made either in the constitution or the by-laws appears on the front page of the pamphlet? A Yes, sir.

Q Except as so amended this constitution and these by-laws have been in force ever since the Association was formed? A Yes, sir. 30

Pamphlet containing printed copies of constitution and by-laws offered in evidence and marked Exhibit No. 2 on behalf of the defendant Ladd, October 7th, 1914.

Q I show you another pamphlet entitled "19th Annual Report of the East Rutherford Savings, Loan and Building Association. 1914," and which appears on the first page to be dated April, 1914? A Yes, sir. 40

George A. Duncan, direct.

Q Is that the last annual report of your Association? A Yes, sir; that is the last report of the Association as of April 30th, 1914.

Mr. Faulks. I offer that pamphlet in evidence.

10 *Judge Collins.* I object to it as irrelevant. Of course, I have not looked at it to see what is in it. If Mr. Faulks can tell us what bearing it has on this controversy I shall be glad.

Mr. Faulks. I think it has a bearing because it shows the character of the Association in which these shares were held.

Judge Collins. That is shown by the constitution and by-laws and the articles of association.

20 *Mr. Faulks.* It is also shown in part by this report, which shows the operations of the Association, the amount of its assets, the number of its shares and routine matters of that kind, which it seems to me would tend to throw some light on the question; that your Honor would want to know whether this was an active going concern and matters of that kind.

30 *The Court.* I will admit it subject to the objection. It may have no relevancy; it does not appear yet that it has, but I do not think it can do any harm so I will admit it in case subsequently any question arises which it may throw light on.

(Marked Exhibit No. 3 on behalf of the defendant Ladd, October 7th, 1914.)

40 Q Have you produced the books of the Building and Loan Association containing the account of any shares which have ever been is-

George A. Duncan, direct.

sued, either installment or prepaid shares, in the names of William McKenzie, or Margaret Stewart McKenzie, or in the names of both of them.

A I have.

Q I will ask you, Mr. Duncan, to turn to the account showing the first shares which were taken out by Mr. William McKenzie in the Association. 10

Mr. Collins. I object to this as irrelevant, unless they are going to show its devolution down to the present ones; I think if we confine ourselves to the various predecessors of those now in controversy that is all we need.

Mr. Faulks. That is all I am doing.

The Court. You do not want to take testimony of other shares which matured and were paid or the proceeds applied in some way. 20

Mr. Faulks. For your Honor's information, I will state that Mr. Duncan has told me that the 500 shares in controversy are the same shares that were first taken out by Mr. McKenzie in this Association, that is they are the same shares concerning which the change was made in the name of the account in May, 1913. 30

The Court. As Judge Collins says they are connected by devolution or change with those in controversy, and—

Judge Collins. Yes, I do not think I can object to their going to the foundation of the shares and tracing them down.

The Court. I will admit the question.

Q (Last question read). 40

George A. Duncan, direct.

The Court. And state what the book is you are reading from.

10 *Witness.* Yes, this is the installment ledger, we call it installment ledger No. 4; the title of it is rather long winded, "Installment and Industrial Share Holders No. 4."

The Court. Call it installment ledger No. 4 and state what period it covers.

Witness. It begins in May, 1911, and ends with October, 1913.

Q What installment shares does this book show Mr. McKenzie had in the Association at the time this book was opened? A Five hundred shares. It has not been changed at any time.

20 *Judge Collins.* Five hundred installment shares.

Witness. Yes, sir, it is all in this book.

Q Were they represented by a pass book?

A Yes, sir.

Q What was the number of that pass book?

A 156.

30 Q What was the amount to the credit of that pass book?

Judge Collins. On what date.

Mr. Faulks. In May, 1911.

A Well, this book—

Q I mean at the time this book was opened.

A \$45,723.13.

The Court. What does that represent?

Witness. That was the value of the five hundred shares of William McKenzie on October 30th, 1911.

40

George A. Duncan, direct.

Q That is, the five hundred shares evidenced by this pass book, No. 156? A Yes, sir.

Q Have you any book here which shows the earlier history of those shares? A I have his pass book which goes back further.

Judge Collins. Why should we go back—here we start at a date long before the present transaction. However, if you think it is relevant I will not object. 10

Mr. Faulks. I think it is, it will not take long.

Q Will you please produce the pass books?
A (producing a pass book.) Here is the pass book.

Mr. Faulks. Witness produced pass book No. 156 of the East Rutherford Savings, Loan and Building Association, in the name of William McKenzie. 20

Witness. I might suggest that you make some distinction between that book and the new book that has been issued. That is the old book.

Q The first entry in this book is May, 1900.
A No, May, 1899.

Q And that book covers from that date down to what date? A May 12th, 1913. 30

Q So that there was an earlier book on account of those same shares. A We changed our method of operation that year from a serial plan to what they call a permanent plan and that necessitated the cancelling of all previous accounts and the issuing of new pass books, so that the pass book took the place of certificate from that time on, as far as installment shares were concerned. 40

George A. Duncan, direct.

Q Have you anything with you which will enable you to say when the shares appearing in this book were first taken out or when any of them were taken out? A No, I have not.

10 Q Have you any information on that subject? A The only information I would have, sir, was that Mr. McKenzie was a member from the beginning and this is the same account as far as I can find that he had when the Association was started in 1895.

Q Prior to the issuance to him of this Book No. 156, I understand you to say he had an earlier book?

Mr. Collins. No, certificates

Witness. Yes, certificates.

20 *Mr. Collins.* They changed the style.

Witness. We changed our style all together.

Q You started on the serial plan? A Yes, sir.

Q While that plan was in force the shares were represented by certificates? A That is the idea.

30 Q Then in 1899, you changed to the non-serial plan? A Yes, sir, April 28th, 1899.

Q And called in the certificates and issued pass books in the place thereof? A Yes, sir.

Q And this is the pass book that was issued to Mr. McKenzie at that time? A Yes, sir.

Q How many installment shares were owned by Mr. McKenzie in this Association at the time the change was made? A Three hundred and eighty-one as shown by this book.

George A. Duncan, direct.

By the Court.

Q That means, the change of 1899? A Yes, I took that question to mean the change from the serial plan to the permanent plan.

Q Yes, and that was in April, 1899? A Yes, sir.

10

Further direct examination.

Q And at that time he owned 381 installment shares? A Installment shares, yes.

Q What does this book show with reference to the account from then on up to the time the book was closed? A It shows all the payments made by Mr. McKenzie, the withdrawals made by him, and the dividends paid by the Association in half yearly terms right along until this book was handed in and the new book issued.

20

Q You have been connected with the Association in the capacity of either treasurer or secretary during the entire period covered by this book, from April, 1899, to date? A Well, I became treasurer just shortly after 1899. I think it was just at the end of the year 1899.

Q Do you know by whom the various payments appearing in this book as made to the credit of the shares shown by it to have been standing from time to time in Mr. McKenzie's name, were made? A Mr. McKenzie.

30

Q All of them? A Yes, all of them.

Q By whom were the withdrawals that were made against the account from time to time, made? A By Mr. McKenzie, no one else.

By the Court.

Q And the proceeds of those withdrawals paid to Mr. McKenzie? A Yes, sir.

40

George A. Duncan, direct.

Further direct examination.

Q As the result of the payments made to this account from time to time after April, 1899, and the profits or dividends credited to it, after that date, did the number of shares in the account increase? A Yes, Mr. McKenzie increased his shares to 500 shares; I think the first change was to 400 shares and then to 500 shares.

Q When was the change to 400 shares made?

A The 400 shares—he changed to them during the half year ending April 30th, 1901, and he changed to 500 shares during the half year ending October 31st, 1902.

Q And does the book continue to represent the 500 shares from then until the time of the last entries in it? A Yes, sir.

Q The number of shares was never increased above 500 nor decreased below that? A No.

Q What does this book show as to the amount standing to the credit of this book at the date of the last entry? A It shows there was to the credit of this book, \$47,838.88.

The Court. As of what date?

Witness. As of April 30th, 1913.

Q And then, written just below that on the last page on which there is any writing, appears the word “to new book. D.” A Yes, sir.

Q Is that “D” your initial? A Yes, sir.

Q That entry was made by you? A Yes, sir.

Pass Book, No. 156, concerning which the witness has just been testifying, offered in evidence and marked “Exhibit No. 4 on behalf of the defendant Ladd, October 7th, 1914.”

George A. Duncan, direct.

Q What has been the practice of the Building and Loan Association with reference to requiring the production of the pass book at the time any withdrawal is made on account of any installment shares standing to the credit of any account?

Mr. Collins. Objected to as irrelevant. If the articles of the Association or the constitution and by-laws require such production that is one thing; if they do not the practice is irrelevant.

10

The Court. Suppose you ask him first whether the by-laws prescribe any particular method.

Mr. Faulks. The constitution and by-laws are both in evidence, your Honor.

The Court. Yes.

20

Mr. Faulks. They, of course, speak for themselves; but I have no objection to asking Mr. Duncan that question.

Q Do either the constitution or the by-laws of the Association contain any provision with relation to the production of the pass book at the time withdrawals are made on account of installment shares? A I do not know that it is in here (referring to Exhibit No. 2). It has been the practice but I do not know whether it is in here.

30

Q You have no recollection now of any such provision in either the constitution or the by-laws? A No, sir.

Q What has, as a matter of fact, been the practice of the Association with reference to requiring or not requiring this book to be produced at the time any withdrawal is to be made

40

George A. Duncan, direct.

on the account standing to the credit of any member?

Mr. Collins. Or deposits either, suppose.

Mr. Faulks. Or deposits either.

Mr. Collins. Objected to as irrelevant.

10 *The Court.* I will admit the question subject to the objection.

A When deposits or withdrawals are made we require the members to bring their pass books. When deposits are made, however—at least, we will accept deposits without the pass book and give a temporary receipt, but we do not pay any withdrawals without the pass books being presented.

20 Q Has that been the uniform practice of the Association during the time you have been its treasurer or its secretary?

Mr. Collins. I make the same objection.

The Court. I will admit the question.

A Yes, sir.

Q Has it been impossible during all that time for any one to make a withdrawal on account of installment shares without producing the book?

30 *Mr. Collins.* I enter the same objection.

The Court. I will overrule that question.

Mr. Faulks. I want to know whether there has been any departure from that practice.

The Court. The witness has just said that it has been the uniform practice to require the production of the pass book for withdrawals but not necessarily for deposits.

40

George A. Duncan, direct.

That is your answer, is it not?

Witness. Yes, that is correct, sir.

Q I show you what purports to be a deposit slip of your Association and ask you whether or not that is the form that has been prepared by the Association and used by it?

A It is, that is one of them.

10

Q How long has that form of deposit slip been in use? A This form has been used since 1899.

Deposit slip just shown witness offered in evidence and marked Exhibit No. 5 on behalf of the defendant Ladd, October 7th, 1914.

Q That is the time when you changed from the serial shares involving certificates, to the non serial shares involving pass books? A Yes, sir.

20

Q Is this pink slip which I am showing you now a form of withdrawal slips that is used in connection with withdrawals of installment shares in your Association? A Yes, sir.

Q How long has that slip been used? A We have had withdrawal slips since 1899, also.

Q In that same form, or substantially that form? A In that same form. They differ in color that is all, they used to be white, they just changed the color.

30

Q The printing matter being the same? A The printing matter is the same.

Pink withdrawal slip just shown witness offered in evidence and marked Exhibit No. 6 on behalf of the defendant Ladd, October 7th, 1914.

40

George A. Duncan, direct.

By the Court.

Q Is the use of a withdrawal slip similar to a draft payable upon presentation, or is it an application only— A It is an application to withdraw.

10 Q Requiring subsequent action? A Not necessarily; well, they file this application with us and we get a check ready for them and pay them next morning; or, if they present it at a meeting night it can be paid practically on demand.

Q It is practically a draft? A Yes, sir; of course, it is not paid anywhere but in our own office.

20 Q What I wanted to know is whether it was an immediate transaction or a mere notification that they desired to cancel or surrender certain shares.

Mr. Faulks. It is an application.

The Court. And the practice has been to pay at a very early date, that is the next day.

30 *Witness.* Yes. If the application is presented on Saturday evening when our officers are present we can take care of it right away.

Mr. Collins. I do not understand they withdraw so many shares, it is a withdrawal of so much money.

Witness. Yes, of so much money.

Further direct examination.

40 Q As I understand your testimony the practice was not to allow money to be withdrawn on these applications unless the pass book was actually produced? A Yes, the pass book must

George A. Duncan, direct.

be on hand at the time we hand over the money or check, so that we can make the withdrawal entry in the book.

Q Referring to the pass book, which has been marked Exhibit No. 4, was a new book issued in April or May of 1913? A In May, 1913, there was a new book issued to take the place of that one. 10

Q That book you have not here now? A No, sir.

Q Have you any entry in the books of the Building and Loan Association before you showing the payments which have been made to the credit of that book?

The Court. Do you know the number of the new book?

Witness. It is the same number Number 156. 20

Q In whose name was the new book issued? A William McKenzie and or Margaret Stewart McKenzie.

Mr. Collins. There was something else, was there not?

Witness. That is all, William McKenzie and or Margaret Stewart McKenzie.

The Court. That was in 1913? 30

Witness. That was May 12th, 1913.

The Court. That was issued in substitution for the old pass book No. 156.

Witness. Yes.

Q What credits or payment to that account, as appears in this new book 156 have been made?

A There was a payment of \$3,000 made in May, 1913.

Mr. Collins. Have you the date? 40

George A. Duncan, direct.

Witness. I have not got the date here, no, sir.

Mr. Collins. The payment made to, or by the Association.

Witness. A payment made by Mr. McKenzie of \$3,000, and a withdrawal made
10 at the same time of \$5,500.

Q By whom was that payment made and by whom was the withdrawal made? A Mr. McKenzie.

Q What is the next entry that appears in the account? A The entry is an addition of \$1,360.14, dividend which was added to the book as of October 31st, 1913.

Q That was a credit that went to the account from profits of the Association? A Yes,
20 sir.

Q At the close of the half yearly period in October, 1913? A Yes, sir.

Q What further entries are there of credits to, or withdrawals from this account? A There is another entry added to it of the dividend for the half year ending April, 1914, which I have not got here.

Q That was the amount standing to the credit of these shares as their percentage of
30 the profits of the Association for the semi-annual period ending at that time? A Yes, sir.

Q And there have been no other credits to the account, or withdrawals from the account, than those you have mentioned? A In November, 1913, there was \$3,000 withdrawn and a payment of \$3,000 made.

Q By whom was that withdrawal, and that payment, made? A By Mr. McKenzie.

Q Are there any further entries in the account
40 at all? A That is all.

George A. Duncan, direct.

Q What is the balance standing to the credit of the account at this time? A I gave that to Mr. Luce; about forty-eight or forty-nine thousand dollars, as is stated in the proceedings.

Q The amount stated in the bill of complaint?
A Yes, sir.

Mr. Collins. \$48,099.90?

10

Witness. That is correct.

Q When does the next semi-annual period of the Association close? A On the 31st of this month.

Q At that time there will be a further credit to go to these shares on account of profits for the six months just ending? A Yes, sir.

Q Did Mr. McKenzie have any other installment shares than those to which you have testified, in this Association at any time? A In May, 1913, when the change—

20

Q No, I do not— A You do not refer to that?

Q No. These I understand you to say were the only installment shares he had? A Yes, sir.

Q Did he have any prepaid shares? A Yes, sir.

Q What is the difference between instalment shares and prepaid shares, will you state that briefly, please? A Installment shares require payments monthly. Prepaid shares are where the individual's shares may mature and he has no use for the money probably, and we would have a use for it, and we will, instead of giving him his money for his matured shares we will give him paid up certificates or paid up shares, these shares have been paid dividends on at the rate of five per cent per annum.

30

40

George A. Duncan, direct.

Q Let me bring that out a little more clearly if I can. What is the amount that is required to be paid by a person taking out one installment share? A One dollar and one dollar per month.

10 Q That is the dues for the first month? A Yes, sir.

Q From time to time thereafter he pays further dues? A Yes, sir.

Q And from time to time there is, semi-annually, credited to this account his share of the profits of the operations of the association, the amount of which is determined by the number of shares standing to his credit? A Yes, sir, that is the idea.

20 Q At what value do these installment shares mature? A \$100.

The Court. So that, so far, the method is exactly the same as in an ordinary building and loan association?

Witness. Yes, sir.

30 Q Did you say that the holders of installment shares are required to pay a certain amount per month, certain dues every month? A Yes, sir. They are not confined just to any particular month, they can make up their monthly payments at any time during the half year, but it is based on a monthly payment.

Q You do not impose a fine, as many other associations do in case payments are not made from month to month? A No; the only people fined in our association are the borrowers who neglect to pay dues.

40 Q The holder of installment shares may pay dues at any time within six months? A Yes, sir.

George A. Duncan, direct.

Q What happens if he does not pay dues in six months? A He would only pay five per cent on his balance, instead of six per cent.

Q Whatever amount he has to the credit of his installment shares is subject to withdrawal at any time? A Yes, sir.

Q And those shares mature at \$100? A 10
Yes, sir.

Q What is the situation with reference to the prepaid shares; how much is paid for one prepaid share at the time it is taken out? A One hundred dollars.

Q That is the full maturity value? A Yes, sir.

Q That value does not increase or decrease?
A It does not increase or decrease.

Q Does the holder of a prepaid share make any further payments after the initial one? A 20
No.

Q Can he withdraw less than the total value of that prepaid share at any time? A No.

Q If he withdraws he must draw the whole share? A Yes, sir, at least one full share.

Q If he holds more than one prepaid share he may withdraw one or more? A One or more, and we will issue a certificate for the balance. 30

Q What amount is placed to the credit of those shares from time to time? A We send semi-annually a check for the dividend.

By the Court.

Q On the prepaid share? A Yes, sir.

Q It is placed to his credit? A No, sir, we send him a check every half year.

George A. Duncan, direct.

Further direct examination.

Q What is the rate of that dividend? A Five per cent.

Q Per annum? A Yes, sir.

10 Q So that you send a check every six months to the person in whose name the prepaid shares stand for two and a half per cent thereof? A Two and a half per cent, yes, sir.

Q Did Mr. McKenzie at any time owe any prepaid shares in this association? A I have the prepaid ledger here and I will see what it shows. (Refers to book.) I can tell you the months and year, yes, sir.

By the Court.

20 Q You are referring to what? A The prepaid ledger.

Q Covering what period? A I should imagine from the beginning up to the present time.

Q That would be from when? A 1899.

Q From 1899 to the present date. To what page do you refer? A Page 76.

Q And looking at that page you say what? A That Mr. McKenzie opened his account in November, 1900.

30 *Further direct examination.*

Q Judge Collins has called my attention to the fact that you said any member whose installment shares matured, could, instead of withdrawing the matured value, secure prepaid shares in place of them? A Yes, sir.

40 Q Is that the only circumstance under which prepaid shares are issued? A Oh, no, a person may come in and subscribe for prepaid shares by paying cash for them.

George A. Duncan, direct.

Q And that without reference to whether he then has, or ever had any installment shares or not? A Yes, sir.

Mr. Collins. Without being a member?

Witness. Without being a member. He becomes a member by subscribing to paid up shares, there are very few of them who were not installment share holders, however. 10

Q Now, if you will, turn to the prepaid ledger. A Yes, sir, I have it, page 6.

Q This shows an account standing in the name of William McKenzie and or Margaret Stewart McKenzie, does it not? A Yes, sir.

Q In whose handwriting is that account? A "William McKenzie" is in the handwriting of our former secretary, Mr. Fleming.

Q Is he dead? A Yes, sir. The "and or Margaret Stewart McKenzie" is in my handwriting. 20

Q Does that mean the headings of the account were written at two different times, one at one time and the other at a later time? A Yes, sir.

Q When were the words "William McKenzie" in Mr. Fleming's handwriting written? A In 1900, when the account was opened.

Q When did you add the words "And or Margaret Stewart McKenzie?" A May 12th, 1913. 30

Q Will you read into the record the amount standing to that account, giving in each case the date of the payment and whatever may be necessary to show the method of payment? A

November, 1900	By cash	\$5,000	
November, 1902		5,000	
June, 1904		2,000	
November, 1904		3,000	
November, 1905	From installment acc't	5,000	40

George A. Duncan, direct.

Q What do those words "from installment account" appearing in this last entry mean? A Charged to his installment account and credited to his prepaid account.

Q That is, \$5,000 withdrawn from his installment account and fifty prepaid shares purchased
10 with that money? A Yes, sir.

Q There are no entries in this account showing the dividends paid from time to time on those shares, are there? A No.

Q But those payments have been uniformly at the rate of two and a half per cent. each six months from the time that account was opened?
A Yes, sir.

Q There have been no changes in that account as it appears on the association's record
20 except these entries from time to time showing the purchase of new shares, and the addition of the words "and or Margaret Stewart McKenzie," which you made in May, 1913? A Yes, sir; that is right.

By the Court.

Q Would those credits, or that interest in paid up shares, be represented by a pass book or a certificate? A By a certificate. They go up
30 from one hundred to one thousand dollars; there are little coupons on the side and you can tear them out of the book.

Further direct examination.

Q Have you a form of the certificate book here? A Yes, sir.

Q Have you a blank certificate we can offer in evidence? A No, I have not.

George A. Duncan, direct.

By the Court.

Q Then as I understand it, when you changed from certificate to books that change only related to installment shares? A Yes, sir.

Q And there were never pass books issued to represent the interest of paid up shares? A Yes, sir; that is right. 10

Mr. Collins. Prepaid shares you mean?

Witness. Prepaid, or paid up; a great many people call them paid up shares; in fact, it is printed "certificate of paid up or prepaid shares," printed right on the certificate.

Q Was the dividend or semi-annual distribution of profits the same on the prepaid shares as on the installment shares, at the same rate? A No, sir; the installment shares' dividend is 6% and on the prepaid shares it is 5%. 20

Q And in each case the semi-annual distribution is practically a dividend in the sense that you do not distribute a specified sum, but that you pay a sum equal to five or six per cent. of your outstanding shares? A Yes, sir.

Further direct examination.

Q I show you a sample certificate, No. 506; is that the form of the certificate that the association has been in the habit of issuing at the time prepaid shares were taken out by anyone? A Yes, sir; that is a sample. 30

Q How do you determine by this certificate the number of shares it represents? A By the writing in here (indicating) so many shares also here (indicating). We write the number of shares in the space on the upper right hand corner of the certificate, also in the space be- 40

George A. Duncan, direct.

fore the word "share" in the body of the certificate, and then, in tearing the certificate from the book we tear off at the number designated by the number of shares subscribed for.

10 Form of certificate just shown witness offered in evidence and marked Exhibit No. 7 for the defendant Ladd, October 7th, 1914.

Q This tearing off diagonally coupons on the left hand side of the certificate is simply for cancellation purposes? A Yes, sir.

Q So that the certificate could not be used again? A That is the idea, yes, sir.

Q A certificate in that form, I understand, is issued to any one who subscribes and pays for prepaid shares? A Yes, sir.

20 Q And is issued at the time payment for the shares is made? A Yes, sir.

Mr. Collins. And his name is put in?

Witness. Yes, the member's name is put in. It is signed by the secretary and the president.

30 Q What has been the requirement of the association, with reference to the production and surrender of certificate at the time prepaid shares are paid off? A The certificate must be returned and cancelled.

Q And it is then retained by the association? A Yes, sir; the certificate is cancelled and placed back in the book from which it was torn originally.

Q As an evidence of the fact that the shares which it did represent have been paid? A Yes, sir; we have to show them to the bank examiner when he comes to show where we stand.

George A. Duncan, direct.

Q There are no further entries in any book of the association with reference to these two hundred prepaid shares? A No.

Q These entries of \$5,000, \$5,000, \$2,000, \$3,000 and \$5,000 to which you have referred, aggregating \$20,000 were sufficient to pay for two hundred prepaid shares? A Yes, sir. 10

Q And certificates were issued at some time prior to the first of January, 1906, to Mr. McKenzie in his own name for that number of shares? A Yes, sir.

Q What was the practice in reference to making payment of the dividend declared from time to time on those shares? A The dividend is determined by the board every six months and a check is sent to the holder of prepaid shares for his dividend not to exceed five per cent. per annum. 20

Q Has that practice been followed in connection with these shares? A It has.

Q Up to May, 1913, when the change was made in the name of the account to whom were the dividend checks sent? A To Mr. William McKenzie.

Q To whom have they been sent since then? A Only one of them has been sent, that was sent to William McKenzie. 30

By the Court.

Q When was that? A That was in November, 1913.

Further direct examination.

Q Have you that check with you? A Yes, I have (producing a check).

Mr. Collins. I think perhaps there may be a little confusion there, only one has been sent since when? 40

George A. Duncan, direct.

Witness. Since the account was changed. That is what I understood you to say?

Mr. Faulks. Yes.

Witness. Since the account was changed.

By the Court.

10 Q That was done on May 1st, 1913, and after that on November 1st, 1913, one check was sent, and then Mr. McKenzie had died.

Q He died before the next check was issued to him. That is what I mean? A Yes, sir.

Further direct examination.

Q You have produced a check of the building and loan association dated November 14th, 1913, to the order of William McKenzie for \$500
20 have you not? A Yes, sir.

Q And is that the check which was issued at that time in payment of the dividend declared as of October 31st, 1913, on these two hundred pre-paid shares? A It is.

Q And that check was sent to Mr. McKenzie at that time? A Yes.

Q Do you recognize the endorsement? A I do.

30 Q Is that his signature, "William McKenzie," appearing on the back of the check? A Yes, sir.

Q And it is also countersigned by him as president of the association? A Yes, sir.

Check last produced by witness offered in evidence and marked Exhibit No. 8 for the defendant Ladd, October 7th, 1914.

40 *Mr. Faulks.* This check bears the endorsement of William McKenzie and there are no other endorsements and it has the perfor-

George A. Duncan, direct.

ated stamp, "Paid, November, 13th, 1914," upon it.

Q Was there any dividend declared on the prepaid shares in May, 1914, for the period ending April 30th, 1914? A There was a check issued for it, but it was never paid over.

Q That was because Mr. McKenzie had died in the meantime? A Yes, sir. 10

Q And this controversy had arisen as to the ownership of the shares? A That is the idea.

By Mr. Collins.

Q To whose order was the last check drawn? A It was drawn in the same way but it has been retained by the association.

Q Drawn to William McKenzie after he was dead? A Yes. Well, I don't remember just how it was drawn. 20

Further direct examination.

Q That check was withheld by the association pending the determination of this present controversy? A Yes, sir.

By Mr. Collins.

Q You do not remember how it was drawn? A If I am not mistaken it was drawn to the order of Margaret S. McKenzie. 30

Mr. Faulks. I do not think that is evidential in the case.

Mr. Collins. You asked it.

Mr. Faulks. I simply asked if there had been a check drawn. I do not think the fact the check was drawn to one person's or to another person's order is of the slightest importance in the case; the fact is they did not pay it. 40

George A. Duncan, direct.

The Court. I agree with you.

Mr. Collins. It is perhaps a little useful as showing how the association regarded it.

The Master. It only signifies that William was dead and Margaret Stewart was alive.

10 *Mr. Collins.* Yes, and the account was payable to "and or Margaret Stewart McKenzie."

Further direct examination.

Q Were there any prepaid shares ever issued by the association in the name of Margaret Stewart McKenzie? A There was.

Q Can you tell from your records when those were issued? A Yes.

20 Q Tell us please? A In January, 1907; April, 1907, and June, 1908, there were shares issued to Mrs. McKenzie.

Q How many shares on each of those dates?

The Court. They were all prepaid?

Witness. They were all prepaid shares.

Q Give us the number and date in each case. A In January, 1907, there were 30 shares, \$3,000; in April, 1907, there were 20 shares, \$2,000, and in June, 1908, there were 10 shares, \$1,000.

30 Q That makes \$6,000 in all and sixty shares in all? A Yes, sir.

Q And no further or other prepaid shares have been issued in her name? A No.

Q You are now referring to the prepaid ledger? A Yes, sir.

Q On page 76? A Yes, sir.

40 Q And that is the same ledger that you referred to in connection with the prepaid shares originally issued in the name of William McKenzie? A Yes, sir.

George A. Duncan, direct.

Q This account from which you have just been reading appears on page 76, under this caption, does it not, "Margaret S. McKenzie, and or William McKenzie, Carlton Hill?" Yes, sir.

Q Carlton Hill is the place where Mr. and Mrs. McKenzie resided? A Yes, sir; that is his post office, it is in East Rutherford Borough. 10

Q In whose handwriting are the words, "Margaret S. McKenzie?" A Former secretary Fleming.

Q In whose handwriting are the words, "and or William McKenzie?" A Mine.

Q And "Carlton Hill?" A That is Mr. Fleming's.

Q This account then was originally opened in the name of Margaret S. McKenzie? A Yes, sir. 20

Q And you added the words "and or William McKenzie" on May 12th, 1913? A Yes, sir.

Q The first entry in this account of \$3,000 appears to be by cash? A Yes, sir.

Q Have you any knowledge as to who made that payment of \$3,000? A No.

Q The second and third entries appear to have been installment shares transferred? A Yes, sir.

Q What was that? A In April, 1907, two thousand dollars was transferred from the installment account of Mrs. McKenzie to prepaid shares and in June, 1908, there was \$1,000 transferred from her installment account to prepaid shares. 30

Q Then she had also, in addition to these prepaid shares, an installment account with the association? A She had.

Q Were the dividends on these prepaid shares mailed to her from time to time by check to her 40

George A. Duncan, direct.

order? A Yes, sir; in the same manner as the others.

Q And that custom was followed for how long? A Up until the present time.

Q It was followed up until the time of Mr. McKenzie's death? A Yes, sir; and after that
10 time.

Mr. Collins. Up to the present time?

Witness. She got one dividend check since Mr. McKenzie's death.

Q That is you have always paid the dividends, payable on those shares any and all of them to Mrs. McKenzie? A Yes, sir.

Q At the rate of two and a half per cent. semi-annually? A Yes, sir.

Q And by means of checks mailed to her semi-
20 annually? A That is the idea.

Mr. Faulks. I think your Honor that I ought to show where account No. 918 from which \$3,000 of money was paid to this pre-paid shares came from. There was an account in Mrs. McKenzie's name of installment shares represented by book 918 and \$3,000 of the money which paid for these shares came out of that account.

30 *The Court.* I think that should be shown.

Mr. Faulks. There was a transfer in the name of that account in the same way there was in this other account.

Mr. Collins. I really think it is immaterial, however.

The Court. I would like to have that.

Q What do your records show with reference to the installment shares that at one time stood
40 in the name of Mrs. McKenzie? A Installment

George A. Duncan, direct.

Ledger, No. 4, on page 25, which is the first entry in this book bearing on this account shows that Mrs. Margaret S. McKenzie was the holder of one hundred installment shares, her pass book being No. 918.

The Court. What is the date of that?

Witness. The date of that, sir, is as of October 31st, 1911. 10

Q You are giving the first entry that appears in Ledger No. 4? A Yes, sir.

Q What was the amount to the credit of those installment shares at that time? A \$2,431.48.

Q Have you pass book No. 918 which was issued on account of these shares? A I have (producing pass book) that is the old pass book No. 918, issued in the name of Mrs. Margaret S. McKenzie. 20

Q The first entries being under date of October, 1905? A October 13th, 1905.

Q What is the date of the last entry in that book? A May 12th, 1913.

Q What is the amount standing to the credit of the book at that time? A \$2,630.97.

Q What was the number of shares to the credit of that book at that time? A One hundred shares. 30

Q There appears on the last page an item "To new book D," was that written by you? A It was.

Q At what time? A May 12th, 1913.

Q Was there a new book issued in place of that old book 918 at that time? A There was.

Q Have you it with you? A Yes, sir.

Mr. Faulks. I will offer in evidence the old book, No. 918, issued in 1905, in the name of Mrs. Margaret S. McKenzie. 40

George A. Duncan, direct.

(Marked Exhibit No. 9 on behalf of the defendant Ladd, October 7th, 1914).

Q Will you produce the new book? A Yes, sir, (producing book).

10 Q You have now produced another pass book, No. 918; in whose name was that issued? A In the name of Margaret S. McKenzie and or William McKenzie.

Q Was that issued on that same day, May 12th, 1913? A Yes, sir.

Q By whom was it issued, you? A Yes, sir; I issued it.

Q And the amount carried to the credit of this new book was \$2,415.97 and \$215.00? A Yes, sir.

20 Q Referring to Exhibit No. 9, the old pass book, those are the same amounts as appear on the last page of that book on which there is any writing, are they not? A Yes, sir.

Q You read them together, \$2,630.97? A Yes, sir.

Q As a matter of fact, they are stated separately? A Yes, sir. One item being \$2,415.97 and the other \$215.00.

30 Q And those are the same items which are carried over on the first page of this new book, No. 918? A Yes, sir.

Q And above them appear the words, "From old book," do they not? A Yes, sir.

Q In whose handwriting is that, do you know? A Mine.

Q What amounts have been placed to the credit of the book since?—

Mr. Collins. That is the new book?

40 *Mr. Faulks.* That is the new book, No. 918.

George A. Duncan, direct.

Q —it was issued? A A credit of dividend as of October 31st, 1913, of \$65.65.

Q That is the dividend declared as of that time on the one hundred shares represented on that book? A Yes, sir.

Q And that made the total amount for the credit of the book what? A At that time which would be practically November 1st, 1913, \$2,-696.72. 10

Q Have any payments been made on those shares except by way of that dividend credit? A No, sir.

Q Since the book was issued? A No, sir.

Q Have there been any withdrawals? A Yes, sir; it has been closed out since then.

Q Closed out by what? A Withdrawals.

Q Give the date and amount in each case? A November 22, 1913, \$264; November 24, 1913, \$486; December 5th, 1913, \$200; December 12th, 1913, \$200; January 6th, 1914, \$100; January 12th, 1914, \$50; January 13th, 1914, \$1,396.72. 20

The Court. And that closed the account?

Witness. It extinguished the account, yes, sir.

Q Nothing has been placed to the credit of the account since then, it has never been reopened? A It has never been reopened. 30

New pass book, No. 918, offered in evidence and marked Exhibit No. 10 for the defendant Ladd, October 7th, 1914.

Q Do you know by whom these withdrawals were made, I mean the withdrawals you have just recited? A By Margaret Stewart McKenzie.

By Mr. Collins.

Q And the money paid to her? A It was paid to her. 40

George A. Duncan, direct.

Q Money or check, I suppose? A Money or check, yes, sir.

Further direct examination.

Q From time to time upon application made by her to the association? A Yes, sir.

10 Q Do you know whether or not the pass book was presented each time the withdrawals were made? A Yes, sir.

Q There were not any withdrawals on this old book, No. 918, except such as were made for the purpose of purchasing prepaid shares, were there? A Yes.

Q Beginning when? A Beginning on January 8th, 1913.

20 Q Then there was a withdrawal of \$50? A Yes, sir. On January 20th, of the same year, \$200, and on February 6th, of the same year, \$50.

Q By whom were those withdrawals made? A By Mrs. McKenzie.

By the Court.

Q Those were all from the old book, No. 918? A Yes, sir.

Further direct examination.

30 Q The only other withdrawal appearing in the old book, that is, in addition to the three you have just read were the withdrawals of one thousand dollars and two thousand dollars that were applied to the purchase of prepaid shares? A Yes, sir.

40 *Mr. Faulks.* Your Honor, Mr. Shafer has come in with the papers from Trenton, and if there is no objection it might be well to suspend Mr. Duncan's examination and put

L. T. H. Shafer, direct.

Mr. Shafer on the stand so that he may return.

Mr. Collins. I have no objection.

The Court. Then we will suspend this examination.

L. T. H. SHAFER, sworn on behalf of the defendant Ladd. 10

Direct examination by Mr. Faulks.

Q You are connected, are you not, with the office of the Clerk in Chancery? A I am.

Q Have you produced from the safe deposit facilities of that office, pass book No. 156, of the East Rutherford Savings, Loan and Building Association? A Yes, sir.

Q Is that the book which was deposited with the Clerk in Chancery by Mr. Ladd, one of the defendants in this suit, at or about the time that the interlocutory decree was entered? A It was handed to me by Mr. Tabbs, of our office, about the time it was directed to be left with the clerk the next day. 20

Q Have you also produced twenty-six certificates of the same building and loan association, representing the prepaid shares that the Clerk in Chancery received from Judge Collins' office? A Yes, sir; of \$1,000 each. 30

Mr. Faulks. I suppose we can stipulate that the book now produced by Mr. Shafer is book No. 156, issued by the complainant association on May 12th, 1913, in the names of William McKenzie and or Margaret S. McKensie, for five hundred installment shares?

Mr. Collins. Yes.

Mr. Faulks. And that the twenty-six certificates produced by Mr. Shafer are the pre- 40

L. T. H. Shafer, direct.

paid shares referred to in the bill of complaint.

Mr. Collins. Yes.

10 *Mr. Faulks.* Twenty of them being certificates for ten shares each, numbers 1409 to 1428, both inclusive, issued in the names of William and or Margaret Stewart McKenzie, dated May 12th, 1913, and ten of them being certificates Nos. 1403 to 1408, both inclusive, for ten shares each, issued in the name of Margaret Stewart and or William McKenzie, and dated May 12th, 1913.

Judge Collins. Yes.

Q None of the assignments appearing on the backs of these certificates are executed, are they?

20 A No, sir; they are all in blank.

The pass book, No. 156, produced by this witness was offered in evidence and marked Exhibit No. 11 for the defendant, Ladd, October 7th, 1914.

30 *Mr. Faulks.* I suppose you will also stipulate that each of these twenty-six certificates now produced by Mr. Shafer are in the same form as the sample certificate, Exhibit No. 7, for the defendant Ladd, and that the blank form of certificate appearing on the back of each of them is in the same form as that on the back of the sample, Exhibit No. 7.

Mr. Collins. Yes, and that each has annexed ten coupons.

Mr. Faulks. And that each has annexed ten coupons and that each is signed "William McKenzie, President," and "George A. Duncan, Secretary."

40 *Judge Collins.* Yes.

George A. Duncan, direct.

The Court. And the transfers on the back are vacant in every case.

Mr. Faulks. Yes, the witness testified to that.

GEORGE A. DUNCAN, resumes the stand.

10

Mr. Faulks. Will your Honor give the certificates a number without marking them?

The Court. Yes, suppose we call them Exhibit A?

Mr. Faulks. I suggest we call those in the name of Margaret and or William, Exhibit A, and those issued in the name of William and or Margaret, Exhibit B.

The Court. Very well.

Mr. Faulks. Then the certificates, Nos. 1403 to 1408, inclusive, being the six certificates issued in the name of Margaret Stewart and or McKenzie will be referred to as Exhibit A, and the twenty certificates 1409 to 1428, inclusive, issued in the name of William and or Margaret Stewart McKenzie, will be known as Exhibit B.

20

Direct examination resumed by Mr. Faulks.

Q I show you Exhibit 11, being the new pass book, No. 1456, and ask you if that book was issued by you on behalf of the association on May 12th, 1913? A It was.

30

Q In whose handwriting are the various entries appearing in that book, first, as to the words appearing at the top of the pages? A All the entries in this book were written by me.

Q Including the words, "William McKenzie and or Margaret Stewart McKenzie," appearing

40

George A. Duncan, direct.

at the top of the pages? A Yes; the number of the book and the number of the shares.

Q There also appears as the first item to the credit of the book the amount \$47,838.88? A Yes.

10 Q And above that item the words, "From old book?" A Yes, sir.

Q And that entry was made by you? A Yes, sir.

Q And represents the amount on that date to the credit of the old book, No. 156? A Yes.

Q Will you read into the record the payments which have been made to that book, or withdrawals that have been made against it since it was issued? A For the half year ending October 31st, 1913, there was one payment of \$3,-
20 000, under date of May 14th.

The Court. Was that a credit or was that withdrawn?

Witness. It was a credit, a payment made on account of this book.

Q Proceed. A On May 13th, there were two withdrawals, one of \$2,000 and one of \$3,500, and, as of October 31st, 1913, there was added to the book \$1,360.14, dividend, making the balance
30 as of November 1st of that year \$46,699.02; on December 16th, 1913, which was in the half year ending April 30th, 1914, there was a payment of \$3,000 on account of the shares and a withdrawal of \$3,000 the same day.

Q Then there was another dividend— A On April 30th, 1914, there was an entry made here, which was made subsequent to Mr. McKenzie's death, of \$1,400.97.

Q What was the amount standing to the
40 credit of the book prior to that? A \$46,699.02.

George A. Duncan, direct.

Q And the only entry since then is the May dividend of this year of \$1,400.97? A Yes.

Q And that makes a total amount to the credit of the book at this date— A \$48,099.90.

Q You have already testified as to withdrawals against this book? A Yes, sir.

Q You said they were all made by Mr. William McKenzie? A I did; yes, sir. 10

Q And the deposits placed to the credit of this book and appearing in it were also made by him? A They were.

Q You recognize the certificates which have been marked A and B, as the certificates you issued on May 12th, 1913. Do you? A Yes, sir.

Q Referring again to these Exhibits A and B, in whose handwritings are they? 20

Mr. Collins. Except the signature of the president.

A They are in my handwriting, except the signature of the president, of course.

Q They are all signed by Mr. McKenzie as president? A Yes, sir.

Q And by you as secretary? A Yes, sir.

Q And they were all issued on the dates they bear, May 12th, 1913? A Yes, sir. 30

By the Court.

Q And those which were issued in the joint names, "and or," were issued in that way when they were originally issued?

Mr. Collins. Oh, no, they were—

The Court. I mean these particular certificates were issued in the form in which they now appear?

Witness. Yes, sir. 40

George A. Duncan, direct.

Further direct examination.

Q Have you the original twenty-six certificates that were surrendered on May 12th, 1913?

A I have some of them here, I think; I have two certificate books, I don't know whether I have them or not, I will see.

10

(Witness examines).

I have the original certificates issued in the name of Margaret S. McKenzie.

Q You now produce a certificate book of the association containing a number of cancelled certificates, do you now? A Yes, sir.

Q And one of these is Certificate No. 529 for ten shares, issued in the name of Margaret S. McKenzie on January 5th, 1907? A Yes, sir.

20 Q And that certificate is signed by William McKenzie as president and by Mr. Fleming as secretary? A Yes, sir.

Q Is that one of the certificates that were surrendered at the time the new certificates were issued on May 12th, 1913? A It is.

30 Q And were other certificates in similar form and similarly signed, issued in the name of Margaret S. McKenzie, also surrendered at that time for ten additional *pro rata* shares? A Yes, sir.

Q Were similar certificates similarly signed, issued in the name of William McKenzie for two hundred shares,—that is twenty certificates in ten shares each, surrendered at that same time and new certificates issued in place thereof? A Yes, sir.

By Mr. Collins.

40 Q Is there anything in the way of a written surrender? A No, sir.

George A. Duncan, direct.

Q They are just marked "cancelled?" A Yes, sir.

Q By a big red stamp? A Yes, sir; that is my stamp.

Further direct examination.

Q As each of these certificates were surrendered they were marked "cancelled" by you? A Yes, sir. 10

Q And placed in the certificate book from which they were issued? A Yes, sir.

Q There was no assignment or surrender endorsed on the back of these certificates or anywhere else? A No, sir.

By Mr. Collins.

Q They were stamped by you as cancelled? A Yes, sir; stamped and dated. 20

Q On them was stamped the date of the cancellation, May 12th? A May 12th, 1913.

Further direct.

Q By whom were the payments from time to time placed to the credit of this old book, 918, issued in the name of Margaret S. McKenzie made, if you know? A As a rule they were made by Mr. McKenzie, all the payments at that time were attended to by him. 30

By Mr. Collins.

Q All the payments by the family were attended to by him, is that it? A Yes, sir.

Further direct examination.

Q What knowledge have you on that subject, how were the payments made by him, what was his practice? A His practice was to make them 40

George A. Duncan, direct.

by check, bring down the books himself and take the books back with him; he would have his own book and Mrs. McKenzie's book all the time, as far as the payments are concerned.

Q And give you each of the books with a check for the dues on both books? A Yes, sir.

10 Q That was the usual practice? A Yes, sir.

Mr. Faulks. If your Honor please, I am going to ask Mr. Duncan now with reference to the circumstances that resulted in these transfers being made on May 12th, 1913, a conversation which took place between him and Mr. McKenzie at that time and which resulted in that transfer. My own view is that it might not be proper for Mr. Duncan to state what it was Mr. McKenzie said to him; it would not be proper for him to do more than say that as a result of directions he received from Mr. McKenzie at that time he proceeded to make these transfers. In other words, I have felt that anything Mr. McKenzie may have said to Mr. Duncan at that time, not in the presence of Mrs. McKenzie as to the purpose of causing these transfers to be made would not be evidential against her. I do not know what Judge Collins' view is; I want to bring out all the facts in the case that can properly be brought out under the rules of evidence.

20

30

Mr. Collins. I cannot tell until I hear some question asked.

The Court. Put your question, Mr. Faulks.

Q Mr. Duncan, referring now to these various transfers and the changes that were made in the accounts, on May 12th, 1913, I want to ask you

40

George A. Duncan, direct.

whether or not you made them as the result of directions received by you at that time from anyone and if so, who? A I made the changes at the solicitation and direction of Mr. McKenzie.

Q Did you meet anybody else in connection with that matter at all? A No, sir.

Q Where did the talks you had with Mr. McKenzie, if you had talks with him, take place? A In the office of the association. 10

Q Was it as the result of that talk and the directions he gave you at that time that you caused these transfers and changes to be made in this account? A It was.

Q Were any new signature cards signed at that time? A There were new signature cards prepared, yes.

Q At whose suggestion were they prepared? A Mr. McKenzie's. 20

Q Have you those with you? A I have, (producing cards).

Q How many cards are you producing? A I am producing four cards that were filltd out as the result of that conversation—new cards that were issued.

Q New cards that were made out at that time? A Yes, sir.

Q As the result of what Mr. McKenzie said to you? A Yes, sir. 30

Q The first one of these cards that I have picked up is dated May 12th, 1913, and refers to book No. 156, in the upper left hand corner? A It does.

Q I will read that into the record, "I hereby make application for five hundred installment shares in the East Rutherford Savings Loan and Building Association and agree to abide by its constitution, a copy of which I have received." 40

George A. Duncan, direct.

Signed, "William McKenzie," under which appears in print the words, "Name in full," then "Residence, Carlton Hill, N. J.," under which appears "Number of street, borough or township. Wife. Married. Wife's name, Margaret Stewart McKenzie." That is all that appears on the
 10 front of the card. On the reverse side are the following words: "The shares in our joint names are payable to either or both, and to the survivor on the death of the other. William McKenzie. Margaret Stewart McKenzie."

Q In whose handwriting are the words, "William McKenzie," appearing after the printed word, "Signature," on the front of this blank?

A The signature of Mr. McKenzie.

Q In whose handwriting are the words, "Margaret Stewart McKenzie," appearing after the words, "Wife's name," at the bottom of the
 20 card? A Margaret Stewart McKenzie's.

Q In whose handwriting is the signature "Wm. McKenzie," appearing on the reverse side of the card? A Mr. McKenzie's.

Q And the words "Margaret Stewart McKenzie"? A Mrs. McKenzie's.

Signature card just shown witness was
 30 offered in evidence and marked Exhibit No. 12 on behalf of the defendant Ladd, October 7th, 1914.

Mr. Faulks. I suppose we can substitute copies for these original cards.

Mr. Collins. Yes, I agree to that.

Q I call your attention to another of these cards, bearing the same date and having in the upper left hand corner the words "Certificates, No. 1409 to 1428 Inc." That card is similar, as
 40 far as the printing on it is concerned, as the

George A. Duncan, direct.

others, is it not? A Excepting that it is for two hundred prepaid shares instead of five hundred installment shares, otherwise the card is similar to the other—also the number. The certificate numbers are different from the numbers on the other card.

Q The other card said "Book No....." and this says "Certificate No....." A Yes, sir. 10

Q Is that card signed after the word "Signature," by Mr. McKenzie? A Yes, sir.

Q And at the bottom, on the front of it by Mrs. McKenzie? A It is.

Q Under the words "Wife's name"? A Yes, sir.

Q And on the reverse side are the signatures, "William McKenzie" and "Margaret Stewart McKenzie," respectively, in the handwriting of Mr. and Mrs. McKenzie? A Yes, sir. 20

Q Are the same words on the back of this card as on the other? A Yes, the stamp was used as on the back of the other card.

Signature card last shown witness offered in evidence and marked Exhibit No. 13 on behalf of the defendant Ladd, October 7th, 1914.

Q These certificate numbers appearing in the upper left hand corner of Exhibit 13, are these the old or new certificate numbers? A Those are the new certificate numbers. 30

Q 1409 to 1428 inclusive? A Yes, sir, inclusive.

Q I call your attention to the third of these cards bearing the same date and having in the upper left hand corner the numbers 1403, 1404, 1405, 1406, 1407 and 1408, in which application is made for sixty-five paid shares, is the name 40

George A. Duncan, direct.

opposite the word "signature" on that card in the handwriting of Margaret Stewart McKenzie? A It is.

Q Is the signature "William McKenzie," after the words "Husband's name," in Mr. McKenzie's handwriting? A It is.

10 Q The same words appearing on the reverse of this card as in the case of the other two? A Yes, sir.

Q And the signatures there are those of Mr. and Mrs. McKenzie, respectively? A Yes, sir.

Card last shown witness offered in evidence and marked Exhibit No. 14 on behalf of the defendant Ladd, October 7th, 1914.

20 Q Now the fourth and last of these cards has the same date, and refers in the upper left hand corner to book number 918, and is an application for one hundred installment shares, and the words "Margaret Stewart McKenzie," which appear opposite the word "signature," are in her handwriting? A Yes, sir.

Q And the words appearing at the bottom of the card opposite "husband's name" are the signature of Mr. McKenzie? A Yes, sir.

30 Q And the same words are stamped on the back as in the case of the other cards? A They are.

Q And the signatures here are respectively those of Mr. and Mrs. McKenzie? A They are.

Card last shown witness offered in evidence and marked Exhibit No. 15 on behalf of the defendant Ladd, October 7th, 1914.

40 Q Did you meet Mrs. McKenzie at all in connection with the transfer or changes made in these accounts? A No, sir.

George A. Duncan, direct.

Q Your dealings and conversations were had with Mr. McKenzie alone? A They were.

Q And no communication had with any one else? A No, sir.

Q What was done with the signature cards after they were filled up by you under his direction? A He took them to have them signed by Mrs. McKenzie. 10

Q And they were brought back? A They were brought back and he returned them to me, yes, sir.

Q And they were put in the records of the association? A Yes, sir.

Q What was done with the new pass book 156 that was issued? A It was given to Mr. McKenzie.

Q What was done with the twenty certificates that were issued in place of the old certificates for the two hundred prepaid shares therefore standing in his name? A They were given to Mr. McKenzie. 20

Q What was done with the certificates for the sixty prepaid shares theretofore standing in the name of Mrs. McKenzie? A They were given to Mrs. McKenzie.

Q What was done with the new pass book No. 918? A The same thing, given to Mr. McKenzie. 30

Q And the old pass books and the old certificates were all surrendered by him and retained by the association? A They were.

Q What do you know as to where pass book No. 156 was kept, that is the old pass book, No. 156? A The old pass book was always, as far as I know, kept in his office.

Q Where was his office? A The Standard Bleachery at Carlton Hill. 40

George A. Duncan, direct.

Q The Standard Bleachery Co. is engaged in business on a large scale in East Rutherford?

A Yes, sir.

Q And Mr. McKenzie was president of that company? A I believe so.

10 Q Where was his office, at the mill? A At the mill.

Q When you speak of this book having been kept as far as you know at his office, you mean at his office in the mill? A At his office in the mill, yes, sir.

Q On what occasion did you know of its being kept there? A When he would bring me the book to bring it down and have it balanced he took it out of his safe and gave it to me.

20 Q Out of his safe at the office in the mill? A Yes, sir.

Q You would be up there at his office? A Yes, sir.

Q And with reference to the procedure concerning this book, what did you see of the book? A He has taken the book out there and given it to me to take down and have the interest put in it.

30 Q You say he has taken the book out there, out of where? A Out of his safe, he had a safe in his office.

Q In your presence would he go to the safe and get the book and give it to you? A Yes, sir.

Q What would you do with the book then? A Take it to the office, balance it, and return it to him.

40 Q Did you ever observe what he did with it after you returned it to him? A I have no recollection of that, no.

George A. Duncan, direct.

Q How often, according to the best of your judgment, did you see him take this book out of the safe?

Mr. Collins. He is speaking of the first book now.

Witness. Yes, that is what I have reference to. 10

A I should imagine at least half a dozen times.

Q Did you ever see the book anywhere else, except at the office, or as you took it down to the association to have it balanced and brought it back? A No, sir.

Q What about its production at the time payments were made? A As I said, either he would bring it down or give it to me at the mill.

Q These half a dozen occasions, as I understood you, were the times when he gave it to you at the mill? A Yes, sir. 20

Q What I meant to ask you was as to the other times on which you saw the book, I want to know where it was on these other occasions, when you saw it and in whose possession it was?

A At our own office, in Mr. McKenzie's possession.

Q When would that be? A Whenever he made payments or withdrawals, or brought it down to have the dividend entered in it. 30

Q Except as he gave it to you at the mill from time to time to be balanced, am I correct in understanding you in saying that at all other times when payments were made, he produced the book at the office? A Yes, sir.

Q And you had no knowledge as to where that book was kept or in whose possession it was kept, other than as you have told us? A That is all. 40

George A. Duncan, direct.

Q Have you any knowledge at all in that respect with reference to the new book No. 156?

A No, sir.

Q Did you ever see that book after it was issued? A Yes, sir.

10 Q On what occasion? A I saw it in December when he brought—

Mr. Collins. 1912?

Witness. 1913, and I saw it again—

Mr. Collins. You did not finish what you were saying you said “When he brought—

20 *Witness.* When he brought the book to have a payment made, a withdrawal made at the Building and Loan Association office and the other occasion was when Mr. Luce brought it to have the last dividend put in it.

Q That was after Mr. McKenzie’s death? A Yes, sir.

Q This occasion in December, 1913, was the time when, as I recollect, three thousand dollars was paid into the credit of the account and five thousand five hundred withdrawn. A There was three thousand dollars withdrawn I know. I will look at the book.

30 Q The book has gone back to Trenton, but if you will turn to your record, I think you can refresh your recollection as to the dates. A No, there was just three thousand dollars drawn and three thousand dollars paid. It was in December that the \$5,500—

Q What was that date? A December 16th, 1913.

40 Q Was that the only withdrawal made from the account—to the credit or debit of the account—after the new book was issued? A

George A. Duncan, direct.

Aside from the entries of May 19th, 1913, yes. There were withdrawals and payments on May 13th, 1913, when the book was issued.

Q The bill of complaint states in paragraph 12 that after the new book was issued, number one hundred and ninety there was paid in on account of said installment shares in May, 1913, three thousand dollars in November, 1913, and withdrawn in May, 1913, fifty-five hundred dollars and in December, 1913, \$3,000; is that correct? A That is the idea, yes, sir. 10

Q I want to know whether the book was produced at the time that those two payments of three thousand dollars each were made? A It was.

Q And by whom? A By Mr. McKenzie.

Q Were the withdrawals made at the same time? A Yes, sir. 20

Q It would not appear so from this recital because it says November, 1913, three thousand dollars was paid in, and in December, 1913, three thousand dollars was withdrawn? A That was a simultaneous operation; that was on December 16th, 1913, that ought to read "December," instead of "November," when the payment was made.

Q Was the book produced each time a withdrawal was made? A Yes, sir. 30

Q Produced by whom? A Mr. McKenzie.

The Court. The evidence is that was a simultaneous transaction.

Witness Yes, sir.

By Mr. Collins.

Q What was the object of that? A The installments required payments of the equivalent of five hundred dollars a month. 40

George A. Duncan, direct.

Q You had to pay it in order to keep your standing? A Yes, sir.

Further direct examination.

Q At all times then, when you saw this book after it was issued, it was in Mr. McKenzie's possession? A Yes, sir.

Q Have you any recollection of his having had it in his possession at any place other than at the association office? A No.

Q Do you know of your own knowledge what was done with the new certificates that were issued and delivered by you to him on May 12th, 1913? A No, I don't recall what was done with them.

Q You have already testified, have you not, that you delivered the new book 918 to Mr. McKenzie with the other book and the new certificate? A Yes, sir.

Q You have also testified that from time to time thereafter Mrs. McKenzie made drafts against that account? A Yes, sir.

Q And she continued so to do until the account was closed? A Yes, sir.

Q And it was closed by being entirely withdrawn? A Yes, sir.

Q What I want to know is as to who produced this new book 918 at the time these withdrawals I have just mentioned were made? A Mrs. McKenzie or her representative.

Q Do you mean same employee of her's? A Yes, sir.

Q Was that book ever produced by Mr. McKenzie afterwards? A No, sir.

Q For the purposes of withdrawal, I mean? A No, sir.

George A. Duncan, direct.

Q After that book was issued, the new book was issued, there was no further money went into the credit of that account excepting one dividend. A One dividend, yes, sir.

A recess was then taken.

AFTER RECESS.

10

GEORGE A. DUNCAN, resumes the stand.

Further direct examination by Mr. Faulks.

Q I think it already appears, and if not it will appear in the case that Mr. McKenzie died on the 12th of April of this year. Did you see him on any occasions during his last illness?

A I saw him on two occasions.

Q On either of those occasions did you also see Mrs. McKenzie? A On both occasions. 20

Q Mr. McKenzie was sick at his home at Carlton Hill, was he not? A Yes, sir.

Q Did you have any talk on either of these occasions with Mrs. McKenzie with reference to this new pass book, No. 156 or with reference to the certificates then outstanding for the two hundred and sixty prepaid shares? A On the second visit I did, yes, sir.

Q Can you fix the date of that second visit? 30

A Two weeks, I believe it was, before he died; on a Sunday.

Q At what time of the day? A In the afternoon, about—oh, I should imagine about half-past three or four o'clock.

Q How came you to go to Mr. McKenzie's house then? A Mrs. McKenzie sent for me.

Q Sent for you by letter or telephone or how?

A She telephoned.

Q Telephoned to you? A Yes, sir. 40

George A. Duncan, direct.

Q Did you talk with her over the wire? A I did.

Q Did she ask you to come up? A She did.

Q And you went? A Yes, sir.

Q Will you relate the conversation you had
10 with her that day in reference to the pass book
and the certificates I have mentioned?

Judge Collins. Objected to as irrelevant. I do not see what Mrs. McKenzie could say to him that would change her legal rights, it seems to me it is irrelevant.

The Court. I will admit the question.

A Mrs. McKenzie asked me if I had the pass book, I told her I did not, that Mr. McKenzie must have it, and she asked me if I knew where
20 the certificates were, I said, "No, I do not, I have not seen them since they were given to Mr. McKenzie." That is all the conversation we had about it.

Q I wish you would refer back in your memory to that time and make certain whether or not you have given us all of that conversation you can recollect, first with reference to the pass book and second with reference to the certificates; give the substance of what you said,
30 and the substance of what she said as nearly as you can recollect it.

Mr. Collins. He has done so. I object to the question.

The Court. I understand this question is simply asking the witness to try his memory further to see if he has done all. I think that is proper; there is no suggestion refreshing his recollection.

40 *Mr. Collins.* He has told what was said.

George A. Duncan, direct.

Mr. Faulks. And now he is asked whether on further consideration he now says that is all.

The Court. I will admit the question.

Mr. Faulks. I want to know whether, on thinking it over he now says that is all that occurred between him and Mrs. McKenzie at that time in reference to these matters.

10

The Court. The question is admitted.

A Mrs. McKenzie asked me if I had the book, I said, "No"; she asked me if I had the certificates or knew where they were, and I said, "No, I had not seen them since Mr. McKenzie had them," and her reply was, "I must get them, I must have them." That is all the conversation I can recall.

20

Q Did you see Mr. McKenzie on that day?

A Yes, sir.

Q What was his condition of health at that time? A That afternoon he was fairly bright, I had quite a conversation with him that afternoon.

Q Was he in bed? A He was on a couch, or in bed.

Q Did Mrs. McKenzie show you any papers that day? A She brought an envelope in to Mr. McKenzie, which, eventually, I saw what was in it.

30

Q What was it?

Mr. Collins. Objected to as irrelevant.

The Court. It may prove to be irrelevant, but I would rather take it and disregard it if it proves to be irrelevant, then exclude it.

Mr. Collins. The question is, what was in the envelope?

40

George A. Duncan, direct.

The Court. What he saw taken from the envelope in his presence.

A It was Mr. McKenzie's will.

Q Did you see the will, that is sufficiently to know its contents? A No.

10 *The Court.* How do you know it was his will?

Witness. He told me—Mr. McKenzie.

Q In Mrs. McKenzie's presence—she was present at the time? A Mrs. McKenzie was present at the time.

Q Where were you all of this time that you are now speaking of? A In the bedroom where Mr. McKenzie was lying.

20 Q What was the shape and size of this envelope or wrapper? A It was a—there were two envelopes, one a brown envelope and one a white envelope similar in size to that one (indicating). I suppose you would call it a business envelope.

Q That is a large sized business envelope? A Yes, sir.

Mr. Collins. About eight inches by two and—

30 *Witness.* Well, it is a little over eight; it is about eleven by three and a half, I should imagine—or ten and a half by three and a half; probably that is a little more accurate.

Mr. Collins. That is the white one.

Witness. Yes, sir, and the brown envelope or outside wrapper was probably the same size.

40 Q Was there any writing on either one of these envelopes that you saw? A On the out-

George A. Duncan, cross.

side one, I think, was "Mrs. Margaret—" I think it was "Mrs. McKenzie" or "Mrs. William McKenzie," I cannot say which, I am not positive as to the outside one. The white one was addressed to "Mrs. Margaret McKenzie," either "Private" or "Personal" account, I am not sure which, on the lower left hand corner. 10

By the Court.

Q Was the white envelope enclosed in the brown one? A Yes; Mrs. McKenzie took it out of the brown one and it was brought in to Mr. McKenzie like that (witness illustrated by holding up a large white envelope).

Cross examination by Mr. Collins.

Q Each of the exhibits, number 12, 13, 14 and 15, of which No. 12 was read into the record, and it was said the others were similar, are printed blanks, everything on each being printed except the date, and as to that, the figures "191.." are printed and the number, the number of shares and the signatures, am I right? A On the face of it, yes, sir. 20

Q That was a regular printed blank for applications? A Yes, sir. 30

Q Applications for shares? A Yes, sir, applications and signatures.

Q On this Sunday when you were up to the house about two weeks before Mr. McKenzie died did Mrs. McKenzie tell you that the pass book had been taken out of the drawer of a chiffonier or some article of bed room furniture? A I do not recall.

Q Or something to that effect? A She mentioned about some thing being taken out of the 40

George A. Duncan, cross.

chiffonier, but I do not recall any reference to the pass book being taken out of there.

Q She did mention some things were taken out of the chiffonier? A Yes, sir.

Q You do not recall whether she said the pass book was taken out of the chiffonier drawer? A I do not recollect that any specific
10 articles were mentioned other than there had been some things taken from the chiffonier drawer.

Q The large envelope you think had her name written on it, but of that you are not sure?

A There was a name on it, it was Mrs. McKenzie's name, but whether it was Mrs. Margaret or Mrs. William McKenzie, I am not sure.

Q It was Mrs. McKenzie, anyhow? A Yes,
20 sir.

Q The small envelope, that you know also had Mrs. McKenzie's name on it and you think it was Mrs. Margaret McKenzie? A That was written in Mr. McKenzie's handwriting, "Mrs. Margaret S. McKenzie" private or personal account, whereas the writing on the brown envelope was in somebody else's handwriting, it was not Mr. McKenzie's handwriting.

Q And out of that white envelope Mr. McKenzie took a paper which he said was his will?
30

A Took a paper which he said was his will, and there was a letter, I think, a letter sheet with it.

Q That he took out with it? A That was accompanying it, that she put back in the envelope again.

Q That was accompanying the will? A Yes, sir.

Q You do not know what else was in the envelope? A There was nothing else in it.
40

James J. McKenzie, direct.

Q In the white envelope? A Nothing else in it.

Q But the will and this letter? A Yes, sir, because I put them back again after Mr. McKenzie folded them up.

(By consent of counsel witness retains the exhibits that he had produced to be again produced by him at the time of the argument.) 10

JAMES J. MCKENZIE, sworn on behalf of the defendant Ladd.

Direct examination by Mr. Faulks.

Q You live in East Rutherford? A No, I live in Rutherford.

Q Are you the son of the late William McKenzie of East Rutherford? A Yes, sir. 20

Q Are you the oldest son? A The oldest living son, yes, sir.

Q During a number of years, prior to your father's death, were you associated with him in the Standard Bleachery? A Yes, sir.

Q In charge of the operations being carried on there? A For the last ten or twelve years in charge there. 30

Q How much of your business time did you spend at the bleachery during those years? A All the time.

Q Did your father come there from time to time? A Every day that he was at home, yes, sir.

Q Were there any safes in the office of the bleachery company? A In his private office, there were two safes, one was his personal safe, the other was used for the bleachery affairs. 40

James J. McKenzie, direct.

Q He had a private office at the mills? A Yes, sir.

Q And it was in that office those two safes were? A Yes, sir.

Q In one of which he kept his private papers and the other was used for the company's business? A Yes, sir.

10 Q Do you know anything about where the first of the two pass books No. 156 was kept?

Mr. Collins. Objected to as irrelevant.

The Court. The old pass book, No. 156.

Mr. Faulks. Yes.

Mr. Collins. You admitted it before, I am simply keeping myself consistent.

The Court. I will try to be consistent, too, I will admit it.

20 A I know he always kept the building and loan book in one of the private drawers of his safe.

Q How do you know that? A From time to time when he would be on his way to the building and loan he would stop in there and if he had not made out his check in the afternoon he would make out his check for the book and take them down; very often he took my book as well as some others.

30 Q On those occasions would you see him get the book? A I would see him, I would be in my office and he would come in and enter his private office, I would hear him unlock the safe, and very often I have seen him make out the slip.

Q Did you see where he got the books from? A Well, he would have his safe open and he often on his return from the building and loan
40 would stop and deposit them there.

James J. McKenzie, direct.

Q Where? A In this safe of his.

Q Did you see these building and loan books on other occasions, except when they were being used for the purpose of making a monthly payment? A Yes, sir, I have seen them lying on his desk; about once a month or six weeks, he would have his papers out evidently checking up for what purpose I do not know, but the week before he was taken sick I saw them lying there. 10

Q I am speaking about the old book. A Well, I cannot say about the old book, because I did not know of any change being made in that until after he died—just previous to the time he died.

Q You are speaking then of building and loan books, generally? A Building and loan books, generally. 20

Q You say that you saw him have those books in his possession at the time he was arranging to make monthly payments, or when he was returning from the building and loan association meeting? What was this other occasion, when I understood you to say that you saw him with these books in his possession? A I saw him about a week before he was taken ill.

Q No, no, I am not speaking about that time, I am speaking about the time or times when I understood you to say he had the books on his desk. A He had his papers out and I have repeatedly seen the building and loan books lying there. 30

Q What kind of a safe was this in which you say he kept his private papers? A It was quite a large safe and he had the exclusive use of it, no one could get in there without the inner pass key. 40

James J. McKenzie, direct.

Q Was there a combination lock to the outside door? A The outside had the regular combination, which I had, but I did not have the inner pass key.

Q Was this a safe standing out in the room or one that was built into the wall? A It was
10 built in the wall.

Q You had the combination to the outside door? A Yes, sir.

Q When you had used the combination and opened that door what did you find next? A
A There were two inner doors, which were opened with a large flat key similar to a Yale lock key.

Q Did you have a key which enabled you to open those doors? A No, sir.

20 Q Did you ever see anybody else open them other than your father? A No, sir.

Q Who carried the key that opened those doors? A Father.

Q What was this occasion you spoke of a week or so before his death? A On that occasion he was evidently checking up his accounts or something and he came to me and said—

30 *Mr. Collins.* Never mind what he said.

Witness. He asked me—

Mr. Collins. I object to that.

Q You cannot relate conversations that took place? A Well, I will have to relate it to explain why—how I happened to go into his private office.

By the Court.

40 Q You had a conversation with him on that occasion? A Yes, sir.

James J. McKenzie, direct.

Q In consequence of that conversation did you do anything? A No; I went into his private office and he asked me about a dividend on his stock and he thought I had stock in the same company and I told him no, I had no stock and I told him I had received a dividend for him while he was in Europe and I asked— 10

Mr. Collins. In some other company?

Witness. It was the Paterson and Passaic Fire Auxiliary Co. I told him I thought I had received a dividend for him while he was in Europe and I told him I thought he would find an entry on the slip I gave him of receipts received and he looked it up and found it. So I saw among other things, the building and loan books on his desk. 20

Further direct examination.

Q He had them on his desk at that time? A Yes, sir, he had a lot of stock spread out there,

Q Did you have any occasion to go to his safe at any time between the time you told us of and the time of your father's death? A Yes, I was up to the house—well, to be exact, the date was March 27th, and I told him I had received notices from several banks, where he had loans that there was money to be paid April 1st, and he said to me, "You pay it out of your funds and I will fix it up later," and I told him I did not have funds enough to do it and he said, "Well, I will get the keys," and he called his wife and she brought the keys to me. 30

Q Did you see her get them? A She brought in his vest and took them out of his pocket. 40

James J. McKenzie, direct.

Q Took them out of the vest pocket? A Yes, sir.

Q And gave them to him? A I have forgotten now whether she gave them to me or to him.

10 Q At all events, you took the keys which you understood to be the keys to this safe? A I took three or four little flat keys; one of them I knew was the key to this inner door; we have similar keys with all our other safes.

Q What did you do with these keys after you took them? A I took them and I did not do anything with them that day, but the next day Mrs. McKenzie sent down and said she wanted the keys back and some papers that were in the safe addressed to her, and some money.

20 Q Did you open the safe? A Yes. I went then and unlocked—used the combination and opened it and then I found that the drawers in there were all unlocked.

Mr. Collins. Unlocked?

Witness. Yes, sir; he only used the outer pass key, the keys to the outer door.

30 Q Don't go quite so fast. You got these keys on this occasion, I understand, for the purpose of enabling you to get his check-book and draw some checks to cover required interest payments? A Yes, sir.

Q You got the keys in the way in which you have described on one day and then undertook to get the check-book out of this safe on the following day? A Yes.

Q Then what did you do when you opened the safe at that time—you used the combinations on the outside door, in the usual way? A Yes, sir.

40 Q And that opened the outside door? A Yes, sir.

James J. McKenzie, direct.

Q When that door was opened, what was it necessary for you to do next in order to get into the safe? A Use the Yale key that I got to open the inner doors.

Q Were those inner doors locked? A Yes, sir.

Q And you opened them with this Yale key? 10
A Yes, sir.

Q And inside of those inner doors there were compartments or drawers? A Yes, sir.

Q And those drawers or compartments you found unlocked? A Yes, sir.

Q Were the keys in them? A Yes, sir.

Q You found the check-books you were looking for? A Well, I didn't look for them because I had not time to bother with them then; I was going to wait until later in the afternoon, but I searched for the paper that was sent for. 20

Q Sent for by whom? A Ostensibly by my father, but I think by somebody else.

Q What was the word that you got? A That he had said—they said he mumbled so that they could not understand what it was, but Mrs. McKenzie said he wanted some paper that was addressed to her.

Q Who was it that brought you this message? 30
A Frank Widows, who was father's coachman.

Q This was on the day after you had gotten the keys to the safe in the way in which you have described? A Yes, sir.

Q This message that came to you in the way you have just described, through the coachman, was to what effect—what was it Widows said?

A That I was to send up one hundred dollars in cash and an envelope that was addressed to her and the key. 40

James J. McKenzie, direct.

Q What key? A The keys, I presume, that I got the night before.

Q You looked in the safe for the envelope that was requested? A Yes, sir.

10 Q What did you find there? A After searching through several drawers, I found an envelope addressed "Mrs. Margaret McKenzie," and the word "private" on the lower left-hand corner, and on the back where it was sealed down he had it all covered with scrawls, so that it could not be opened.

Q That is, if it was opened— A It would show.

Q Was that a white or a brown envelope? It was a white envelope.

20 Q Was it sealed? A Yes, sir.

Q It had not been opened since these marks had been put across the place where it had been sealed, across the flap? A I don't think so.

Q What was the size of that envelope? A That was quite a big envelope, thicker than that (illustrating by the use of a large envelope).

Q You produce now just about the same sized envelope as Mr. Duncan described when he was on the stand? A Yes, sir.

30 Q And one which is, perhaps, a quarter of an inch thick? A Yes, sir.

Q How does the size of that envelope compare with the one you say you found in the safe? A I think that envelope was half again as big as this.

Q The length and breadth about the same? A About the same size.

40 Q And about half as thick again? A Yes, sir.

James J. McKenzie, direct.

Q When you say half as thick again, you mean, as I understand you, the thickness— A Through this way (indicating).

Q The thickness of the package? A Yes, sir.

Q The envelope which you now have in your hand, and which you are using to illustrate with, has something in it—it is not just an empty envelope? A No; it has papers in it. 10

Q And the one you say found in the safe at that time, with its contents, was about half as thick through as this one—

Mr. Collins. Half as thick again.

Q It was half as thick again as this one is now, with its contents? A Yes, sir.

Q What did you do with that envelope? A I put it in a brown envelope and addressed it to Mrs. McKenzie. 20

Q Did you give it to the coachman? A Yes; and took his receipt for it.

Q With the \$100 that was sent for? A With the \$100; yes, sir.

Q What about the keys? A I kept the keys, for I was not through with them.

Q You say that you saw your father on the 27th of March? A Yes; in the afternoon of the 27th. 30

Q And you gave these papers to the coachman on the following day? A About noon on the 28th.

Q At that time did you observe anything as to whether or not this building and loan book was in the safe? A No; I did not.

Q Did you retain the keys of the safe until after your father's death? A Yes, sir. 40

James J. McKenzie, direct.

Mr. Collins. There was only one key to the safe—do you mean did he retain that bunch of keys?

Mr. Faulks. Yes; the same keys that he got.

10 Q There was only one of the keys you got that fitted the safe? A There was only one that was necessary to open the safe—the inner drawers all had their keys in them.

Q You kept this key that opened the inside doors of the safe until after your father's death? A Yes, sir.

Q After his death occurred, did you go through the safe? A I did not go through until about—well, about ten days after I went through.

20 Q What did you find in there at that time? A I ran across this building and loan book.

Q That is this book, No. 156? A Yes, sir.

The Court. The old number, 156?

Mr. Collins. No, the new one, the old one had been surrendered, you know.

Mr. Faulks. It was the book produced here this morning by the representative of the Clerk in Chancery.

Witness. Yes, that was it.

30 Q Whereabouts in the safe did you find it? A I found it in the second drawer from the bottom.

40 Q I show you a paper purporting to be a receipt, signed in two places by Frank Widows, and bearing two dates, March 27th, 1914, and March 28th, 1914. Is the writing under each of these dates, being the signature, "Frank Widows," his writing, and does that paper cover receipts that you took from this coachman Widows? A Yes, sir; the first is for \$50, which

James J. McKenzie, direct.

I gave him on Friday afternoon, and the other is for the \$100 and the brown envelope which I gave him on Saturday morning.

By the Court.

Q What was the age of your father at the time of his death? A He would have been 73 in August. 10

Q 1914? A Yes, sir.

Mr. Faulks. I offer in evidence the two receipts which are on the same paper, which paper has just been produced by this witness.

Marked Exhibit No. 16 on behalf of the defendant Ladd, October 7th, 1914.

Further direct examination.

20

Q You did not open this envelope before you gave it to Widows, did you? A No, sir.

Q Did you ever see that envelope again? A No, sir;—I did see it in Mr. Gourley's office, but I was not close enough to see into it.

Q Do you know what was in it at the time you delivered it to Widows? A I have learned now the will was in it.

Mr. Collins. Never mind that.

30

Q I mean do you know of your own knowledge? A No, sir.

Q What is your recollection as to the size of the envelope as distinguished to its thickness; was it the same as Mr. Duncan says, about ten and a half by three and a half? A It contained far more than that.

Q You mean it was a larger envelope than that? A There was more contained in it.

40

James J. McKenzie, direct.

- Q Don't let us misunderstand each other. In describing the envelope, did not say anything about the thickness he said that as he recollected it, it was about ten and a half inches long by three and a half inches wide, and I want to know how that corresponds with your memory of it?
- 10 A That is about it, a regular business envelope.

Q Without reference to the envelope which you have produced to illustrate the thickness, how thick do you say that envelope was? A I should say it was about—well, a good three-quarters of an inch, puffed up; I could feel it had things in it that were folded and evidently quite heavy paper.

- Q How often did you see your father during his last illness? A Oh, I suppose a dozen times.
- 20 Q What was his condition of health at that time? A The first two weeks he was getting along very well, but after that first Sunday he went down very fast.

Q What do you mean by that Sunday, the Sunday Mr. Duncan spoke of two weeks before his death? A Yes, sir.

- Q What do you mean when you say he went down pretty fast? A He was unconscious. The doctor reported to me on Sunday night—
- 30

Mr. Collins. I object to what the doctor reported to you.

Q You saw him from time to time during the last two weeks? A Yes, sir.

Q On the occasions you saw him, was he conscious or unconscious? A Unconscious.

By the Court.

- Q For how long a period prior to his death?
- 40 A I don't believe he knew anything after that

James J. McKenzie, direct.

Sunday, he did not know me any time I saw him after that.

Q After that Sunday at no time when you saw him did he recognize you? A No, sir.

Further direct examination.

Q How frequently were you there after that Sunday? A I should think, after that Sunday, at least six times. 10

By the Court.

Q How soon after that Sunday did you see him? A On Monday.

Q On Monday was he unable to recognize you? A Unable to recognize me. The reason I called on Monday was that Duncan reported to me what had happened and I went up to see my father, but he was not able to make himself understood at all. 20

Further direct examination.

Q Did your father keep any personal books, books of account of his own personal transactions? A Not that I know of.

Q Did he keep any entries on the stub of his check books? A Very seldom.

Q Do you know by whom the payments of the amount paid in on these shares represented by book No. 156 were made? 30

Mr. Collins. Objected to.

The Court. The question is does he know.

Mr. Collins. They will speak for themselves.

The Court. The inquiry is whether he knows, if he says he does not know, that ends it; if he says he does, let us see if the ques- 40

James J. McKenzie, cross.

tion is admissible. It is competent to ask him if he knows.

A I have no means of knowing, and I don't know anybody else who would.

Cross examination by Mr. Collins.

10 Q I think you have said that the day the keys were given to you was on a Friday? A Yes, sir.

Q And that the day that Widows gave the first receipt for that \$50 was on Friday? A Yes, sir.

Q And the day he gave the receipt for the \$100 and the brown envelope was, of course, the next day, Saturday? A Yes, sir.

20 Q So that the following day, which would be Sunday, the 30th of March, that you say was the last that he was conscious? A Yes, sir. No, I said Monday, it was Monday when I saw him.

Q Monday would be the 31st? A Monday would be the 30th.

Q Widows' first receipt was on the 27th and that was Friday? A Yes, sir.

Q The second receipt is dated on the 28th, Saturday? A Yes, sir.

30 Q That would make Sunday the 29th? A Yes, sir.

Q And Monday, the 30th—that is right? A Yes, sir.

Q And you say that on that day you went out and on the 30th he was unconscious? A Yes, sir.

40 Q This safe that you have been speaking of, was about what size outside? A Well, it was about as tall as that book case, and about three-quarters as wide.

James J. McKenzie, cross.

Q Then it was about four or five feet or more high? A Oh, yes.

Q And three or four feet wide? A Yes, sir, and taller than I am.

Q And sunk into the wall? A Yes, sir.

Q With double doors? A Yes, sir.

Q And then when you opened those double doors you would find two other thin double doors that you would open with the Yale key? A Yes, sir.

10

Q And inside of that, drawers? A Yes, sir.

Q You had the combination of that safe? A Yes, sir.

Q Why? A Because those two safes were put in there when he was in Europe one year, we remodeled the office, and when he came back he said, "I will take one of those for my own personal safe." and I gave him the combination, and we retained in our main safe, we retained the combination of every safe in the mills, we have about ten or a dozen.

20

Q How many keys were there to the inner doors? A Two.

Q And there was only one that was given to you in this bunch of four? A Yes, sir.

Q Where was the other one? A Inside.

30

Q That was left inside? A Yes, sir.

Q In one of the drawers, I suppose? A I have forgotten whether it was—it was inside in the—it was inside the safe somewhere.

Q Was it all divided into drawers or were there some pigeon holes? A The lower part is all drawers and I think there are some pigeon holes on top, on both sides there are pigeon holes.

Q Pigeon holes for books? A Yes, sir.

40

James J. McKenzie, cross.

Q Didn't you keep any of the company's books or papers in there? A No, sir; I never saw the inside of that, never entered the safe from the time we got the Yale key until two years ago, I guess.

10 Q The Standard Bleachery Co. is a corporation? A Yes, sir.

Q Of which he was president? A Yes, sir.

Q You spoke of seeing the building and loan books, you used the plural, lying on his table? A Yes, sir.

Q Whose books were they? A They were his books, his own private books and three books belonging to my sister's children who live in Boston.

20 Q And your own books sometimes? A No, sir; my own book I handle—for the last two years I have handled it myself.

Q Did your brothers have some books in the building and loan? A They all handled their accounts for the last two years.

30 Q You said your father used to make the payments for you? A Yes, sir; he used to, but he only would carry my book down; he would not write out the check for it. I would just simply pass it to him to save me from going down.

Q I do not mean he would retain your check and give his check, but he would be your messenger to take your book down? A Yes, sir.

Q And make the deposits and the withdrawals? A Yes, sir.

Q And he continued that until the time he was taken sick? A Not so frequently in the last two or three months.

Q But he did? A Practically so.

40 Q From time to time? A Yes, sir.

James J. McKenzie, cross.

Q Did he keep that book for you? A No, sir.

Q He did not keep that in his safe? A No, sir.

Q The handwriting of this address on the white envelope that you took out of the safe—"Mrs. Margaret McKenzie, personal or private"—you think, was your father's? A Yes, sir. 10

Q And that he had put some scrolls or scrawls on the back where it was sealed up? A Yes, sir.

Q You said, casually, that your father kept the building and loan books for the whole family in that safe? A Well, he kept his own and those of my sister's three children; they were in there; I saw them a week before he was taken sick, and I wondered— 20

Q He kept those in that safe? A Yes, sir; I saw them absolutely that week.

Q Did he keep those of any other member of the family in there? A No; the others were all married.

Q They took care of their own? A Yes, sir.

Q Those children that you spoke of were grown up? A No; I think the oldest is about fourteen years old, probably not as old as that; I really do not know. 30

Q But these passbooks were their own private property? A They were kept there because they lived in Boston.

Q But they belonged to them? A Yes, sir.

Q The shares belonged to those children? A Yes, sir.

Q And he kept the books in his safe, they living in Boston? A Yes, sir. 40

John M. Bell, direct.

Re-direct examination.

Q Do you know who paid the dues on the shares of those children? A My brother-in-law would send his check.

Q Send a check to your father? A Yes, sir.

10 Q And then your father would send his check to the Building and Loan Association? A Yes, sir.

JOHN M. BELL, sworn on behalf of the defendant Ladd.

Direct examination by Mr. Faulks.

Q You are a member of the bar of this State, are you not? A Yes, sir.

20 Q Are you the attorney for Mr. James McKenzie, who has just been on the stand? A Yes, sir.

Q You represented him, I think, in the contest over the will, did you not? A Yes, sir; I did.

Q Did Mr. McKenzie give you the building and loan book, No. 156, which is in dispute here, after the death of his father? A He did.

Q What did you do with it? A I delivered it to Mr. Edward J. Luce.

30 Q As representing who? A Representing the executor of the estate.

Q That is, after Mr. Ladd had qualified as executor, you gave that book to Mr. Luce? A I did, at his request.

Q He saying to you that he was Mr. Ladd's attorney? A Yes, sir.

By Mr. Collins.

40 Q You are referring to the book produced by Mr. Shafer by the Chancery office? A Yes, sir.

Edward T. Luce, direct.

EDWARD J. LUCE, sworn on behalf of the defendant Ladd.

Direct examination by Mr. Faulks.

Q You are a member of the bar of this State?

A Yes, sir.

Q Have you been active as counsel for Mr. Ladd, as executor of the William McKenzie estate in reference to general estate matters? A Yes, sir. 10

Q You represented Mr. Ladd in connection with the admission of the will to probate, I believe? A I did.

Q After the will was admitted to probate, did you take any steps to produce possession of the passbook, No. 156, which was produced by Mr. Shafer this morning, on Mr. Ladd's account? A Yes, sir; I notified Mr. Bell, who was the attorney for Mr. James McKenzie, that I thought the book ought to be put in Mr. Ladd's possession. 20

Q Did you obtain it from Mr. Bell? A Mr. Bell brought the book to me.

Q You turned it over to me, I believe. A I sent the book by express to your firm.

The further hearing was then adjourned until Friday, October 16, 1914, at ten o'clock, at Chancery Chambers, Newark, N. J. 30

John J. Williams, direct.

CHANCERY CHAMBERS, NEWARK, N. J.

Friday, October 16, 1914.

Continuation of proceedings in the above stated matter before Honorable Halsey M. Barret, advisory master, pursuant to adjournment.

10

(Appearances as before noted.)

Mr. Collins. I am very anxious to relieve Mr. Williams who has come at considerable inconvenience to the firm of Tiffany & Company, and I promised to put him on promptly. We might defer the argument as to whether the other witnesses will be permitted to be examined.

The Advisory Master. All right.

20 JOHN J. WILLIAMS, a witness produced on behalf of the defendant, Margaret Stewart McKenzie, being duly sworn, testifies as follows:

Direct examination by Mr. Collins.

Q Where do you live? A Flushing, New York.

Q What is your age? A Forty-three.

30 Q In whose employ are you? A Tiffany & Company.

Q Of New York City, Manhattan? A Yes, sir.

Q How long have you been in their employ? A Twenty-six years next month.

Q What is your present position? A I have charge of the safe deposit vaults.

40 Q The company has a safe deposit business with vaults that they rent to people the same as any safe deposit company does? A Yes.

John J. Williams, direct.

Q And you are in charge of the safe deposit vaults? A I am in charge of them.

Q Approximately how long have you been in charge of them? A About fifteen years.

Q Was there a box—what do you call them, boxes or safes? A Well, safe deposit boxes.

Q Was there a safe rented in the name of William McKenzie and Margaret Stewart McKenzie? A Yes, sir. 10

Q When first? A Mr. or Mrs. William McKenzie, July 3, 1907.

Q William McKenzie and Margaret Stewart McKenzie? A No, it was Mr. or Mrs. William McKenzie.

Mr. Faulks. What was that date, please?

Witness. July 3, 1907.

Q Was there a different box, a different safe, substituted for that one? A Yes. 20

Q When? A Within a year. They had some trouble with the keys and I gave them the box next to it, 630. The one they originally took was 631.

Mr. Faulks. The first one was 631?

Witness. 631.

Q And the new one was 630, a year later? A Yes. 30

Q And that was William or Mrs.— A Just the same. It was just simply a change in the box.

Q Of course, that box had other keys? A Yes, a different set of keys.

Q What keys are there that go with a safe? A There are two keys for the outside safe and two small keys for the inside tin box.

Q To whom did you give the four keys for this new box, 630? 40

John J. Williams, direct.

Mr. Faulks. I object to that as immaterial.

The Advisory Master. I have in mind that if Judge Collins should ask the witness whether these four keys were two duplicate sets, or four different keys—

10 Q There were two just alike, either one of which would open the safe itself, and two smaller ones just alike, either one of which would open the tin box? A Yes.

Q To whom did you give those four keys?
A Mrs. McKenzie.

Mr. Faulks. I object to that as immaterial.

20 *Mr. Collins.* I submit it is proper to prove the fact to your Honor and you can take the responsibility of overruling it or having it thrown out afterwards. It is not like a jury, with the strict ruling on evidence.

The Advisory Master. I will admit the question.

Q Mrs. William McKenzie? A Yes.

30 *The Advisory Master.* Judge Collins, does he say he gave to Mrs. McKenzie the two duplicate sets, all four of the keys?

Witness. All four of them, yes, sir.

Q Was anybody present beside herself? A No.

Q Does your company keep a record of every time anyone comes to open a safe? A Yes, sir.

Q When did you begin that record? A The 4th of June, 1910.

40 *Mr. Faulks.* Was there no record kept before that time?

John J. Williams, direct.

Witness. No, sir.

Q Will you please tell us who went to that safe from the time your record begins down to the year 1914, down to April 12, 1914?

Mr. Faulks. As appears from the record.

Q Give the dates and tell who it was? A 10
Would you like me to go over it and give the dates?

Q Yes. A (Referring to book.) June 28, 1910, Mrs. William McKenzie, and she was alone. July 6, 1910, Mrs. William McKenzie, alone. December 23, 1910, Mrs. William McKenzie, alone. May 6, 1911, Mrs. William McKenzie, alone. May 27, 1911, Mrs. William McKenzie, alone. October 25, 1911, Mrs. William McKenzie, alone. November 18, 1911, Mrs. William McKenzie, alone. February 7, 1912, Mrs. William McKenzie, alone. May 18, 1912, Mrs. William McKenzie, alone. September 28, 1912, Mrs. William McKenzie, alone. November 30, 1912, Mrs. William McKenzie, with husband. 20

Q Do you remember that occasion? A Yes, sir.

Q Will you describe the arrangement of the department, whether there is an outer room and then a door into the vault, or how it is arranged? 30
A Well, our office is in front of the elevator as you come down from the main floor. There is grill work around the office and around our desk. Through a second door we have our coupon rooms, there are five, leading into the vault, and this day that Mr. McKenzie came in there he sat in front of my desk while the box was taken out, while Mrs. McKenzie took the box out of the vault and looked it over in one of the coupon rooms. 40

John J. Williams, direct.

Q And took it in one of the coupon rooms?

A Yes.

Q With a door between the room he was in and the coupon room? A Yes.

Q That is still further on? A Yes.

10 Q And she went in to get the box and took it in one of the coupon rooms and afterwards returned it? A Yes.

Q Did he remain all the time in the office?

A Yes, he sat in front of my desk.

Q Proceed. A December 6, 1912, Mrs. William McKenzie, alone. December 18, Mrs. William McKenzie, alone. March 22, 1913, Mrs. William McKenzie, alone. May 9, 1913, Mrs. William McKenzie, alone.

Q Does your record give the day of the week?

20 A No, sir.

Q Go on. A June 2, 1913, Mrs. William McKenzie, alone. July 3, 1913, Mrs. William McKenzie, alone. November 20, 1913, Mrs. William McKenzie, alone. December 1, Mrs. William McKenzie, alone. December 2, Mrs. William McKenzie, alone. December 19, Mrs. William McKenzie, alone. December 29, Mrs. William McKenzie, alone. February 17, 1914, Mrs. William McKenzie, alone. February 21, Mrs. William McKenzie, alone. April 9, Mrs. William McKenzie, alone.

30 Q Did anything happen on that day with regard to them? A Yes, sir.

Q What was it? A Mrs. McKenzie had the safe transferred to her own name, Mrs. William McKenzie, on April 9th.

Mr. Faulks. And the same box retained?

Witness. The same box.

40 Q She just changed the name. Proceed. A April 13, Mrs. William McKenzie, alone.

John J. Williams, direct.

Q We have now got down past Mr. McKenzie's death. Do you remember Mrs. McKenzie being there after Mr. McKenzie's death and having a bunch of keys which she had some conversation with you about? A Well, I do remember, but I couldn't say whether it was after Mr. McKenzie's death or not.

10

Q What were the keys on? A They were tied with a pink string, or something of that sort.

Q Did you have some talk with her about the keys? A Well, I believe I told her—.

Mr. Faulks. Don't say what was said.

The Witness. I advised her to—.

Mr. Faulks. Wait a minute. I understand this is a talk Mrs. McKenzie had with the witness after Mr. McKenzie's death.

20

Mr. Collins. The witness is not sure whether it was before or after. At present he can say yes or no.

The Advisory Master. The objection is to his detailing the conversation.

Mr. Faulks. Yes, sir.

Q You had some talk? A Yes.

Mr. Collins. Now, I will tell your Honor what I propose to show. I want to show she had this bunch of keys, all of them, on this pink string or ribbons, or whatever it was, and that Mr. Williams advised her not to carry them all together, that it was not best to have the two sets all in one. I think that is perfectly legitimate. I am going to follow it up with Mrs. McKenzie and show what she did, to account for the fact that she now has, as will appear later, one outside key and

30

40

John J. Williams, direct.

the two inside ones, and the other outside key she has not got.

10 *The Advisory Master.* I do not think it is competent to show what advice Mr. Williams gave Mrs. McKenzie. You can ask whether she did anything at that time as a result of his advice, that he saw her do.

Q What was the conversation?

Mr. Collins. Your Honor rules that out?

The Advisory Master. Yes.

Q Did you give her any advice with regard to the keys?

Mr. Faulks. Objected to.

Objection sustained.

20 Q As a result of that advice, do you know what she did?

Mr. Faulks. Objected to.

30 *The Advisory Master.* The question is ruled out as to whether he gave her any advice. Consequently, that can not be any basis for asking what she did as the result of advice which is ruled out. You can show what she did afterward, but I do not think you can prove she did it as the result of his advice.

Mr. Collins. Your Honor used that expression.

The Advisory Master. Perhaps I was too general in that statement.

Q Do you know what she did with the keys after you talked to her? A Why, she separated them and—

40 Q That is the important part of it. Does your record show the number of keys, the outer

John J. Williams, direct.

keys, the duplicate keys that belonged to safe 631? A Yes, sir.

Q What is it? A 631, 717.

Q Which was the second box? A 630 is the second box.

Q What was the number of the duplicate keys to that box? A 761. 10

Mr. Faulks. That is the key for the second box, the box being No. 630, was No. 761?

Witness. 761.

Q That is the manufacturer's number, is it? A No, that is the private number we have.

Q You put it on yourself, do you? A No, we had that put on.

Q Put on at the manufacturer's?

Mr. Faulks. He does not say it was put on at the manufacturer's, but he says they had it put on. 20

The Advisory Master. It is put on for identification of some sort?

Witness. Yes, sir; exactly.

Q I show you a key, No. 761, do you recognize that as the key? A Yes, sir.

Q And the little one that is on the same ring has no number? A It has no number, no, sir. 30

Q And that is a key to the tin box in the safe? A Yes, sir.

Mr. Faulks. Can he tell from looking at it now whether it is the inside key to box 630?

Witness. No, sir.

Q It is similar? A Similar.

Q They are all of the same type? A Yes, sir; I couldn't tell.

Q Do you notice a little ring on which these two keys are? A Yes. 40

John J. Williams, direct.

Q Do you know whether or not you gave Mrs. McKenzie that ring on the occasion you speak of?

A Well, I couldn't say that. I no doubt gave Mrs. McKenzie a ring, but I couldn't remember.

Mr. Faulks. You couldn't remember whether this is the one or not?

10

Witness. I could not; no, sir.

Q Do you remember whether that is the sort of rings you had? A We have that sort of ring and we also have another little wire ring for keys, only on a smaller scale.

Mr. Collins. This is sufficiently identified by the number, isn't it, or what shall we do about it?

20

The Advisory Master. I think it is sufficiently identified. I have a note of it.

Mr. Collins. I will offer it later after I have called Mrs. McKenzie.

Q Is there a card signed at the time the safe is rented? A Yes, sir.

Q Have you got the one for the safe that was rented July 3, 1907? A Yes, sir.

Q Will you please produce it? A (Witness produces a card).

30

Mr. Collins. I offer this in evidence. I suppose you will let me read it into the record?

Mr. Faulks. I have no objection.

Mr. Collins. I will read it into the record. It is headed, "Tiffany & Company." Out at the left, "631." Then the name, "Mr. or Mrs. William McKenzie." Then the password, "Braeside," "Height: He, short; she taller. Weight, (no entry). Light or dark: Grayish beard and hair, cast in eye." Op-

40

John J. Williams, direct.

posite the words, "He short;" and nothing opposite the words, "She taller."

Below: "Leased, July 3, '07. Expired, July 3, '08. Surrendered, renewed. Rate, \$32. Paid, Oct. 17, '07. Key No. 717. Address, Carlton Hill, N. J." Under the head of business, nothing. "References, T. & Co." Then there is written and partly printed the following: "New York, July 3, 1907. We hereby acknowledge to have received this day from Tiffany & Co. a receipt for rent of a safe No. 631, which embodies the whole contract concerning it. We also acknowledge to have received two keys for said safe, and in the event of the death of one of us, the survivor or survivors are to have full access to the safe rented by us." Signed, William McKenzie, Margaret S. McKenzie." 10 20

The Advisory Master. Is that under date of July 3d?

Mr. Collins. July 3, 1907.

The Advisory Master. That will be Exhibit No. 1 for defendant, M. S. McKenzie, October 16, 1914, and we can not keep the card.

Mr. Faulks. Yes. 30

Q I show you a form of receipt such as is given when a safe is rented. Is that such a blank? A Yes. When the payment is made that is the receipt that is given.

Q Could you spare this or don't you want to leave it? A Yes, we can spare it.

Mr. Faulks. Is that the form that was in use in 1907?

Witness. Yes, sir. 40

John J. Williams, cross.

Q And continuously down to now? A No, we do not have that form now. We have included that all on our card now.

Mr. Faulks. But that is the form that was used in 1907?

Witness. Yes.

10 *The Advisory Master.* That will be marked Ex. 2 for defendant, M. S. McKenzie, October 16, 1914.

Q And such a receipt was issued for box 631? A Yes, sir. That receipt, Judge, was mailed when the bill was paid. We charged for this box and that receipt was sent October 17th the same year. We sent the receipt two or three months later. That was when the box was paid for; we charged it.

20 Q That was sent immediately when the rent was paid? A Yes, sir.

Q And I suppose on each payment afterwards you sent a receipt? A Yes, sir.

Cross examination by Mr. Faulks.

Q That is, you sent a receipt annually? A Well, not necessarily. This was charged and paid direct to the house. One of our receipts 30 would be sent him, a receipted bill, and for the original payment there was always a receipt sent.

Mr. Collins. And after that he might pay in cash at the place, and it would be then credited?

Witness. Yes, sir.

Q These dates you have been giving us as the ones when either Mr. or Mrs. McKenzie came to 40 your safe deposits vaults are taken from what

John J. Williams, cross.

record? A From this record we keep, the visitors' record.

Q And that is the only information you now have as to the dates when either of them were there? A Yes.

Q You are testifying solely from the record? A Yes, sir. 10

Q Now, will you give us the dates, Mr. Williams, after April 13, 1914, down to July 1, 1914, when it appears from your record that Mrs. McKenzie again came to the safe deposit vault?

Mr. Collins. Objected to as irrelevant.

The Advisory Master. I will admit it.

Q From the 13th of April to the 1st of July—

Mr. Collins. I object to it as irrelevant.

The Advisory Master. I will admit it. 20

You went beyond the date of the death. You took the date of April 13th.

Mr. Collins. The death was the 12th, and the memorandum showed on the 13th she was there. Go on. That is, the dates after the 13th.

A April 28th, Mrs. William McKenzie, alone. April 29th, Mrs. William McKenzie, alone. May 1st, Mrs. William McKenzie, alone. May 12th, Mrs. William McKenzie, alone. May 15th, Mrs. William McKenzie, alone. May 29th, Mrs. William McKenzie, alone. June 8th, Mrs. William McKenzie, alone. June 19th, Mrs. William McKenzie, alone. July 9th, Mrs. McKenzie, and Doman was with her, one of our salesmen in the store. 30

Q Now, these days she was alone, as it appears on your records in connection with the entries appearing on the various dates you have given us, does that mean that Mrs. McKenzie was 40

John J. Williams, cross.

the only person that went to the box on that date? A Yes, sir; that she was alone. There was nobody accompanying her.

Q Nobody accompanying her to your office at all? A Yes.

10 Q If anyone else came with her who did not go beyond the grill work, would you have an entry to that effect in your book? A Yes; we would have an entry of a gentleman or a lady; if we knew who it was we would have the name.

Q So whoever came downstairs in the basement, where, I understand, the vaults were, if anybody came down with her to the basement then there would be a note made to that effect in the book? A Yes, sir.

20 Q So that when you say, "alone," under each of these various dates you have given, you mean that she came down to the basement alone? A Yes.

Q Will you let me see the entry you have under date of April 9, 1914? A (Indicating on book.) April 9th.

30 Q Well, that entry simply reads, "April 9th, McKenzie, Mrs. William." And under the head of "Box No." is "630." Under the head of "Room" is "3." Under the head of "Time admitted" is "4.05." Under the head of "time left," "4.45," and then under the head of "With whom" is the word "alone." Those are the only entries appearing in that book under that date? A Yes, sir.

40 Q You testified, however, that on that date Mrs. McKenzie had the safe transferred to her own name. Where did you get that information from, any record you have with you? A Yes, sir; right here (indicating).

John J. Williams, cross.

Q You produce now, do you, a signature card? A Yes, sir.

Q You produce a card headed, "No. 630, Tiffany & Co.?" A Yes, sir.

Q That card, I observe, is signed by Mrs. McKenzie. Do you recognize her signature? A Yes, sir.

10

Q And was it so signed by her on April 9, 1914? A Yes, sir.

Q The reverse side of the card only is used in case a deputy is appointed to have access to the box? A Yes.

Q And that is blank in the case of this card? A Yes, sir.

Mr. Collins. And of the other card, the first one.

Q And that is also true as to the card which has already been read into the record and marked Exhibit 1 for the defendant, M. S. McKenzie? A Yes, sir.

20

Q Above Mrs. McKenzie's signature on this card appears the following: "New York, April 9, 1914. I hereby acknowledge to have received this date from Tiffany & Co., four keys to the safe, No. 630, as also relative contract No. 630." Were any new keys given Mrs. McKenzie at that time? A No; there was not.

30

Q What is this relative contract that is referred to? A That is the contract right there (indicating), the contract on the card.

Q You mean that that relative contract is embraced in the small printed part on the face of the card? A Yes, sir.

Q And this is your company's record of the transfer of Box No. 630, made on that date from the names of Mr. and Mrs. McKenzie—

Mr. Collins. "William or—"

40

John J. Williams, cross.

Q From Mr. or Mrs. William McKenzie to Mrs. William McKenzie? A Yes.

Mr. Faulks. I do not care about having this card marked; but I want it identified, so that we can offer it. I will offer it at this time if you say so.

10

Mr. Collins. I am willing it should be offered out of turn.

(Mr. Faulks reads as follows: "No. 630, Tiffany & Co. Card. Name, Mrs. William McKenzie. Pass word, blank. Height, blank. Weight, blank. Light or dark, blank. Remarks, blank. Leased, April 9-14. Expired, April 9, '15. Surrendered, blank. No. of receipt, blank. Rate, 32. Paid, April 9-14. Key No. 761.")

20

Then in small type across the face of the card appears the following: "One. No person other than the renter or approved deputy named in the books of the company or legal representative (in case of the death, insolvency or other disability of the renter) shall have access to the safe, excepting as hereinafter expressly stipulated. Where the safe is taken in the names of two or more persons, in the absence of special directions given upon the company's books, either person alone will be permitted to have control of the safe.

30

Two. The company reserves the right to terminate at any time the renting and possession of the safe upon their notice mailed to the address of or otherwise delivered to the renter; or, if absent, to the deputy designated upon the books, or to any other legal representative, and upon the surrender of

40

John J. Williams, cross.

the keys to the safe and the removal of its contents, a due proportion of the rent received will be refunded. Notice of any change in an address must be immediately given to the company.

Three. All rents of safes are payable in advance. If the renter of a safe, at the expiration of any term or upon any earlier termination as above provided, shall not renew said renting and shall fail to give up possession of the safe, the company shall have the right, at the end of fifteen days after mailing notice of their intent or action to the address of the renter as registered in their books, or after service thereof, to forcibly open the safe of said renter in the presence of the president or treasurer, and of one other witness, and remove the contents therefrom, and to hold and retain the same on special deposit, subject to the payment of all rents that may be unpaid, and to charge for the use of the safe after the ending of the term proportioned to the annual rent, and all expenses incurred in opening the safe and changing its locks and keys, and also for the safekeeping of the contents after their removal from the safe.

Fourth. Boxes must not be opened or papers examined within the vault, but in the rooms provided for such purpose. The safe must not be left unlocked.

Fifth. The person hiring a safe agrees to surrender the same at the expiration of the term, in as good order as when received, reasonable use thereof only excepted; to make all such repairs as may be rendered necessary by his own or his agents' acts, or

John J. Williams, cross.

neglect and to employ for such purpose only such workmen as the company shall select. The cost of replacing a lost key will be paid by the renter.

10 Sixth. The person hiring a safe agrees not to assign his contract, nor to sublet said safe, nor any part of it, under penalty of forfeiture of this contract, nor to use the safe for any other purpose than for the storage of valuable papers and property, nor to mark or deface it in any way.

Seventh. Satisfactory reference must be given upon application for a safe."

20 Then, below that: "Address, Carlton Hill, N. J." Then, "New York, April 9, 1914, I hereby acknowledge to have received this date from Tiffany & Co., four keys to the safe, No. 630, as also relative contract No. 630. Margaret McKenzie."

The Advisory Master. The card just read by Mr. Faulks should be marked Ex. 17 for defendant Ladd, October 16, 1914.

30 Q Will you look at your book and see whether it contains any entry of a visit made to safe deposit box No. 630 by Mrs. McKenzie on the date of May 27, 1914? A (After referring to book.) No, sir. I have no such entry. May 28th—

Q May 28th? A Yes.

Q You did not give me that date before; at least, if you did, I did not take it down. I have an entry of May 15th, Mrs. McKenzie, alone, and May 29th, Mrs. McKenzie, alone? A May 15th, May 29th and May 28th.

Q Possibly I missed that.

40 *Mr. Collins.* You omitted May 28th.

John J. Williams, cross.

Q There was no entry under date of May 27th? A No, sir.

Q Do you know what day of the week the 27th was? A No, sir.

Mr. Collins. May 27, 1914, was Wednesday.

Mr. Faulks. I think you did not offer your keys in evidence, Judge. 10.

Mr. Collins. I was going to do it when I call Mrs. McKenzie.

Q I show you a key bearing the number 761, marked "Remington & Sherman Co., Philadelphia and New York." Let me have the other one, Judge. Isn't that another key to box 630? A Yes.

Q And is an exact duplicate of the key marked "761" that Judge Collins showed you a few minutes ago? A Yes, sir. 20.

Q You were unable to identify the small key on the same ring that carries the large key that Judge Collins showed you. Can you identify either of the keys carried on the string containing the large key which I have just showed you? A I can identify this as belonging to—as the same make as our small keys for the safe deposit box. This one key is the same make key—

The Advisory Master. Describe it. 30

Mr. Faulks. Referring to one of the two small keys on the same string as the big key, No. 761, which I have just shown him.

Mr. Collins. It is the same make?

Witness. It is the same make as our keys for our small boxes, for the inside tin boxes.

Q Now, look at the other small key carried on the same string. A I have no idea what that is for. 40

John J. Williams, re-direct.

Q That is different from the— A Different from any key that we have.

Q Now, the small key that you first referred to is marked "Corbin, New Britain, Conn., U. S. A.," and that is a key to one of the tin boxes in your safe deposit vault? A I should
10 think so, without trying it; yes. It is the same kind of key. There is no identification on that key at all to identify it by.

Q The other key does not relate—is not a key in connection with one of the tin boxes in your safe deposit vault? A No. It is unlike any key I have ever had.

Q I understand you are not able to fix the time when Mrs. McKenzie separated some keys which she had with her? A No, sir.

20 Q Do you know who paid the rent that was charged for either box 630 or box 631? A Previous to April 9th, do you mean?

Q Yes; previous to April 9th. A No; it has always been charged to the account and paid through the office. I presume Mr. McKenzie paid it.

Q You have no knowledge? A No.

Mr. Collins. I move to strike that out.

30

The Advisory Master. Strike it out.

Q Do you know whose account the rent would be charged? A In both names.

Q Just as it appeared on the signature card? A Yes, sir.

Re-direct examination by Mr. Collins.

Q Did you look at Exhibit 1 for Mrs. McKenzie? Who made out the card? A I did.

40 Q Then you were present when both Mr. and Mrs. McKenzie signed it? A Yes, sir.

John J. Williams, re-direct.

Q It was signed in your presence. Did he ever come there after that, except on this occasion that you have named when he stayed out in your office? A I don't remember that he ever did; no, sir.

Q You stopped at a date—or, rather, Mr. Faulks stopped at a certain date, July, 1914? A Yes. 10

Q Was there an occasion when Mrs. McKenzie and her counsel, who is now addressing you, Mr. Collins; Mr. Bell, who is an attorney and counsel here present representing James McKenzie; Mr. Luce, the complainant's solicitor, and Mr. Rurode, representing the appraiser or controller, were there, and the safe was opened July 13th? A July 13th?

Q Yes. A July 13th, referring to the book, Mr. Ladd, Mr. Bell, Judge Collins, New Jersey deputy, and a man. That is the entry made by my assistant. He did not know the names. 20

Q A man? A Yes.

Q The key which you identify, No. 761, produced by Mr. Faulks just now, is like the larger one that was shown you to the other safe? A Yes, sir.

Q Not to the inner. Now, I show you the small key which you say is to the lock of the tin box, and which is annexed to the large key that I produce? A Yes. 30

Q And I ask you if it is not a fact that the indentations on the one that I produce, on the key ring with the big one, differ from the indentations on the two little ones produced by Mr. Faulks? A (After comparing keys.) Yes; they are different keys.

Q I show you another one that has not yet been shown you, another small key I now produce, and I ask you if those two, the two small 40

John J. Williams, re-cross.

ones on the key ring and the one I produce are not identical in the indentations? A (After comparing keys.) Yes, sir; I should say they were. Those keys are made so similar that the very least difference will make a difference in the key.

10 *Mr. Collins.* They are identical and the others are not.

Mr. Faulks. Is the witness able to positively say that they are identical?

The Advisory Master. He says, "I should say they were."

Mr. Collins. I want to know whether he can be positive about it.

(Keys referred to are again shown to witness.)

20 *Witness.* Yes. I should say these are identical.

Q And identical in thickness also? A That would not make any difference.

Q It would not make any difference? A Not in those.

30 Q Of course, you can not tell us here whether the little key was the one that opened the tin box. I suppose we will either have to ask counsel to go over and try it or admit it, or take Mrs. McKenzie's word for it. But there is no doubt about it that that is the one.

Re-cross examination by Mr. Faulks.

Q You have already testified that when the box 631 was taken on July 3, 1907, there were two outside and two inside keys given to Mrs. McKenzie, were there not? A In 1907?

40 Q When the original box No. 631, was taken on July 3, 1907. You have testified the two

John J. Williams, re-cross.

outside keys and the two inside keys were then given to her.

Mr. Collins. No. When the four were given her it was on the change.

A When there was a change in the boxes.

Q Let us go back to the time box 631 was taken out, the first box. Were there two small keys and two large keys issued at that time? A Yes, sir, there were. 10

Q Have you any record or recollection as to who the keys for that box were given to? A No, I have not, no, sir.

Q Now, you say that that box was changed about a year later because of some trouble with the keys? A Yes, sir.

Q Are you saying that from recollection or from some record you have with you? A No. I have no record of it, but I remember it very well. 20

Q And at that time were all four of the keys for the first box, No. 631, surrendered? A No, sir, they were not.

Q They were not surrendered? A No, sir.

Q Why didn't you require them to be surrendered? A Well, I don't know. I couldn't get them just then, and beside there was some trouble with the lock. The outside door lock would not work properly, the tumblers did not work properly and I had a new lock put on it, so I just transferred or gave Mrs. McKenzie the next box to it, 630. 30

Q You did not then secure the surrender of the old keys? A No.

Q Did you later on get the old keys back? A No. Remington & Sherman put a new lock on, a vault lock. 40

John J. Williams, re-cross.

Mr. Collins. It did not make any difference after you had the new lock on what became of the old keys.

10 Q You never got the old keys back? A We had one key there at the time Mrs. McKenzie made the change, but the other key we did not get.

By Mr. Collins.

Q The outer key or the little key? A The outer key.

Q You had one of the outer keys left? A Yes. Otherwise we couldn't have got in it.

By Mr. Faulks.

20 Q When you originally rented box 631 in the names of Mr. or Mrs. William McKenzie, four keys were delivered, were they not, two inside and two outside keys? A Yes.

Q The outside being the big keys and the inside the smaller ones? A Yes.

Q Now, do you say you retained any keys to that box? A If we retained them?

Q Yes. A No, sir.

30 Q How would you open that, with a master key? A We could not open it except with the two keys that Mr. and Mrs. McKenzie had.

Q Now, the trouble that developed in connection with box 631 was in the lock in the outer door of the safe itself? A Yes.

Q And you had that lock changed? A Yes, sir. Yes, I am quite sure it was changed.

Q And you rented a new box, 630? A I just transferred the—

40 Q By just transferring the contents and the record from 630 to 631? A Yes. And another thing I remember also very well, the small key

John J. Williams, re-cross.

for the inside tin box that Mrs. McKenzie had was very badly bent.

By Mr. Collins.

Q How is that? A The small key for the inside box at that time was very badly bent, when I made this change, also. 10

By Mr. Faulks.

Q When you made this change the safe 631, the old safe, was opened? A Yes.

Q And the box within that safe was also opened, was it not? A Was opened?

Q Yes. A It was opened when Mrs. McKenzie opened it, yes.

Q With keys that she had with her? A Yes, exactly. 20

Q And the contents of the box were then transferred to box No. 630? A Yes, sir.

Q And didn't she at that time surrender any of the keys to the old box 631? A Yes, sir, she surrendered the keys that she had.

Q One outside and one inside key? A Yes, sir, all she had, I guess.

Q All that she had with her as far as you know? A Yes, as far as I know.

Q And she did not then or thereafter surrender the other set of keys to the box 631? A I don't think that we ever got the other keys. 30

Q When that transfer was made in that way you handed her the keys for the new box, 630, two outside and two inside keys? A When this transfer was made?

Q When this change was made from box 631 to 630? A Yes.

Q Did you make any entry on your record of this change? A Only simply changed the numbers on the card. 40

John J. Williams, re-cross.

Q On the card that Judge Collins has already had read into the record? A No, this is a subsequent card here.

10 *Mr. Collins.* A continuation card that I did not bother to put in. It better be put in now. You see it is the same blank, only what you might call a second addition of it. So I did not bother with it. It is not essential.

The Witness. It is just a renewal.

The Advisory Master. They changed subsequently to a new number.

Q There is nothing on this card you have now produced which shows the date under which the change from box 631 to box 630 was made, is there? A No, the only thing I can go by is
20 the talk we had in the store the year the number was changed.

Mr. Collins. And that year was what?

The Witness. 1908.

Q You haven't any record with you showing what keys of box 631 were then or thereafter surrendered? A No, sir.

Q And you haven't any record showing to whom the keys for box 630 were handed? A
30 I have no record of that.

Q Now, is there any record at the office of the company? A No, sir.

Q On either of these matters, that is as to the surrender of the old keys or the person to whom the new keys were handed? A When we changed the box?

Q Yes. A No, sir.

Q What record have you of the transfer that was made of box 630 from the name of Mr. or
40 Mrs. William McKenzie to Mrs. William Mc-

John J. Williams, re-cross.

Kenzie, under date of April 9, 1914? A (Indicating). This is the card you have read.

Q Oh, that is the one I have read into the record? A Yes, sir.

Q Have you any record of the surrender of the old box 631 on that date? A (Witness indicates).

10

Q On the card which you have now produced and which Judge Collins has spoken of as the continuation card, I notice under the head of "surrendered" the following in red ink: "\$8. C. R. 4/9/14." What does that entry mean? A That is credit on the rent for the previous year.

Q Credit on the rent of box 630 for the previous year? A Up to 1914.

Q That is a quarter of the annual rent? A Yes.

20

Q And that entry shows the payment of the annual rent for what period? A Mrs. McKenzie, when she made this transfer, paid for a year. These (indicating) are charged there in advance.

Q Are the rentals charged in advance? A Yes, sir.

Q When Mrs. McKenzie had this box, 630, transferred to her own name on April 9, 1914, did she make any payment of rentals? A Yes, sir, she paid.

30

Q She paid how much? A \$32.00.

Q Well, the rental on box 630 had been charged prior to that time for the calendar year in each case, had it not, from January first to January first? A No, charged from July 3rd to July 3rd, 1914. This change was made on April 9th, so that we would credit the account there with \$8, the difference on \$32 a year; and Mrs. McKenzie paid on the 9th of April \$32 for this box.

40

John J. Williams, re-cross.

Q Did she pay \$32 or \$24? A I am quite sure she paid \$32.

Q Where did this credit of \$8 on the box go to? A That was made to the account. Mrs. McKenzie has an account in the store.

10 Q So she had \$8 credited to her account on account of the then current year's rent, and paid \$32 for one year's rent in advance? A That is right.

Q You have now shown us all the records you have in reference to these boxes? A Yes. We have one other book that all the entries are made in each month and the renewals each year, but there is nothing that would—

Q Nothing that has not been covered by what you have already testified to? A No, sir.

20 Q Does box No. 630 still stand in the name of Mrs. McKenzie? A Yes, sir.

Q Has she ever had any other box than 630 or 631 in your company? A No, sir.

Q Did Mr. William McKenzie ever have any other box with your company than either one of those? A No, sir.

By Mr. Collins.

30 Q The third card produced which someone called a continuation card is a mere continuation showing the rent charged and payments. They are not signed by anybody? A No, sir.

Q And on that continuation card you noted the change of the number of the box? A Yes.

Q Can you tell by the record what the key number was of box 631, the first box? A Yes.

Q What was it? A 717.

40 Q Now, in your list of the people that were present on July 13th you said one, "a man."

Dr. John J. Sullivan, direct.

You have seen the Rev. Mr. Ladd here? A Well, Mr. Walsh made this entry.

Q You were there? A Yes.

Q And that was the Rev. Mr. Ladd? A Yes.

Mr. Collins. Now, Doctor Sullivan is here under subpoena and I do not want to keep him waiting. 10.

The Advisory Master. I will accommodate you in any way you wish.

DOCTOR JOHN J. SULLIVAN, a witness produced on behalf of the defendant, Margaret Stewart McKenzie, being duly sworn, testified as follows:

Direct examination by Mr. Collins.

Q Dr. Sullivan, you are a practicing physician of many years standing in Passaic, New Jersey? A Yes, sir, Passaic. 20.

Q Did you know the late William McKenzie, whose post office address was Carlton Hill, and I think the homestead was in East Rutherford? A Yes.

Q You knew him? A Yes.

Q Were you called in consultation in his last illness? A Yes. 30

Q When did you begin to attend him? A I saw him first on March 16th, and I saw him from two to four times a day until April 12th, when he died.

Q When did he become unconscious? A He became unconscious between the 6th and 7th.

Q Of April? A Yes.

Q You say between the 6th and 7th— A Well, I saw him on the 6th and he was conscious, and there must have been a further hemorrhage 40.

Dr. John J. Sullivan, cross.

that evening and he was totally unconscious on the 7th.

Q Up to April 6th he had been conscious and able to converse?

Mr. Faulks. Well, the doctor has not said that.

10 Q Well, had he been? A From March 16th until March 28th he was perfectly rational and clear in every respect. On March 27th, between that and the 28th, he had a secondary hemorrhage which made his mind cloudy at times.

Q He had a secondary hemorrhage that made his mind cloudy at times? A Yes. Then he varied from that time until the 7th, when he became totally unconscious.

20 Q Between the secondary hemorrhage and the 7th he varied? A Yes.

Q Describe how? A There would be times when he would be incoherent and misunderstand questions asked. He would be cloudy; and there were other times that he seemed to be quite clear and he comprehended me fully. There was no time he was unconscious until the 7th.

Cross examination by Mr. Faulks.

30 Q You saw Mr. McKenzie every day from March 16th until his death? A Yes.

Q From two to four times a day during that entire period? A Yes.

Q What was the nature of his trouble, doctor? A He had a hemorrhage into the motor area of the right side of the brain which paralyzed the left side, the hemorrhage, of course, being on that side and his being a right handed man it did not affect the centre of speech. That would be only in case of hemorrhage in the left
40 area or the centre of speech, which is the third

Dr. John J. Sullivan, cross.

ventricle, that would cause lack of speech in a right handed person. His speech continued and his voice was natural and so on until the pressure became so great from the second hemorrhage, and then, of course, his speech was considerably interfered with; but he was conscious and normal in every mental condition from the 16th up to the 28th. 10

Q You spoke of a hemorrhage, of the first hemorrhage, and then of a secondary hemorrhage? A I meant the second hemorrhage, not secondary.

Q The second hemorrhage. Did each of these hemorrhages result in what is commonly known as a stroke of paralysis? A A stroke of paralysis, yes.

Q Was each of these hemorrhages in the left brain? A The left side was paralysed, so the hemorrhage would be in the opposite side from the part that was paralysed. The fibres cross into the brain. 20

Q Were the hemorrhages on the other side of the brain? A Yes.

Q What effect did they have on his ability to use his arms and legs? A Well, the hemorrhage, when it first took place, was in the motor area—that extends from below up. We could locate exactly where the hemorrhage was from the paralysis that was there. The paralysis of the arm was more complete than the leg, so it showed the hemorrhage was down quite low in the motor area. 30

Q Was it his right arm that was paralysed or the left? A His left arm.

Q And his left leg? A Yes.

Q But it was not until he had the second hemorrhage, between the 27th and 28th of March, 40

Dr. John J. Sullivan, cross.

that his speech was affected? A It was then that the speech began to be affected.

Q Was he confined to his bed from the time of this first hemorrhage until the time of his death? A He was confined to his bed, but we changed his position, fearing a hyperstatic pneumonia, which is likely to develope with a man of his years.

Q He died from the result of those hemorrhages? A Yes, but in the last week there was a development of what is called hyperstatic pneumonia, which is usually the case in conditions of that kind.

Q Were there any other complications? A As I remember, no; there were no other complications; no, sir.

Q And after this second stroke which occurred between March 27th and 28th his condition of mind varied greatly as I understand, sometimes being cloudy and sometimes being clear? A Yes.

Q You mean to say he was not totally unconscious at any time prior to April 6th? A Yes, sir, between the 6th and 7th.

Mr. Collins. Now, if your Honor please, I am ready to hear the rest of Mr. Faulk's case and I think his case ought to be closed before I go on.

The Advisory Master. Were there two witnesses from Tiffany's whom you wanted to call, or one?

Mr. Collins. No. Mr. Williams knows it all. Mr. Faulks stated he wanted to prove something about tracing payments, and also to produce the Tiffany people, but I have the Tiffany people. Now he asks for leave to

Dr. John J. Sullivan, cross.

call Mr. Widows but that is a matter of discretion with your Honor, but whatever he does call I want to have it done before I go on with my case.

The Advisory Master. Do you want to call Mr. Widows first?

Mr. Faulks. Yes.

10

The Advisory Master. I will admit his evidence.

Mr. Collins. There is another subject I did not know the doctor knew about.

By Mr. Collins.

Q Doctor, my attention has been called to another subject that I did not know you knew. You know Mr. George Duncan? A I met him once at the house of Mr. McKenzie.

20

Q (Indicating). Is that the gentleman? A Yes.

Q You met him at Mr. McKenzie's house? A Yes.

Q What day of the week was it? A It was on a Sunday afternoon.

Q What Sunday was it? A It was the Sunday preceding the Sunday he died, which would be Palm Sunday; that would be the 5th of April, I think.

30

Q Mr. McKenzie died on Easter Sunday? A Yes.

Q And this was the 5th of April? A Yes, sir.

Q And he was at his house? A Yes.

40

Frank Widows, direct.

FRANK WIDOWS, a witness produced on behalf of the defendant Ladd, being duly sworn, testified as follows:

Direct examination by Mr. Faulks.

Q Where do you live? A Carlton Hill.

10 Q Were you employed by the late William McKenzie, at the time of his death? A Yes.

Q How long had you been employed by him then? A About three years I believe.

Q In what capacity? A As coachman, private coachman.

Q And you were working at his residence as a coachman during the time of his last illness were you? A Yes, sir.

20 Q Do you remember on one occasion being summoned to the room where Mr. McKenzie was confined at that time? A I was summoned lots of times.

Q You were there every day, were you not? A Every day, two or three times a day sometimes.

Q Do you remember one occasion when you were summoned to the room and directed to go to Mr. McKenzie's office and get some papers and money? A Yes, sir, I remember it well.

30 Q Tell us how you came to go to the room at that time? A Mrs. McKenzie rang for me and I was down at the stable and I went up and she called out of the window to come straight up to Mr. McKenzie's room.

Q You mean Mrs. Margaret McKenzie? A Yes.

Q Did you go up to the room? A I went straight up to the room.

40 Q Who did you find there? A Mrs. McKenzie and Miss Machinter, the trained nurse.

Frank Widows, direct.

Q And Mr. McKenzie was, of course, in bed?

A Yes.

Q Did Mrs. McKenzie say anything to you at that time? A She said Mr. McKenzie had some orders for me and I leaned over to him but I couldn't catch what Mr. McKenzie said. His voice was kind of hoarse, kind of going away, and Mrs. McKenzie said, "Did you understand what Mr. McKenzie said?" And I said, "No," so she repeated what he had said, that I should go to Mr. James McKenzie and ask for a hundred dollars in cash, an envelope belonging to Mrs. McKenzie and the key to the safe. 10

Q Who was it said that to you? A Mrs. McKenzie repeated what Mr. McKenzie had said and she told me to lean over again and get the order from Mr. McKenzie himself and she says, "I have a witness here, Miss Machinter," and that time I did hear what Mr. McKenzie said. 20

Q On the first occasion you did not hear? A I could not understand him on the first occasion.

Q And after he had said something which you were not able to understand what was it Mrs. McKenzie said? A She said to Mr. McKenzie, "You told Widows to go down and ask James to get \$100 in cash, an envelope addressed to myself and the key to the safe." And she says, "You bend over and he will tell you that order," and I did and when I stood up again she said, "Now do you swear you heard that? I have the witness here. Do you swear you heard Mr. McKenzie say that?" 30

Q Did she say who the witness was? A Yes, Miss Machinter, and I repeated what Mr. McKenzie said to me.

Q Then you went to the mill? A Then I went to the mill and saw Mr. McKenzie and gave him my orders. 40

Frank Widows, direct.

Q What did he give to you in response to repeating to him the orders that you had? A He went to the safe and looked through it for this envelope and finally got to one and he said, "This must be it," and laid it on the table, and he said, "Wait a few moments and I will look a little further," and then he finally said, "That must be it," and he called his son and told him to give me a hundred dollars and he took the first envelope, addressed it to Mrs. McKenzie and put it in another envelope and handed it to me and asked me to sign a receipt for it and he handed me the hundred dollars in cash and I receipted for that and he said, "You can tell father I am not through with the key to the safe."

Q You took the money and the first envelope which he had placed in another envelope? A Yes.

Q And took them back to the house? A Yes.

Q And gave them to whom? A To Mrs. McKenzie. She was in the upper hall and as soon as I handed the envelope to her she said, "This has been tampered with." I said, "It has not, madam. It is in another envelope; it was placed in there in my presence. Mr. McKenzie never tampered with the envelope."

Q The envelope that was taken from the safe, did you have an opportunity to see whether it was sealed or not? A Yes.

Q Was it sealed? A It was.

Q Was it tampered with before it was put in that envelope? A No, sir.

Q What was the size of the envelope taken from the safe? A About like that (illustrating).

The Advisory Master. The witness is shown the bill of complaint filed in this

Frank Widows, direct.

cause and is asked whether it was an envelope large enough to have received that bill of complaint.

The Witness. Oh, yes.

The Advisory Master. Was it considerably larger than would have been required to have held that bill of complaint? 10

The Witness. Not considerably, but it was quite large.

Q How big was the package? A I should think about an inch thick.

Q Do you remember the color of the envelope? A Yes, sir, a yellow, an ordinary wrapping paper color.

Q A manila color? A Yes.

Q That envelope you say Mr. James McKenzie put into the outside envelope? A Yes, sir. 20

Q Did he seal the outside envelope? A Yes, sir.

Q Do you know whether or not he addressed it? A He addressed it to either Mr. or Mrs. McKenzie. I couldn't really swear to that.

Q And you delivered it to Mrs. McKenzie? A Yes.

Q And also gave her the money? A Yes, sir. 30

Q Shortly after Mr. McKenzie's death, did you leave the employ of the household? A Yes, sir, the Monday following Mr. McKenzie's funeral.

Q Did you return and go to work for Mrs. McKenzie some time subsequent to that? A Five weeks after that.

Q At any time shortly after your return, did you go to New York with Mrs. McKenzie? A On several occasions; yes, sir. 40

Frank Widows, direct.

Q On any of those occasions did you accompany her to the store of Tiffany & Company on Fifth avenue, New York? A I went to Tiffany's with Mrs. McKenzie.

Q When you went to Tiffany's with Mrs. McKenzie was there any package taken over? A
10 Yes, sir; I was called up to the house and told to get ready to go on either the nine or nine-thirty-five train.

Q Told by whom? A By Mrs. McKenzie. When we started for the train she handed me the package and said, "For goodness sake, don't lose sight of this or lose it; there is some very valuable papers in it."

Q What was the size of the package she handed you? A It would be a foot long and
20 nearly a foot square, and on the way down she took the package away from me, and we went first to Judge Collins' office, I think, and from there we went to Tiffany's, and she told me to wait on the main floor in Tiffany's while she went down to the deposit boxes, the safety vaults. I stayed on the main floor and Mrs. McKenzie took the elevator down to the vaults, and I was there quite some time, and when she came back she was smiling and she gave me this same envelope, and she said, "Now, if anybody wants that
30 let them have it. They will have the pleasure of reading the morning paper." She had put the papers in the safe and substituted a morning paper.

Q Did you look at the envelope? A When I got home I did.

Q Did she ask you to give her the envelope? A No, sir; I destroyed the envelope and the
40 paper.

Frank Widows, cross.

Q It was just a newspaper? A It was just a newspaper.

Q What part of the journey to New York was it she handed to you the envelope or package which she then had? A Going to New York? Right at the house.

Q When was it in the course of your journey that she took it back into her own possession? 10

A Before we got to the railroad station.

Q And she carried it the rest of the way? A The rest of the journey.

Q Going home you carried it all the way? A Yes; I carried it going home.

Q How soon after you returned to the employment of the McKenzie household was it you made this trip to New York with Mrs. McKenzie?

A I think I came back on a Friday, and it must have been the following Monday or Tuesday. 20

Q Within three or four days? A Oh, yes; within three or four days.

Q Have you any way of fixing the date of the month or the day of the week you went to the office and got the envelope and money you told us about? A No; I have not.

Q Neither the date of the month or the day of the week? A No; I could not remember that. Mr. McKenzie knows, I think. I signed a receipt. 30

Cross examination by Mr. Collins.

Q When did you go to work for Mrs. McKenzie—after Mr. McKenzie's death? A It would be five weeks after.

Q He died on Sunday, the 12th of April? A Yes.

Q When was it you went back to work? A About five weeks after. 40

Frank Widows, cross.

Q On a Sunday? A No; on a Saturday.

Q On the Saturday before the five weeks?

A Well, I can easy figure it up. Mr. McKenzie was buried on a Wednesday, the 15th, and I left on the following Monday, and I was away not quite five weeks.

10 Q Not quite five weeks? A I went back on a Friday before the Monday that would have been the five weeks.

Q That would have been the five weeks? A That I left Mrs. McKenzie.

Q You left on Monday, the 20th, and you came back on the Friday before the Monday that would have been five weeks? A Yes, sir.

20 Q You came on Friday, the 22nd of May, and you think it was within a few days after that that you went to Tiffany's? A Yes; within a few days.

Q Did you go in a carriage, as driver? A No, sir. We walked down to the Erie Station and got off at Jersey City, and from there we went to Judge Collins' office.

Q You walked from the house to the Erie Station and you carried this package about a foot square? A Yes.

30 Q And she said it had valuable papers in it? A Yes, sir.

Q And when you got to the station she took it from you? A Before we got to the station.

Q Then you came on the steam cars to— A Jersey City.

Q And took the tube over? A I think we walked that day to the office.

40 Q Walked all the way from the Erie Station? A I think we walked that day. One day we walked. I was there twice and once out of the twice we walked.

Frank Widows, cross.

Q How did you come the other time? A We must have took the tube, I think.

Q The time you walked—do you mean you walked all around through the streets of Jersey City? A Whether we took the tube or not—I am not positive about that. But I know it was quite some walk from where we got out to this office we went to. 10

Q You say one time you did take the tube? A Yes; but I wouldn't swear—

Q On that occasion, did you go to Mr. Collins' office? A Yes; both times.

Q Both times you went to Mr. Collins' office? A Yes.

Q Can you tell which time you took the tube, the first or the second time? A No, sir; I cannot. 20

Q How far apart were these two times? A It couldn't have been very far. I don't think it could have been much more than a week.

Q But the time you had the package was the first of the two times? A That I don't know, but I do not think it was.

Q Did you go up into Mr. Collins' office? A No; I stayed down at the foot of the elevator each time I was there.

Q But she went up and stayed a while and came out? A Yes. 30

Q Did she take the package with her? A Yes, sir.

Q And brought it down again? A And brought it down again.

Q You went to Tiffany's, I suppose, by the tube. You went across to New York by the tube and— A No. I believe that day we went to Tiffany's we took the ferry from the Jersey side. 40

George A. Duncan, direct.

Q Then how did you get to Tiffany's from the ferry? A By trolley.

Q And when you got there you stayed upstairs and she went downstairs? A I was up on the main floor and she went down on the elevator.

10 Q When she came back she had the same sort of a looking package? A Yes.

GEORGE A. DUNCAN, recalled on behalf of the defendant Ladd.

Direct examination by Mr. Faulks.

Q Mr. Duncan, I show you a number of checks of the late William McKenzie, drawn on the Rutherford National Bank and the Hobart Trust Company, contained in two envelopes—
20 one marked "William McKenzie, Book 156"; the other envelope marked "Payments, 156 and 918." Have you already examined these checks? A Yes, sir; I have.

Q All of these checks are drawn, are they not, to the order of the East Rutherford Savings, Loan and Building Association? A Yes, sir.

Q And does each of them contain on the back an entry in lead pencil, the figures showing the
30 payments to the association which that check covered? A Yes, sir.

Q Can you tell us, from your examination of these checks and comparison of the payments made by them with records which you had here the other day, what payments to the association the checks cover? A They cover payments that were credited on Books No. 156 and No. 918.

Q Were there any payments credited on either of these books, for which checks are not
40 now produced—that is, Mr. McKenzie's checks

George A. Duncan, direct.

are not now produced—and, if so, what payments were they? A Well, there was one payment of \$1,000 on Book No. 156 and \$200 on Book No. 918 that no check has been produced for.

Q You don't find the check in either one of those envelopes—checks of William McKenzie, covering those two specific payments? A No, sir. 10

Q But all the other payments made in those books—that is, books 918 and 156, were made by means of those checks? A Well, there is one exception of a payment on 918, where one of our own checks was credited to the book on prepaid shares, simply credited to the account of 918. There were several credits on book 156 that were made by transfer in the office.

Q But with those exceptions that you have mentioned all of the other payments credited to either books 156 or 918, old or new, were made by these checks which I have shown you? A Yes, sir. Old or new? I only refer to the old book. 20

Q You have not examined as to the new book? A No, sir.

Q You covered that by your testimony the other day? A Yes, sir; by the ledger. 30

Mr. Faulks. I don't know as it is relevant or worth while to encumber the record with these checks. I want it to appear we have produced all of his checks to the order of the Building and Loan Association which we have been able to find, and they cover payments which have been testified to by the witness. There are quite a number of the checks. It hardly seems worth while to have them go in evidence. 40

George A. Duncan, direct.

By Mr. Collins.

Q The checks are in two envelopes — one marked "Payments, 156 and 918"; the other marked "156." What is that? A Those marked 156 were credited to Mr. McKenzie's book only, and the other would be where checks
10 paid for more than one book; one check was made out, covering more than one book.

Q Now, on the checks in the envelope marked "Book 156," there are pencil entries of dates and what not? A Yes.

Q Who put those on? A Mr. William G. McKenzie.

Q Who is he? A The young man sitting alongside of you.

Q When did he put them on? A About
20 Tuesday, I think it was.

Q Last Tuesday? A Yes.

Q Did he try to trace these checks through the books? A Yes.

Q Now, there is nothing on the checks themselves, except the fact that they are signed by William McKenzie to the order of the East Rutherford Savings, Loan and Building Association, that would indicate what the payments were made for, is there? A No, sir.

30 Q 156, as I remember is the original book of installment shares and you are, in your testimony today, referring only to the old book? A Yes, sir.

Q Of that number? A Yes, sir.

Q And 918 was Mrs. McKenzie's book? A Yes, sir.

By Mr. Faulks.

Q You have compared these checks with the records of the association, have you not? A
40 Yes, sir.

George A. Duncan, direct.

Q And in that way you can tell to what payments they were applied? A That is the idea. That is why the numbers were there.

Q The checks corresponding with the dates of the entries in your books? A No; I would not say that because the check might be dated a day or two before.

10

By Mr. Collins.

Q I thought you said William G. McKenzie did that? A Yes.

Q Now counsel asks if you did it? A I was there at the time it was done. He couldn't do it without my books.

Q You had your books there? A Right in front of me; yes, sir, and he made the notation on the checks.

20

Q You and he together did it? A Yes, sir.

By Mr. Faulks.

Q You know whether or not the checks corresponded with the payments appearing on the books? A Yes, sir.

Q Do they or not? A They do.

Mr. Faulks. Now, I offer these checks, but it hardly seems worth while that they should be marked in evidence.

30

Mr. Collins. I object to the checks as irrelevant. It does not make any difference who made these payments on these instalment books, and particularly is that true with regard to Mrs. McKenzie's book, 918. That is an instalment book of her own. She drew the money and closed it out and it has nothing to do with this case at all. It is not brought into it, but your Honor, for precautionary reasons permitted it to be

40

Miss Isabel Guy, direct.

shown there was such a book, and I do not see there is any reason for proving Mr. McKenzie paid the instalments on Mrs. McKenzie's book 918.

10 *The Advisory Master.* I do not know that they are material and I do not know that they will ever be proved relevant, but I think that the way this evidence comes, nevertheless I will admit them.

Mr. Faulks. The envelope marked "payments 156 and 918" I will ask to have marked Exhibit C. We have a bundle of certificates, A and B.

(Marked Exhibit C for defendant Ladd, October 16, 1914).

20 *Mr. Faulks.* And I will have the other envelope, the one bearing the words "William McKenzie, book 156" marked Exhibit D.

(Marked Exhibit D for defendant Ladd, October 16, 1914.)

Mr. Faulks. That is our case.

30 MISS ISABEL GUY, a witness produced on behalf of defendant Margaret Stewart McKenzie, being duly sworn, testified as follows:

Direct examination by Mr. Collins.

Q Where do you live? A The Women's Dormitory, Columbia University, Whittier Hall.

Q And your age is what? A Thirty-eight.

Q And your profession or business? A Physical Educator, physical culture.

40 Q You are a niece of Mr. Justice Guy of the Supreme Court of New York? A I am.

Miss Isabel Guy, direct.

Q Did you form the acquaintance of Mr. and Mrs. William McKenzie of East Rutherford?

A I did.

Q Where? A At St. Regis Hotel, I suppose, about six or seven years ago. I do not remember just the date.

Q At the St. Regis Hotel in New York? A Yes. 10

Q What were you called in for? A To give some exercises to Mrs. McKenzie's knee, by Doctor Myers. She was ill at the time.

Q Some tendons in the knee needed manipulation and motion? A Yes.

Q And you did that? A Yes.

Q And for some little time? A Yes, for a number of months.

Q Did that lead to an acquaintance or intimacy? A It did. 20

Q Did you visit sometimes at their home at East Rutherford or Carlton Hill? A I did.

Q You remember visiting there last year, 1913? A I do.

Q What month was it in? A I was there a number of times, but I was there, I think the last time was the last of May or the first of June, on a Sunday, but I can't— 30

Q The calendar tells us that the first day of June was Sunday. A Well, I do not remember that.

Q And the Sunday before that would be May 25th? A Yes.

Q You think it was one of those Sundays, do you? A Yes; it was the very last of May or the first of June.

The Advisory Master. This year, 1914?

The Witness. No; 1913. 40

Miss Isabel Guy, direct.

Mr. Faulks. It was on a Sunday?

The Witness. It was on a Sunday.

Q Do you happen to recall whether Mrs. McKenzie's help had left her? A She did not have any help at that time because she was in and out getting the meal—the dinner.

10 Q Were you and Mr. William McKenzie together? A Yes.

Q And she was in and out? A Yes.

Q Where was it you were together? A I suppose they call that room the library; it was a large sitting-room.

Q Did the subject of the conversation turn on building and loan associations? A It did.

20 Q How did that come about? A I had some money and I asked Mr. McKenzie about building loans. I didn't know he belonged to one, but he told me about the East Rutherford one, and, in his little modest way, he said he didn't like to talk about his own, but he would help me to decide where to place the money.

30 Q What did he say about that one? A He said he thought it was the best building loan there was and he brought out a lot of papers and told me about what per cent. they paid and what it meant to a person who had very little money, and he went on and said—

Mr. Faulks. Is this developing into anything referring to this matter?

Q He had circulars, statements or books there? A He had a lot of paraphernalia about the building loan.

Q Did he say he started the association? A He said he started it.

40 Q Did he say anything about the rate of interest? A I don't remember that, but he said

Miss Isabel Guy, direct.

it paid a higher rate of interest than most building loans.

Q What did he say to you, if anything, about some investments in that association?

Mr. Faulks. I object to that.

The Advisory Master. I don't know how it is going to have any bearing. 10

Mr. Collins. Shall I open and state what he said?

The Advisory Master. No; not necessarily. Is it your idea to prove by this witness the statements which Mr. McKenzie made to her with respect to his own interests in that building loan association?

Mr. Collins. No; the statement is purely preliminary to what happened just shortly after, and shows how it happened. What he said to her is entirely consistent with the face of these papers, and it explains what happened. There is nothing they need fear in what he said. I can state just what it was if you want me to. 20

Mr. Faulks. I have no objection. I suppose it should not go on the record.

The Advisory Master. Let counsel state what it leads up to. 30

(After argument.)

The Advisory Master. Do you propose to show what happened by this witness?

Mr. Collins. Yes; certainly.

The Advisory Master. Let the witness tell what happened first and we will see whether the other has any bearing on it. So far, I do not think any of this evidence is competent. 40

Miss Isabel Guy, direct.

10 *Mr. Collins.* I think I have a right to ask the question and then, after you have heard the whole testimony, if any part of it, in your judgment, is incompetent, it can be stricken out, but I think I have a right to prove what Mr. McKenzie said on the subject of these investments.

The Advisory Master. You think you have a right to prove what Mr. McKenzie said in the presence of this witness, as to his own investments in this association?

Mr. Collins. As to this joint investment, the one we are talking about, the same certificates.

The Advisory Master. And is that based on the theory—

20 *Mr. Collins.* It is not intended to contradict what the documents show.

The Advisory Master. Is it based on the theory that what you propose to show is a statement by Mr. McKenzie against his own interest?

Mr. Collins. It is not.

The Advisory Master. How could it be admissible?

30 *Mr. Collins.* Just the same as it frequently happens that you cannot explain an occurrence of fact except by showing what led up to it. That is all.

The Advisory Master. Then I understand your statement to be that what you propose to show by this witness as to remarks or statements made by Mr. McKenzie has no bearing; those statements that have no bearing on the case at all, but they are desirable

40

Miss Isabel Guy, direct.

for the purpose of making intelligible what you propose to prove?

Mr. Collins. Exactly.

The Advisory Master. I will admit it for that purpose.

Q Now state what he said as near as you can? A I told him that I never had had much faith in building loan associations and he said: "To prove to you that I believe in mine, my wife and I have put our money in it," and he went on in his nice little way and said if he should die his wife would have the money to tide her over until things were all settled, and in between this Mrs. McKenzie had been flitting in and out in the way she does, and she came down almost immediately and put something in my hand and closed it over, and she said, "How do you feel having \$26,000 in your hand," and I said—

Mr. Faulks. I object to that and move it be stricken out.

Mr. Collins. It tends to show that Mrs. McKenzie had in her possession this \$26,000 worth of certificates; that, owing to what she heard said there by her husband about investments, the impulse seized her and she went and got the certificates and she put them in her hand, and she said, "How does it feel to you to have \$26,000 in your hand?"

The Advisory Master. That would be absolutely immaterial. If they were hers she might get them and put them in the hands of this witness or anybody else, or if they were her husband's or her son's.

Mr. Collins. Oh, that is true. The putting of them in the hands of this witness is unimportant, but the fact of the possession

Miss Isabel Guy, direct.

10 at that time, at that period of time, which is not long after the certificates were taken out—that she had them in her possession. They have claimed that in some way or other she got them after his death; that she asked Mr. Duncan where they were just before her husband died, and this is evidence to show she had them at that time herself in her possession.

The Advisory Master. Will this witness be able to testify as to just what those certificates were?

Mr. Collins. This witness and Mrs. McKenzie combined will.

20 *The Advisory Master.* But unless this witness can say what was put in her hands it will not have any more probative effect than Mrs. McKenzie's own testimony to that effect.

30 *Mr. Collins.* I will state what I am going to prove by Mr. McKenzie. I want to relieve this young lady from attendance. I want to prove by Mrs. McKenzie that what she did put in her hand was this bundle of certificates, \$26,000 worth. It is corroborative and it is helpful. Mrs. McKenzie, hearing her husband and this witness talking about the money invested in the building loan, in a jocosse way, gave what you may call a demonstration of such a thing to her friend. She got the certificates, put them in her hands and shut them and said, "How do you feel to have \$26,000 in your hands," and if I follow that up by the proof by Mrs. McKenzie that it was these certificates, then this witness' testimony is corroborated.

40

Miss Isabel Guy, direct.

The Advisory Master. Then this witness' testimony is absolutely needless unless she herself could identify it. The witness could only say what Mrs. McKenzie did, and what she said was handed her, and unless she verified that by examination of the documents or the certificates put in her hand—it might have been like the newspaper. 10

Mr. Collins. It corroborates the occurrence. It is a strange thing for Mrs. McKenzie to do. If Mrs. McKenzie came on the stand and testified to that you might think such an occurrence as that was unusual and improbable, but when it is corroborated by this disinterested witness it goes very far to satisfy your Honor this thing occurred, and that the thing occurred that this witness testified to, borne out by Mrs. McKenzie's testimony as to what it was she did— 20

The Advisory Master. I will admit the testimony as to what took place.

Mr. Faulks. I would like to be heard on that.

The Court. All right.

(After argument.) 30

The Advisory Master. I will admit the evidence. I do not see it has any probative force, but it is an evidence of an actual occurrence and a conversation in the presence of Mr. McKenzie, and I will admit it.

(Last answer read.)

Q What did you say? A I said I never expected to do a thing like that or never had it in my hands before—something like that. 40

Miss Isabel Guy, direct.

Q Did you notice the character and appearance of the papers she put in your hands, the color? A My impression is—

Mr. Faulks. The question is whether you noticed it.

10 *The Advisory Master.* I think counsel should ask if she can describe the papers put in her hands.

Q Describe it as well as you can. A I have an idea the paper was sort of yellow, but having very poor eyesight I never strained my eyes to read these, but my impression is they were something like that (illustrating).

Q Did you notice whether or not they were printed blanks filled in? A No.

Mr. Faulks. Objected to as leading.

20 *The Advisory Master.* It is too leading, particularly since the witness has said she did not notice them; that her impression is they were yellow. I think she will have to describe what she saw without asking particularly about it in detail.

Witness. They were not in blank; there was writing on them.

Q They were what?

30 *Mr. Faulks.* I object to that.

(Last answer read.)

The Witness. I know they were in writing. It was not a plain blank piece of paper.

Q It was written in, was it—a printed form that was filled up?

Mr. Faulks. Wait.

The Advisory Master. That is too leading.

Q Was it all in writing or in print or what?

Margaret Stewart McKenzie, direct.

Mr. Faulks. I object. I submit these questions are in strict violation of your Honor's ruling.

(After argument.)

The Advisory Master. I do not think this witness can testify or ought to be allowed to testify as to the character of these papers, in view of her statement that she does not see well; that she did not examine them; that she does not know, and I only admitted her testimony to show the incident happened in the presence of Mr. McKenzie, and I will not allow it to go any further than that with this witness. 10

Mr. Collins. That will do; I submit to your Honor's judgment. 20

The Advisory Master. You see we are only to have the subsequent testimony of Mrs. McKenzie as to what she put in this witness' hand.

No cross examination.

(A recess was then taken to 2:10 o'clock in the afternoon.)

MARGARET STEWART McKENZIE, one of the defendants, sworn. 30

Direct examination by Mr. Collins.

Q You are the defendant, Margaret Stewart McKenzie? A Yes, sir.

Q It appears that a safe was rented at Tiffany & Company's, July 3rd, 1907. What was kept in that safe? A My jewels and real laces.

Q Was there ever anything of Mr. McKenzie's personal belongings kept in that safe? And 40

Margaret Stewart McKenzie, direct.

I will exclude now from my question the installment certificates now in suit—prepaid certificates now in dispute, so as not to have any controversy—was there anything of Mr. McKenzie's ever kept there? A No, sir.

10 Q Where did you keep the prepaid shares that stood in your own name for \$6,000 and were surrendered and new shares issued to "Margaret Stewart McKenzie and or William McKenzie?" A In Tiffany's box or safe.

Q In your box or safe? A Yes.

Q In Tiffany's safe deposit vault? A Yes, sir.

Q When did you get those from that safe?

A This year?

Q No, no. A Last year.

20 Q That is before the new ones were issued?

A I got them the 9th of May.

Q 1913? A Yes, sir.

Q What did you do with them? A On a Friday—.

Q What did you do with them? A I gave them to my husband. He asked me for them.

Q Whose money was it that purchased those certificates? A My own money, sir.

30 Q Was Mr. McKenzie your husband? A Yes, sir.

Q Was your husband, William McKenzie, ever at Tiffany & Company's safety deposit rooms except on the occasion that Mr. Williams has testified to when he remained out of the office and you went into the vault—I mean ever there with you? A No, sir. The first—may I explain?

40 Q If you like. What is it you want to explain? A In 1907 he went in and was shown the box.

Margaret Stewart McKenzie, direct.

Q Oh, at the time he hired the box? A Yes.

Q I meant from the time you hired the box until his death, was he ever there with you to your knowledge except on one occasion when Mr. Williams testified to? A No, sir.

Q Then he did not go into the vault? A No, sir.

10

Q You heard Miss Guy's testimony, did you? A Yes, sir.

Q When was it she was there at your home? A She was there June first, because we spoke about the apple and cherry blossoms having disappeared—on a Sunday, Sabbath afternoon.

Q On that occasion where was she and Mr. McKenzie sitting? A In the library.

Q Where were you? A I was in the kitchen between times.

Q What do you mean by "between times?"

20

A Well, I had no maid at that time and so I was preparing dinner.

Q Were you out and in? A I brought in a bowl of soup for Mr. McKenzie and asked her if she would have a cup of soup, as he was in the habit of having some half after three.

Q Never mind the details. Were you out and in? A Yes, sir.

Q Did you hear your husband and her talking about building and loan matters, money having been invested in East Rutherford? What did you do? A Well, I heard her say something about she hadn't much faith in them and I said, "Oh, you can have faith in my husband. He is a McKenzie," and I ran upstairs and opened a chiffonier drawer—

30

Mr. Faulks. I want to enter an objection to the reception of any evidence from Mrs. McKenzie with reference to what happened

40

Margaret Stewart McKenzie, direct.

10 at that time as to matters that were touched upon by Miss Guy this morning. I think that would be incompetent in any event, and that is all barred by the provision of the statute which forbids Mrs. McKenzie testifying as to transactions with the deceased. It comes within that provision. And upon the further ground that it would not in any event be material or competent for the purpose of showing the possession which was had of any of the certificates or the title to these others that are involved in this suit.

20 *Mr. Collins.* I understand your Honor to have admitted the testimony of what happened to Miss Guy and therefore the only thing I need address myself to now in proving the same thing by Mrs. McKenzie is that it was a transaction with her husband and the husband was sitting there, and the point I am going to bring out is that she got the certificates, had them in her possession, and came down and did what Miss Guy said she did with them, and I will identify by this witness what they were and I will follow that up by proving how she got them originally. That is another question. But this much your Honor has already permitted and the only point now is, can she testify to it. If it was a transaction with or a statement by her husband she could not, but it is not that at all. It would be the same if he had not been there. I do not understand the witness is debarred from testifying to what happened between her and another one because the husband happened to be in the room.

30

40

Margaret Stewart McKenzie, direct.

The Advisory Master. I admitted the testimony of Miss Guy as to the incident because it seemed to me that it was entirely on the same line as the testimony of Mr. Duncan as to what happened on the Sunday he was there present. I could not see any difference between those two. Now the question is, suppose Mr. McKenzie had not been present, then clearly this would not be admissable, would it? 10

Mr. Collins. Yes, sir; oh, certainly. The only point of the whole case is that she had the certificates. I want to prove she had them in her possession and put them in Miss Guy's hands. The mere fact that Mr. McKenzie happened to be there does not make any difference, but if you want to draw some inference from the fact of his presence, nevertheless she may testify to that act. It was no transaction with him. What she said to another person in his presence is admissable if it is otherwise admissable, notwithstanding the statute. 20

The Advisory Master. She can testify as to the possession of these certificates which were in her name originally and subsequently in her name and her husband's. Is not that all you want? 30

Mr. Collins. I want to identify what she put in Miss Guy's hands.

The Advisory Master. How is it important whether she put these in the hands of Miss Guy other than it would be important as she has just testified, that she kept her lace in the safe deposit vault?

Mr. Collins. That would be important to show she kept the old certificates in the 40

Margaret Stewart McKenzie, direct.

safe deposit vault and I will follow it up and show she kept these in there. All I am proving by her is the identity of what she put in Miss Guy's hands.

10 *The Advisory Master.* You want to prove that on that particular day, that Sunday in June, she had these certificates in her possession?

Mr. Collins. Yes.

The Advisory Master. I will admit that question, but I do not think it is important as to whether she put them in Miss Guy's hands.

Mr. Collins. Oh, no.

20 *The Advisory Master.* I do not regard Miss Guy's testimony as corroborative of anything, because she did not testify to it. All she testified to was an incident.

Mr. Collins. Now I am going to tie the two together. It takes the whole thing to make the thing complete. The only benefit of Miss Guy is that we have a disinterested witness. I must rely on this witness as to what those papers were.

30 Q Did you hear Miss Guy's testimony as to your putting some papers in her hand? A Yes.

Q Did you put some papers in her hand?

Mr. Faulks. Wait.

A Yes, sir.

Mr. Faulks. Wait a moment. I object. That is immaterial.

40 *The Advisory Master.* I think this witness can testify as to her possession of these certificates and I think she is competent to testify to anything she did with

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them, just as she could testify she had taken to Judge Collins' office and that she had then in this safe deposit box, if they had been there. I do not think it amounts to corroboration of Miss Guy except to show Miss Guy was there that day.

Mr. Collins. I thought Miss Guy corroborated her, and that is all. 10

Q You did put some papers in her hands?

A Yes.

Q What were they? A They were twenty thousand certificates of Mr. McKenzie's and six of mine that I had been given by Mr. McKenzie to take into New York.

Mr. Faulks. I object to that and move it be stricken out.

The Advisory Master. Yes. 20

Q Were they the twenty-six thousand dollars' worth of prepaid shares in the East Rutherford Savings, Loan and Building Association that were produced here by the clerk of the Court of Chancery? A Yes, sir.

Mr. Faulks. Wait.

The Advisory Master. That is leading and unless the witness can answer that question without having it put to her in that direct form we will have to take some other method. She must tell what she did. 30

Q What papers did you put in her hand? A Why, twenty-six thousand dollar certificates.

Q Of what association? A Of the Temple of Thrift, the savings, building and loan.

Q What is the name of the saving association? A The East Rutherford Loan and Saving or Loan and Building Association. There are so many names. 40

Margaret Stewart McKenzie, direct.

Q What twenty-six thousand dollars worth of these certificates were they? Which ones? A They were prepaid shares, they call them.

Q Yes, but which ones? Were you present in court at the last session? A Yes.

10 Q Did you or not see those certificates to which you refer? A Yes.

Q Who produced them here in court? A Why, a man, I think that came from Trenton.

Q From what office? A I don't know what office he came from, but I have a receipt for them—the Chancellor's office, I presume.

Q A representative from the Clerk in Chancery you mean? A Yes, sir.

20 Q Now, when had you received those certificates? A I had received them about the—I think it was the 13th or 16th of May.

Q 1913? A 1913.

Q From whom had you received them?

Mr. Faulks. I object.

The Advisory Master. They are these identical certificates which are now lodged in the Court of Chancery?

Mr. Faulks. So she says.

30 *Mr. Collins.* I think the question is all right. It may possibly be if the answer should be as Mr. Faulks fears it will be it would be illegal. We have a right to ask the question and if the testimony is illegal it may be stricken out, but I have a right to ask from whom she received these certificates.

40 *Mr. Faulks.* This is his client and not a disinterested witness in the suit. He must be presumed to know whether or not this question tends to bring out evidence with

Margaret Stewart McKenzie, direct.

reference to a transaction had by this defendant with Mr. McKenzie, and if it does the question is clearly not proper because what happened would constitute a transaction between the defendant and Mr. McKenzie.

Mr. Collins. The question is proper. If the answer is illegal— 10

The Advisory Master. Does the witness say when she received them?

Mr. Collins. About the 15th of May.

The Advisory Master. This was 1913?

Mr. Collins. Yes, sir

Mr. Faulks. The only evidence in the case as to the custody of the certificates about that time—I would not say the only evidence—the evidence is that at that time or shortly before these certificates had been handed by Mr. Duncan to Mr. McKenzie. 20

The Advisory Master. Before June, 1913?

Mr. Faulks. A very few days before May 15th, 1913. Now I object to this question if it is intended to bring out any conversation with or transactions with Mr. William McKenzie, and if your Honor permits the question to be answered and if you find it does relate to such a matter I ask that I should be allowed to strike out the answer. 30

Mr. Collins. That is your privilege of course.

The Advisory Master. I will admit the question.

Q From whom did you receive them? A My husband.

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Mr. Faulks. Now, I ask that be stricken out for the reasons I have urged in objecting to the question.

The Advisory Master. Strike the answer out.

10 *Mr. Collins.* I supposed it would be stricken out, but I had hoped this executor would not insist upon the statute. Maybe counsel considers it his duty to do so. The testimony is not *ipso facto* illegal. It is only so when he objects to it. If he asks that it be stricken out I cannot help it.

The Advisory Master. I will strike it out.

Mr. Collins. But of course we have the answer and the order to strike it out on the record.

20 *The Advisory Master.* Yes, sir.

Q Where were you accustomed to keep those certificates after you first received possession of them? A I was to have taken them in the following day but I was taken ill—

Q You misunderstood my question. A In a chiffonier drawer in my bedroom—our bedroom.

30 Q You say you were to have taken them in the following day. The following day from what? A From the evening that he gave them to me.

Mr. Faulks. I object to that.

Q From the evening you received them? A Received them.

Q Take them into where? A To my box in Tiffany's, sir.

Q You say you were taken ill? A Yes, sir.

40 Q What did you do with them eventually? A I took them in the second day of June and put them in the box in Tiffany's.

Margaret Stewart McKenzie, direct.

Q What year? A In 1913.

Q In what box? A In my Tiffany safe box.

Q Did they or did they not remain in that safe until you took them out to comply with the order of the court to deposit them? A Yes, sir.

Q Now, I will come to that box. When the box was changed as Mr. Williams has testified to, from 631 to 630 what did you receive in the way of keys from Mr. Williams? A Do you mean when the lock was broken? 10

Q When the box was changed to another box. A Four keys, two small ones and two larger ones.

Q What were the two larger ones for? A For the outer door.

Q What were the two small ones for? A For the inside tin box. 20

Q Who had possession of those four keys from the time they were given to you? A From 1908 until the other day I had.

Q Mr. Williams has testified to your having some keys together on a pink cord or string, a string, as he expressed it. Do you remember the occasion? A Oh, yes.

Q When was that? A That was on St. Andrews—at least it was the first of December. St. Andrews day was the 30th of last November, and Mr. McKenzie and I were in the habit of attending the dinner— 30

Q Never mind that. I asked when it was. A It was the first day of December when I went to the vault to get some jewels.

Q 1913? A Yes.

Q Then it was before Mr. McKenzie's death? A Oh, my, he never was so well in his life. 40

Margaret Stewart McKenzie, direct.

Q And you had what keys in your possession?

A Four.

Q Which four? A I had two small ones and two large ones.

Q Do you mean those you have just described? A Yes.

10 Q What were they on? A On a pink ribbon.

Q Now as a result of this talk with Mr. Williams, what did you do? A Well, I had quite a box of things and I dropped them—

Q What did you do with the keys? A I dropped them, sir, or they dropped out of my hand, and he advised me to have a little ring.

Q I asked you that. As a result of what he said to you, what did you do? A He took them and put two on the ring or a ring.

20

Q Now let me see them.

(Witness produces keys.)

Q Witness is shown a large key, No. 761, with a small one attached to it by small key ring, that was shown to Mr. Williams and is asked what are those. What are they? A Keys, my safe keys.

Q Are they the ones that you say Mr. Williams put on the ring? A Yes, sir.

30

Q Is that the ring? A Yes, sir. He wanted to put it on a larger one, but I said no, it was bulky.

Mr. Collins. I offer these in evidence. They have a little tag.

(Marked Exhibit 3 for the defendant M. S. McKenzie, October 16, 1914.)

Q What did you do with the other two respectively? A I dropped them loosely in a side pocket in the bag.

40

Margaret Stewart McKenzie, direct.

Mr. Faulks. The same bag that you have in your lap now, Mrs. McKenzie.

The Witness. No; it was a smaller bag, sir; I think it was smaller. It was gray.

Q What did you do with them respectively after that? A I put them in the chiffonier drawer when I returned home.

10

Q Both of them? A As nearly as I remember, sir.

Q I show you another small key that Mr. Williams has the duplicate of the small one on the ring and I ask you where did you get that from? A I picked it up in my bedroom after my chiffonier drawer was opened.

Q This little one? A Yes, sir.

Mr. Collins. I offer that in evidence.

(Marked Exhibit 4 for defendant, M. S. McKenzie, October 16, 1914.)

20

Q Did you find the larger one on the floor?
A No.

Q Or anywhere else? A No, sir.

Q Was it in the chiffonier drawer after the time you found the small one on the floor? A Why, I noticed the drawer was partly opened, and I hurriedly pulled it out and looked amazed. My private papers and everything had been taken out and an empty envelope that I kept the passbooks of the East Rutherford Saving and Building Loan Association in our joint names.

30

Q That was gone? A That was gone.

Q You have anticipated my next question. You got ahead of my question. My question was whether you found the large key in that drawer, or was that gone? A That was gone, sir.

40

Margaret Stewart McKenzie, direct.

Q Now, I will come to the subject that you volunteered the testimony upon without waiting for the subject. This was a chiffonier in your bedroom? A Yes, sir.

Q Was it ordinarily kept locked? A Oh, yes; and I have the key.

10 Q You say that on this occasion it was open? A Yes. You could just see; it was open about that far (illustrating).

Mr. Faulks. (Indicating.) About an inch?

The Witness. Yes.

Q Did it give any evidence of the lock having been forced, or that it was simply opened? A Opened. It was just open.

20 Q What had been kept in that drawer? A Well, I kept the passbook and a small box with Mr. McKenzie's St. Andrew's cross or badge, and some of my private papers and letters pertaining to home (my home), and small papers. The larger ones Mr. McKenzie kept for me in his safe.

Q What passbook do you refer to? A The East Rutherford Saving and Building Association.

30 Q The one that was brought to court the other day by the clerk? A Yes.

Q When was it you discovered the drawer open and this pass book gone? A It was in March, the last of March, I think it was—now I can tell you; it was on a Monday.

Q Well, what time? A It was—well, I think it was toward the evening.

Q No, what month or what day of the month? A Oh, pardon me, sir. It was in March.

40 Q What time in March? A In March, 1914.

Margaret Stewart McKenzie, direct.

Q What time in March? A I think it was the 30th or 31st of March, because I was very tired, up night and day. I do not remember it distinctly.

Q Mr. Duncan has testified you spoke to him about things having been taken from that drawer? A Oh, I spoke to him, sir. 10

Q Did you tell him what had been taken? A I said Mr. McKenzie—

Mr. Faulks. Wait a moment.

Q You answer my question, my dear lady. Did you tell him what had been taken? A The pass book, sir.

Q He says that on that occasion you asked him if he knew where the certificates were and said, "I must have them. I must get them." Did you say that? A I never said such a thing, sir, for I had forgotten all about them and never thought of money or certificates. 20

Q Tell me when this was that Mr. Duncan was at your house? A It was on Palm Sunday, sir.

Q What year? A 1914.

Q When did your husband die? A My husband passed away at half past two, April 12th, Easter Day.

The Advisory Master. Palm Sunday was the week before? 30

The Witness. Yes, sir.

The Advisory Master. That would be April 5th?

The Witness. Yes.

Q So that was the day Mr. Duncan was there?
A Yes. May I say what I said to him?

Q No. The law will not permit you to do that. A I asked him if he brought me a bit of 40

Margaret Stewart McKenzie, direct.

palm and he said no, he was not out with the paraders.

The Advisory Master. How is that material?

Mr. Collins. It shows how she knows it was Palm Sunday.

10 *The Advisory Master.* Well, she has not expressed any doubt about it.

Mr. Collins. She had to identify the time. I don't care whether it stays in or not.

Q Mr. Frank Widows testified this morning that he went with you from your home some time in May, 1914, first to my office and then to Tiffany's, and that he carried for you a package about a foot square and then you took it from him and that you went down into the Tiffany vault while he stayed upstairs and then you came back again and that you gave him apparently the same package, and that you said to him when you first gave it to him there were valuable papers in it, and when you gave back the package you said—I forget what he says you said, but you will recollect what he did say. And that he opened it and found nothing in it but newspapers. Will you state that occurrence exactly as it happened, beginning at the beginning. Do not tell anything except about that? A Well, sir; I would have to precede that with saying that the day previous to taking Widows into New York to Tiffany's vault I had stopped into Mr. Luce's office.

20

30

Q Mr. Edward J. Luce? A Yes, sir; he is sitting there next to Mr. Faulks.

Q Proceed. A And I had some papers or letters rather, and I had told him one or two

40

Margaret Stewart McKenzie, direct.

things in regard to carrying them and what they were and he said, "Would you not like a brown envelope, a large envelope?" In fact I asked him if he could give me a paper or an envelope and he gave me two. I saw something like that here, about that size (illustrating), and about like that (illustrating). 10

Mr. Collins. Indicating about a foot square, I think.

Q About as big as what the judge has here (indicating a volume of a transcript of testimony)? A Something like that on the table what lawyers have.

The Advisory Master. Was it a large square envelope?

The Witness. No, it was more long than square. 20

Q It was large? A Yes, it was large, about like that (illustrating).

Mr. Collins. Indicating about fifteen inches by twelve.

Q Go on. A I put the letters in.

Q What did you put in there, what were they?

A Will I have to answer that?

Q You will if you want me to act for you. A Do I have to answer that, Judge Barrett? 30

The Advisory Master. Yes.

The Witness. They were my husband's 404 love letters and letters from Susie Draper White, his niece.

Q Those were what you put in the envelope? A Yes, sir—dearer and higher than life.

Q What about the newspapers? A Well, it was flat and I said I should have something in this, and Mr. Luce says, "Just wait a moment," 40

Margaret Stewart McKenzie, direct.

and he rolled up a couple of old newspapers and he put in the other one.

Q Now that was what was in that envelope, was it? A Yes, sir.

Q What did you put in the box at Tiffany's that day? A My husband's love letters.

10 Q What did you give back to Widows? A The package containing two newspapers.

Q Were they the same papers that Mr. Luce gave you that you put in there? A Oh, yes, the same papers, and I wrote on the outside "private letters," and told him to be very careful.

Q When was that you told him to be very careful? A The next day when we were getting on the train, as they were very important.

20 Q You mean the next day after you saw Mr. Luce? A Yes, sir.

Q You mean on the day you and Widows were going in you said that? A Yes.

Q What did you say when you gave him back the package of the old newspapers? A I told him to be also very careful.

Q Widows has also testified that he brought up to the house from the office an envelope which when opened was found to contain an envelope addressed to you and marked "personal or private." As Mr. Duncan testifies—James McKenzie—no. Who was it?

30 *The Advisory Master.* James McKenzie.

Q And Duncan testified it was opened and there was a will and a little sheet in it. I think that was Duncan, wasn't it?

40 *Mr. Faulks.* Duncan testified as to an envelope in which there was a will and letter.

Margaret Stewart McKenzie, cross.

Mr. Collins. And Widows testified he did not look in it. That is what I was trying to say. Do you know anything about that envelope?

The Witness. Oh, yes.

Q What was in it? A A hundred dollar bill from Mr. James. He sent me on a Friday fifty dollars and it was not enough and his father told me— 10

Q I don't mean what was in the large envelope, but what was in the small one marked with your name? A Why, Mr. McKenzie put it in, after receiving it, under his arm and then he opened it.

Q What was in it? A The will.

Q Just state if it was thicker than it would be with the will, if there was something else in it besides? A No, sir. 20

Q Was there anything in that envelope to your knowledge except the will? A No, sir.

Q Mr. Duncan said a letter. Do you know what he means about a letter? A It was the other one, with a hundred dollars in it.

Q No. A letter inside with the will? A Not to my knowledge. It was opened and Mr. Duncan held it for Mr. McKenzie in my presence. 30

Q Did you take anything out of that envelope? A No, sir.

Cross examination by Mr. Faulks.

Q Mrs. McKenzie, when were you and Mr. William McKenzie married? A 1905.

Q What date of the year? A 1905, June 9th.

Q You gave us the date of his death. What was the date on which he was buried? A The 15th of April, 1914. 40

Margaret Stewart McKenzie, cross.

Q Now, you say that you paid for the 60 pre-paid shares in the East Rutherford Savings, Loan and Building Association which at that time stood in your name, with your own money?

A Oh, yes, sir.

10 Q Was that money which was given to you by your husband? A No, sir.

Q It didn't come from him at all? A Five hundred of it did.

Q Five hundred of it did? A Yes.

Q What was the total amount paid for those shares? A I gave him—

Q No. I am only asking you about what the total amount was that was paid for those shares?

A I don't understand you.

20 Q You had sixty shares, didn't you? A Yes. Well, I don't know how much it was, only I had \$6,000.

Q And you say you paid \$6,000 for that stock? A Not altogether, no.

Q You mean not at one time? A No, not all at one time.

Q But altogether you did pay \$6,000 for it? A Yes.

30 Q And all of your \$6,000, with the exception of \$500— A January 4th.

Q —was your own money? A That I earned, sir.

Q That you earned before you were married or after? A Why, certainly. I worked. When I was married I was working.

40 Q None of that money you say was paid by Mr. McKenzie? A Not to my knowledge. I gave him the money. I did not care what he did with it. I gave him \$8,000, but I don't know what he did with it.

Margaret Stewart McKenzie, cross.

Mr. Faulks. I ask to have that statement in reference to \$8,000 stricken out.

Mr. Collins. I object to that. I think it is legitimate evidence.

The Advisory Master. I think the witness has a right to say she gave more than the six. I will let the answer stand. 10

Q Have you any of the checks by which you gave to Mr. McKenzie the money that you say went to pay for these prepaid shares? A I did not give it in check, sir.

Q You gave it in cash? A I gave it in cash.

Q At different times? A At different times.

Q You also had a book covering a hundred installment shares in the same building and loan association, didn't you? A Yes. 20

Q By whom were the payments to the credit of that book made? A That I don't know.

Q They were not made by you? A No.

Q But you are very positive that all of the sixty prepaid shares were paid for out of your own money with the exception of the \$500? A Yes. Shall I tell you when I received the \$500?

Q No. I want to know now about it being paid for? A I would like to state when he gave me the check. 30

Q I only asked whether you are positive you paid for the prepaid shares out of your own money except the \$500? A Yes.

Q You cannot be mistaken about that? A I gave him the money and he said he would pay the money out, his own check, or pass it in.

Q When was that you purchased these prepaid shares? A That I don't just remember, but I know it was in seven and eight. 40

Margaret Stewart McKenzie, cross.

Q Nineteen seven and nineteen eight? A It was at different times. But when he put that in I don't know.

Q Do you mean it was at the time you provided the money for their purchase? A I had the money prior to that.

10 Q I am not asking you when you had it. I understand you to say it was money you earned before you were married? A Yes.

Q When was it you provided the money, turned over the money with which to purchase these shares? Was it in nineteen seven and nineteen eight? A No, it was some time in 1906, when we were abroad. It was money I had loaned to a friend and then they paid that with the interest.

20 Q It came back to you in that way in 1906? A Some of it, sir.

Q I want to know when it was that you purchased the last of the 60 prepaid shares which stood in your name? A I don't remember. I know he gave me a check the 4th of January, 1908 for \$500, made out a check and said he was going to put that in the building loan.

Mr. Faulks. I ask that be stricken out.

30 *Mr. Collins.* She was asked to fix the date, but it has already been proved and brought out by them that he had given her \$500. So that was legitimate. Now she says she knows it was January 5th, 1908, that he gave her a check for \$500.

The Witness. He made that out.

Mr. Collins. He made it out and said he was going to put it in the building loan.

40 *The Advisory Master.* I did not understand it that way. I thought he made it out and gave it to her?

Margaret Stewart McKenzie, cross.

The Witness. No, sir.

Mr. Faulks. I submit that none of that answer after the words, "I don't remember," is responsive to the question.

The Advisory Master. I will strike out the answer after that and counsel can examine her if they want to on that afterward. 10

Q Can you give me any more direct information than you have already as to the dates when you purchased the 60 prepaid shares? A Oh, no. Mr. McKenzie seen to everything.

Q You say that immediately upon those shares coming into your possession you deposited them in a safe deposit box of Tiffany & Company? A He told me to.

Mr. Faulks. I ask that be stricken out.

The Advisory Master. Strike that out. 20

Q Please listen to my questions and answer them.

The Advisory Master. The question was whether on a certain date you deposited them in a Tiffany deposit box, not what anybody told you.

The Witness. Yes, sir.

Q (Previous question read as follows: "You say that immediately upon those shares coming into your possession you deposited them in a safe deposit box of Tiffany & Company.") A Yes, sir. 30

Q Did you deposit certificates for all sixty of the shares at that time? A That I don't remember.

Q Can you give us the date upon which you made the deposit? A That I don't remember. I did not make the deposit. Mr. McKenzie did.

Q Then you did not put them in the safe de- 40

Margaret Stewart McKenzie, cross.

posit box yourself? A Yes, I put them in the safe deposit box.

Q It is that deposit in the safe deposit box about which I am inquiring. A I thought you were inquiring about the deposits in the East Rutherford Association.

10 Q No. A You will pardon me, sir.

Q We misunderstood each other, I want to know if you can tell the time it was when you first deposited the certificates for the 60 prepaid shares in the safe at Tiffany & Company? A No.

Q Can you give the month? A That I cannot. I think it was in 1908 some time.

Q That is your best recollection? A And only one.

20 Q Well, you say you deposited them all at one time, and the best you can say—

Mr. Collins. She did not say that. On the contrary, she said she could not tell whether she did or not.

Q You cannot say whether you deposited them all at one time or not? A No.

Q And you cannot tell us when you deposited any of them, except to say you think it was in 1907 or 1908? A Yes.

30 Q And that is as definite or as specific as you can be? A As far as I can remember. I never trouble myself much about money matters.

Q Do you remember on how many different occasions you deposited some of those certificates there, that is how many deposits you had to make or did make before you deposited them all? A Well, I kept some of them in the drawer in the chiffonier that I had the key to.

Q Until what time did you keep them there?
40 A Well, before we left for Europe.

Margaret Stewart McKenzie, cross.

Q When did you leave for Europe? A We generally left about the first week in July; sometimes the 3rd and sometimes the 5th and 6th.

Q Did you go over every year? A Every year, sir.

Q Now, I do not understand until just before which trip to Europe it was you kept some of the certificates in the chiffonier drawer. A The first ones, sir. 10

Q The first trip? A The first certificates. We went to Canada the second year and not abroad.

Q Well, let me see if I can get it, Mrs. McKenzie. You were married in 1905? A And then 1906 I think we took a trip to Canada instead of going to Europe.

Q At that time had you acquired any of these prepaid shares? A Well, you see I would have to explain, but you won't allow me—about Mr. McKenzie. 20

Q I want to know whether you can tell us now whether you had acquired any of those prepaid shares prior to the time you went to Canada in 1906? A That I could not say without I explained it in my own way.

Q Now, you say you kept some of those certificates in the chiffonier drawer for a while? A Yes, sir. 30

Q How long did you keep them there? A Oh, I couldn't say. Until I would go into the city.

Q Just a matter of a few days? A Oh, no. Sometimes for a matter of perhaps six weeks.

Q Did you take them from your chiffonier drawer and over to Tiffany's the first time you went to New York after you secured them? A Yes, sir. 40

Margaret Stewart McKenzie, cross.

Q Therefore you did not keep them any great length of time in the chiffonier drawer? A No.

Q And you cannot tell us how many times you went to Tiffany's to deposit some of these certificates, or when the last deposit was made? A
10 No, sir, I cannot, because Mr. McKenzie who was always doing nice things—

Q Never mind that.

The Advisory Master. Strike that out and let the answer read simply, "No, sir."

Q Do I understand you to say that from the time you deposited the certificates for these 60 prepaid shares in Tiffany & Company up to the time of Mr. McKenzie's death those certificates remained there?

20 *Mr. Collins.* I do not suppose counsel wants to do anything in a sinister way. He either misunderstands it or he is misquoting. She never has said that the original 60 prepaid shares remained there until his death. She said she went and got the money.

The Witness. The 9th of May, 1914.

Mr. Collins. And then it was the new ones that were taken there.

30 Q They remained there from the time they were deposited until the 9th of May, 1913, did they? A Yes, sir.

Q They were not withdrawn for any purpose during that time? A Mr. McKenzie said—

Q No, no. The question is clear. A —to change them into our two names.

Q Not until that time? A No, sir.

40 Q Have you told us when you put the new certificates for the 60 prepaid shares back in the safe deposit box of Tiffany's? A The 2nd of June, 1913.

Margaret Stewart McKenzie, cross.

Q What day of the week was that? A On a Monday.

Q This conversation with Miss Guy that has been testified to took place on Sunday afternoon, didn't it? A Yes.

Q But you were unable to go to New York the next day you said? A Oh, no. I never 10
said such a thing.

Q That is the way I understood you? A I begged Miss Guy to remain over night and go with me.

Q You took them in on Monday, the 2nd, didn't you? A Yes, sir.

Q And deposited them in Tiffany's at that time? A Yes, sir.

Q And they remained there until they were withdrawn to be deposited with the Clerk in Chancery after this suit was instituted? A 20
Yes. Judge Collins wrote me to get them and I went to the box and took them out and took them to his office and he gave me a receipt—at least his clerk gave me one, for he was not in.

Q Did you keep anything in this box except your laces and your jewels and these certificates? A No.

Q Mr. McKenzie was totally unconscious, was he not, for a week prior to his death? A He 30
was unconscious from five minutes of four Wednesday, the 8th of April, 1914, until he passed away at half after two Easter day.

Q You had the box transferred to your own home on the next day, April 9th, didn't you? A Thursday I had it transferred. I was to have done it the week of Mr. McKenzie's illness.

Mr. Faulks. I ask to have that stricken out, your Honor.

The Advisory Master. Strike it out. 40

Margaret Stewart McKenzie, cross.

Q You visited the box again on the 13th of April, the day after his death, didn't you? A Sir?

Q Did you visit the box on the 13th of April, the day after his death? A The day after my husband's death, on Monday?

10 Q Yes. A I went in to order black garments, what I wanted.

Q Did you go to the safe deposit box on that day? A I think I did.

Q Did you take anything out or put anything in on that day? A I took my two rings, as I thought it was not consistent to wear jewelry—

The Advisory Master. Never mind what you thought. Tell us what change you made, if any, in the box.

20 *The Witness.* Well, I took my jewels, sir, and a necklace I had and a breastpin and two bracelets and two fans.

Mr. Collins. What did you do with them?

The Witness. I put them in the safe.

Q You did not take anything out? A No, sir.

Q And did not put anything else in except things of that kind? A No, sir.

30 Q Now, do you say you had no conversation at all with Mr. Duncan on the Sunday shortly before your husband's death with reference to the prepaid certificates or the building and loan book?

Mr. Collins. I object to that question on the ground he does not recite it properly. She did speak about the building and loan books.

40 Q Do you say you said nothing at all to him about the prepaid certificates on that day? A

Margaret Stewart McKenzie, cross.

Sir? No, I did not. I will tell you what I did say.

Q I am asking whether you said anything to him at all about the certificates for the prepaid shares? A No, sir; I never mentioned the word "prepaid shares." I never thought of it then; I had forgotten all about them. I spoke to him about the pass book— 10

Q Did you talk about shares of any kind? A No, sir.

Q How long before the time that you say this drawer in the chiffonier had been opened had the building and loan book which you say was then kept in that drawer been kept there? A How long since—

Q How long before the time the drawer was opened in the way you have described had the building and loan book which you refer to as being kept there been, in fact, there? A Since 1913, in May. 20

Q Whereabouts in the room did this chiffonier stand? A Back of the door.

Q Which of the doors to the chiffonier did you say this book and these papers were kept in? A The left hand drawer adjoining the wardrobe. 30

Q Was that drawer ordinarily kept locked? A Oh, yes. I had the key for it.

Q Did anybody else have a key for it? A No. Mr. McKenzie would always say, "Have you the key? I want to get the book."

Q You had the only key? A There were a number of keys that I found afterward in my dresser.

Q You thought you had the only key? A I thought I had the only key. 40

Margaret Stewart McKenzie, cross.

Q Where were you when Widows handed you this envelope that he brought up from your husband's office? A I was in the bedroom and I came to the door, halfway in the hall.

Q Did you ever show that envelope to Mr. Duncan? A Oh, no. Why should I show it?

10 Q Were you present at the time he says he put a will and a letter back into the envelope?

A Yes. I got it out of the drawer and gave it to him.

Q When was that, on the Sunday that you say he was at your house? A On the 5th day of April, Palm Sunday.

Q On that day you gave the will to Mr. Duncan to take down to the building and loan association vault for safe keeping did you? A I didn't, but my husband did.

20 Q And Mr. Duncan then gave you a receipt for the will, did he not? A And he sent me—

The Advisory Master. Just answer the question.

The Witness. Yes.

Q He signed a receipt for the will on that day and took the will with him? A Yes.

Q For the purpose of depositing the will in the building and loan vault for safe keeping? A 30 Yes.

Q Now on the following day you sent for the will didn't you? A Oh, no.

Q Did anybody send for a will on the following day? A Oh, no.

Q How long did the will remain on deposit with Mr. Duncan? A Until after Mr. McKenzie was buried.

Q Are you sure about that? A I think I am very sure.

40 Q Isn't it a fact— A On Friday.

Margaret Stewart McKenzie, cross.

Q Isn't it a fact, Mrs. McKenzie, that on the Monday following the Sunday that Mr. Duncan took the will for purposes of safe keeping and gave a receipt for it the will was returned to you and the receipt which Mr. Duncan had given at the time I have stated surrendered to him?

A No.

10

The Advisory Master. It appears by your own evidence and by Mr. Duncan's that on Sunday, April 5th, 1913, the will was given to Mr. Duncan for safe keeping. Now, the inquiry is whether it is true that on Monday, the day following, you asked to have that will returned to you.

The Witness. No, sir.

Mr. Collins. Not that she asked to have the will returned to her but the receipt returned.

20

The Witness. No, sir. I did not get the receipt.

The Advisory Master. Was the will returned to you?

The Witness. On Friday, yes, sir.

The Advisory Master. Please hear the question. Was the will returned to you on Monday, April 6th, 1913?

30

The Witness. No, sir. 1914, sir.

By Mr. Faulks.

Q Was it returned to you at any time before Mr. McKenzie's death? A Why, no, sir.

Q Was the receipt of Mr. Duncan surrendered to him at any time before Mr. McKenzie's death?

A Why, he says that it was not necessary. For I in my own handwriting wrote on it "received

40

Margaret Stewart McKenzie, cross.

from George A. Duncan'' a package or something to that effect when I got it.

Mr. Collins. That is after the death?

The Witness. After the death.

Q On Sunday, you say, April 5th— A Yes, sir.

10 Q —Mr. Duncan took the will for purposes of safe keeping and gave him a receipt for it, did he not? A He said he would send the receipt, which he did.

Q He took the will? A Yes.

Q And said he would send you a receipt for it? A It came through the mail.

Q It came through the mail when? A The next day.

Q That you say, would be Monday, the 6th of
20 April? A Yes.

Q Now, did Mr. Duncan ever get that receipt back? A I took it down myself.

Q When? A In a day or two. I think it was on—I will tell you. I think it was either on Friday or Saturday; I am not sure, but it was after Mr. McKenzie's burial.

Q You kept that receipt until after Mr. McKenzie had been buried, had you? A I gave it to him—

30 Q No. Answer the question. A Yes, sir.

Q How long did Mr. Duncan keep the will? A Well, sir, I called for it on Friday and took it to William B. Gourley.

Q Mr. Duncan kept it until Friday after Mr. McKenzie was buried, did he? A I presume it was in the safe.

Q You got it from Mr. Duncan at the building and loan association office on the Friday after Mr. McKenzie's death, you say? A Yes,
40 sir, as far as I can remember.

Margaret Stewart McKenzie, cross.

Q And was it at that time that you surrendered the receipt to Mr. Duncan? A I took it down after. He said it didn't matter, that my word was sufficient.

Q You took it down later on the same day or at a later day? A It seems to me I took it down that same day, because I had an automobile hired and I drove down. 10

Q What was the day and month upon which Widows brought the \$100 and an envelope from Mr. McKenzie's office at the mill? A Well, I will precede that with the fifty on Friday, and the hundred on Saturday. I think it was the 30th day of March, or the 29th, the two dates I got money, and it was addressed to me in Mr. James McKenzie's hand writing.

Q That you fix as Saturday, the 29th of March? A Yes. 20

The Advisory Master. Saturday was actually the 28th.

The Witness. Well, it was Saturday.

Q It was the last Saturday in March? A The 28th should be the last Saturday. It could not have been the 28th, in 1914. It seems to me it was on a Monday.

Mr. Collins. The 28th was Saturday. 30

The Witness. I will tell you how I believe it. Mr. James McKenzie came up on a Monday very much annoyed and said Widows had said the will was tampered with and I said, "No, he did not understand. Your father did not mean anything like that. There was nothing done."

Q It was on the 28th of March you got this hundred dollars and the envelope from the mill office? A Yes, I think it was. 40

Margaret Stewart McKenzie, cross.

Q And it was not the next day, but the first Sunday in April that you had this talk with Mr. Duncan and gave him the will for safe keeping, is that so? A It was Palm Sunday, whatever date that fell on. I think it was the 5th of April. I know it was Palm Sunday; it don't matter
10 what Sunday it was.

Q Will you say it was not the day after the hundred dollars— A Oh, no, sir, it was not that.

Q It was not that? A No, sir.

Q You are very positive about that? A Yes.

Q You cannot be mistaken? A I cannot because he was not up there. I had sent for him again and again. Mr. McKenzie kept saying, "I want to see George. I want to see George." And
20 he asked Dr. Brooks if he had asked him and I said to Mr. McKenzie, "I don't think the doctor cares to have George or anyone come up to see you," and Dr. Brooks, I believe, asked Mr. McKenzie if he wished to see him and he said, no, he did not, and I said, "Why, you did," and he said, "Well, I only said so, you know," because he wanted to see George Duncan.

Q Well, in any event, you are positive Mr. Duncan was not there on Sunday, March 29th?
30 A Well, I know about what he said about being out with the paraders and the cross—the Palm. Some reference was made—I had a little cross on the screen at Mr. McKenzie's head, and that evening Mr. McKenzie sat up and looked at the pictorial part of the *Times*, and even sat up ten minutes in his chair. And I know, also, I read the service out of my prayer book aloud that Sunday evening, and it was Palm Sunday.

Margaret Stewart McKenzie, re-direct.

Re-direct examination by Mr. Collins.

Q Mrs. McKenzie, why did you have the safe changed from Mr. or Mrs. William McKenzie to your own name on the 9th of April?

Mr. Faulks. If this involves a transaction with the testator I shall be compelled to object to it. 10

The Advisory Master. If it proves to involve that I will strike it out.

Q Why did you do that? A Mr. McKenzie told me to go in and do it on Thursday.

Q He told you on Thursday? A Yes; I was going in on Wednesday to Mr. Hall's to get him a set of blankets and—

Q What Thursday? A Monday was the 16th. Tuesday was a holiday, Irishman's Day—or St. Patrick's Day—pardon me, your lordship, and I think I went in about Thursday, and I went to Hall and ordered a bed and a rolling chair at Sergeant's. 20

Mr. Faulks. I ask to have that stricken out.

The Advisory Master. Strike the whole of it out on the ground it is a transaction with the testator.

The Witness. Can't I say I was unable to get up to Tiffany's? 30

The Advisory Master. Not unless your counsel wishes you to.

Mr. Collins. What did she say?

The Advisory Master. She asks if she can say she was unable to get up to Tiffany's.

Mr. Collins. No.

The Advisory Master. It is not important.

Mr. Collins. Now we are through except for one witness. I am perfectly willing now, 40

Edward B. Luce, direct.

if they have any rebuttal, to let them put it in. Unfortunately, that witness lives in Boston and I expected him to come here. It is very brief, very trifling, but I shall have to take the testimony there, and Mr. Bradley happens to be going down to Boston.

10 *The Advisory Master.* You will take the testimony in Boston?

Mr. Collins. Yes, sir. If you have any rebuttal you can go on now.

Mr. Faulks. I want to put Mr. Luce and Mr. Duncan on. Mr. Luce, with reference to the furnishing of the envelopes in his office.

20 Mr. Duncan has told me and told Mr. Luce that he gave a receipt for this will on Monday, March 30th. He got the will on Sunday, March 29th, and mailed the receipt to Mrs. McKenzie on Monday, March 30th, and on the same day was asked to surrender the will and did so and took back his receipt.

The Advisory Master. Did not Mr. Duncan testify to that?

30 *Mr. Faulks.* I do not think he did, with reference to the return of the receipt. The point is this, that Mr. Duncan tells me he has papers which fix the date beyond any question and I think they ought to be before your Honor.

The Advisory Master. I think so.

EDWARD B. LUCE, recalled on behalf of defendant Ladd.

Direct examination by Mr. Faulks.

40 Q Mr. Luce, do you recall the occasion when Mrs. McKenzie obtained some envelopes in your office? A I recall such an occasion.

Edward B. Luce, direct.

Q Will you just tell us what happened at that time?

The Advisory Master. When it was, first.

The Witness. It would be impossible for me to fix the date with any degree of accuracy, any further than to say that it must have been in May, I should think, some time. 10

Q Of this year? A Yes; but I would not be positive even as to the month.

Q Was it before or after Mr. McKenzie's death? A Oh, it was after his death, and it was after Mr. Ladd had come to me to act as counsel for him as executor. Mrs. McKenzie came into the office to see me. I do not recollect what her precise errand was that day. I think, as she testified, she did produce some letters from her late husband to herself. I think she showed them to me and that I read a line or two of one of them. Just how many of those letters there were I do not recall. My recollection is not, however, that I saw more than a few; but my recollection is she was in the office quite a while talking about the situation of affairs up at her home in Carlton Hill, and her various friends, and then she also told me she was being pursued by detectives; that on her way down to my office that day she either had seen or suspected there were detectives following her, and as she was about to leave my room she noticed these document envelopes which were laying on the stand there, and she said to me, "Could I have one of those envelopes?" 20 30

Mr. Collins. About what size?

The Witness. I have one of them here that is the exact size (producing envelope). 40

James McKenzie, direct.

Q That is the document envelope you use in your office? A Yes.

Q About eighteen inches long and ten inches wide? A I think that is a good guess. And she wanted to know if she could have one and I said, "Certainly," and I handed it to her—I
 10 don't know but it was two, one or two, anyway, and she said, "Put something in there that will make it look as though I had papers," and my recollection is that she wanted it put in so the detectives she feared (were outside) would think she came into my office to get some papers. So I took some newspapers that were lying near at hand and put them in the envelope and just tied the tape up and handed it to her, and she looked back at me and winked and laughed and went
 20 out.

JAMES MCKENZIE, recalled on behalf of the defendant Ladd.

Direct examination by Mr. Faulks.

Q Mr. McKenzie, I show you three keys on a string that I exhibited to Mr. Williams, of Tiffany & Company this morning, and which are some keys that you handed me at that time.
 30 Where did you obtain those keys? A In one of the drawers in my father's private safe.

Q When did you find them there? A I cannot say. It was some time after his death.

Q When you found them there did you know what keys they were or what box they fitted? A No, sir; I did not.

Q How did you find out—through the makers of the keys? A I put a man that was in my employ to looking them up and he went to the
 40 manufacturers and they told him they were keys

James McKenzie, direct.

to a box that had been furnished to Tiffany & Company.

Q Is that the first intimation you had that they were keys fitting safe deposit boxes of Tiffany & Company? A Yes, sir.

Q And those keys have been in your possession or your son's possession ever since? A 10
Yes, sir.

Q What part of the safe did you find those in? A In one of the drawers. There were a pair of drawers in the center and I found those in one of them.

Q This is the safe that has been testified to was your father's private safe in the office? A The private safe; yes, sir.

Q Had you ever seen those keys, as far as you know, before your father's death? A No, 20
sir.

Q Did you know he had a safe deposit box in Tiffany & Company's? A No, sir.

Mr. Faulks. I will offer these in evidence.

(Marked Exhibit 18 for defendant, Ladd, October 16th, 1914.)

Mr. Collins. We are through except Mr. Duncan and he can be called on the day of the argument. Mr. Faulks thinks we can stipulate to what the witness in Boston will 30
say.

Mr. Faulks. I will say that I will admit that if he was called he would say that.

We will adjourn to Thursday, the 12th, at ten o'clock in the morning, with the right on our part to call Mr. Duncan if we wish.

The Advisory Master. Yes.

Adjourned to Thursday, November 12th, 40
1914, at 10 o'clock in the forenoon.

Argument in re Deposition of Mrs. Butland.

CHANCERY CHAMBERS, NEWARK, N. J.

Thursday, November 12th, 1914.

Continuation of proceedings in the above stated matter before Hon. Halsey M. Barrett, Advisory Master, pursuant to adjournment.

10 Appearances as before noted.

Mr. Collins. We have the deposition of Jane A. Butland, which Mr. Bradley received from the hands of the commissioner, under the statute, and, under the statute, it can be given by him to the court or a judge thereof; but we have to make some affidavit that—

Mr. Faulks. We waive all formalities with reference to it.

20 (Mr. Bradley proceeded to read the deposition of Mrs. Butland, in the taking of which the following questions and objections appear: “Q When you saw Mr. McKenzie on January 1st, 1914, did you have any conversation with him, touching his business affairs? A Yes. Q State what that conversation was?”)

30 *Mr. Faulks.* That question is objected to, and, after the answer was given a motion was made to strike it out. I think perhaps the answer had better be read in order to enable your Honor to rule on the objection which I desire to press.

(Mr. Bradley then proceeded to read the answer referred to as follows:

40 “I had noticed he was not well, and I asked him why he didn’t get out of active business and let his sons run his mills, and I said, ‘Why, you have enough in that building and loan association to take care of you,’

Argument in re Deposition of Mrs. Butland.

and he said, 'Oh, that all belongs to my wife,' and that was news to me—and I said, 'Is that so?' and he said, 'Oh, yes, but it is in our joint names,' and I said, 'That is doing nicely,' and he said, 'Yes—oh, yes, I hope that will be up to one hundred thousand dollars or more.' ")

10

Mr. Faulks. I desire, if your Honor please, to object to the reception of that answer to that question on the grounds noted in the deposition, and I think it is clear under cases in this State, and elsewhere, that the evidence is incompetent.

(After argument).

The Court. I will take that course. It is here in the deposition and I will not consider now whether it has any binding effect. My impression at present is, that it ought not to be considered as proof. But I will hold it for further consideration.

20

(Mr. Bradley proceeded with the reading of Mrs. Butland's depositions, it proceeding as follows: "Q Did you know what building and loan association Mr. McKenzie held shares in? A Yes.")

Mr. Bradley. The same objection was taken to this, your Honor.

30

Mr. Faulks. Yes, and I presume the same course will be taken as to each of those objections.

Mr. Collins. Yes, that they need not be argued.

The Court. Very well.

(Mr. Bradley then concluded the reading of the direct examination of Mrs. Butland).

40

George A. Duncan, direct.

Mr. Faulks. With reference to the cross examination, I presume you will take that in the same way. If the direct testimony had been ruled out, of course, the cross examination would not be read.

The Court. Yes.

10

(The reading of Mrs. Butland's testimony was then proceeded with and concluded.)

Mr. Faulks. Have you anything further, Judge Collins?

Judge Collins. No.

Mr. Faulks. I want to recall Mr. Duncan.

GEORGE A. DUNCAN, recalled for the complainant.

20 *Direct examination by Mr. Faulks.*

Q You have already testified with reference to a call that you made at the McKenzie home on a Sunday shortly before Mr. McKenzie's death and said that the time was about two weeks before his death. Have you anything by which you can fix that date definitely? A I have.

30 Q Is it the paper dated March 29th, 1914, which I am now handing to you? A Yes, sir.

Q Read, if you will, the upper part of it, I mean the part which is in typewriting and signed by you.

Judge Collins. One moment.

Mr. Faulks. Do you want to see it first, Judge?

Judge Collins. Yes. (Paper handed to Judge Collins.) I do not think it should be read until it is offered.

40

George A. Duncan, direct.

Mr. Faulks. I thought it would be easier to read it right into the record.

Mr. Collins. It depends on whether it is admissible. Do you offer it in evidence as a paper signed by him?

Mr. Faulks. I will have him identify it and then offer it in evidence. 10

The Court. Which part do you want to offer in evidence, the statement signed by George A. Duncan or the receipt underneath?

Mr. Faulks. Both.

Mr. Collins. I will admit for the purpose of the argument that that is the witness's signature to this paper and that this other writing is altogether in Mrs. McKenzie's handwriting. Now, the whole document is offered in evidence. 20

The Court. Is it offered in evidence for anything except to fix a date?

Mr. Faulks. It is offered in evidence for the purpose of fixing the date of Mr. Duncan's call at the house when Mr. McKenzie's will was given to him for safe keeping.

The Court. On a Sunday afternoon?

Mr. Faulks. Yes, on a Sunday afternoon. 30

The Court. Was not that date fixed?

Mr. Collins. The only difference is that they claim it was one week earlier than we claim it was. It is a secondary issue of very little importance, but they claim it was Sunday—

Mr. Faulks. March 29th.

Mr. Collins. Yes, March 29th, and we say that it was Sunday, April 5th; and he died April 12th. 40

George A. Duncan, direct.

The Court. That would be Palm Sunday.

10 *Mr. Collins.* Yes, April 5th was Palm Sunday. We say that is when he called and they say it was a week earlier. Now, Mr. Faulks claims that this document,—I suppose supplemented by some testimony perhaps, I do not know about that,—will help to fix the date. My objection to it is that the paper is irrelevant on any issue that is involved here, and its only tendency is to fix the date. I will read it.

“East Rutherford, N. J.
March 30th, 1914.

Mrs. Margaret S. McKenzie,

“Braeside,” Carlton Hill, N. J.

Dear Mrs. McKenzie:

20 In accordance with my conversation with Mr. McKenzie and you yesterday, I have placed the envelope, handed me by Mr. McKenzie, in the vault at the office.

Yours very truly,

(Signed) Geo. A. Duncan,
Secretary.

GAD/EMH.”

And then at the bottom it says:

30 “Recd. from G. A. Duncan large and small envelope today. April 9th, 1914.

Margaret Stewart McKenzie.”

The fact that this happened to be written by her, that on April 9th she received a large and small envelope on that day, the 9th of April, 1914, cannot have any evidential force, as ratifying or adopting what is said above.

The Court. As of March 30th?

40 *Mr. Collins.* Yes, that is the point.

George A. Duncan, direct.

Mr. Faulks. You do not understand, because you have not given me an opportunity to state—

Mr. Collins. Very well, then go on—

Mr. Faulks. —the purpose of this offer, which is a double one.

The upper part of the paper fixes the date, we claim, of Mr. Duncan's call at the McKenzie house, and of the receipt by him of the McKenzie will, the lower part fixes the date when Mr. Duncan returned the will to Mr. McKenzie. She has testified in the most positive way even going so far as to say that it is impossible that she could be mistaken that Mr. Duncan retained the will until after Mr. McKenzie was buried. The evidence is that he did not die until the 12th of April. I purpose to offer both parts of this paper in evidence for the purpose of definitely fixing those dates, and to have Mr. Duncan state just what occurred at each of those times.

Mr. Collins. Mr. Faulks has opened a new phase of the case. He wants to show by the manuscript part of that paper that Mrs. McKenzie is mistaken in thinking that Mr. Duncan retained the will of Mr. McKenzie until after his death. It is entirely immaterial whether she is mistaken or not on that point, as far as I can see.

This paper here shows that she did receive from him on April 9th a large and small envelope.

Mrs. McKenzie. Pardon me—

Mr. Collins. You will have your opportunity. Just a moment.

George A. Duncan, direct.

(Judge Collins here consulted with Mrs. McKenzie.)

Mrs. McKenzie wants to see it again.

(Paper shown to Mrs. McKenzie.)

10 That is irrelevant and not rebuttal, the document itself, certainly, unaccompanied by any testimony is not evidence and proves nothing.

20 *Mr. Faulks.* This is the situation, if your Honor please. Mr. Duncan when he was called before and before Mrs. McKenzie or Dr. Stoddard (Sullivan) testified, spoke of having been at the McKenzie homestead on the Sunday two weeks before Mr. McKenzie died. And at that time he was asked to take possession of this will, and did so. Subsequently a very serious effort, apparently, was made to show that Mr. Duncan was wrong as to the date of that interview, and the date of the estate having taken possession of the will. Mrs. McKenzie was questioned about it at some length and Dr. Stoddard (Sullivan), after he left the stand, was recalled, and fixed the date as April 5th; then Mrs. McKenzie was examined as to the date when the return of the will was secured by her, and was, as I have already said
30 very positive that she could not have been mistaken that she did not secure the return of the will until after Mr. McKenzie's death and burial.

40 I think that this evidence is far from secondary, and that the date on which the will was delivered to Mr. Duncan, and the date on which it was returned by him to Mrs. McKenzie, are both very important.

George A. Duncan, direct.

Mr. Collins. Why?

Mr. Faulks. Because of other transactions which occurred on or about the dates in question which are very significant.

The Court. I am prepared to give a ruling on this point if counsel desire it now.

Mr. Faulks. I will examine Mr. Duncan a little further. 10

Q Mr. Duncan, have you any way of fixing the date on which you were at the McKenzie home and were given Mr. McKenzie's will in order that you might deposit it in the safe at the building and loan association office? A I have.

Q How can you fix that date? A By this letter, this receipt that I mailed to Mrs. McKenzie the day following that on which I received it, received the paper. 20

Q Do I understand you to say you remember mailing this receipt to Mrs. McKenzie on the day following the day on which you received the will? A I do sir, I dictated it and signed it on the day following the receipt of the will.

By the Court.

Q That date would be what? A March 30th, was the day I wrote it and March 29th, Sunday, March 29th, is the day I received it. 30

Further direct examination.

Q That is your signature? "George A. Duncan" above the word "Secretary"? A It is.

Q And that was mailed by you to Mrs. McKenzie on the day it says, March 30th? A It was.

Q How does it come to be in your possession again? A After the paper—or envelope—containing the will, had been delivered to Mrs. Mc- 40

George A. Duncan, direct.

Kenzie, she brought back this receipt to me, just as you see it here.

Q Have you any way of fixing the date on which the envelope containing the will was re-delivered by you to her? A I have, in Mrs. McKenzie's own handwriting, April 9th, and on the
10 back of it the stenographer's check of April 9th.

Q Your stenographer? A My stenographer.

Q How did that check come to be put on there? A Because I gave the will up before I had this receipt and I gave the will up in the presence of the stenographer.

Q Did you give it up before the day that this receipt bears date? A No, sir; the same day; I gave it up about half-past one of April 9th, and Mrs. McKenzie brought this receipt back,
20 just as you see it here, about, probably, two hours later.

Q On the afternoon of the same day? A On the afternoon of the same day; yes, sir.

Q And you are able to say, then, as I understand you, from this paper, that the date on which you re-delivered the will to her was April 9th, 1914? A Yes, sir; that was the date.

Q What was it you gave to her on that day? A The envelope which had been sealed on Sun-
30 day, March 29th, and which contained a white envelope containing Mr. McKenzie's will and a smaller envelope—I don't know what was in it—and they were delivered to her on that day.

Q And it was on that day that Mrs. McKenzie signed the receipt for those papers which appears on the lower half of this sheet? A Well, I did not see her sign it, but that is the way I received it from her; she must have
40 signed it on that day, because—

George A. Duncan, cross.

Q She delivered it to you on that date? A Yes, sir.

Q And it was signed by her on the day you received it? A It was signed that way when I received it.

Mr. Faulks. I offer it in evidence.

Mr. Collins. I will cross examine.

10

By Mr. Collins.

Q Your letter to her, under date of March 30th, said, "Dear Mrs. McKenzie: In accordance with my conversation with Mr. McKenzie and you, yesterday, I have placed the envelope handed me by Mr. McKenzie in the vault at the office," and then you signed it? A Yes, sir.

Q And that envelope you speak of as handed to you by Mrs. McKenzie contained his will? A Yes, sir.

20

Q Mrs. McKenzie's receipt at the foot of this paper is "Rec'd from G. A. Duncan, large and small envelope to-day. April 9th, 1914," and it is signed "Margaret Stewart McKenzie," from whom did you receive the small envelope referred to therein? A There were really three envelopes in the entire transaction. The will was in a large white business envelope; there was a smaller envelope, about—a letter-size envelope, and those two envelopes were enclosed in a large brown envelope and sealed, so that as far as I was concerned I only had the one envelope; it was sealed, and Mrs. McKenzie had sealed it by writing her name over the flap of the envelope.

30

Q And was that document, the sealed outer envelope, the one you gave to her? A Yes, sir.

Q And then she says a large and small envelope? A Well, they were in the brown envelope.

40

George A. Duncan, cross.

Q You remember there was a small leather-sized envelope put in with the large envelope?

A Yes; that Sunday.

Q Do you know what was in that? A No; I do not.

10 Q Who put it in? A Mrs. McKenzie handed it to me and I put it in the envelope.

Q And then Mr. McKenzie handed you the large sealed envelope—or who handed you that?

A I don't get you.

Q After she had put the small one in— A I put the small one in.

Q Who sealed the big one, then? A I did.

Q Who handed it— A I gave it to Mrs. McKenzie to put her signature on, to endorse the flap, seal it.

20 Q Mrs. McKenzie? A Yes; Mrs. McKenzie.

Q And she did so? A She did so.

Q Who gave it to you to take away? A She handed it to me to take away; after she signed it she handed it back to me.

Q You spoke of an envelope handed to you by Mr. McKenzie? A It was handed to me at the time, at first; then I put it in the other envelope.

30 Q I see. How did you come to give it to Mrs. McKenzie? A Because she demanded it.

Q But Mr. McKenzie had entrusted it to you, had he not? A Mr. McKenzie and Mrs. McKenzie were present at the time.

Q What was it given to you for? A Safe keeping.

40 Q Why should you give it back to Mrs. McKenzie? A I had no reason for withholding it from her. I was not any more than the custodian of the paper, for the convenience of the family; I was not paid to keep it down there for

George A. Duncan, cross.

his account or anything; I was not in a position to refuse it.

Mr. Collins. I object to it as irrelevant. I do not see what bearing it has.

The Court. The portion of the letter which is signed by Mr. Duncan is not evidence, and proves nothing by itself. But as it is in the nature of a memorandum made at the time, or very nearly the same time, contemporaneously, it can be used by Mr. Duncan for the purpose of refreshing his recollection, and as the basis of definite testimony fixing the date. 10

The lower portion, which is a dated receipt, signed by Mrs. McKenzie is admissible as showing the day on which she received this large and small envelope and to that extent I will admit it in evidence. 20

Paper received in evidence and by the direction of counsel spread in full upon the record.

“EAST RUTHERFORD SAVINGS LOAN
AND BUILDING ASSOCIATION.

East Rutherford, N. J., March 30th, 1914.

Mrs. Margaret S. McKenzie,
‘Braeside,’

Carlton Hill, N. J. 30

Dear Mrs. McKenzie:

In accordance with my conversation with Mr. McKenzie and you, yesterday, I have placed the envelope handed me by Mr. McKenzie in the vault at the office.

Yours very truly,

George A. Duncan,
Secretary.

GAD/EMH

Argument.

Rec'd from G. A. Duncan, large and small envelope, to-day, April 9th, 1914.

Margaret Stewart McKenzie."

10 *Mr. Faulks.* I think, your Honor, that completes the case, excepting that some arrangement ought to be made, before your Honor disposes of this case, to have some one go to New York with the two sets of keys and report to you the results and what the keys are. Your Honor will remember Mrs. McKenzie produced one key to the present box, box 631.

The Court. The Tiffany box?

Mr. Faulks. Yes, sir; one outside key—and that we produced one outside key.

20 *The Court.* Do you say Mrs. McKenzie produced one outside key?

Mr. Collins. Yes; here in court.

30 *Mr. Faulks.* Mrs. McKenzie produced one and it was numbered 761, the private number which enabled Mr. Williams, the Tiffany man, to say that fitted box 631. Now, we produce another key similarly numbered and which, undoubtedly, fits the outside of the same box. Mr. James McKenzie testified that key was found by him in his father's private safe at the mill after his father's death, with the key of the outside door of the lock, that Mrs. McKenzie produced; there were two small keys, apparently duplicated, and Judge Collins says, I believe, they are the keys which will open the inside box. With the outside key we produced there were also two small keys which differed from each other, and also differed from the two little keys Mrs. McKenzie pro-

40

Argument.

duced, and, of those small keys, Mr. Williams said that one was a Tiffany key, and the other was not, and I think your Honor ought to know what those keys are—which is the Tiffany keys produced on each side to fit this box, either the outside door or the box itself.

10

The Court. You each have the possession of the keys—you each produced them, did you not?

Mr. Faulks. Yes; we each have a set of the keys.

The Court. What would that prove, if they are different and only one set opens the inner and outer doors.

Mr. Faulks. I do not know that it would prove very much of anything. I suggest this, because, as your Honor knows, it is the desire of Mr. Ladd that you should have all the possible light you can in determining this question. He is trying to hold an even hand between the widow and the next of kin, and if your Honor thinks that testimony would not be important, I will not urge the suggestion.

20

Mr. Collins. I do not care one way or the other about it, except that we do not want delay. If your Honor wants to go over, and take these keys, Mrs. McKenzie will go over because they won't let you in without her, but you don't need to do it.

30

There was an old safe deposit box and the lock got broken and they changed to another box and took the tin box which belonged in that receptacle and put it in the other receptacle. Mrs. McKenzie received, as is testified to in the case, both by Mr.

40

Argument.

Williams and Mrs. McKenzie, two sets of keys—one was an outer key to the safe itself, another was a duplicate of that—exactly alike. There were two keys, also, for the tin box, and she had all four of those keys. She testified, and Mr. Williams corroborated her, that she used to carry all four keys around with her and Mr. Williams told her that was not wise, and separated them and put two on a little ring he furnished her—a small key and a large key; the other two were on a pink ribbon. In some way or other, one of these large keys—I do not dispute it is one of the large keys—got into the possession of Mr. James McKenzie, and through him went to the executor, so that the executor has a key to the safe and Mrs. McKenzie has a key to the safe. The two little keys Mrs. McKenzie still has. There is not any doubt that those two are alike. Mr. Williams testified to it, and your Honor's visual inspection will show it. So Mrs. McKenzie has the two little keys. Her explanation of how it is that she does not have the big one and does have the little one is that while she carried in her hand bag the two on a ring, the big one and little one, the other big one and little one were in the drawer of the chiffonier in her bedroom and on some occasion someone had opened that—March 28th—and she saw the small key lying on the floor and she picked it up and kept it. That is the reason why she had two little keys. The big key has disappeared. There is not any doubt that the two little keys are exactly alike and whatever one opens the other opens. That one

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Argument.

of those keys—or both of them, for that matter—will open the tin box if proved by Mrs. McKenzie, unless they want to dispute it, and Mr. Faulks can be easily assured by Mr. Ladd and Mr. Luce and myself and Mr. Williams and several other people that, in the presence of those I named, I received 10
from Mrs. McKenzie one of these little keys and opened this tin box in their presence, and in the presence of the comptroller, so as to see what was in there.

So that there is no dispute about it that one of these is the key to the tin box—one that Mrs. McKenzie produced.

The Court. One of the small keys?

Mr. Collins. One of the small keys. The big one every one admits is the key to the safe, and one of the small keys—they are exactly alike—is the key to the tin box. If he doubts my word, or Mr. Ladd or Mr. McKenzie or anyone else wants to go and try it, they are welcome, but it seems to me it is unnecessary. We have two keys, either of which will open that tin box; they have two keys which differ from each other, and each differ from those two keys. If you want to go over and open that tin box you are welcome to. 20
30

Mr. Faulks. I, of course, do not dispute Judge Collins' word about anything. But I do say this that it is not yet proved in this case who has a key or keys that will open the inside box. It is admitted we each have an outside key. If your Honor does not think it important as to who has the inside key or keys, well and good. 40

Argument.

Mr. Collins. We would like you to go over if you can spare the time. Mr. Bradley can go over, and Mrs. McKenzie and Mr. Faulks.

10 *Mr. Faulks.* If Mr. Bradley and Mrs. McKenzie and someone representing Mr. Ladd can go over, we can, undoubtedly, agree on a statement of what the facts are; or if anyone knows now, I am perfectly willing it should be stated on the record, but it is not in the case yet.

Mr. Collins. It is in the case, by the evidence of Mrs. McKenzie, and Mr. Bell knows that Mrs. McKenzie's key, in my hand, opened the tin box.

20 *Mr. Faulks.* If Mr. Bell or Mrs. McKenzie will say neither one of the keys Mr. Ladd has produced will open the small box, I shall be satisfied.

The Court. The later one, the substituted one.

Mr. Faulks. Yes; the later one.

30 *Mr. Collins.* It is not proved that the two they have will, neither, open the box. So that, if we go over at all, what we want to do is to take out two keys that are in evidence and their two keys and try them all.

The Court. Suppose I receive and consider any statement signed by the representative of both parties, which will identify these keys and describe what they will open.

Mr. Collins. They are already in evidence as exhibits.

The Court. I know they are.

40 *Mr. Collins.* There can be a statement signed by counsel, Mr. Bradley and Mr. Faulks, that the two we produced, either do

Deposition of Jane L. Butland, direct.

or do not open the tin box, and that the two they produced, or one of them, either does or does not.

The Court. Will that be satisfactory, Mr. Faulks?

Mr. Faulks. Yes; I suggest that Mrs. McKenzie arranged to-morrow to go over with Mr. Bradley or anyone else and report to your Honor what the facts are. 10

Mr. Collins. That is perfectly satisfactory.

Counsel then proceeded with the oral arguments.

Deposition of Jane L. Butland taken De Bene Esse.

JANE L. BUTLAND, being duly sworn as a witness on behalf of the defendant Margaret Stewart McKenzie, testifies as follows: 20

By Mr. Bradley.

Q What is your name? A Jane Louise Butland.

Q Mrs. Butland, where do you live? A My home?

Q Yes. A In the winter, in Dorchester, in Neponset. 30

Q Are you in business? A I am.

Q Where? A At 170-A Tremont street.

Q In what city? A Boston.

Q Were you acquainted with the late William McKenzie of East Rutherford, New Jersey? A Yes, sir.

Q For how many years prior to his death? A About seven.

Q And he died when? A I could not give you the date. 40

Deposition of Jane L. Butland, direct.

Q When did you last see him? A On the first day of Januray, this year.

Q 1914? A 1914.

Q Were you an intimate friend of Mr. McKenzie? A Why, I knew him quite intimately, knew about his business affairs.

10 Q Were you in the habit of speaking to him about his business affairs? A Yes.

Q For how long a period before his death did you speak to him about his business affairs?

A How long had I been talking with him?

Q Yes. A Why, ever since I knew him, from the first time I ever saw him.

Q When you saw Mr. McKenzie on January 1, 1914, did you have any conversation with him touching his business affairs? A Yes.

20 Q State what that conversation was.

Mr. Twining. That is objected to upon the ground that it is incompetent, irrelevant and immaterial. It appears to be a conversation with the deceased.

A I had noticed he was not well. and I asked him why he didn't get out of active business and let his sons run his mills. And I said, "Why, you have enough in that building and loan association to take care of you." And he said, "Oh, that all belongs to my wife." And that was news to me, and I said, "Is that so?" And he said, "Oh, yes, but it is in our joint names." And I said, "That is doing nicely?" And he said, "Yes,—Oh, yes, I hope that will be up to \$100,000 or more."

30

Mr. Twining. I move to strike that out on the ground that it is incompetent, irrelevant and immaterial. It is a statement of a conversation with the deceased; and is also incompetent upon the ground that it is an at-

40

Deposition of Jane L. Butland, cross.

tempt to contradict, add to, change or alter transactions which are covered by documents offered in evidence in this case; and it has no materiality on the question at issue. It is what testator intended by what he did; it goes rather to the question as to what the testator may have intended to do, which is not a question in issue in this cause. 10

Q Did you know what building and loan association Mr. McKenzie held shares in? A Yes.

Mr. Twining. I make the same objection to that question I make the same objection to this whole line of questions, and move to strike out each answer on the same grounds as above stated.

Q What was the name of the association? A East Rutherford Loan & Building Association. 20

Q And was that the association to which you and he referred in this conversation? A Yes, I knew of no other.

Q What was the nature of the conversation which you were holding with Mr. McKenzie at the time this remark was made? A Why, he came to me on business; I am a scientific worker, and he came to me to ask advice always.

Q The conversation was, then, serious and professional? A Yes, sir. 30

Mr. Bradley. That is all.

Mr. Twining. As there is no one here who can rule upon my objection, I will cross examine, reserving my right to renew these objections before the Advisory Master at the hearing.

Cross examination by Mr. Twining.

Q Are you married, Mrs. Butland? A I am a widow. 40

Deposition of Jane L. Butland, cross.

Q What is the nature of your business, which you have defined as "scientific worker"? A Why, people come to me for advice. I can read their hand, and they talk over their affairs to me. I seem to be able to,—partly Christian Science, partly psychometry, partly hand, so
10 much of all that I call it a "scientific helper."

Q It is psychic rather than anything which is due to business experience, is it not? A No.

Q What business experience have you had?

A What business experience have I had?

Q Yes. A No business experience except as an artist.

Q What kind of an artist? A Portraiture and heraldry and miniature work.

Q Then how is it that you can advise business men as to their business affairs unless your advice is based upon some psychic power which you possess? A I do not call it that. I call it "science of the hand." Would you call hand
20 reading psychic?

Q No; I won't attempt to define it. A I won't either.

Q Is your ability to advise business men based principally upon your ability to read their palms? A A great deal.

30 Q Principally? A Principally.

Q And upon what else is it based? A Well, I suppose it is one form of psychometry. You may call that psychic.

Q What is psychometry? A Soul sensing.

Q What do you mean by "soul sensing"? A From your vibrations.

Q What can you tell from a person's vibrations? A You can tell the conditions often-
40 —that is, take up a small piece of stone that

Deposition of Jane L. Butland, cross.

had come from a distant country; and, by holding it close to your head and concentrating, you can get the conditions where it came from. That is one form of psychometry.

Q These conditions that you speak of, are they present conditions, past conditions, or future conditions? A All three. 10

Q So, if you take up a stone, you can tell future conditions? A No, I beg your pardon, it is only the past conditions,—what it has been against. I simply use that as an illustration.

Q But if you use the “soul sensing,” or whatever you may call it, with reference to individuals, you claim to have the ability to tell their past? A Not through that, no,—

Q Their future? A —I do that entirely by the hand. 20

Q Well, how do you use the “soul sensing” process in connection with individuals? A I do not use it unless they use a crystal,—unless they take a crystal and use it,—unless they hold a crystal.

Q Now, did Mr. McKenzie hold a crystal? A He did twice.

Q And whenever he came to see you during the seven years that you knew him, it was for the purpose of taking your advice? A Absolutely. 30

Q And the advice you gave him was based upon these powers which you claim to have? A Hand, always, from the first; and then crystal twice.

Q Now, when you saw him the first time,—when was that? A I can't give you the date. It is back in 1907.

Q Did you have conversations with him frequently? A Why, when he came to Boston; 40

Deposition of Jane L. Butland, cross.

sometimes three times a year, and sometimes four times a year, I think I found through my books.

Q You always had conversations with him?

A Why, he always came to see me that way; never any other.

10 Q When you read his palm, was that for the purpose of discovering what was going to happen to him in the future? A Not specially, only as anybody comes to have their hand read and talk things over.

Q But your advice to him was based upon what you found in his palm, was it not, principally?

A Why, no, he talked things over with me, he told me a great many things about his business.

20 One time he said, "I had just as soon"—

Q No matter about that. A All right I am not anxious to talk.

Q Did you, however, base your advice to him as to his business affairs upon what you found in his palm? A The only way you can base your business advice upon his palm is, what the good conditions are, that is all.

30 Q Do you mean, by "good conditions," good present conditions? A Yes, good present conditions, or good future conditions. I can't tell you unless I can explain about the lines.

Q By "good conditions," do you mean good physical conditions? A Physical conditions and business conditions. That is, there is a business side of the thing, and the line of the feeling.

40 Q When did you first discover that he had any shares of stock in this Building and Loan Association? A I couldn't tell you that. It was in talking over his,—he had talked with

Deposition of Jane L. Butland, cross.

me for two or three years,—two years anyway, I am very sure, about his stocks.

Q And you do not know, do you, as a matter of fact, whether he had stock in any other building and loans, or not? A He never told me of any specially,—never specialized any.

Q He never told you what his holdings were in any building and loan, did he? A He may have, but I don't remember any. There was a special reason why this was told me. 10

Q Now, how long have you known Mrs. McKenzie? A Mrs. McKenzie and her husband came to me first together.

Q Did you know Mrs. McKenzie before she was married? A Never,—I never saw her.

Q Do you know where she came from? A No, I haven't any idea,—except from England, I should say. 20

Q How many times have you seen her since she was married? A Since she was married? I don't know. I supposed she was married,—I I didn't know.

Q How many times have you seen her since 1907? A Well, I couldn't tell you. Very few times. I never read for her but three times.

Q Have you seen her as frequently as you saw her husband? A Oh, no indeed. 30

Q Have you seen her since her husband's death? A Yes.

Q How many times? A She came twice.

Q And you are here at her request, I presume, today are you not? A I came here at Judge Collins' request, I judge.

Q When did you first meet Judge Collins?

A I did not meet him, I had a letter from him.

Q That is the first you ever heard of him?

A That is the first I ever heard of him. 40

Deposition of Jane L. Butland, cross.

Q Through whom did knowledge of Mr. McKenzie's death come to you? A Through her.

Q This conversation of January 1, 1914, was held where? A At my office at 170-A Tremont street.

10 Q In connection with one of these— A Talks, hand readings, yes.

Q —palm readings? A Yes.

Q Can you give me the dates, since Mr. McKenzie's death, when Mrs. McKenzie called on you? A No, I could not.

20 Q Do you remember the months and the year? A No, I could not. Just for a moment, I saw her. She came with a maid,—she said it was a maid at least,—she had her as a maid,—came to my door all dressed in black,—the first I knew he had passed out.

Q To your office? A Yes.

Q What was the purpose of that visit? A Just to tell me that he had died.

Q Have you and she discussed the conversation of January 1, 1914? A The second time she was there. Shall I tell you what she said?

30 Q Yes. A She told me what a hard time she was having, that she didn't have any money or anything of that sort. And I said, "Well, where is all that stock that belongs to you?" And she said, "What stock?" "Why," I said, "that East Rutherford Building and Loan that belonged to you." And she said, "Why, what do you know about that?" And I simply told her.

Q Was she present at the conversation on January 1, 1914? A No,—no.

40 Q Which visit was it when this conversation that you speak of was had? A What I just told you about her?

Deposition of Jane L. Butland, re-direct.

Q Yes. A The second.

Q And what was the date of that? A I couldn't tell you.

Q What was the month? A I couldn't tell you, I don't remember.

Q Was it some time last summer? A I think it was the last time she came to Boston, if you can find that out. 10

Q Last summer, was it? A Yes, it was in the summer.

Q This summer of 1914? A Yes.

Q And was that the time that she came to your office with a maid? A No, she came to my office with a maid a little while before that; she didn't stay two minutes.

Q Did she come this last time for the purpose of consulting you as to business affairs? A No. 20

Q Did you read her palm the last time? A No, she simply talked with me. She was too nervous to have me read her palm. I may have talked with her about her business affairs,—just as like as not I did, but I don't remember anything. There was no money transaction between us at all.

Q Did you ever make an affidavit for use in this cause? A Yes. 30

Q At Judge Collins' request? A Yes, sir.

Mr. Twining. I have nothing further.

Re-direct examination by Mr. Bradley.

Q What is your religion? A Unitarian.

Q Are you in regular attendance at a Unitarian church? A Yes.

Q And in good standing? A Yes.

*Stipulation of Facts.***Stipulation of Facts.**

Filed November 16, 1914.

10 IT IS HEREBY STIPULATED AND AGREED by and
between Lindabury, Depue & Faulks, solicitors
of defendant, Henry Manchester Ladd, executor
of the last will and testament of William Mc-
Kenzie, deceased, and Collins & Corbin, solicitors
of the defendant, Margaret Stewart McKenzie,
that the following statement of facts shall be
and the same is hereby admitted as proof in the
above entitled cause, and shall constitute a part
of the record therein without further or formal
proof thereof:

20 (1) The large key numbered 761 produced by
the defendant, Margaret Stewart McKenzie, at
the hearing (p. 216), on the small key-ring to
which a smaller key was also attached, which
large key is in evidence (marked Exhibit 3 for
the defendant, Margaret Stewart McKenzie (p.
217), fits the lock of and opens the outer lock
box numbered 630 in the safe deposit vault of
Tiffany & Co., at Fifth avenue and Thirty-sev-
enth street, New York City.

30 (2) The above mentioned small key on the
same small key-ring with the above mentioned
large key, produced at the hearing by the de-
fendant, Margaret Stewart McKenzie (p. 216)
and in evidence (marked Exhibit 3 for the de-
fendant, Margaret Stewart McKenzie (p. 217),
fits the lock of and opens the inner tin box which
is contained inside of the above mentioned outer
lock box numbered 630 in the safe deposit vault
of Tiffany & Co., at Fifth avenue and Thirty-
seventh street, New York City.

40 (3) The small key, unattached to anything,
produced by the witness, Margaret Stewart Mc-

Stipulation of Facts.

Kenzie at the hearing (p. 217), and in evidence (marked Exhibit 4 for defendant, Margaret Stewart McKenzie (p. 218), fits the lock of and opens the small tin box which is contained inside of the above mentioned outer lock box numbered 630 in the safe deposit vault of Tiffany & Co., at Fifth avenue and Thirty-seventh street, New York City. 10

The three above mentioned keys are in the possession of the defendant, Margaret Stewart McKenzie.

(4) The large key, bearing the number 761, marked "Remington & Sherman Co., Philadelphia and New York," produced at the hearing by counsel for the defendant, Henry Manchester Ladd, executor, etc. (p. 146), and in evidence (marked Exhibit 18 for defendant, Ladd, p. 255), fits the lock of and opens the outer lock box numbered 630 in the safe deposit vault of Tiffany & Co., at Fifth avenue and Thirty-seventh street, New York City. 20

(5) The small key produced at the hearing by counsel for the defendant, Ladd (p. 146), marked "Corbin, New Britain, Ct., U. S. A.," and in evidence (marked Exhibit 18 for defendant, Ladd, p. 255), can be inserted in the keyhole of the inner tin box which is contained inside of the above mentioned outer lock box numbered 630 in the safe deposit vault of Tiffany & Co., at Fifth avenue and Thirty-seventh street, New York City, but cannot be turned in the keyhole of and will not unlock the said inner tin box. 30

(6) The small key marked "Eagle Lock Co., Terryville, Conn.," produced at the hearing by counsel for defendant, Ladd (p. 146, but not so identified on the record), and in evidence (marked Exhibit 18 for defendant, Ladd, p. 255) 40

Stipulation of Facts.

will not enter the keyhole of nor unlock the inner tin box which is contained inside of the above mentioned outer lock box numbered 630 in the safe deposit vault of Tiffany & Co., at Fifth avenue and Thirty-seventh street, New York City.

10 The three last mentioned keys are now in the possession of the witness, James McKenzie.

Neither of the above mentioned large keys [mentioned in paragraphs (1) and (4)] will unlock the outer lock box numbered 630, until the master key, in the possession of the custodian of Tiffany & Company's vault, has first been inserted and turned in the lock of the outer lock box.

20 COLLINS & CORBIN,
*Solicitors of Defendant, Margaret
Stewart McKenzie.*

LINDABURY, DEPUE & FAULKS,
*Solicitors of Defendant, Henry Man-
chester Ladd, Executor, &c.*

Dated, November 16, 1914.

30

40

*Exhibits for Defendant Ladd.***Exhibits for Defendant Ladd.**

- No. 1—Last Will and Testament of William McKenzie (see copy annexed to Bill of Complainant, page 12).
- No. 2—Constitution and By-Laws of Complainant.
- No. 3—19th Annual Report of Complainant. 10
- No. 4—Old Pass Book No. 156 of Complainant.
- No. 5—Form of Deposit Slip of Complainant:

Deposit Slip to accompany every payment, whether made personally or by letter.

Deposited in

EAST RUTHERFORD SAVINGS LOAN AND BUILDING ASSOCIATION

By 20
Name of Member.

Book No.....(No. of Book is important)

Date191...

Amount:Dollars.....Cents

Note here any change of address, any increase or decrease of shares you desire, etc.

It Will Save Delay If Members Will

1. Fill out deposit slip at home.
2. Be careful to give No. of pass book.
3. Spread all bills out straight, and place them all one way, face up. 30
4. Put deposit slip and money in book at place where entry is to be made.
5. When presenting more than one book, put deposit slip and money in each.

Payments may be made by postal money order, express order, or registered letter.

Cheques to be drawn to the order of the Association.

Remittances by mail address to the Secretary. 40

Exhibits for Defendant Ladd.

Regular meetings the second Friday of each month, and every Saturday, 7-9 P. M.

Pass Book must be presented when depositing or withdrawing money.

Office open every day, except Saturday, 1-4 P. M.; Saturday, 7-9 P. M.

10 The aim and purpose of the Association is the instilling and development of a spirit of thrift and industry, and the promoting of a love of home-owning in the citizens of the community.

It Issues

Instalment Shares (\$100) — Subscriptions from date of membership; no back dues. A dollar a share a month, but members can pay more. They can also pay weekly. Six per cent. dividends, compounded semi-annually.

20 Industrial Shares (\$100) — Issued to any adult or minor applying for two or more. Ten cents per share per week, or more. Six per cent. dividends. Excelling and superseding industrial insurance.

Juvenile Saver Shares—And lend banks to boys and girls to help them save. Dividend, 5 per cent., when the payments amount to \$5 and upwards. No stipulated payments and no fines.

30 Prepaid Shares (\$100) — Dividend, 5 per cent., payable in May and November. Better than a mortgage, as there are no fees, no commissions, no legal expenses, no renewals, no insurance or taxes to look after—nothing to worry an investor; and the money is available at short notice.

40 No Petty Exactions—No entrance, membership, transfer, or withdrawal fees, and no charge for pass books or certificates.

*Exhibits for Defendant Ladd.**It Loans*

To Build a Home, Buy a Home, Improve a Home, or Pay Off a Mortgage—Applications for loans received at any time. The attorney's and surveyor's fees are fixed and moderate.

One dollar a month for every \$100 borrowed (or less if the security is liberal), but a borrower can pay as much more as he pleases, cancelling loan all the sooner. 10

Loans Reduced at Every Dividend Period whenever the borrower has the value of one or more shares in subscriptions and profit to his credit. The interest charge is correspondingly reduced, and the monthly payments may also be lessened, if the borrower so elects.

Juvenile Saver Annex 20

Miss Susan Staab and Miss Amy Petzold will be at the office on the Saturday following the second Friday of each month, from 3 to 5 P. M., for the convenience of juveniles bringing their banks and pass books, and to give out banks to new members.

The members of the Association are its greatest propagandists. The satisfaction of investors and borrowers is manifested in their eagerness to make the merit of the Association known, hence its rapid expansion, and the extension of its beneficent influence. 30

Exhibits for Defendant Ladd.

No. 6—Form of Withdrawal Application of Complainant:

EAST RUTHERFORD SAVINGS LOAN AND BUILDING ASSOCIATION

I desire to withdraw \$..... Dollars,

10 Write the amount in full Book No.....

Signature

Address

No. of Street Boro' or Township

Date.....191...

This application will not be accepted without your Pass Book.

No. 7—Form of Certificate of Prepaid Shares of Complainant:

20 Organized May 23, 1895

Certificate of Paid Up Stock or Prepaid Shares (Design)

Number 506Shares

Incorporated Under the Laws of the State of New Jersey

EAST RUTHERFORD SAVINGS LOAN AND BUILDING ASSOCIATION

30 East Rutherford, New Jersey

This Certifies that.....has paid the full sum of.....Dollars, as appears by the coupons hereto attached, onShares, of the Capital Stock of the *East Rutherford Savings, Loan and Building Association*

Transferable only on the books of the corporation on surrender of this Certificate in person or by attorney and subject to all the restric-

Exhibits for Defendant Ladd.

tions and provisions of the By-Laws of the Corporation.

Issued and dated at East Rutherford, N. J., this.....day of.....A. D. 190..

..... Secretary
 President

- Shares \$100 Each 10
- (1)—One Hundred Dollars—(1)
 - (2)—One Hundred Dollars—(2)
 - (3)—One Hundred Dollars—(3)
 - (4)—One Hundred Dollars—(4)
 - (5)—One Hundred Dollars—(5).
 - (6)—One Hundred Dollars—(6)
 - (7)—One Hundred Dollars—(7)
 - (8)—One Hundred Dollars—(8)
 - (9)—One Hundred Dollars—(9)
 - (10)—One Hundred Dollars—(10) 20

For value received .. hereby sell, transfer and assign to.....

.....
 the Shares of Stock within mentioned, and hereby authorize.....
 to make the necessary transfer on the books of the Corporation.

Witness .. hand and seal this.....
 day of..... 190...

Witnessed by..... 30

No. 8—Dividend Check of Complainant to order of William McKenzie, dated Nov. 14th, 1913.

No. 9—Old Pass Book No. 918 of Complainant.

No. 10—New Pass Book No. 918 of Complainant.

No. 11—New Pass Book No. 156 of Complainant. 40

Exhibits for Defendant Ladd.

A. AND B. 26 Certificates for Prepaid Shares

No. 12—

Date, May 12th, 1913.

Book No. 156.

10 I hereby make application for 500 Installment
Shares in the
EAST RUTHERFORD SAVINGS LOAN AND BUILDING
ASSOCIATION
and agree to abide by its Constitution, copy of
which I have received.

Signature (Name in Full)—Wm. McKenzie.

Residence (Number and Street) (Boro' or
Township)—Carlton Hill, N. J.

Married.

Wife's Name—Margaret Stewart McKenzie.

20 The shares in our joint names are payable to
either or both, and to the survivor on the death
of the other.

WM. MCKENZIE.

MARGARET STEWART MCKENZIE.

No. 13—

Date, May 12th, 1913.

Book No. 1409 to 1428, Inc.

30 I hereby make application for 200 Instalment
Shares in the
EAST RUTHERFORD SAVINGS LOAN AND BUILDING
ASSOCIATION
and agree to abide by its Constitution, copy of
which I have received.

Signature (Name in Full)—Wm. McKenzie.

Residence (Number and Street) (Boro' or
Township)—Carlton Hill, N. J.

Married.

40 Wife's Name—Margaret Stewart McKenzie.

Exhibits for Defendant Ladd.

The shares in our joint names are payable to either or both, and to the survivor on the death of the other.

WM. MCKENZIE.

MARGARET STEWART MCKENZIE.

No. 14—

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Date, May 12th, 1913.

Certificate Nos.

1403

1404

1405

1406

1407

1408

I hereby make application for 60 Prepaid Shares in the

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EAST RUTHERFORD SAVINGS LOAN AND BUILDING ASSOCIATION

and agree to abide by its Constitution, copy of which I have received.

Signature (Name in Full)—Margaret Stewart McKenzie.

Residence (Number and Street) (Boro' or Township)—Carlton Hill, N. J.

Married.

Husband's Name—Wm. McKenzie.

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The shares in our joint names are payable to either or both, and to the survivor on the death of the other.

MARGARET STEWART MCKENZIE.

WM. MCKENZIE.

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Exhibits for Defendant Ladd.

No. 15—

Date, May 12th, 1913.

Book No. 918.

I hereby make application for 100 Installment
Shares in the10 EAST RUTHERFORD SAVINGS LOAN AND BUILDING
ASSOCIATIONand agree to abide by its Constitution, copy of
which I have received.Signature (Name in Full)—Margaret Stewart
McKenzie.Residence (Number and Street) (Boro' or
Township)—Carlton Hill, N. J.

Married.

Husband's Name—Wm. McKenzie.

20 The shares in our joint names are payable to
either or both, and to the survivor on the death
of the other.MARGARET STEWART MCKENZIE.
WM. MCKENZIE.

No. 16 —

Rec'd from James J. McKenzie,

Mch. 27/14—Brown envelope containing \$50
in new bills.

FRANK WIDOWS.

30 Mch. 28/14—Brown envelope containing \$100
addressed to Mr. Wm. McKenzie also Brown
envelope addressed to Mrs. Wm. McKenzie con-
taining an envelope addressed to Mrs. Margaret
S. McKenzie.

FRANK WIDOWS.

No. 17—Conditions of Deposit of Tiffany & Co.
C. AND D. Bundle of Checks.

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Exhibits for Defendant Margaret S. McKenzie.

No. 18—3 keys on a string.

No. — Receipt of Margaret Stewart McKenzie
for large and small envelope, dated
April 9, 1914:

Rec'd from G. A. Duncan, large & small en-
velope, today, April 9th, 1914.

MARGARET STEWART MCKENZIE.

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**Exhibits for Defendant Margaret Stewart
McKenzie.**

No. 1—Card signed when Tiffany & Co. box
was rented.

No. 2—Receipt given when Tiffany & Co. box
was rented.

No. 3—Two keys on ring.

No. 4—Small key.

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*Opinion of Vice-Chancellor.***Opinion.**

Filed July 10, 1916.

Mr. Gilbert Collins for Margaret Stewart McKenzie.

10 Mr. Frederic J. Faulks for Henry M. Ladd, Executor.

MEMORANDUM.

HOWELL, V. C.

This suit was brought by the East Rutherford Savings, Loan and Building Association against Margaret Stewart McKenzie, the widow, and Henry M. Ladd, the executor of the will of William McKenzie, deceased, for the purpose of
 20 determining the title to some shares of stock of the complainant corporation which were claimed by both the widow and the executor. What is claimed to be the evidence of the ownership of the shares is on deposit with the clerk of this Court and consists of certificates of shares of stock and a pass book in which the account between the corporation and the shareholder were kept. A decree of interpleader has passed and the contending parties have filed their claims;
 30 and the cause now comes on for hearing and a settlement of the title to the shares in question.

The facts are these: On May 12, 1913, and for a long time prior thereto, William McKenzie, the decedent, owned 200 shares of full paid stock of the complainant corporation, the par value thereof being \$100 per share, and Mrs. McKenzie owned sixty shares thereof, for which certificates had been issued to them, respectively, by the corporation, and the shares stood in their
 40 names, respectively, on its books. At the same

Opinion of Vice-Chancellor.

time Mr. McKenzie was the owner of five hundred shares of the same stock, which were not fully paid up. These shares were represented by a pass book numbered 156, in which was kept an account of all the deposits and withdrawals and exhibiting the balance to the credit of the shares on the company's books. There had been paid on account of these shares something over \$48,000. In addition thereto, Mrs. McKenzie owned one hundred shares of the stock of the corporation which were redeemed by the corporation during the lifetime of Mr. McKenzie, so that this block of stock is not in controversy. Since the beginning of the suit the sixty shares of full paid stock owned by Mrs. McKenzie have been surrendered and released to her by the executor, so that there remains in controversy two hundred shares of the full paid stock and five hundred shares of the installment stock, having an aggregate value of about \$75,000. On the date last mentioned, May 12, 1913, Mr. and Mrs. McKenzie severally surrendered to the corporation all the said certificates and the pass book No. 156, and, at the same time, made application for new certificates and a new pass book by signing their names to cards prepared by the corporation for the purpose. The cards so deposited with the pass book No. 156, reads as follows: "Date, May 12, 1913. Book No. 156. I hereby make application for 500 installment shares in the East Rutherford Savings, Loan and Building Association, and agree to abide by its constitution, copy of which I have received. Signature, Wm. McKenzie. Residence, Carlton Hill, N. J. Married. Wife's name, Margaret Stewart McKenzie." The form of application for the other block of the shares was in the same

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Opinion of Vice-Chancellor.

form, the only changes being made necessary by the slightly varying subject matter. On the reverse side of each of the said cards was endorsed a statement, of which the following is a copy: "The shares in our joint names are payable to either or both and to the survivor on the death of the other. Wm. McKenzie, Margaret Stewart McKenzie." At the time the new certificates for the shares were issued Mr. McKenzie gave directions that they should be issued as follows: The new certificates to Mrs. McKenzie were issued to "Margaret Stewart and/or William McKenzie," and the certificates which were issued to take the place of the ones that had been surrendered by Mr. McKenzie were issued to "William and/or Margaret Stewart McKenzie." The proper entries were made on the books of the corporation to effectuate the purposes of the surrender of the old evidences of ownership and the issue of the new ones. All this took place on May 12, 1913, and when the transaction was finished Mr. McKenzie went from the office of the complainant corporation, having in his possession all the certificates and the pass book, representing 200 shares of the full paid stock and 500 shares of the installment stock of the said corporation. We now lose sight of the certificates and pass book in question until June 2, 1913. In the year 1907, long prior to any controversy over this property, Mr. and Mrs. McKenzie rented a safe deposit box at the store of Tiffany & Company, in New York, in the names of both. A year or so later the lock on the original box became out of order, and another box, numbered 630, was substituted. There was delivered at that time to Mrs. McKenzie two large keys for the outside door of

Opinion of Vice-Chancellor.

the safe deposit box and two small keys for the interior tin box. It appears by the records of Tiffany & Company that no one ever claimed or had access to this box (to either the original or the substituted box), except Mrs. McKenzie. She kept in it her individual personal property, and, as I understand the evidence, only her property was ever placed in that box. She continued to rent the box in question from that time until after the beginning of this suit, and she says that the certificates for the two hundred shares having come into her possession, she deposited them in the Tiffany box on June 2, 1913, and that they remained there until they were taken out by her to be deposited with the clerk of this Court under an order made in this cause for that purpose. This is the complete history of the custody of the shares, so far as is disclosed by the evidence, with the single exception that according to the evidence of Miss Guy, on June 1, 1913, Mrs. McKenzie went out of the room where she and Mr. McKenzie and Miss Guy were engaged in conversation about building and loan shares and almost immediately returned and put something in Miss Guy's hand and closed it over and said, "How do you feel having \$26,000 in your hand?" There was considerable discussion over the admissibility of this evidence, but it was finally admitted, and while there is no direct evidence that it was the certificates for the shares that was put in Miss Guy's hands, still, it is stated by Mrs. McKenzie that what she had in her hand was the shares, whence comes the argument that on that day she had the certificates for the shares in her possession. The evidence was clearly admissible.

The history of the pass book, which represented the five hundred shares of installment

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Opinion of Vice-Chancellor.

stock, is somewhat different. Mrs. McKenzie says that that pass book came into her possession and that she kept it from May 12, 1913, down until within a few days of Mr. McKenzie's death, in a drawer in a chiffonier in her bedroom under lock and key; and that a few days
 10 before Mr. McKenzie's death the drawer containing the pass book was surreptitiously opened and the pass book removed therefrom, together with the large key fitting into the lock of the outer door of the Tiffany safe deposit box. When she discovered it she instituted a search and found the small key to the inside box on the floor of the room in which the chiffonier was; the large key and the pass book were found in Mr. McKenzie's safe at the mill when the safe
 20 was opened after his death.

Mrs. McKenzie insists that the surrender of the old certificates and pass book to the complainant corporation, and the issue of the new certificate and the new pass book in the joint names of the husband and wife, with the formula contained on the reverse side of the application cards, amounts to and is a consummated gift, and a settlement of the property on her to the extent of a joint ownership, with the right of
 30 survivorship, and that upon the death of her husband she takes as survivor.

The law governing the case has been illustrated by so many cases in this State and is so well understood that it is unnecessary to cite authorities. There must be a donative intention, a delivery of the gift, or what amounts to a delivery, and the donor must rid himself of all control over the subject matter. There can hardly be any doubt but that Mr. McKenzie intended to place the property in the joint names
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Opinion of Vice-Chancellor.

of himself and his wife; he was a man of large business affairs and was at the time conducting successfully a large business in this State; he was president of the building and loan association, with whose shares he was dealing; he was evidently a man of strong will, large experience, and he, undoubtedly, knew what he was doing when he caused the old certificates and the old pass book to be surrendered and new ones issued in the joint names of himself and his wife. So far as appears, he intended this to be a permanent disposition of the property, because nowhere in the evidence is there any intimation that it was done for a temporary purpose. On the contrary, according to the testimony of Mrs. Butland, he seems to have transferred the property to his wife permanently. I think there likewise was a delivery of the subject matter of the gift within the requirements of the law on the subject. I find no authorities defining what is requisite for a delivery in the case of shares issued to joint tenants. Neither has the diligence of counsel been otherwise rewarded, and I suppose, therefore, we are remitted to the rule that the delivery must be such as the subject matter of the gift is most capable of. A delivery to one of two joint tenants must, in the nature of things, be a delivery to both. This would, undoubtedly, be true of tenants in common where it is the undoubted rule that the possession of one is the possession of all. That is, undoubtedly, the rule with respect to real estate. *Foulke v. Bond*, 12 Vr. 527, and other things being equal, the same rule would apply to personal property. According to the testimony of Mrs. McKenzie, the certificates of stock and the book came into her possession some time between May 12 and

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Opinion of Vice-Chancellor.

June 1, 1913. The fourth section of the evidence act precluded her from stating that possession came to her from her husband, and, therefore, we must say that it does not appear how the property got into her possession. I do not think that the Court can assume that it came
10 into her possession unlawfully; it would preferably infer that the husband intended to make a settlement upon her and that she came into possession of the property in pursuance of that arrangement and in a lawful manner. It was supposed by counsel for the executor of the argument that the certificates and the pass book did not come into Mrs. McKenzie's possession until a few days prior to his death, when she sent the witness, Widows, to the mill for money and for
20 the brown envelope, which, she says, contained only Mr. McKenzie's will. But this supposition on the part of the executor is a mere supposition; there are no facts whatever to support it, nor any set of circumstances from which corroboration can be obtained. I am, therefore, constrained to reject the argument so made upon the ground that it appears to me to have no foundation in fact.

The two objections to Mrs. McKenzie's claim
30 urged by the executor are: (1) That the transaction amounted to a testamentary disposition of the property and was void because it was not made in accordance with the requirements of the statute of wills; and (2) That if the act which was performed by Mr. McKenzie was intended as a gift *inter vivos*, it failed because he retained the actual physical possession of the evidences of the subject matter of the gift, to wit, the certificate and the pass book. I think the first objection is without substantial foundation. The
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Opinion of Vice-Chancellor.

argument against the executor's position is this. The testamentary disposition of property is one which is intended to take effect at or after the death of the testator. If a vested interest is created in his lifetime that vested interest is valid, notwithstanding the will and all the requirements of law touching the testamentary disposition of property. The only valid objection to gifts, or attempted gifts upon the ground of lack of testamentary form, lies in the fact that the interest dealt with is an interest which does not vest until after the death of the testator. Here, if any interest passed to Mrs. McKenzie by virtue of the transaction appearing in the evidence it passed on May 12, 1913, nearly a year before the death of Mr. McKenzie, and not until that event did her full right accrue. It is the ordinary case of the present vesting of an interest to be enjoyed at some time in the future. The second objection, viz.: the lack of delivery, has already been dealt with; but there remains to be added a word on the point of the donor's renunciation of all control over the property. It is undoubtedly true that the changing of the title to the shares from individual ownership to joint ownership effected no change whatever in the manner in which the parties to the transaction dealt with the shares. Mr. McKenzie remained president of the building and loan association, and, to all outward appearances, there was no change. Even supposing that there had been no actual physical delivery of the evidences of the property to Mrs. McKenzie, Mr. McKenzie, as joint tenant with the right of survivorship, had such an interest in his right of survivorship as permitted him to hold and manage the joint property to the best advantage of all concerned.

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Opinion of Vice-Chancellor.

I am, therefore, of opinion that by virtue of the transaction above recited the title to the said shares and pass book, and the fund represented by them, vested in Mr. and Mrs. McKenzie as joint tenants on May 12, 1913, and that, upon the death of Mr. McKenzie, Mrs. McKenzie became
10 entitled to the property by the right of survivorship, and I will advise a decree to that effect. The decree will be made without costs.

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Final Decree.

Final Decree.

Filed July 24, 1916.

The complainant having filed its bill of interpleader touching certain of its prepaid shares represented by prepaid certificates and certain of its installment shares represented by pass book No. 156, respectively claimed by the defendant, Margaret Stewart McKenzie, and by the defendant, Henry Manchester Ladd, executor of the last will and testament of William McKenzie, deceased, and the certificates and pass book having been deposited with the clerk of this court and a decree discharging the complainant with costs and directing the defendants to interplead touching their respective claims having been made, and such interpleader having been made by answer and statement of claim according to the practice of this court, and the cause coming on to be heard on pleadings and proofs in the presence of Gilbert Collins and Charles B. Bradley, of counsel with defendant, Margaret Stewart McKenzie, and Frederic J. Faulks, of counsel with defendant, Henry Manchester Ladd, executor of the last will and testament of William McKenzie, deceased, and certain of the prepaid shares having, by consent of the parties and by order of this court, been delivered to the defendant, Margaret Stewart McKenzie, as her property, and the court being of opinion that the two hundred other prepaid shares represented by twenty certificates, each for ten shares numbered consecutively from 1409 to 1428, both inclusive, now on deposit with the clerk of this court and the five hundred installment shares represented by pass book No. 156, on deposit with the clerk of this court, to-

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Final Decree.

gether with accrued interest on all of said shares, belong to the defendant, Margaret Stewart McKenzie:

10 It is, on this twenty-second day of July, in the year of our Lord one thousand nine hundred and sixteen, on motion of Collins & Corbin, solicitors for and of counsel with the defendant, Margaret Stewart McKenzie, ORDERED, ADJUDGED AND DECREED, and the Chancellor does by virtue of the power and authority of this court hereby ORDER, ADJUDGE AND DECREE that the said defendant, Margaret Stewart McKenzie is the beneficial owner of and is entitled to the two hundred pre-paid shares in said East Rutherford Savings, Loan and Building Association, represented by twenty certificates, each for ten shares, numbered consecutively from 1409 to 1428, both inclusive, and to five hundred installment shares in said association, represented by pass book No. 156, together with accrued interest on all of said shares; and that the clerk of this court do forthwith deliver to the said defendant, Margaret Stewart McKenzie, or to her solicitors, the said certificates and pass book.

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30 And it is further ORDERED, ADJUDGED AND DECREED that the title of the said defendant, Margaret Stewart McKenzie, in and to all of said shares is hereby ratified, confirmed and declared to be good and effectual in law and in equity.

E. R. WALKER,

C.

Respectfully advised,

J. E. HOWELL,
V. C.

Notice of Appeal.

Notice of Appeal.

Filed July 27, 1916.

Defendant, Henry Manchester Ladd, executor of the last will and testament of William McKenzie, deceased, hereby appeals from so much of the Final Decree made by this court in the above stated cause as orders, adjudges and decrees that the defendant, Margaret Stewart McKenzie is the beneficial owner of and is entitled to two hundred prepaid shares in said East Rutherford Savings, Loan and Building Association, represented by twenty certificates, each for ten shares, numbered consecutively from 1409 to 1428, both inclusive, and to five hundred installment shares in said association represented by pass book No. 156, together with accrued interest on all of said shares; and that the clerk of this court do forthwith deliver to the said defendant, Margaret Stewart McKenzie, or to her solicitors, the said certificates and pass book, and that the title of the said defendant, Margaret Stewart McKenzie, in and to all of said shares is by the said Final Decree ratified, confirmed and declared to be good and effectual in law and in equity, to the Court of Errors and Appeals in the last resort in all causes.

Dated July 26, 1916.

LINDABURY DEPUE & FAULKS,
Solicitors for and of counsel with
Defendant, Henry Manchester Ladd,
Executor of the last will and testa-
ment of William McKenzie, deceased.

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

JOHN W. BISHOP, JR.,
Of counsel with defendant,
Henry Manchester Ladd, executor, etc.

Petition of Appeal.

Petition of Appeal.

Filed July 27, 1916.

New Jersey Court of Errors and Appeals

10 *To the Honorable, the Court of Errors and Appeals in the last resort in all causes.*

The petition of Henry Manchester Ladd, executor of the last will and testament of William McKenzie, deceased, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 22nd day of
20 July, 1916, in a cause wherein The East Rutherford Savings Loan and Building Association was complainant and Margaret Stewart McKenzie and your petitioner were defendants in this respect, to wit: That the said decree orders, adjudges and decrees that the defendant Margaret Stewart McKenzie is the beneficial owner of and is entitled to two hundred prepaid shares in said East Rutherford Savings, Loan and
30 Building Association, represented by twenty certificates, each for ten shares, numbered consecutively from 1409 to 1428, both inclusive, and to five hundred instalment shares in said association represented by pass book No. 156, together with accrued interest on all of said shares; and that the clerk of the Court of Chancery do forthwith deliver to the said defendant Margaret Stewart McKenzie, or to her solicitors, the said certificates and pass book,
40 and that the title of the said defendant Mar-

Petition of Appeal.

garet Stewart McKenzie in and to all of said
 shares is by the said Final Decree ratified, con-
 firmed and declared to be good and effectual in
 law and in equity, and your petitioner humbly
 appeals from that part of said Decree of the
 Chancellor which orders, adjudges and decrees
 as aforesaid on the ground that the same is 10
 erroneous for that the said Margaret Stewart
 McKenzie is not the beneficial owner of and is
 not entitled to the said two hundred prepaid
 shares in said East Rutherford Savings, Loan
 and Building Association, and is not entitled to
 said five hundred installment shares in said as-
 sociation, together with accrued interest on all
 of said shares; and that the clerk of the said
 Court of Chancery should not forthwith deliver
 to the said defendant Margaret Stewart Mc- 20
 Kenzie, or to her solicitors, the said certificates
 and pass book, and that the title of the said
 defendant Margaret Stewart McKenzie in and
 to all of said shares ought not to be by the said
 decree ratified, confirmed and declared to be
 good and effectual in law and in equity, but that
 on the contrary it should have been in and by
 the final decree ordered, adjudged and decreed
 that your petitioner is the beneficial owner and
 is entitled to the said two hundred prepaid 30
 shares in said East Rutherford Savings, Loan
 and Building Association and to the said five
 hundred installment shares in said association,
 and that the clerk of the said Court of Chancery
 should forthwith deliver to your petitioner, or
 to his solicitors, the said certificates and pass
 book and that the title of your petitioner in and
 to all of said shares should be by the said final
 decree ratified, confirmed and declared to be good
 and effectual in law and in equity. 40

Petition of Appeal.

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 your petitioner may have such relief in the premises as to this honorable Court shall seem meet.

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LINDABURY DEPUE & FAULKS,
*Solicitors for and of counsel
with Appellant.*

Formal answer to Petition of Appeal duly filed.

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