

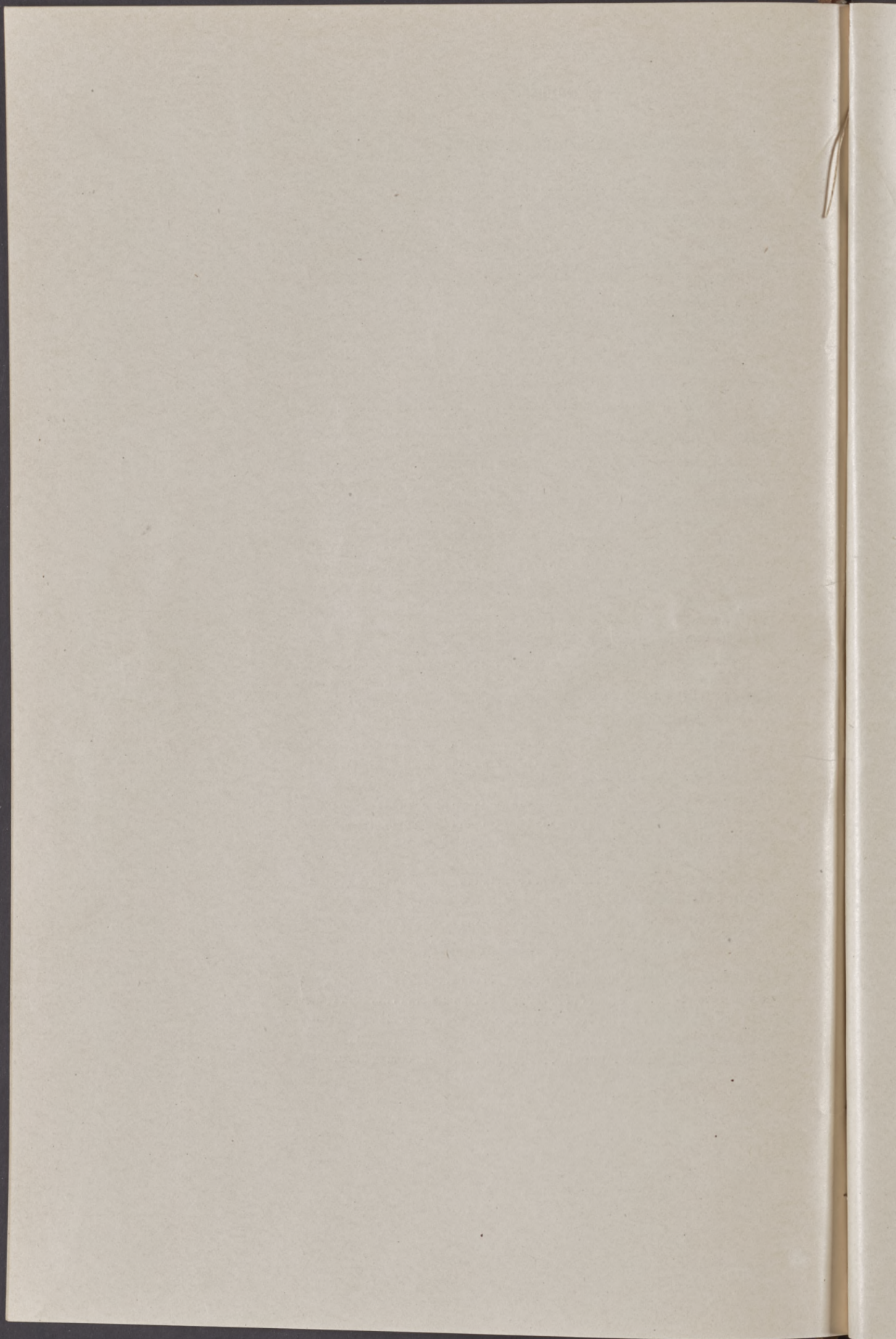
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BILL OF COMPLAINT.

(Filed October 14, 1920.)

IN CHANCERY OF NEW JERSEY.

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

Complainant, Wilhelmina Neubeck, residing in the
city of Pittsburgh, State of Pennsylvania, respectfully
shows: 10

1. That she was married to her present husband, Wil-
liam H. Neubeck, at Trenton, by Reverend Charles H.
Elder, a minister of the Gospel, on April 17th, 1902.

2. That there has been born of said marriage one
child, W. Henry Neubeck, age 16 years.

3. That complainant and defendant have resided at
various places in the city of Trenton ever since their
marriage up until October 10th, 1919, when complainant
left the defendant while they were residing at 118 20
Newell Avenue, Trenton, New Jersey.

4. While complainant and defendant were living to-
gether prior to their separation defendant was engaged
in the barber business at No. 7 Chambers street, Tren-
ton, for about fourteen years, when he moved his barber
business to 792 East State street, Trenton. Before the
defendant established his business on East State street
the defendant and complainant had acquired about one-
half the real estate they now own. The complainant,
besides performing her own household duties, while they 30
were living on Chambers street, also assisted the de-
fendant in cleaning the said barber shop and supplying
it with clean towels and other necessities which were in
her power to manufacture or make up.

5. While the defendant ran his barber shop at 792
East State street the complainant, besides assisting her
husband in maintaining his barber shop, also ran a pool
room, tobacco, ice cream and confectionery store at 794

East State street, and it was while the complainant was operating this place that the complainant and defendant acquired the remaining half of the property they now own; and most of the money accumulated by complainant and defendant during this period of three years was gotten through the pool room, tobacco, ice cream and confectionery store operated by the complainant.

6. During the time the complainant and defendant cohabited together they worked under a joint agreement
10 whereby both the complainant and defendant were to jointly own the proceeds of their joint endeavors, and, in pursuance of this agreement, the money accumulated by each and both of them was deposited first in the Trenton Trust and Safe Deposit Company, then in the Trenton Savings Fund Society, and then in the First National Bank of Trenton, in their joint names and to their joint credit, but, however, the bank accounts were so arranged that either could draw without the signature of the other.

20 7. At the respective times the complainant and defendant acquired the properties hereinafter mentioned the complainant and defendant would go together to the bank and draw therefrom the amount to be paid as a cash consideration for the respective properties, and at each respective transaction whereby the complainant and defendant acquired title to the properties hereinafter mentioned the complainant would accompany the defendant and was present at the settling of each respective transaction.

30 8. The complainant and defendant acquired in their joint names and they jointly held an estate by the entirety in the following properties located in the city of Trenton, for which the defendant is collecting rents:

792 East State street; \$25 per month; Benj. Van Camp, tenant.

794 East State street; \$60 per month; Philip Ermeling, tenant.

796 East State street; \$25 per month; Benj. Van Camp, tenant.

118 Newell avenue; occupied by William H. Neubeck.

102 Sweets avenue; \$15 per month; Herman Rikofski, tenant.

104 Sweets avenue; \$16 per month; James Moss, tenant.

9. Since October 10th, 1919, the defendant has been collecting the rents for the said premises above mentioned, and, although requested so to do, has refused and neglected to pay to the complainant any portion of the said rents or profits. 10

10. Complainant is advised and verily believes that under the law of this State she is entitled to one-half of the rents and profits accruing from said properties, and that she has no adequate remedy in the courts of law.

Your petitioner therefore prays—

1. That William H. Neubeck, the defendant of this suit, may answer this bill of complaint and each statement herein made.

2. That a receiver may be appointed to collect the rents of the above-mentioned premises now due or hereafter to become due, with such powers as may be necessary. 20

3. That the said William H. Neubeck, defendant, be enjoined from further collecting the said rents, and the said Benj. Van Camp, Philip Ermeling, Herman Rikofski and James Moss from paying over to the said William H. Neubeck, or any other person whomsoever, any of the rents and profits of the said premises, until the further order of this court.

3. That the said William H. Neubeck may account 30 for the rents and profits which have accrued from the said premises since October 10th, 1919.

4. That the said receiver shall, after deducting taxes, interest on mortgages, repair expenses, and other carrying charges, from the total of the rents received, pay to the complainant one-half of the said balance, at such periods as to your honor may seem practical.

5. That a writ of subpœna may issue commanding the said defendant to answer this bill of complaint and

to abide by such decree as this court may make in the premises.

And your petitioner will ever pray.

JOHN H. KAFES,
Solr. of Complainant.
 ALVIN W. SYKES,
Of Counsel.

STATE OF NEW JERSEY, } ss.
 COUNTY OF MERCER, }

10 *Wilhelmina Neubeck*, being duly sworn according to law, on her oath deposes and says:

That she was married to her present husband, William H. Neubeck, at Trenton, New Jersey, by Reverend Charles H. Elder, a minister of the Gospel, on April 17th, 1902.

That there has been born of said marriage one child, W. Henry Neubeck, age 16 years.

That deponent and defendant have resided at various places in the city of Trenton ever since their marriage
 20 up until October 10th, 1919, when deponent left the defendant while they were residing at 118 Newell avenue, Trenton, New Jersey.

While deponent and defendant were living together prior to their separation, defendant was engaged in the barber business at No. 7 Chambers street, Trenton, for about fourteen years, when he moved his barber business to 792 East State street, Trenton. Before the defendant established his business on East State street, the defendant and deponent had acquired about one-
 30 half the real estate they now own. The deponent, besides performing her own household duties, while they were living on Chambers street, also assisted the defendant in cleaning the said barber shop and supplying it with clean towels and other necessities which were in her power to manufacture or make up.

While the defendant ran his barber shop at 792 East State street, the deponent, besides assisting her husband in maintaining his barber shop, also ran a pool room, tobacco, ice cream and confectionery store at 794

East State street, and it was while the deponent was operating this place that the deponent and defendant acquired the remaining half of the property they now own, and most of the money accumulated by deponent and defendant during this period of three years was gotten through the pool room, tobacco, ice cream and confectionery store operated by the deponent.

During the time the deponent and defendant cohabited together, they worked under a joint agreement whereby both the deponent and defendant were to jointly own the proceeds of their joint endeavors, and in pursuance to this agreement the money accumulated by each and both of them were deposited first in the Trenton Trust and Safe Deposit Company, then in the Trenton Savings Fund Society, and then in the First National Bank of Trenton in their joint names and to their joint credit, but, however, the bank accounts were so arranged that either could draw without the signature of the other. 10

At the respective times the deponent and defendant acquired the properties hereinafter mentioned, the deponent and defendant would go together to the bank and draw therefrom the amount to be paid as a cash consideration for the respective properties, and at each respective transaction whereby the deponent and defendant acquired title to the properties hereinafter mentioned, the deponent would accompany the defendant and was present at the settling of each respective transaction. 20

The deponent and defendant acquired in their joint names and they jointly hold an estate by the entirety in the following properties for which the defendant is collecting rents: 30

792 East State street, \$25 per month. Benj. Van Camp, tenant.

794 East State street, \$60 per month. Philip Ermeling, tenant.

796 East State street, \$25 per month. Benj. Van Camp, tenant.

118 Newell avenue, occupied by William H. Neubeck.

102 Sweets avenue, \$15 per month. Herman Rikofski, tenant.

104 Sweets avenue, \$16 per month. James Moss, tenant.

Since October 10th, 1919, the defendant has been collecting the rents for said premises above mentioned, and, although requested so to do, has refused and neglected to pay to the deponent any portion of the said
10 rents and profits.

WILHELMINA NEUBECK.

Sworn and subscribed to before me this 12th day of October, 1920.

CHAS. J. FALCEY,
Attorney at Law of N. J.

20

IN CHANCERY OF NEW JERSEY.

BETWEEN

WILHELMINA NEUBECK,

Complainant,

AND

WILLIAM H. NEUBECK,

Defendant.

} On Bill, &c.

30

ANSWER.

(Filed November 30, 1920.)

The answer of the defendant, William H. Neubeck.

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

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.

4. Defendant denies that before establishing his business at No. 792 East State street, Trenton, N. J., he had only acquired about one-half of the real estate mentioned in the bill of complaint, and alleges that prior to said time he had purchased all of the property mentioned in the complaint, with the exception of No. 796 East State street and No. 118 Newell avenue. Defendant further denies that while complainant and defendant were living together on Chambers street, complainant assisted defendant in cleaning defendant's barber shop and in supplying clean towels and other necessities, and says that such assistance as complainant may have given defendant in this particular was only rendered occasionally and not as a regular practice. 10

5. Paragraph 5 is denied.

6. Paragraph 6 is denied.

7. Paragraph 7 is denied, except that it is admitted that complainant was present at the delivery of the deeds for the properties mentioned in the bill of complaint, for the purpose of signing the mortgages given as part of the consideration for said properties. 20

8. Defendant states that the properties mentioned in paragraph 8 are subject to mortgage encumbrance as follows:

792 East State street,	\$1,500	
794 East State street,	2,000	
796 East State street,	2,000	
118 Newell avenue,	2,250	
102 Sweets avenue,	1,000	
104 Sweets avenue,	1,000	30

He denies the other allegations of said paragraph.

9. Defendant admits since October 10th, 1919, he has been collecting rents for the above-mentioned premises, but denies that complainant has ever requested him to pay her any portion of said rents.

10. Defendant is without knowledge and belief as to any advice complainant may have received respecting

her legal rights in the premises, but denies that she is entitled to any portion of the rents aforesaid.

11. Defendant further says that on October 10th, 1919, complainant deserted defendant and eloped with one Frank W. Banks, and went to Pittsburgh, Pennsylvania, where complainant and said Banks lived together in adultery, in violation of complainant's marriage vows. Since said date complainant and said Banks have lived together either continually or from time to time, as
10 aforesaid, whereby complainant has forfeited any right she might have had to enjoy part of the income from said property, which income, it was agreed between complainant and defendant, should be used for the maintenance of their home, and for the maintenance and education of their son, W. Henry Neubeck, now in the custody of defendant.

By way of counter-claim against complainant, the defendant says that—

20 1. Each and all of the properties mentioned in the bill of complaint filed herein were purchased with the moneys of defendant, William H. Neubeck, and the one-half interest which complainant is alleged to have therein she holds in trust for the defendant, complainant having contributed nothing to the consideration paid for said lands and premises, and defendant not having made a gift of a beneficial interest therein to complainant.

This defendant therefore prays—

30 1. That complainant may answer this counter-claim and each statement herein made.

2. That it may be decreed that if she is the owner of a one-half interest in said lands and premises she holds the same in trust for the defendant.

3. That complainant may be decreed and ordered to convey to defendant the one-half interest aforesaid.

KATZENBACH & HUNT,

Solicitors for and of Counsel with Defendant.

Q. That is the opening of a bank account?

A. Yes.

Q. And who could draw from that bank account?

A. Either party.

Q. And you have here the records of withdrawals and deposits; is that right?

A. The record of the account, yes.

Q. There was also another account in your bank, wasn't there, the records of which you have not brought?

10

A. Yes, there was a trustee account.

Q. In whose name; do you remember?

A. I couldn't tell you, sir.

Mr. Falcey—I offer that in evidence.

Said signature card and record of accounts are marked *Exhibit C 2 and C 3*, respectively.

By the Court—

Q. Is that the original ledger sheet of your bank?

A. Yes, sir.

20

Mr. Hunt—There is nothing about this which shows who made the withdrawals.

Cross-examination, by Mr. Hunt.

Q. You can't tell which party could make the withdrawals?

A. No, I can't tell from that.

Wilhelmina Neubeck, the above-named complainant, being duly sworn in her own behalf, testified as follows:

Direct examination, by Mr. Falcey.

30

Q. When were you married to the defendant, William H. Neubeck?

A. April 17, 1902.

Q. Do you remember when Mr. Neubeck opened the barber shop for himself?

A. Yes, very well.

Q. When was that?

A. As near as I can remember, it was the 30th of September, 1901.

Q. Do you remember how much he paid for that barber shop?

A. \$200.00.

Q. Do you know how much he paid out?

A. Well, my father went on a note for \$80.00, as near as I can remember; Mr. Katzenbach loaned him.

Q. Which one?

10 A. F. S. Katzenbach, \$25.00, and the rest was made in payments as he could, to the man he bought the shop from.

Q. When you were married had the debt on the barber shop been cleared?

A. Yes, as near as I can remember, it was cleared in January; I was married in April.

Q. Did Mr. Neubeck have any money in the bank?

A. No, sir.

Q. Do you know what he had in his pocket?

20 A. About \$50.00, we had.

By the Court—

Q. You say *we* had?

A. He had.

Q. After you were married, your husband started to work in this barber shop on Chambers street?

A. Yes, sir.

Q. What did you do there?

A. You mean in the barber shop?

Q. Yes.

30 A. Well, I helped to keep it clean, and each time I cleaned house, which was twice a year, I house-cleaned the barber shop; I also helped to scrape paper off the wall, if any papering was to be done; I kept towels clean, and there were hundreds of them; and I made sheets, shaving sheets.

Q. After you were married was any money saved?

A. You mean—

Q. Was any money saved?

A. By us?

Q. Yes.

A. Well, there wasn't any; we went into debt for our furniture when we got married, with the exception of cooking utensils and bed linens and quilts and things like, that we paid for; and I think, as near as I can remember, it was about eleven months we paid so much a month; we bought our furniture at S. P. Dunham's; as near as I can remember, it was paid within a year. Then, we thought we did so well, if we could do that within a year, we could start a bank account, and we 10 both decided that we would work together in the interests of one another, and accumulate what we could, which we did. I did all I could to save money, and he did all he could; and when we had—well, I just forget what the first deposit was I made, but after that, each and every week whatever we could save—for a long time, I know it was more than \$5.00; once in a while our business—

Q. You mean five dollars per week?

A. Yes, per week, and once in a while, if we could 20 accumulate any more by our joint savings we would do it; and that would go down, too; and then it was after we could get a little in the bank—oh, I just forget how much we had, but it was enough to start something—my father heard of a lot for sale, of Mr. Anthony Hershler, I don't know where he lived; and we used to go up home every Sunday to my mother's and stay the day.

Q. You had accumulated some money in the bank by that time?

30

A. Yes.

Q. How was that money placed—in what bank?

A. As near as I can think, it was the bank the corner of West State and Chancery.

Q. The Trenton Trust and Safe Deposit Company?

A. That's the one.

Q. Do you know in whose name it was?

A. In both our names.

Q. What is the reason it was in both of your names?

A. Well—what was the reason it was in both our names?

Q. Yes.

A. Well, we both decided that we would work together, and have that so that if anything happened to either one of us, or we got old in any way, and hadn't brought it, we would have a protection.

Q. Why was it not in his name alone?

10 A. Because he wanted it in both names, the same as I did, because we worked together usually—or always.

Q. Now, who deposited the money in the bank?

A. Either one.

Q. I mean in the Trenton Trust and Safe Deposit Company, your first bank account?

A. We both went together.

Q. Would you do it sometimes alone, or would he do it sometimes alone?

A. I don't get you. What was that first question?

20 Do you mean who opened the bank account?

Q. No; who deposited the money.

A. Either one has taken it, or both, at times.

Q. Now, do you know how much money you had in the bank? Well, do you know how much you paid for Anthony Hershler's lot on Sweets avenue?

A. \$350.00.

Q. And Anthony Hershler—where did you hear of this lot from?

A. From my father.

30 Q. How did you hear from your father; tell us the circumstances.

A. Well, my father knew that we were saving, and he heard of this lot, and he said it would be a good proposition for us, that we could buy this lot and build. Mr. Neubeck thought that we didn't have enough money to start.

Q. Where was this conversation?

A. In my father's kitchen; and my father said he would do the work day work, and he wouldn't ask a

penny until the roof was up, and then by that time we could get a mortgage, which he did; and my father brought Mr. Hershler in the kitchen and introduced him before he bought the lot; and that is how we come to get the lot.

Q. The deed was not given at that time, was it—the deed was not delivered at that time?

A. At the time of the building?

Q. No, at the time you were in your father's kitchen?

A. No; you mean for the lot.

10

Q. Where did you meet Mr. Hershler first?

A. In my father's kitchen.

Q. Were you present?

A. Yes.

Q. And your husband?

A. Yes.

Q. And your father?

A. Yes.

Q. When did you see Mr. Hershler since, as near as you can remember?

20

A. As near as I can remember, it was in an office here in the old Masonic Temple Building.

Q. The corner of State and Warren?

A. Yes.

Q. Did you see Mr. Hershler there?

A. Yes.

Q. Was your husband with you?

A. Yes.

Q. Did you receive a deed at that time, or you and your husband receive a deed to the property?

30

A. I don't remember whether we did, or whether it was sent over there to the court house; I just don't remember; I think—

Q. Did you receive a deed, then, in that building?

A. I am almost sure we did.

Q. Did you see that deed (showing witness deed)?

A. Yes, sir.

Q. Was that the deed you received?

A. That's the deed.

Q. The deed here is made in the name of William H. Neubeck and Wilhelmina, his wife. Can you tell me if you know how the deed was placed, by whose direction the deed was placed in both names?

A. Mr. Neubeck's.

Q. Were you there?

A. Yes, sir.

Q. The money to pay the \$350.00 for this deed, where was it drawn from; do you know where you got
10 the \$350.00?

A. We had it in the bank in our names, but I forget which bank it was in; we changed four times, but I just can't remember which— as near as I can remember, it was the West State street bank.

Mr. Falcey—I offer the deed in evidence.

Said deed from Anthony Hershler and wife to William H. Neubeck and Wilhelmina Neubeck, his wife, dated June 29th, 1908, and recorded in Book 308 of Deeds in the Mercer County Clerk's Office, page 22, &c., is marked
20 *Exhibit C 4*.

Q. Do you know who called at the bank to get that money?

A. I don't know whether Mr. Neubeck went or we both went together.

Q. But you know, however, that the money was drawn from the bank account in your joint and several names?

A. Yes, sir; it was drawn out of our account.

30 Q. At that time, when you received that deed, did you have to sign any mortgage; did you have to sign any mortgage?

A. No, I don't think so.

Q. No. There wasn't any mortgage given, was there?

A. Oh, no.

Q. Then it wasn't necessary for you to be present in order to sign any mortgage?

A. No, sir.

Q. After you bought the Sweets avenue property, did you still save?

A. Oh, yes, the same as we started.

Q. To get back to the Sweets avenue property, your father built on it, didn't he?

A. Yes.

Q. Do you know how much that building cost?

A. As near as I can remember, it was \$3,300.00—around \$3,300.00.

Q. Now, in order to defray the cost of the building, 10 did you mortgage the property?

A. Yes, sir.

Q. That was after the building was nearly completed?

A. Yes, sir, had the roof on it.

Q. Do you remember how much you mortgaged the property for, and who lent you the money?

A. It was \$2,000—\$1,000 on each property.

By the Court—

Q. Was a double house put on it?

20

A. Yes.

Q. That was around October, 1908?

A. Yes, sir.

Q. The rents for this Sweets avenue property, to whom where they paid?

A. Either one; the rents, as a rule, were left up in my mother's or father's, in my father's desk, and either one could get it.

Q. And where did the rents go?

A. We put them in the bank in our joint and several 30 accounts, the same as we always did.

Q. When did you buy the property 794 East State street; it was some time in January, 1911?

A. Yes.

Q. Do you know how he came to hear of this property for sale?

A. Yes.

Q. How?

A. Through Mr. Taylor—Mr. Harry Taylor.

Q. Tell what your plans were when you bought this property?

A. Well, when the property was bought our rent was being raised where we were, and Mr. Neubeck didn't want to pay any more rent there, any higher rent, rather, and he thought he would start a barber shop over there and tear it out and move over, and the lady was named a Mrs. Burroughs lived there then, and she lived there for seven years before that, and we decided
10 to move over—about seven years—and then when we took it over, we used to talk quite a lot in the kitchen of our home about what we would do with this property, and we decided it wouldn't pay to just move over with the one business; we were buying the two. Well, in the meantime, we cleared that building, and we thought if we wanted to go deeper, we could put a mortgage on 794 and buy 792, and tear them both out at the same time, and then we could both do something to earn more money, which we did. We tore out then—

20 Q. What was your idea? Well, your husband ran the barber shop, and what was your idea?

A. I was to run one side and he should run the other.

Q. What was your side to be?

A. Well, he thought he would get a pool license for him there and we could sell ice cream and candy and cigars, and anything that went with the store that way.

Q. When you bought 794 East State street, do you know where you got that money—that was bought by paying how much cash, do you remember; how much
30 was the consideration price?

A. \$2,800.00—\$2,400.00 for 794.

Q. And there was a mortgage on there which you assumed, wasn't there, of \$1,500.00?

A. Yes.

Q. And then you paid how much cash?

A. We paid the rest.

Q. That is, \$900.00 in cash?

A. Yes.

Q. Where did you get your money?

Q. That is the opening of a bank account?

A. Yes.

Q. And who could draw from that bank account?

A. Either party.

Q. And you have here the records of withdrawals and deposits; is that right?

A. The record of the account, yes.

Q. There was also another account in your bank, wasn't there, the records of which you have not brought?

10

A. Yes, there was a trustee account.

Q. In whose name; do you remember?

A. I couldn't tell you, sir.

Mr. Falcey—I offer that in evidence.

Said signature card and record of accounts are marked *Exhibit C 2 and C 3*, respectively.

By the Court—

Q. Is that the original ledger sheet of your bank?

A. Yes, sir.

20

Mr. Hunt—There is nothing about this which shows who made the withdrawals.

Cross-examination, by Mr. Hunt.

Q. You can't tell which party could make the withdrawals?

A. No, I can't tell from that.

Wilhelmina Neubeck, the above-named complainant, being duly sworn in her own behalf, testified as follows:

Direct examination, by Mr. Falcey.

30

Q. When were you married to the defendant, William H. Neubeck?

A. April 17, 1902.

Q. Do you remember when Mr. Neubeck opened the barber shop for himself?

A. Yes, very well.

Q. When was that?

A. As near as I can remember, it was the 30th of September, 1901.

Q. Do you remember how much he paid for that barber shop?

A. \$200.00.

Q. Do you know how much he paid out?

A. Well, my father went on a note for \$80.00, as near as I can remember; Mr. Katzenbach loaned him.

Q. Which one?

10 A. F. S. Katzenbach, \$25.00, and the rest was made in payments as he could, to the man he bought the shop from.

Q. When you were married had the debt on the barber shop been cleared?

A. Yes, as near as I can remember, it was cleared in January; I was married in April.

Q. Did Mr. Neubeck have any money in the bank?

A. No, sir.

Q. Do you know what he had in his pocket?

20 A. About \$50.00, we had.

By the Court—

Q. You say *we* had?

A. He had.

Q. After you were married, your husband started to work in this barber shop on Chambers street?

A. Yes, sir.

Q. What did you do there?

A. You mean in the barber shop?

Q. Yes.

30 A. Well, I helped to keep it clean, and each time I cleaned house, which was twice a year, I house-cleaned the barber shop; I also helped to scrape paper off the wall, if any papering was to be done; I kept towels clean, and there were hundreds of them; and I made sheets, shaving sheets.

Q. After you were married was any money saved?

A. You mean—

Q. Was any money saved?

A. By us?

Q. Yes.

A. Well, there wasn't any; we went into debt for our furniture when we got married, with the exception of cooking utensils and bed linens and quilts and things like, that we paid for; and I think, as near as I can remember, it was about eleven months we paid so much a month; we bought our furniture at S. P. Dunham's; as near as I can remember, it was paid within a year. Then, we thought we did so well, if we could do that within a year, we could start a bank account, and we both decided that we would work together in the interests of one another, and accumulate what we could, which we did. I did all I could to save money, and he did all he could; and when we had—well, I just forget what the first deposit was I made, but after that, each and every week whatever we could save—for a long time, I know it was more than \$5.00; once in a while our business—

Q. You mean five dollars per week?

A. Yes, per week, and once in a while, if we could accumulate any more by our joint savings we would do it; and that would go down, too; and then it was after we could get a little in the bank—oh, I just forget how much we had, but it was enough to start something—my father heard of a lot for sale, of Mr. Anthony Hershler, I don't know where he lived; and we used to go up home every Sunday to my mother's and stay the day.

Q. You had accumulated some money in the bank by that time?

A. Yes.

Q. How was that money placed—in what bank?

A. As near as I can think, it was the bank the corner of West State and Chancery.

Q. The Trenton Trust and Safe Deposit Company?

A. That's the one.

Q. Do you know in whose name it was?

A. In both our names.

Q. What is the reason it was in both of your names?

A. Well—what was the reason it was in both our names?

Q. Yes.

A. Well, we both decided that we would work together, and have that so that if anything happened to either one of us, or we got old in any way, and hadn't brought it, we would have a protection.

Q. Why was it not in his name alone?

10 A. Because he wanted it in both names, the same as I did, because we worked together usually—or always.

Q. Now, who deposited the money in the bank?

A. Either one.

Q. I mean in the Trenton Trust and Safe Deposit Company, your first bank account?

A. We both went together.

Q. Would you do it sometimes alone, or would he do it sometimes alone?

A. I don't get you. What was that first question?

20 Do you mean who opened the bank account?

Q. No; who deposited the money.

A. Either one has taken it, or both, at times.

Q. Now, do you know how much money you had in the bank? Well, do you know how much you paid for Anthony Hershler's lot on Sweets avenue?

A. \$350.00.

Q. And Anthony Hershler—where did you hear of this lot from?

A. From my father.

30 Q. How did you hear from your father; tell us the circumstances.

A. Well, my father knew that we were saving, and he heard of this lot, and he said it would be a good proposition for us, that we could buy this lot and build. Mr. Neubeck thought that we didn't have enough money to start.

Q. Where was this conversation?

A. In my father's kitchen; and my father said he would do the work day work, and he wouldn't ask a

penny until the roof was up, and then by that time we could get a mortgage, which he did; and my father brought Mr. Hershler in the kitchen and introduced him before he bought the lot; and that is how we come to get the lot.

Q. The deed was not given at that time, was it—the deed was not delivered at that time?

A. At the time of the building?

Q. No, at the time you were in your father's kitchen?

A. No; you mean for the lot. 10

Q. Where did you meet Mr. Hershler first?

A. In my father's kitchen.

Q. Were you present?

A. Yes.

Q. And your husband?

A. Yes.

Q. And your father?

A. Yes.

Q. When did you see Mr. Hershler since, as near as you can remember? 20

A. As near as I can remember, it was in an office here in the old Masonic Temple Building.

Q. The corner of State and Warren?

A. Yes.

Q. Did you see Mr. Hershler there?

A. Yes.

Q. Was your husband with you?

A. Yes.

Q. Did you receive a deed at that time, or you and your husband receive a deed to the property? 30

A. I don't remember whether we did, or whether it was sent over there to the court house; I just don't remember; I think—

Q. Did you receive a deed, then, in that building?

A. I am almost sure we did.

Q. Did you see that deed (showing witness deed)?

A. Yes, sir.

Q. Was that the deed you received?

A. That's the deed.

Q. The deed here is made in the name of William H. Neubeck and Wilhelmina, his wife. Can you tell me if you know how the deed was placed, by whose direction the deed was placed in both names?

A. Mr. Neubeck's.

Q. Were you there?

A. Yes, sir.

Q. The money to pay the \$350.00 for this deed, where was it drawn from; do you know where you got
10 the \$350.00?

A. We had it in the bank in our names, but I forget which bank it was in; we changed four times, but I just can't remember which— as near as I can remember, it was the West State street bank.

Mr. Falcey—I offer the deed in evidence.

Said deed from Anthony Hershler and wife to William H. Neubeck and Wilhelmina Neubeck, his wife, dated June 29th, 1908, and recorded in Book 308 of Deeds in the Mercer
20 County Clerk's Office, page 22, &c., is marked *Exhibit C 4*.

Q. Do you know who called at the bank to get that money?

A. I don't know whether Mr. Neubeck went or we both went together.

Q. But you know, however, that the money was drawn from the bank account in your joint and several names?

A. Yes, sir; it was drawn out of our account.

30 Q. At that time, when you received that deed, did you have to sign any mortgage; did you have to sign any mortgage?

A. No, I don't think so.

Q. No. There wasn't any mortgage given, was there?

A. Oh, no.

Q. Then it wasn't necessary for you to be present in order to sign any mortgage?

A. No, sir.

Q. After you bought the Sweets avenue property, did you still save?

A. Oh, yes, the same as we started.

Q. To get back to the Sweets avenue property, your father built on it, didn't he?

A. Yes.

Q. Do you know how much that building cost?

A. As near as I can remember, it was \$3,300.00—around \$3,300.00.

Q. Now, in order to defray the cost of the building, 10
did you mortgage the property?

A. Yes, sir.

Q. That was after the building was nearly completed?

A. Yes, sir, had the roof on it.

Q. Do you remember how much you mortgaged the property for, and who lent you the money?

A. It was \$2,000—\$1,000 on each property.

By the Court—

Q. Was a double house put on it?

20

A. Yes.

Q. That was around October, 1908?

A. Yes, sir.

Q. The rents for this Sweets avenue property, to whom where they paid?

A. Either one; the rents, as a rule, were left up in my mother's or father's, in my father's desk, and either one could get it.

Q. And where did the rents go?

A. We put them in the bank in our joint and several 30
accounts, the same as we always did.

Q. When did you buy the property 794 East State street; it was some time in January, 1911?

A. Yes.

Q. Do you know how he came to hear of this property for sale?

A. Yes.

Q. How?

A. Through Mr. Taylor—Mr. Harry Taylor.

Q. Tell what your plans were when you bought this property?

A. Well, when the property was bought our rent was being raised where we were, and Mr. Neubeck didn't want to pay any more rent there, any higher rent, rather, and he thought he would start a barber shop over there and tear it out and move over, and the lady was named a Mrs. Burroughs lived there then, and she lived there for seven years before that, and we decided
10 to move over—about seven years—and then when we took it over, we used to talk quite a lot in the kitchen of our home about what we would do with this property, and we decided it wouldn't pay to just move over with the one business; we were buying the two. Well, in the meantime, we cleared that building, and we thought if we wanted to go deeper, we could put a mortgage on 794 and buy 792, and tear them both out at the same time, and then we could both do something to earn more money, which we did. We tore out then—

20 Q. What was your idea? Well, your husband ran the barber shop, and what was your idea?

A. I was to run one side and he should run the other.

Q. What was your side to be?

A. Well, he thought he would get a pool license for him there and we could sell ice cream and candy and cigars, and anything that went with the store that way.

Q. When you bought 794 East State street, do you know where you got that money—that was bought by paying how much cash, do you remember; how much
30 was the consideration price?

A. \$2,800.00—\$2,400.00 for 794.

Q. And there was a mortgage on there which you assumed, wasn't there, of \$1,500.00?

A. Yes.

Q. And then you paid how much cash?

A. We paid the rest.

Q. That is, \$900.00 in cash?

A. Yes.

Q. Where did you get your money?

A. We didn't have quite that amount—that is, there was \$200.00 lent to us to help us out, and we paid the \$900.00 on the mortgage.

Q. You got some money from the bank?

A. Yes—where did I get that money?

Q. Yes.

A. That was taken out of the joint savings of both of us.

Q. Do you know what bank?

A. As near as I can remember, we dealt in the Broad Street Bank, and I think we had gone over to the First National Bank then; and I think that is where that money came from.

Q. Did you borrow more of that money to pay the \$900.00?

A. Through a friend; we didn't have to; he offered his assistance.

Q. Who is that?

A. Do I have to tell that?

By the Court—

20

Q. Answer the question.

A. Mr. Harry Taylor.

Q. Do you remember where the deed to that property was received?

A. Mr. Comp's office, Mr. Charles Comp, the Broad Street Bank Building or the Mechanics Bank, either one—Broad Street.

Q. Is this the deed you received (handing witness paper)?

Mr. Hunt—We admit that.

30

Mr. Falcey—I offer that in evidence.

Said deed from Benjamin D. Yard and wife to William H. Neubeck and wife, dated January 12th, 1911, and recorded in Book 333 of Deeds, page 519, is marked *Exhibit C 5*.

Q. Do you know who gave the instructions as to the drafting of the deed?

A. I don't understand that question; do you mean—

Q. Do you know who gave the instructions as to the drafting of the deed, how it was; if any instructions were given, who gave them, in regard to putting in whose name it should go to?

A. Both our names.

Q. Did you hear any instructions given to Mr. Comp, or to anyone in his office, as to how the deed should be drawn, in whose name?

A. Yes; Mr. Neubeck said it would be bought in both
10 our names, as that was the only way he ever bought property.

Q. There was already a mortgage on that property for \$1,500.00?

A. Yes.

Q. You paid \$900.00 in cash?

A. Yes.

The Court—Those questions have been asked and answered before.

Q. Did you receive any rents from the East State
20 street property?

A. Did I receive any?

Q. You or your husband?

A. We both did.

Q. Do you know where those rents went?

A. In the joint savings of the both.

Q. Were they deposited in the bank?

A. In the bank.

Q. Now, you afterwards bought the property next door, didn't you, 794 East State street?

30 A. 792?

Q. Yes, 792?

A. Yes, sir.

Q. How did you come to buy that property?

A. Well, we had quite a talk for a long time, different nights, Mr. Neubeck and I, in the kitchen of our home, and we wanted to move and go over there; and I suggested that we find out if that adjoining property, 792, was for sale; it was empty, and it had been empty, and

I thought probably we could buy it and tear out; and Mr. Neubeck thought we didn't have enough to start anything like that; and I said, "Well, our one house was clear, and I don't see why we couldn't; we could put a mortgage on it and start something." He said he didn't know, and I said that was easy found out, and we found out a man by the name of Mr. Jemison—

Q. Who found out?

A. Mr. Neubeck; and he came home and told me he knew—well, before that, he said, "Well, it may not be 10 for sale;" I said, "You can find out."

Q. Is that what he said he couldn't find out?

A. He said he didn't know even who owned it.

The Court—How is all this detail material?

Q. You finally bought the property September 25, 1915?

A. Yes.

Q. From William C. Hendrickson?

A. That's the man.

Mr. Falcey—I offer in evidence the deed. 20

Mr. Hunt—We have no objection.

Said deed from William C. Hendrickson to William H. Neubeck and Wilhelmina Neubeck, dated September 25, 1915, and recorded in the Mercer County Clerk's office in Book 383 of Deeds, page 309, is marked *Exhibit C 6*.

Q. That deed—were you present—in whose office was that deed delivered?

A. Mr. Jemison's.

Q. Do you know where you got the money to buy 30 that property?

A. We took it out of the bank, out of the joint savings.

Q. Do you know who actually drew that money?

A. I don't remember whether I went with Mr. Neubeck or he drew it alone; sometimes we went together and sometimes he would go alone, because either one could draw.

Q. Did you go to the office of Mr. Jemison?

A. Yes.

Q. With your husband?

A. Yes.

Q. Do you know how the instructions were given as to the drafting of that deed?

A. It was to be in both our names.

10 The Court—I suppose counsel admits the husband gave instructions to have the deed made in both names?

Mr. Hunt—Yes, sir.

Q. Did you and your husband have any conversation in regard to that phase of it before you went to Mr. Jemison's office?

A. About both names?

Q. Yes.

A. Yes; this was 792?

Q. Yes.

20 A. He didn't think I ought to have that one particular property in my name at that time. I asked him why, and he said, "Well, he would like one property on his name." I said, "Why?" He said, "Well, if he wanted to borrow any money or do anything else like that, he couldn't do it; or if he wanted to do anything, such as going anybody's note, or going a friend's bail if they got in trouble, where if he had the property in his own name he could do that, and if it was in both names he couldn't." I said I wouldn't stand for it; if I was working and helping as well as him, if I had
30 to work and earn as well as him, I wanted it in both names; so we finally—well, we had quite an argument over it for a little while, and he finally agreed to have it in both names.

Q. Did you have any argument previous to that?

A. No, sir, that's the first time; the rest he all done willingly.

Q. What was the price of 792 East State street?

A. \$2,800.00.

Q. How was that paid?

A. Well—

Q. Do you know how that was paid?

A. I'll have to think a minute. I know there was a mortgage went on it.

Q. How much cash did you pay?

A. How much cash? Why, I think around \$1,000.

Q. And the balance was in mortgages, or a mortgage?

A. A mortgage; I think it was \$1,500.00, and we borrowed \$300.00 through Mr. Jemison, somehow, and 10 we had to pay—that is, we decided, or we made an agreement to pay—Mr. Jemison \$25.00 every three months until that \$300 was paid; and I think we paid it quicker than we thought we could. We did so well after we got over there, business was prosperous on both sides, and we run them both.

Q. Do you know—after you acquired those three properties, you still received rent from Sweets avenue?

A. Yes.

Q. Do you know where that was paid? 20

A. That was left up to my mother's and either one could get it still; it was the same way.

Q. And with 794 East State street, you received rent from those, didn't you, after you bought the Hendrickson property at 792?

A. I think we got one or two rents from there, because we gave Mrs. Burroughs notice to move.

Q. Did you get any rents from 792?

A. No, we never entered that.

Q. But with the rents that you were getting, what 30 disposition—who collected them, and what disposition was made of the rents?

A. Well, whatever rents we got was put in the bank, unless we had something to pay right away and that had to be paid.

Q. In the bank in whose name?

A. Both names.

Q. You also bought the property next door, 796 East State street?

A. Yes, sir.

Q. Can you tell me how much you had in bank, about, when you bought that property?

A. About \$800.00—that is, there may have been a little more, but that's all we could spare.

Q. Now, do you know the reason why you bought that 796?

A. Yes.

Q. Why?

10 A. Well, the people that lived in there were very annoying, and if I had an ice cream tub out front, or any little noise of any kind, they fussed up about it and made it very disagreeable, and Mr. Neubeck talked it over as to how we could stop it without making any trouble, and I thought the best thing to do—well, we talked it over between us and we finally decided buying the house; and then, if they didn't behave themselves, we could give them notice to move.

Q. Who owned the property?

20 A. Mr. Freeman, of the Freeman Electric Works. Mr. Neubeck called him up on the 'phone after we talked it over, and had him come over in our parlor—

The Court—What is the idea of going into this?

Mr. Falcey—To show that she was present during all the negotiations.

The Court—I might assume these details unless there is some contradiction made by the other side.

30 Q. You received the deed for that property?

A. Yes.

Mr. Falcey—I offer that deed in evidence, dated March 19, 1919, from Edgar H. Freeman to William H. Neubeck, et ux., recorded in Book 420 of Deeds, page 384, &c.

Said deed is marked *Exhibit C 7*.

Q. Do you know how much was paid for that property?

A. Mr. Freeman wanted \$2,800.00 for it; he wanted more at the time, but he finally decided to let us have it for \$2,800.00.

Q. How was the consideration paid?

A. \$800.00, and Mr. Freeman kept a \$2,000 mortgage.

Q. That mortgage you and your husband gave back to Mr. Freeman at the time?

A. At the time.

Q. And that conveyance was transacted in whose office?

A. Mr. James Hammond's.

Q. The rents for these properties—the four properties you then owned—whatever rents you were getting out of them were collected by whom?

A. Either one, they were given to either one.

Q. And what was the disposition of those rents?

A. Put in the bank in both our names.

Q. Now, you moved from Chambers street, where your husband kept the barber shop, some time in 1915 to your East State street property, didn't you, in accordance with your agreement, where your husband kept a barber shop?

A. Yes.

Q. And a pool room was run; who ran that?

A. When it was first begun we didn't know how it was going to turn out, and the pool room was opened before I moved over; that is, I think, as near as I can remember, it wasn't many days; it wasn't—I don't think it was a week, and I first began by attending store and helping that way, and then it finally got so that I nearly ran it myself; that is, as far as the working end and the ordering of nearly all the goods, except some cigars, and once in a while—well, either one of us ordered the ice cream over the phone.

Q. Who attended to the pool tables?

A. I did, when I was there.

Q. Did you rack up the balls?

A. Yes, many a time.

Q. Who ordered the candy and cigars?

A. Most of the candy I ordered, and Mr. Neubeck did some ordering.

Q. Did you and your husband have somebody else working for you at that time?

A. Yes.

Q. Who?

A. Not in the beginning, and not until it got so hard
10 for me that I had to have help in that side.

Q. You went in that place what day, do you remember?

A. I went over Christmas—the day before Christmas?

Q. When?

A. Well, when the place was completed—I think 19—

Q. '15?

A. Yes, 1915—'15 or '16.

Q. How soon after Christmas, 1915, was it that the
20 work became so hard that other people were employed by you?

A. I can't tell you just how soon we hired a man, but it got so hard that we talked it over, and I said that I couldn't do it, and we finally decided to hire a man to help me out on that side.

Q. Would you say that was a year after, or six months after?

A. I can't say; it wasn't very long, I know.

Q. Now, after the man came in—what was his name?

30 A. William Bransfield; he was the first man that worked there.

Q. What were his hours of duty, or what days and what nights?

A. The hours were cut up so funny; it seems to me if he would work all day, then I would finish or help finish up at night, and if I worked there all day, he would be there the next night, as near as I can remember.

Q. Did he work every day?

A. No.

Q. How did he work?

A. So many hours, like any—

Q. Did he ever work two days in succession?

A. No, sir, not unless we helped out at night.

Q. What is that—well, would you say that, between you and Bransfield, each of you took about half of your time to it?

A. Yes.

Q. Did you do anything more than that?

A. I kept the place clean, or helped to keep it clean. 10

By the Court—

Q. What place?

A. The pool room and the cigar store, and I have at times cleaned the barber shop, wiped up the floor and dusted, and made hair sheets and shaving sheets.

Q. You had somebody later to do that work besides Bransfield?

A. Yes, when Mr. Bransfield left we got a man by the name of Joe Shinn. 20

Q. Did he have the same arrangement as to hours?

A. His hours were probably a little different, but he didn't work any longer hours than Mr. Bransfield.

Q. Who came after him?

A. Merritt Lawton.

Q. What were his hours?

A. If Merritt worked in the morning, I relieved him in the afternoon, and if I worked in the morning, Merritt would come in the afternoon, and he came awhile every other morning and every other afternoon and every other evening. 30

Q. You rotated that way?

A. Yes.

Q. When you bought 796 East State street, and there was some alterations done, was there—or was it 792?

A. 792 and 794.

Q. How were those alterations—tell us the story of how those alterations were made—who made the plans for them?

A. My father drew them himself.

Q. And who actually did the alterations?

A. My father altered the house—our houses.

Q. Did you have any hand in those alterations?

A. I certainly did.

Q. What did you do?

- 10 A. Before my father started to tear out to build or remodel the place there were, of course—people had been living in them; the walls had several coats of paper on, only there was about 55 coats of paper on the two houses, which I took off by myself more than three-quarters; I counted them; I said about 55.

By the Court.

Q. Fifty-five coats through the house?

- 20 A. Yes, sir; on some walls were eight coats, and so forth; I kept count on purpose to see how many I did take off. Then, when they were building, I was over there every day, or nearly every day, that I can remember, and as the old wood and plaster and all that stuff was torn down, I helped to clean that out of the building, with my brother.

Q. Do you know what those alterations cost?

A. I am just trying to think—

Q. Well, do you know how the work was done?

A. Day work.

- 30 Q. There was a note given to your father, wasn't there, for some part of the consideration for the alterations of the building?

A. Yes; my father went on a note for us at the Broad Street Bank on Warren street.

Q. For the alteration of the building?

A. For the alteration of the building.

Q. There were certain moneys coming to him for work done?

A. Oh, well, that was to be—that come from the mortgages. We had that \$794.00 clear, and we took a mortgage on that house.

Q. Did you pay your father off in cash?

A. I don't remember whether it was cash, or whether Mr. Neubeck put it in the check account, because it would be easier to pay out that way than have to give the bank notice.

Q. You say Mr. Neubeck's check account?

A. In his own name.

Q. He had a check account in his own name?

A. Yes, just to pay bills, so that he wouldn't have to wait for any money at any one time, because you have 10 to give the bank notice, I believe, if you draw over a certain amount of money.

Q. And you had accounts in other banks, and they were all savings accounts in your joint names?

A. Yes, sir.

Q. Going back to how your father was paid for the alterations, do you know whether that was paid in cash, or was there a note given?

A. I think there was a note given.

Q. How much was that note for?

20

A. I think it was \$800.00.

Q. Who signed that note?

A. Both.

Q. When the alterations were contracted for, were you there?

A. Oh, yes.

Q. Now, you kept an account, also, in the Trenton Savings Fund Society, wasn't there?

A. Yes.

Q. Do you recognize this (handing witness bank pass-book)? 30

A. Yes, sir; that is our book.

Q. That is the pass-book of the Trenton Savings Fund Society, the account of William H. or Minnie Neubeck?

A. Yes.

Mr. Falcey—I offer it in evidence.

Said bank pass-book is marked *Exhibit C 8*.

Q. Did you ever draw any money from that account?

A. No, sir; we both did; we both did; that is, when any money was drawn like that, either one could draw, but as a rule, when any was drawn, either we went together or Mr. Neubeck got it alone.

Q. Were things proceeding smoothly between you after you had bought this 796 East State Street?

A. After we bought 796?

Q. Yes.

A. No, sir; we had trouble from the time we moved
10 over.

Q. Did you have some arguments together?

A. Yes, sir.

Q. As a result of those arguments—

A. Let me get you; that is, argument on the property or arguments as to how we were getting this money, or working together; what was that question, please?

Q. In the running of the business?

A. Yes; we had arguments; heated arguments.

Q. What was the result of that argument about the
20 businesses?

A. Well—.

Q. Or how did you come to leave the businesses, you and your husband?

A. Well, it got too much for me, and Mr. Neubeck concluded to do things I didn't want to do, and I wouldn't stand for it, and that's how the argument started.

Q. How was it you came to give these businesses? Tell us the story.

A. I couldn't run the business any longer and I was
30 tired of it the way you wanted it.

Q. Did you tell him that?

A. Yes.

Q. What did he say?

A. He said, "What am I going to do with it? I can't run it without you." I said, "I don't care what you do with it; you can sell it if you want to." He said, "Who wants it?" I said he could sell it. He said, "Go sell it." I said, "I'll get a buyer for you," He said, "What will

I do with my side?" and I said, "I don't know what you will do with yours, but I am done with mine." I won't go down there again. I went down to my father's, and I heard that my sister's husband wanted a place and I put the proposition to my folks.

Q. What is your brother-in-law's name?

A. Philip Ermeling.

Q. Well, as a result, you sold it to your brother-in-law?

A. Yes, sir.

10

Q. For how much?

A. \$2,200, as near as I can remember, and we had my brother-in-law come out there—that is, I left word with my father to tell my brother-in-law, and on Sunday night my brother-in-law came out.

Q. He really bought the stock, fixtures and goodwill on the cabinet store and pool room?

A. Yes, sir.

Q. What about the barber shop?

A. He said, "What will I do with that?" He said, 20
"I might give it away to get rid of it"; that's what he said; and he said, "Well, I don't know"; it finally came about that we would give it to my other brother-in-law, Belville Comp.

Q. How did you come to purchase 118 Newell avenue?

A. Of course, after we sold out the business—my brother-in-law was bookkeeper in the Essex Rubber, and he couldn't take full charge, and until he could, until he could get somebody, he was going to get a man to run that place; and I did go down for him in there, because he was going to buy the place; and then after that, I stayed there that long to help him, and I wanted to move; I said I didn't want to live out there over the pool room any more, and we decided we would buy another house, and we looked around, and if I am not mistaken, that Mr. Neubeck heard tell of this one himself on Newell avenue, and he came and told me about it; and, of course, we thought that with the money we 30

sold the pool room, or some of it—well, we put that down on this Newell avenue house, which was \$3,800, the house was.

Q. What cash did you put down on this Newell avenue property?

A. Around \$1,500.00.

Q. And how close in time was the sale of the pool room and barber shop to the purchase of the property on Newell avenue?

10 A. What?

Q. How close in time was the sale of the pool room and the cigar and candy store and barber shop to the purchase of the Newell avenue property?

A. As near as I can remember, we sold around in April or May, and we moved in the—I just don't remember exactly, but it wasn't very long. We moved June 10th.

Q. If I tell you the deed is dated June 27, 1919—

A. We were in the house before it was settled; we
20 moved in the house before the deed.

Q. Before you got the deed for it?

A. Yes.

Q. At the time that you sold, or at the time that you had sold, or decided to sell, the pool room and that candy and cigar store, were negotiations then pending for the purchase of the property on Newell avenue?

A. No, but when we sold—

Q. Yes; were negotiations then pending for the purchase of the property on Newell avenue?

30 A. As near as I can remember, we had found the house and it wasn't finished yet, and we had to wait for it to be finished; but I think we were selling at that time; and I am almost sure we were, because we were to use that money to buy another property.

Q. And then, how was the money you received from the pool room and candy and cigar store deposited?

A. Mr. Neubeck thought it better to put it in on check account, because if he put so much money in both our names, we were going to buy this house, we knew

that—it would be handier on a check account. That is as near as I can remember how that was settled.

Q. For this Newell avenue property how much cash was exchanged, actual cash?

A. Why, \$1,500.00, or about that.

Q. Now, of this \$1,500.00 how much was the property sold for?

A. \$3,800.00.

Q. And how much were the mortgages on there at the time you bought it?

10

A. \$2,250.00.

Q. And, therefore, how much was the cash consideration, \$1,550.00, wasn't it?

A. Yes, I knew it was \$1,500.00, or about that.

Q. Now, of that money which was paid for the Newell avenue property, you say that some of this money came from the pool room and candy and cigar store?

A. Yes.

Q. Where did the rest come from?

A. From the joint savings, what we had saved together; wait a minute, I think we had a note in the First National Bank for \$400.00, I think. 20

Q. Now, do you know where the deed for the Newell avenue property was delivered?

A. In Mr. Russo's office in the Forst-Richey Building.

Mr. Falcey—I offer the deed in evidence.

Said deed from Frank Russo to William Neubeck and wife, dated June 27, 1919, and recorded in Book 429 of Deeds, in the Mercer County Clerk's Office, page 87, is marked *Exhibit C 9*. 30

Q. Who was it sold you that property?

A. I don't know now; I said before that that—I don't know whether that was Mr. Russo's office, whether we went there or whether he was just there, but I think it was his office—Mr. Russo's office.

Q. However, it was in the office in the Forst-Richey Building?

A. Yes.

Q. And the deed was received there?

A. Yes, sir.

Q. Now, the rents at the time you lived in Newell avenue, the rents for these four other properties which you owned, were collected by whom?

A. Mr. Neubeck.

Q. Every one of them was a renting proposition?

A. Yes, all but the one we lived in.

10 Q. Five properties?

A. Yes.

Q. Who collected the rents?

A. Mr. Neubeck.

Q. Did you collect any of the rents?

A. I think—I don't remember whether I got some of them up to my mother's or not; they were still being left there, but I can't say that—I can't say whether Mr. Neubeck stopped and got them or whether I did. After I moved up there I was so upset that I didn't bother
20 much with rents after that, or anything, because I quit.

Q. Do you know where the rents were put; what was the disposition of the rents?

A. Well, I don't know after that; I never went to the bank after that; I don't know whether he put it in the check account or whether he put them in our joint names, but I think he put it in his own name in the check account, because we had bills pending, and they were being paid right along, and I think that is where the rents were put.

30 Q. The interest and taxes were paid out of what account?

A. Before, you mean, before I left?

Q. Yes.

A. Out of the joint savings each time.

Q. They weren't paid out of your husband's checking account?

A. It might have been drawn out of there and put in the checking account; it was always paid by check in his

name only, but whatever money bought anything it was saved in both our names.

Q. You moved in Newell avenue June 10, 1919, you say?

A. Yes.

Q. And how long did you live there?

A. Until October 10, 1919.

Q. And at that time you left your husband?

A. Yes.

Q. At the time you left your husband, did you leave 10
any communication with him?

A. I left a letter.

Q. What was that letter?

A. Well, I told him that from that day—

Mr. Hunt—That is objected to; the letter will speak for itself; I object to any oral statements.

The Court—The objection is sustained; there has been no foundation laid.

Mr. Falcey—We call on the defendant to produce the letter. 20

Mr. Hunt—I would like to know what purpose it is offered for.

Mr. Falcey—To show she demanded one-half the rents in that letter.

Mr. Hunt—This letter contains some self-serving declarations that are not properly admissible in this case. We are quite willing to admit that portion of the letter—

The Court—We have no jury here.

Mr. Hunt—I have no objection, only to the 30
self-serving declarations. (Producing letter.)

Q. Pick out in that letter the portion which relates to the rents (handing witness letter).

A. (Witness does so.)

Mr. Falcey—I offer the letter in evidence.

Said letter is marked *Exhibit C 10*.

Cross-examination, by Mr. Hunt.

Q. Mrs. Neubeck, when was it, in point of time or date, when conditions at the place of business on East State street got too much for you, as you said, so that you told your husband you would not stand for what he wanted to do, and told him you were tired of the business?

A. Well, it was before war time when it began to get too much for me, and during war time Mr. Lawton enlisted in the war.

Q. On what date, as near as you can place it?

A. Well, around, I guess, in August.

Q. Of what year?

A. Well, 1918, when the war was going on.

Q. Now, how long was it after that that you began to tell your husband that you couldn't stand being engaged in this business any longer and wanted to sell out?

A. Well, I didn't—that was around, just the very day that I told him that I couldn't run the place no more and I wouldn't, it seems to me, was around before I sold the place to my brother-in-law, or we sold the place to my brother-in-law.

Q. About what date?

A. Oh, I think that was around in the spring of the year, in April or May.

Q. What year?

A. 1918.

Q. But Lawton enlisted in the army in August, 1918, you said?

A. 1919.

Q. As a matter of fact, it was about February, 1919, that you began to complain to your husband that you wanted to sell the business, was it not?

A. Well, I don't remember just about when it was, but it was shortly before we sold.

Q. And at the time you were in a rather nervous and upset condition, were you not?

A. I was; I was run down because I ran that place myself during war time.

Q. Just answer what I ask, Mrs. Neubeck, and we will get along better.

A. Yes.

Q. You gave your husband to understand you were suffering from a nervous breakdown?

A. Yes, sir.

Q. Now, had you had anyone assisting you in running that place during some months preceding this time?

A. No, I had no assistance only—

10

Q. A man named Banks had been helping you, had he not?

A. No, sir.

Q. Did he never help you about the place?

A. No, sir.

Q. He spent a good deal of time about the place?

A. He always did, the same as the rest of the boys.

Q. For how long a while had he been spending a good deal of time around there?

Mr. Falcey—Objected to.

20

The Court—Objection overruled.

A. Well, I don't remember that, but he always came in there the same as the rest of the boys and sat around.

Q. He had been in the army, had he not?

A. Yes, sir.

Q. And after he came back from the army he spent more time there than he had been spending before. That is true, isn't it?

A. Well, most of the boys did that.

Q. And he spent more time there than the rest of the boys, did he not?

30

A. I can't say that, no.

Q. Did he help you in the pool room?

A. No.

Q. Did he spend considerable time in the pool room with you?

A. Yes; he sat around with the boys always.

Q. Finally, he came to live in your house with you and your husband, did he not?

A. Yes.

Q. Did your father ever say anything to you about his living in the house?

Mr. Falcey—Objected to.

Mr. Hunt—I will withdraw the question.

Q. At the time that the property at 118 Newell avenue was bought, Mr. Banks was spending a good deal of time around the place, was he not?

A. With Mr. Neubeck; he was always in Mr. Neubeck's company.

Q. And you were also around the place?

A. Yes; I lived there.

Q. And Mr. Neubeck was working in the barber shop, was he not?

A. No, sir.

Q. He was working at that time for the State Road Department?

A. Yes.

Q. And that kept him away from your home on East State street.

A. He was in and out all the time; I never knew when he was coming in or going out.

Q. But he was out and gone most of the time through the day?

A. I can't say most of the time; he was away a good deal, but he was home a good deal, too.

Q. He was employed regularly by the State Road Department, was he not?

A. Yes, he was employed.

Q. As a road inspector?

A. Yes.

Q. And he attended to his duties as road inspector?

A. I don't think he did the way he should have done.

Q. He drew his salary?

A. Yes.

Q. And he never was discharged from his employment, was he?

A. Not that I know of.

Q. While he was engaged in that employment, Mr. Banks was spending a good deal of time about the premises?

A. Yes.

Q. After you moved to 118, Newell avenue, Mr. Banks came there and lived in the house with you?

A. Not right away.

Q. Some little time after?

A. In July.

Q. I think you told Mr. Banks at that time that you 10
hadn't been getting along well with your husband,
didn't you?

Mr. Falcey—Objected to as irrelevant and immaterial.

The Court—Objection overruled.

A. Well, I cried so much and worried, and I didn't get along with Mr.—

Q. Answer my question. (Stenographer repeats the question.)

A. Yes; I did tell him.

20

Q. And that was the first he had known that part of it?

A. I can't say; I don't remember that.

Q. He sympathized with you in the trouble that you told him you were having?

A. He didn't right away; no.

Q. Later, did he come to sympathize with you?

A. Yes, sir; he did.

Mr. Falcey—That is objected to. I don't see how the fact of whether he did or did not sympathize with her has any bearing on whether she is entitled to one-half the rents of this property. 30

The Court—Your objection comes after the answer.

Q. And as a result of the sympathy that he showed, closer friendship sprung up between you?

Mr. Falcey—That is objected to for the same reason.

The Court—I will permit it.

A. No, it didn't.

Q. After the first occasion when you told him of the difficulties you had been having with your husband, did you continue to talk about it at other times?

A. No, not necessarily, no. I thought it over myself and also talked with my son.

Q. You talked with Mr. Banks about it only on one occasion, then?

A. Oh, no, there might have been a couple.

10 Q. And there might have been more. And about this time you began to make suggestions to your husband as to his finding a different kind of employment, didn't you?

A. What?

Q. About this time you began to make suggestions to your husband regarding your husband entering upon a different kind of employment from what he was doing?

A. No.

Q. Didn't you suggest it would be fine for him to
20 enlist in the Navy?

A. Well, we had a heated argument; it was on a Sunday night; I told him it was either him go or me go; I didn't like him any more, and hadn't liked him for a long time. That wasn't the first time I told him I was going to leave, and he knows it.

Q. You did, at this time, suggest to your husband that he should enlist in the Navy as a barber, did you not?

A. Because he said to me, "What will I do?"

30 Q. Just answer that "yes" or "no."

A. Yes, I did say that, because he asked me the question.

Q. Now, in the meantime, you had told Mr. Banks that you had lost your affection for your husband, didn't you?

Mr. Falcey—Objected to.

A. No, I never told him that.

Q. You never told him that?

A. No, not that I can remember.

Mr. Falcey—I object.

The Court—I will hear your objection.

Mr. Falcey—Whether or not she told him that has absolutely nothing to do with the question of whether or not she is entitled to half the rents and profits of this property. They allege future infidelity of the wife, and attempt to debar her from the rents and profits because of her future infidelity, and it has been held time and time again in this State that the after infidelity of the wife will not debar her from— 10

The Court—That is not the only thing; the defendant claims the title is in her in trust.

Mr. Falcey—Then how does this attempt to show this, show that there wasn't any title in trust? That is very far away from the question, as to whether Mr. Banks had any feeling for her; I can't see how it is relevant in this case.

The Court—I think you are going rather far 20
afield, Mr. Hunt. It strictly is not cross-examination of this witness; there is no use taking up the time with this.

Q. Mrs. Neubeck, on October 10, 1919, you left your husband's home and left the city of Trenton, did you not?

A. Yes.

Q. And you went to Pittsburgh, Pennsylvania?

A. Yes.

Q. You returned about a week afterwards? 30

A. Yes.

Q. And went to your father's house in Trenton?

A. Yes.

Q. Your husband and your son came there to call upon you?

A. Yes, I called them up.

Q. And asked them to come?

A. I asked my son to come, and he came with him.

Q. Your husband at that time asked you to return to him?

A. Yes.

Q. You refused to do so?

A. I did.

Q. How long did you stay in Trenton after that interview with your husband?

A. That was on Sunday night, and I left the following Monday night a week.

10 Q. And went to Pittsburgh again?

A. I did.

Q. Did anyone accompany you?

A. No, sir.

Q. When you arrived in Pittsburgh, did you meet anyone who had been living in Trenton while you were living there?

Mr. Falcey—That is objected to as having no bearing on the question.

The Court—Objection overruled.

20 A. Not right away.

Q. How soon after?

A. Well, I don't remember; I don't remember exactly how soon.

Q. As near as you can place it?

A. It might have been two days and it might have been four days; I don't remember.

Q. And the man you met was the Frank Banks who had been living with you and your husband before you left him?

30 A. With me? He wasn't living with me.

Mr. Falcey—That is objected to for the same reason, that it has absolutely no relevancy in this case.

The Court—Objection overruled.

A. Living at our house.

Q. Here in Trenton?

A. At our house; yes.

Q. You and Banks both continued to live in Pittsburgh until the middle of February, 1920, did you not?

A. He lived there, and I lived there, too.

Q. You lived in separate houses there?

A. Yes, sir.

Q. And you saw each other daily?

A. No; not daily.

Q. You both went to work there at separate jobs, didn't you?

A. Yes.

Q. And in the evenings, after you were through work, you would meet each other?

10

A. Sometimes; yes, sir.

Q. He would come to your boarding-house where you were staying?

A. Sometimes.

Q. And he would stay in your room with you?

A. Yes.

Mr. Falcey—Objected to.

Q. And on other occasions you would meet on the street or in other places in Pittsburgh?

A. Yes; whichever way was convenient.

20

Q. The woman who occupied the boarding-house where you lived was named Mrs. Dillworth?

A. Yes.

Q. You introduced Mr. Banks to her, did you not?

A. I don't remember.

Q. Do you remember having a long talk with Mrs. Dillworth at any time when Mr. Banks was by, and all three of you engaged in the conversation?

A. In any conversation?

Q. Yes.

A. We have been talking together, yes.

30

Q. You and Mr. Banks and Mrs. Dillworth had talked together?

A. Yes.

Q. The year 1920 was a leap year, wasn't it?

A. Yes.

Q. Do you remember any conversation in which you and Mrs. Dillworth and Mr. Banks took part?

Mr. Falcey—Objected to.

The Court—Objection overruled.

A. Do I remember any conversation?

Q. Do you remember any allusion in the conversation that took place between you and Banks and Mrs. Dillworth, to the fact that 1920 was a leap year?

A. No; I don't remember anything like that.

Q. Was anything said by you or Banks to Mrs. Dillworth about any plans that you and Banks had for
10 the spring of the year?

A. I don't remember that.

Q. Was anything said by you to Mrs. Dillworth about going to San Francisco or California; can you answer?

A. Well, maybe there was.

Q. And what was said?

Mr. Falcey—I object to that for the same reason; it has absolutely no relevancy, and it doesn't tend to establish a trust in any way.

20 The Court—I will permit it.

A. I don't remember.

Q. Now, in February, 1920, two police officials from Trenton came to Pittsburgh and took you and Banks into custody and brought you back to Trenton?

A. Yes.

Q. And these officials were Mr. Preston and Mr. Olsen?

A. Yes.

Q. And these two men and you and Banks rode on the train together from Pittsburgh to Trenton?
30

A. Yes.

Q. You rode with Mr. Preston?

A. Yes.

Q. And Banks rode in the seat with Constable Olsen.

A. We had separate seats.

Q. You and Preston sat on one side?

A. Yes.

Q. And where did Banks and Olsen sit?

A. Opposite.

Q. There was a conversation between you and Preston, wasn't there?

A. Yes.

Q. And there had previously been a conversation carried on amongst all four of you in the police station at Pittsburgh, had there not?

A. I don't remember whether there was; I don't remember.

Q. Was there a conversation in the police station at Pittsburgh between you and Olsen and Preston? 10

A. No, sir.

Q. You rode from the police station to the railroad station in Pittsburgh with Mr. Preston?

A. No, sir; we walked.

Q. And talked to him as you went?

A. No, I don't remember any conversation.

Q. You did talk to him when you got on the train?

A. Yes, sir.

Q. And you said to him that you were in love with Mr. Banks, and that if conditions ever made it possible you were going to marry him? 20

A. After—

Mr. Falcey—Objected to.

Q. (Stenographer repeats the question.)

A. After I left my husband; yes.

Q. This was after you had left your husband?

A. Yes, sir, after.

Q. You were released by the police here in Trenton after a time, weren't you?

A. Yes, right away.

Q. Well, you gave bail? 30

A. My father went my bail.

Q. And no indictment was found against you?

A. No.

Q. And you went back to Pittsburgh?

A. Yes.

Q. And you and Banks are both living in Pittsburgh still?

A. Yes.

Q. And you are both living in the same house?

A. Yes.

Q. What kind of a house is that?

A. A rooming house.

Q. How many stories?

A. Three high.

Q. How many people are living in the house?

A. Twelve.

Q. What name is Mr. Banks known by in that house?

10 A. Mr. Banks.

Q. Are there any arrangements for cooking available for the lodgers in that house?

A. No, sir, only to me.

Q. You do have cooking arrangements?

A. Yes.

Q. Do you cook?

A. I do cook.

Q. Your own meals?

A. Yes.

20 Q. Do you cook for anybody else?

A. No, only if I have company; I have had lots of company.

Q. Has Mr. Banks joined in your cooking at the house?

A. Yes.

Q. He does regularly, does he not?

A. Eh? No, he at times bought his meals out.

Q. At times?

A. Yes.

30 Q. What day last week did you come to Trenton?

A. Monday.

Q. A week ago today?

A. Yes.

Q. Banks also arrived in Trenton last week?

A. Yes.

Q. And is here still?

A. Yes.

Q. You and he have seen each other every day since you have been here?

A. No.

Q. How many days have you not seen each other?

A. I can't remember that.

By the Court—

Q. What?

A. I don't remember how many days.

Q. You can't remember how many days there have been in the past week that you have not seen Banks?

A. If I stopped to think I suppose I can tell; I 10
was out in the country; I went to my sister's; as
near as I can remember, it was four times or five.

Q. You have seen him four times or five?

A. Yes.

Q. Since you arrived in Trenton?

A. Yes.

Q. I suppose you left Pittsburgh on Sunday?

A. No, left Monday morning.

Q. Then, on the Sunday prior to your leaving Pitts-
burgh, how many meals did you and Banks have to- 20
gether?

Mr. Falcey—That is objected to; I don't see
the relevancy of any of this.

A. One.

Q. What meal was that?

A. Dinner.

Q. In the evening or at noon?

A. Why, about three o'clock in the afternoon.

Q. Where did you eat breakfast that day?

A. In my kitchen, by myself.

30

Q. Where did Banks eat breakfast?

A. I don't know.

Q. On the Saturday, the day before, how many meals
did you and Banks have together?

A. Two.

Q. What meals were they?

A. Luncheon and supper—dinner, rather, and that
wasn't in my house, that was out.

Q. Both of them were out?

A. Both of them were out.

Q. On the Friday before, how many meals did you and he have together?

A. I don't remember.

Q. As a general thing, where does Banks get his evening meal?

A. Well, he sometimes got it out and sometimes with me.

Q. Where do you get your evening meal as a general
10 rule?

A. Make it myself.

Q. Sometimes you eat it out?

A. No, as a rule I eat it home.

Q. Do you prepare your breakfast yourself?

A. Yes, sir.

Q. Where does Banks get his breakfast?

A. I don't remember; I don't know.

Q. Does he sometimes eat breakfast with you?

A. No.

20 Q. Has he never eaten breakfast with you in Pittsburgh?

A. Yes; I believe he has.

Q. In your apartment in this lodging house?

A. Yes.

Q. How many rooms do you have?

A. Two.

Q. A kitchen and combination sitting-room and bedroom?

30 A. No, my bedroom is a bedroom; I never sit in there, but I do sit in my kitchen and eat there and practically live there.

Q. Which floor of the house are the rooms?

A. The third floor.

Q. And which floor of the place is Mr. Banks' room?

A. The third floor.

Q. What is the situation of his room to your room?

A. None whatever.

Q. Is it next to one of your rooms?

A. Yes, but you have to go through a hall to get to each one.

Q. Coming to the top of the third floor stairs, arriving at the third floor, you mean you have to pass down a hall to your room, or Banks' room either?

A. I mean, when we go up the steps, I can go in my living-room and he has to go around a long hall to get into his room.

Q. His room is next to your bedroom?

A. Yes.

Q. Is there any communicating door?

A. None whatever; no, sir.

10

Q. Your bedroom, however, has a door opening upon this hall?

A. Yes.

Q. Are you employed in Pittsburgh?

A. I am.

Q. What is your occupation there?

A. Clerk.

Q. I suppose after this case is finished you intend to return to Pittsburgh?

A. I have to go back to work again; yes, sir.

20

Q. Do you know anything of Mr. Banks' intention to go or not to go back?

A. I believe he is going back when he gets ready; I don't know exactly when; he is going back to his work again.

Q. I believe you said that before you separated from Mr. Neubeck, the interest and taxes of these four properties were paid out of the joint savings account?

A. Yes.

Q. I want you to take those books (handing witness books) and show the Court one withdrawal of money for the purpose of paying interest on mortgages or taxes.

30

Mr. Falcey—That is objected to; it is an unfair question, inasmuch as all the bank books are not here.

The Court—Objection overruled.

A. What do you want to know?

Q. I want you to show the Court one item of a withdrawal of money for the purpose of paying interest on mortgages or taxes.

A. Each time we decided to pay, the money was drawn from the account.

Q. I want you to show the Court one item of a withdrawal of money for the purpose of paying interest on a mortgage, or for the purpose of paying taxes on any of the properties.

10 A. When those things were paid, it was usually put in Mr. Neubeck's check account, and he paid everything by check; he did that for security.

Q. I want you to show me one item wherein money was drawn from these accounts for the purpose of being put into Mr. Neubeck's account to enable him to pay interest on taxes.

A. Well, how that was paid—

Q. I want you to show us an item; can you?

A. No; it wasn't paid that way; it wasn't drawn out
20 of the bank that way.

Q. On your direct examination you said, before you left your husband the interest and taxes were paid out of the joint savings account?

A. Out of the joint savings account?

Q. Yes.

A. I said Mr. Neubeck had a check account which all bills was paid through that check account, but it was the savings of both, and the working of both that brought that checking account around.

30 Q. You cannot show any item on any of these books of the withdrawal of money for the payment of interest or taxes?

A. No, sir; that was just money put in in his name only.

Q. In October, 1919, when you went on your first trip to Pittsburgh, you went to your mother's house and there took unto yourself rentals for a house that one of these tenants had left there, did you not?

A. \$15.00; yes.

Q. Tell the Court when, previous to that time, you had ever taken away from your mother's house any rentals which any tenant had left there.

A. On several occasions.

Q. Name one occasion.

A. Well, I believe that is on the rent books; I signed my name in them lots of times.

Q. Do you mean to say, that when the tenant paid his rent at your mother's house, he left his book there to be signed?

10

A. Yes; whoever took the rent signed the book.

Q. And in any case in which you had taken the rent your name would appear signed in the tenant's book?

A. Yes, sir.

Q. Tell us one occasion when you took rent and signed the book.

A. I can't mention just the date; is that what you mean?

Q. That is what I want.

A. I can't mention the date; I know it is in the rent book.

20

Q. You know you have done it several times?

A. Yes.

Q. Over a period of ten years past, approximately?

A. Yes, sir.

Q. You know there are a number of other occasions—

A. Since we had the Sweets avenue property, that is correct.

Q. Which you acquired when?

30

A. In 1908.

Q. On numerous occasions you have gone to your mother's house, and you have known that the tenants' rent was there, and you have not taken it?

A. No.

Q. And left it for your husband to take it?

A. No, not that I can remember; any time that it was there and my mother said it was there, I took it and took it home, or he took it.

Q. When you took it home, what did you do with it?

A. It was put—

Q. What did you do with it?

A. We put it—

Q. What did you do with it?

A. I suppose I gave it to Mr. Neubeck, and it was taken with the rest of the money to Mr. Neubeck.

Mr. Hunt—I ask to strike that out.

10 The Court—That part in which she added she supposed she gave it to Neubeck can be stricken out.

By the Court—

Q. You know whether you gave it to Mr. Neubeck?

A. Yes, Mr. Neubeck carried the money as a rule.

Q. Then why do you say you “suppose” you gave it to him?

A. As near as I can remember.

20 Q. When you married your husband he was already established in his first barber shop?

A. Yes, sir.

Q. And you and he made your home in part of the same premises in which he carried on the shop?

A. Yes, sir.

Q. As a general thing, in that first shop, the towels that were used in the barber shop were sent to the laundry, were they not?

A. No, sir.

30 Q. You say they were not?

A. I say, as a usual thing.

Q. But they were lots of times?

A. As a usual thing.

Q. How many times were they?

A. I don't know.

Q. It was customary for the laundryman to come?

A. No, I did them for a long time myself; we had a wash machine.

Q. How long a time?

A. I couldn't remember; that is quite a while.

Q. When they were washed in the washing machine, who operated the washing machine?

A. Both; if he was busy in the shop, I did it.

Q. If he was not busy in the shop, Mr. Neubeck did it?

A. Yes, at times he helped me.

Q. The money which went into the purchase of these properties was money that was earned by Mr. Neubeck in the barber shop, was it not, except in so far as there might have been earnings in the pool room afterwards?

A. You mean, over on State street?

Mr. Hunt—I will withdraw that question.

Q. During the early years of your married life, Mr. Neubeck, in addition to carrying on the barber business, also sold watches?

A. By chance; some he sold outright and some he chanced off.

Q. And the money with which you purchased the first lot was accumulated in that way, his selling and chancing off watches?

A. No. Each time I washed the towels we considered that a saving and we would lay that aside, instead of paying it out with the rest of our money.

Q. How much was laid aside that way?

A. Well, towels at that time cost so much a hundred, and whatever they were then, how many hundred I did, that is how much money was laid aside, and sometimes it was one dollar, three or four hundred we did at at time, sometimes five hundred.

Q. And after a while you both got tired doing it that way, and you sent it to the laundry?

A. It was a long time after; I always made the towels.

Q. How much money was laid aside that way?

A. I can't remember that.

Q. The greater part of the money with which you bought the first house was money made in the watch business, wasn't it?

A. I can't say that; I don't remember.

Q. And Mr. Neubeck continued in the watch business during the time that you were erecting buildings, or during the time you were building the new house and discharging the indebtedness that that building created?

A. You mean the Sweets avenue property?

Q. Yes.

A. I guess he was more or less of a chancing barber;
10 he chanced off a lot of things.

Q. And made money that way, and the money went into the transfers; is that correct?

A. Not all of it didn't go in.

Q. Some of it went into your living?

A. No, he bought things with it.

Q. Bought what?

A. Well, the barber shop.

Q. Now, whereabouts did the \$350.00 cash with which you paid for the Hurschler lot in June, 1908,
20 come from?

A. I don't remember which bank exactly; I think it was the West State street bank.

Q. I don't know that I understand you clearly as to what was done with the rents collected from these properties; you said the rent from the two houses on Sweets avenue was deposited in the joint savings account; is that correct?

A. Yes.

Q. What property did you buy next?

30 A 794 East State street.

Q. After you bought that, what was done with the rents from that property—of the Sweets avenue property?

A. Well, we put them together,

Q. And then where did you deposit them?

A. In one of those four banks; I can't say just which bank.

Q. In an account in both your names?

A. Yes, in both names; to the best of my knowledge it was in both names, all the savings.

Q. You know that your husband had a private account in his own name at the same time?

A. Yes; a check.

Q. And you knew at the time what he was doing with the rents received from these houses, didn't you?

A. Yes.

Q. Isn't it true that he was depositing the rents in his own private account?

10

A. No, sir; it went in both names, the rents.

Q. In January, 1911, you bought 794 East State street for \$2,400.00, \$1,500.00 of which was covered by an existing mortgage, and \$900.00 of which was paid in cash; is that true?

A. Yes, sir.

Q. Now, the part of the money that was drawn from the joint savings account is this item of \$448.48, being the entire balance then in the bank, withdrawn January 12, 1911, is it not?

20

A. For the house 794, you mean?

Q. Yes.

A. Yes; I guess it was.

Q. That was \$488.00 out of the \$900.00 that you had to pay?

A. Yes.

Q. Now, Mr. Taylor, you said, loaned an additional \$200.00?

A. Yes.

Q. Now, it is true that Mr. Taylor loaned that on a note of your husband's?

30

A. There was no note.

Q. There was no note?

A. No, sir.

Q. \$488.00 plus \$200.00 is \$688.00; where did the balance of \$212.00 come from, if you know; do you know?

A. Well, I knew everything at the time; I just can't think now whether we—no, sir, I can't answer that question; I don't remember.

Q. You said that when you bought 796 East State street, in March, 1918, you paid \$2,800.00, covered by a \$2,000.00 mortgage and \$800.00 in cash; now, I want you to show me whereabouts in these bank accounts that \$800.00 in cash came from.

A. Well, now—

Q. What date was it?

A. March, 1919.

Q. Tell me where that cash came from?

10 A. What date in March?

Q. It is recorded March 20?

A. What year?

Q. 1919. The \$800.00 was not drawn from either of those accounts you have before you, was it?

A. I don't just remember how we got that money; but I know it was the savings of both that bought that house.

Q. You said in your direct examination that it was drawn from the joint savings account?

20 A. We always saved together, and now whether it was in the joint or in the checking account, I couldn't say; towards the last, when Mr. Neubeck's business—

Q. Who got the \$800.00 from the bank?

A. I guess Mr. Neubeck did; I don't remember about that.

Q. Were you with him?

A. I don't remember that.

Q. Did you sign any paper on which it was got?

A. I don't remember that.

30 Q. As a matter of fact, do you know how that \$800.00 was paid?

A. Yes, sir.

Q. How was it paid?

A. On a note.

Q. Who signed the note?

A. I don't know whether it was signed by Mr. Taylor, or whether Mr. Taylor made it right to Mr. Neubeck's name down at the bank there; we could draw money whenever we wanted it, because we were worth enough at that time to do that.

Q. Did you sign the note?

A. Yes, sir.

Q. I want you to be certain; I am talking about the purchase of 796 East State street in 1918; did you sign a note?

A. I signed a note in the First National Bank.

Q. For \$800.00, to be used in connection with the purchase of that property? I am not asking you to say that; I am asking you whether you are certain that you did?

10

A. I remember signing a note at that time, but whether it was for \$800.00 or how much, I can't say; I signed a note, and we paid off so much as we could to Mr. McBride.

Q. And that note was in March, 1919, and in connection with the purchase of 796 East State street; is that correct?

A. As near as I can remember; I can't remember that.

Q. Now, for a time, after you moved to East State street, the barber shop was the only business you had?

20

A. No, we started both businesses right together.

Q. The laundering from that barber shop was sent to the laundry?

A. That had to be; I couldn't do it any more.

Q. And you hadn't done it for a number of years, had you?

A. Off and on I have done it, when he couldn't get a laundryman.

Q. You had not for a number of years done your own laundry?

30

A. For the simple reason of going up to his mother to help her; I could have done it, and was willing to do it, and he knows it.

Q. In East State street the barber shop and the pool room each had a frontage on the street, didn't they?

A. Yes, sir.

Q. And between their two fronts was a doorway leading to the stairway that went upstairs where you lived?

A. Yes, sir.

Q. And at the rear of that stairway was a connecting door of the barber shop and pool room?

A. Yes.

Q. Your husband worked in the barber shop and had a barber there helping him?

A. Yes.

Q. He had a man working in the pool room on the other side?

10 A. Yes.

Q. So that, on account of the late hour of closing, his time had to be made somewhat irregular on alternate days, didn't it?

A. For the man he hired?

Q. Yes; the man he hired in the pool room went to work at noon one day and remained at work till the closing of the place at night?

A. No.

Q. Until supper time?

20 A. And then I relieved him.

Q. On some days, then, that man worked only in the afternoon?

A. Sometimes, and sometimes he worked in the morning, and then didn't work in the afternoon, and then came back at night, and when he wasn't there I was there.

Q. Well, the barber shop closed in the evening much earlier than the pool room?

A. At eight o'clock, except Saturdays.

30 Q. And the pool room at what time?

A. 12 o'clock.

Q. And after the barber shop closed your husband came over and took care of the pool room?

A. When he got there, sometimes nine o'clock, never earlier than a quarter of nine, for he had a big business in there.

Q. And then he came over?

A. And helped me.

Q. You could have left?

A. He didn't say so; he played pool and I attended to the store.

Q. You stayed because you liked to?

A. Because we were working together.

Q. You had a servant in the house, so you didn't have any housework to do?

A. Not always, no, sir; I had a girl to do my washing, because I couldn't do it up there and be downstairs, too.

Q. And a girl to do the cooking?

10

A. Only for a short time.

Q. When you could get it?

A. Only once; outside of that I did all my cooking myself.

Q. On the pool room door, on the door there was a bell arrangement or something that caused a buzzer to ring in the barber shop?

A. No.

Q. It rang in the pool room and you could hear it in the barber shop?

20

A. Yes.

Q. The pool room wasn't much patronized during the daytime?

A. Sometimes it was.

Q. As a general thing?

A. I can't say that.

Q. And somebody came in to make an occasional purchase of cigars?

A. Yes.

Q. And sometimes an occasional game of pool was played?

30

A. Yes, sir.

Q. The practice was during the daytime for your husband and his barber working for him, when they heard that bell in the pool room, to go over there?

A. That's the way, and many a time when that bell rung I went down and waited on the store and left my work.

Q. As a matter of fact, those times were almost always during the hour when Mr. Neubeck's barber was relieved for lunch, weren't they?

A. I can't necessarily say that, no.

Q. A great many of them?

A. No, not a great many; no, because I had my work to look after upstairs and I couldn't get help.

Q. How about the barber's supper hour; didn't that account for a part of the time?

10 A. No, there was always somebody around through supper hour that Mr. Neubeck relieved me until I got the supper.

Q. You said that on October 10, 1919, just before you left for Pittsburgh, you took up \$15.00 rent from your mother's?

A. Yes; I told my mother to tell Mr. Neubeck at the time.

Q. How long before that had it been since you had collected any other rent?

20 A. I can't remember that.

Q. Is it your claim that the property you and Mr. Neubeck had was jointly owned?

A. Yes.

Q. At the time you went away in October, did you take any other property which would come under that classification of joint ownership?

A. No, sir.

Q. You didn't take anything in which he had any interest?

30 A. Not that I could remember.

Q. Can you remember taking any war stamps?

A. Yes.

Q. Whose money bought that?

A. Mine.

Q. Where did you get that money?

A. Spending money; money that he—well, money that was laid aside.

Q. Who laid it aside?

A. Well, I was allowed so much for spending money each week; we were allowed so much outside of our living.

Q. What was done with it?

A. I bought clothes, and if I didn't need it I saved it, and then we bought stamps with it.

Q. Where did this money come from?

A. From the earnings in that store.

Q. Who laid it aside?

A. Why, I did; Mr. Neubeck gave it to me. 10

Q. How much a week did he give you?

A. Three dollars.

Q. And were these war savings stamps saved out of that \$3.00 a week?

A. Yes, to the best of my knowledge, they were.

Q. How much did they amount to?

A. \$100.00.

Q. Out of the money that Mr. Neubeck had allowed you, you had been clothing yourself and your son and had saved up \$100.00 since the Government began to use war stamps? 20

A. No, I always had a little saving, had money in my pocketbook; I saved from time to time. I haven't accumulated that \$100.00 in such a short time; I was always saving.

Q. Do you recall having a conversation with your husband at any time in which, in connection with your properties, there was mentioned the possibility of the event of his death?

A. No, not particularly. 30

Redirect examination, by Mr. Falcey.

Q. You remember the time that the property, 794 East State street, had a mortgage on it for \$1,500.00?

A. Yes.

Q. And you remember that Lydia A. Massey—that mortgage was taken off and a mortgage for \$2,000.00 was put on there, which was loaned by Lydia A. Massey?

A. Yes.

Q. And that was just about the time that you bought the property 792 East State street?

A. Yes, sir, at that time.

Q. So that of the \$1,000.00 cash consideration paid for 792 East State street, \$500.00 came from the increase of the mortgage of 794?

A. Yes.

Q. And the other money making up the balance came
10 from the bank?

A. Yes, I guess it did; I remember we had that house clear, and we borrowed more on it.

Q. Do you recognize that (handing witness an envelope)?

A. I did, from my son.

Mr. Falcey—I offer that in evidence.

Said envelope for war savings stamps is marked *Exhibit C 11*.

20 Recross examination, by Mr. Hunt.

Q. Did you take anything else besides \$15.00 rent and this?

A. No, sir.

Recess until 2 o'clock.

AFTER RECESS.

Q. You claim that this \$100.00 worth of war stamps, tendered as an exhibit, belongs to you?

30 A. Well, it was in my name; yes, sir.

Q. Will you answer the question, please?

A. Yes, they belonged to me.

Q. How many rooms are there on the third floor of the house in Pittsburgh where you are now living?

A. Three.

Q. One, the kitchen occupied by you?

A. Yes.

Q. The other the bedroom occupied by you?

A. Yes.

Q. And the third is the room occupied by Mr. Banks?

A. Yes; I have nothing to do with that.

The Court—The record may show that there is an application for the barring of the wife's dower in these properties, if the finding of the Court should be that the property is the property of the husband.

Q. What time are you through work in the evening?

A. Six o'clock.

Q. And then you come home and get your supper? 10

A. Yes.

Q. What time is Mr. Banks through work?

A. He works till six.

Q. How long does it take you to prepare your supper and eat it?

A. Why, different times; it's according to how much I have on hand left, or how much I have to cook after I get home.

Q. A matter of an hour of two?

A. An hour, about.

20

Q. How do you spend the remainder of the evening after that?

A. Sometimes I sit in the kitchen, and sometimes I go to see friends, and sometimes to the movies, or take a walk, or go to church on Sunday nights.

Q. What kind of friends do you go to see?

A. Girl friends.

Q. Does Mr. Banks sometimes accompany you on these occasions?

A. Yes, sir.

30

Mr. Falcey—That is objected to.

The Court—Your objection will run to all the testimony offered to show adultery.

Q. On those occasions when you spent the rest of the evening in your apartment, Mr. Banks sometimes stayed with you?

A. Sometimes.

Q. That happens about how many times a week?

A. I don't know; sometimes I am out every night, and then, again, I might be in a couple of weeks.

Q. And stay with him?

A. No.

Q. Some nights he is out a couple of nights?

A. Not the whole week; no.

Q. Usually when you are in the house, he is in the house also?

A. Sometimes; he doesn't always go along with me.

10 Q. He is in the house?

A. No, sir; he is in his room; not in my apartment.

Q. Usually, when you are sitting in your kitchen, he is sitting in there with you?

A. Not always; no.

Q. There is a door between your kitchen and your bedroom?

A. No, sir.

Q. How do you get from your kitchen into your bedroom?

20 A. Through a hall.

Q. And that is the same hall that Mr. Banks uses?

A. That runs the length of the third floor.

Q. What furniture is there in Mr. Banks' room?

A. Well, I don't know exactly.

Q. Well, as far as you remember?

A. Well, I know he has a bed to sleep on.

Q. What else has he?

A. Well, the room is furnished like any ordinary bedroom.

30 Q. Only one bed in it?

A. A single bed; yes.

Q. Is there a couch or lounge, or anything of that sort?

A. Not that I know of.

Q. How many chairs?

A. I couldn't say; I never counted them.

Q. Is there a rug on the floor?

A. Yes, sir.

Q. You have tidied that room up sometimes?

A. No, sir; never.

Q. That is done by the mistress of the house?

A. The lady of the house, yes; I have nothing to do whatever with Mr. Banks' room, for she rented the room to him and I know nothing about it.

Q. She rented it at the same time she rented it to you?

A. No, sir; Mr. Banks had his a long time before I went there.

Q. The room he occupies is the same room he was occupying before you were arrested in Pittsburgh and 10 brought to Trenton; is that correct?

A. Yes.

Q. Is that correct?

A. To the best of my knowledge, yes; I don't think he ever changed.

Q. But prior to that arrest, I think you said, you were living in a separate house from him?

A. Yes.

Q. And after you were discharged in Trenton and went back to Pittsburgh, you went back to this same 20 place?

A. In the meantime, I had a chance to better myself with two rooms; I got two rooms for the same price as I had the one room, and I had a better way of cooking.

Q. At the time you and Mr. Banks first left Pittsburgh, you were able to get these same rooms you are occupying now?

A. Well, I don't know that.

Q. He was living there before you were arrested?

A. Long before; yes, sir.

Q. But at that time the other two rooms were oc- 30 cupied by someone else?

A. The Mrs. herself; she asked me if I wanted them: I didn't ask her.

Q. When did you first become acquainted with her?

A. Why, I don't remember that; I can't remember just when I became acquainted with her.

Q. This building is at No. 5480 Penn avenue, East Liberty?

A. Yes.

Q. And that is where Mr. Banks lived at the time you were both arrested?

A. Yes.

Q. You, at that time, were living at the corner of Rural and Euclid avenues?

A. Yes.

Q. Up to that time had you met this Mrs.

A. Yes; I was arranging to get those rooms.

10 Q. I suppose you were introduced to the proprietor of the place by Mr. Banks?

A. No.

Q. Who did introduce you?

A. Myself.

Q. Mr. Banks was living there at the time?

A. Yes.

Q. Did you tell the proprietress that there was any relation between you and Mr. Banks?

A. No, sir; I didn't.

20 Q. What name did you go under at first in Pittsburgh?

A. Hess.

Q. Your full name?

A. Miss Betty Hess.

Q. You received mail addressed to that name?

A. Yes.

Q. Do you still go under that name?

A. Yes, unless I have to sign my name to any particular business; then I sign my right name.

30 Q. Are you known to the proprietress of the house, 5480 Penn avenue, as Betty Hess?

A. I went there at the time, and after that, she knew of my trouble and she knew of my name.

Q. How did she know of your trouble?

A. Because the detectives were there and told her.

Q. And since then she has learned that you are Mrs. Neubeck?

A. Yes.

Q. You have talked with her about your trouble with your husband?

A. No, she never interfered.

Q. What is her name?

A. Mrs. Miller.

Q. What have you told her in general?

A. I told her I left—

Q. You told her you separated from your husband?

A. Yes.

Q. And that it was your hope to get a divorce?

A. I didn't care; I never thought of it; I didn't care whether I did or not.

10

Q. Did you tell her?

A. No.

Q. Didn't you tell her you looked forward to when you would be released from your husband?

A. No; I don't remember that.

Q. Didn't you ever speak to Mrs. Miller about a time when you would be free to marry again?

A. No.

Q. You spoke to the proprietress of the other place about it?

20

A. That was because she tried to pry into my affairs, and at that time she didn't know whether I was Mrs. or Miss, and I didn't tell her; and I had to tell her some stories.

Q. You told her you and Banks were going to be married?

A. Just to get her off the track, not to mean it.

Q. You have not told Mrs. Miller that?

A. Not that I can ever remember.

Q. Does anyone come to call on you at the premises,
5480 Penn avenue?

30

A. Yes, I have had girls to come.

Q. Just give me their names, will you?

A. Mrs. Cook.

Q. Where does she live?

A. I don't know; I don't know her number.

Q. What is her first name?

A. I don't know that; I don't remember her first name.

Q. Where does she work?

A. She doesn't work; she and her husband came to see me.

Q. What is her husband's name?

A. Sam Cook, I believe.

Q. Where does she live?

A. Up on the hill somewhere; I don't know the name
10 of the street.

Q. Where does he work?

A. I don't know.

Q. How did they happen to come to see you?

A. Well, he worked with Mr. Banks, and it was the first position Mr. Banks had; he worked with; that's how I got acquainted with him.

Q. They came to see you and Mr. Banks?

A. No, not necessarily; I met them and I asked them to come and see me, and she did.

20 Q. Where did you meet them?

A. I guess on the street.

Q. You were introduced to them by Mr. Banks?

A. I think—I think that's the way it came about.

Q. Why did you ask them to come and see you.

A. Because I wanted some friends.

Q. Was Mr. Banks there?

A. Yes.

Q. You didn't know they were coming?

A. No; I didn't know.

30 Q. They just happened to come. Was there any talk about the relations between you and Mr. Banks?

A. No, sir.

Q. Or what his relation with you was to be in the future?

A. No, never; she didn't know I had any trouble.

Q. What were they told about why you and Mr. Banks happened to be living there under those circumstances?

A. She knew he had a room there, and she knew I had my rooms, and she knew I went out with him, that's all.

Q. Who else comes there to call on you?

A. Oh, I just can't remember; a little boy and his father.

Q. What are their names?

A. Linton.

Q. What is the first name of the father?

A. I don't know.

10

Q. Where do they live?

A. I don't know; over in Wilkinsburg.

Q. What does the father do?

A. I don't know.

Q. How did you become acquainted with them?

A. He was Mr. Banks' first boss; it wasn't through Mr. Banks exactly, it was through Mr. and Mrs. Cook that I got acquainted with these people; it was made up that we all go on an excursion together.

Q. Who do you mean?

20

A. Mr. and Mrs. Cook and Mr. and Mrs. Linton and I went, and Mr. Banks went.

Q. How did you and Mr. Banks account to these people for you two being together?

A. I never had to explain; they never asked; there was never no explanation to be made, that I know of.

Q. They understood you to be a young woman to whom this man was paying attention?

A. I guess so.

Q. What do they call you?

30

A. Miss Hess.

Q. And what do they call him?

A. Mr. Banks.

Q. What name does he call you?

A. Miss Hess.

Q. Not "Betty?"

A. No, Miss Hess.

Q. Not "Betty" at any time?

A. No.

Q. What name does he call you when you are alone together?

A. Well, he always said "Mrs." or "Miss Hess."

Q. When you are alone he addresses you as "Mrs." or "Miss Hess?"

A. Yes, to the best of my knowledge.

Q. I think you told the officers from Trenton that you and Banks had displayed some marks of affection toward each other even before you left Trenton?

10 A. I said I liked him, yes; I did like Mr. Banks.

Q. And had displayed some marks of affection?

A. I don't remember that.

Q. Didn't you tell them he had hugged and kissed you here in Trenton before you left home?

A. I don't remember, and I don't remember that he ever did kiss me; I don't remember that he kissed me.

Q. Do you deny that?

A. If I can't remember it, why can't I deny it?

Q. Do you deny it?

20 A. Yes, I do; I don't remember that part of it.

Q. I am asking you whether you deny that you told Mr. Preston that Banks had hugged and kissed you here in Trenton before you left your husband?

A. No.

Q. I don't want to confuse you, but do you mean you didn't deny it?

A. No, I didn't say it, that I know of.

Q. You did not?

A. Not that I know of; no, I don't think—

30 Q. I want to make it plain whether you are denying that you said it, or you can't remember whether you said it?

A. I don't think I said it.

Q. Do you deny that you said it?

A. I must if I don't remember it.

Q. They asked you about such things, didn't they?

A. Yes, sir; I don't remember that question.

Q. They asked you whether you hadn't had sexual intercourse with Banks?

A. Yes, they did.

Q. What did you say to that?

A. I said, "Positively no; or no other man outside of my husband."

Q. Is your recollection refreshed any; can you tell us whether or not you did or did not tell the detectives that he had hugged and kissed you here in Trenton?

A. No, I don't remember, I don't remember.

Q. Did you tell them whether he had hugged and kissed you in Pittsburgh?

10

A. No, I never told them of that.

Q. Now, as a matter of fact, he has, hasn't he?

A. No, not that I know of he didn't.

Q. Up to the time you were arrested in February, 1920, had he ever kissed you?

A. I don't remember that; I can't say that.

Q. In Pittsburgh or Trenton?

A. Not in Trenton; he might have done it in Pittsburgh at times.

Q. Had he put his arms about you in Trenton?

20

A. No, not only on my shoulder, and asked me what I was crying for; I was crying at the time.

Q. You told him what you were crying for?

A. No, I told him I had had trouble, and he was surprised.

Q. And then did he put his arms about you and comfort you?

A. No, he put his arms on my shoulder and said, "I wouldn't cry if I were you."

Q. Did he kiss you?

30

A. No.

Q. You think in Pittsburgh he has kissed you?

A. Well, he has, yes.

Q. And put his arms about you?

A. Not only on my shoulder.

Q. Whereabouts has it occurred in Pittsburgh when he has kissed you?

A. I don't remember that.

Q. Won't you try to remember?

A. It might have been in my kitchen.

Q. Well, it has been in your kitchen, hasn't it?

A. Well, maybe it was.

Q. Has it or not; you remember?

A. Yes, I guess it was in my kitchen.

Q. When, for the last time before you came back to Trenton?

A. I don't remember that.

Q. How about last Sunday evening?

10 A. I don't know.

Q. He might have kissed you good-bye?

A. No.

Q. You came together?

A. Yes.

Q. Then he would not kiss you good-bye?

A. No, not till I would see him again.

Q. He kissed you good-bye at a separation that was going to take place in Trenton, or against that separation?

20 A. Yes; he was coming to Trenton and so was I.

Q. You were coming together?

A. He come on the same train.

Q. Sitting in the same car seat?

A. Yes.

Q. But in Pittsburgh, before you started out, you kissed each other good-bye?

Q. When did you?

A. Sunday.

Q. What time of day?

30 A. In the afternoon.

Q. What time in the afternoon?

A. I don't know.

Q. On Saturday did he kiss you?

A. No, I worked all day Saturday until ten o'clock Saturday night.

Q. Did you see him Saturday night?

A. Yes, I did.

Q. Whereabouts?

A. Coming home on the car with him.

Q. After ten o'clock?

A. Yes.

Q. How did you happen to be coming home on the car with him?

A. He works where I work.

By the Court—

Q. That is the first time you saw him that day?

A. No, sir, because he works where I work.

Q. Aside from that, that is the first time you 10
were with him that day?

A. Yes.

Q. You were not with him before you came home together at ten o'clock?

A. No, because I didn't have to get home before half-past eight.

Q. You were not with him to talk to before ten o'clock on Saturday?

A. No.

Q. And I thought you said you took two meals 20
with him on Saturday?

A. That was noon lunch; we had our lunch out and our supper out; I wasn't home in my house.

Q. I asked you whether you were with him to talk to prior to ten o'clock?

A. Well, I was—in the evening?

Q. Never mind.

Q. You both arrived at your apartment at ten o'clock in the evening?

A. Yes, sir.

30

Q. What time did you separate?

A. We always separated right away.

Q. You had your meals out on Saturday?

A. At the store.

Q. What are the arrangements on the third floor of the house in the way of a bathroom?

A. None on the third floor; the bathroom is on the second floor.

Q. Are there any sanitary arrangements on the third floor?

A. No, sir; not on the third floor.

Q. Nothing of the sort?

A. No.

Q. Then, in order to attend to natural calls, it is necessary to go to the second floor?

A. Yes, we had to get water from the second or first floor.

10 Q. I am asking you whether, anywhere on the third floor, are there any such arrangements as a water closet?

A. No, sir.

Q. To find that it is necessary to go to the second floor?

A. Yes, sir.

Q. You cook on the third floor?

A. Yes.

Q. You have water, then?

20 A. I carry my water.

Q. How do you dispose of the dirty water?

A. I have a bucket, and then I carry it downstairs when it gets full.

Q. Now, you and Mr. Banks are accustomed to kissing each other practically daily, are you not?

A. Oh, not daily.

Q. How many times a week?

A. That I couldn't say.

Q. I mean, how many days a week?

A. That I couldn't say.

30 Q. Isn't it customary for you to say good-night to each other every night?

A. Oh, yes.

Q. And that is usually accompanied with kissing?

A. No, not usually.

Q. Sometimes?

A. Sometimes it might be, yes.

Q. What is the furniture in your bedroom?

A. Well, I have three pieces—that is, two chairs, a tete-a-tete, and then I have a single bed and by wardrobe.

Q. Has Mr. Banks ever been in your bedroom?

A. No, sir; never.

Q. You are quite certain of that?

A. Yes, sir.

Q. He had been in your bedroom prior to your arrest?

A. That was absolutely necessary; if I had any company at all, not only Mr. Banks, but anybody, if I had company, I had to entertain them in my room, because I hadn't the privilege of the parlor, and it was the only place I had to entertain company, and, when I did, my door was always open. 10

Q. You did entertain Mr. Banks there?

A. At times, not very long, though, because I usually went out, and I had to keep my door open; that was the orders of the house.

Q. When you returned to Pittsburgh after your arrest, why didn't you hunt some other quarters? 20

A. Because rooms were scarce, and it was the only real good place I could get that I could have two rooms for the same money, and I could live better and more sanitary there than I could in one room.

Q. Who pays the rent?

A. I do, for my two rooms.

Q. How about the food bills; who pays them?

A. I buy my own food, unless Mr. Banks wants to eat with me; if he does, he pays me for it; that's another way I get my eats. 30

Q. You and Mr. Banks have frequently talked about your relations with your husband, have you not?

A. Relations in business matters?

Q. No; your disagreements with your husband?

A. Mr. Banks never interfered.

Q. I am asking you whether you talked about it?

A. Not much, very little.

Q. You and he have talked about a time when, by divorce or any other cause, you might be free from your husband, have you not?

A. No, I don't remember that.

Q. You never have?

A. Because I never cared; I could work; I always felt—

Q. Have you not, you and Banks, talked about the possibility of your being free from your husband?

10 A. No, I don't remember Mr. Banks ever asking me anything like that.

Q. You and Banks have talked together about getting married, have you not?

A. No.

Q. Never?

A. I never promised any man that I would marry him.

Q. I am not asking you that; I say, you and he have talked about getting married, have you not?

20 A. No, because we couldn't; I couldn't marry any man, because I am married.

Q. Have you and Banks not talked about you and he getting married, providing you were released from your husband?

A. No. I don't remember having such a conversation.

Q. Do you deny having such a conversation?

A. Yes, I will; because I don't remember it.

Q. You said you had told Mrs. Dillworth?

A. I told her; I told her that.

30 Q. That was not true?

A. No.

Q. Then you deceived her?

A. I deceived Mrs. Dillworth, because she was prying into my affairs, and I didn't want her to know my troubles; that's the reason I told her that; I didn't think it was any of her business.

Q. Have you and Banks ever talked about raising chickens?

A. No.

Q. Sure about that?

A. Yes, sir.

Q. Have you and Banks ever talked about the way in which you would use the money you expected to recover in this suit?

A. Mr. Banks never mentioned any money in this suit to me.

Q. Have you talked to him about the way the money would be used?

10

A. No, sir; never.

Q. You have not received calls from any other man in Pittsburgh, have you?

A. No, I haven't; with the exception—well, no.

Q. With the exception of these two men?

A. No, that came with the little boy and the lady.

Q. Is Mr. Banks in the court room?

A. No, sir.

Q. Do you expect him to be here?

A. No, sir; I didn't subpoena him.

20

Q. Do you know where I could find him in Trenton?

A. No, I don't know where he is.

Q. Where did he intend to stay?

A. I don't know whether he is with his sister-in-law—

Q. You do know, don't you?

A. With his sister-in-law, as far as I know.

Q. What is her name and address?

A. Mrs. Banks.

Q. Where does she live?

A. Cleveland avenue.

30

Q. What number.

A. I don't know.

Q. What is the telephone number?

A. I don't know whether they have a telephone.

Q. Did he tell you where he was stopping?

A. I know he is eating out there; I don't know whether he is sleeping at the Moose, or whether he is sleeping out with his sister-in-law.

Q. You told Detective Preston that it was quite possible for two people to be in love with each other without having sexual intercourse?

A. Yes, because single girls do.

Q. And I believe at the time of your release on bail from the county jail, you said that if Banks couldn't be let out, too, you didn't care to go out?

A. Yes, because he wasn't to blame any more than I was, and I didn't want him to suffer for what I was
10 punished for; I tried to be taken back.

Q. And didn't you tell Mr. Preston that you were in love with Frank Banks, and if conditions made it possible, you were going to marry him?

A. Well, I don't know that I said that.

Q. Practically that?

A. I said I liked Mr. Banks.

Q. You said you loved him?

A. I don't remember.

Q. And you said, in substance, that if conditions ever
20 made it possible, you and Mr. Banks were going to be married?

A. Well, I don't—no, I couldn't say that; I don't remember saying that.

Q. Who mends Banks' clothes?

A. I don't know that; I don't know whether he has them mended or not, or whether he mends them himself.

Q. You have never mended any of them?

A. Not that I can remember; I never did.

Q. Surely, if you had mended any you would have
30 remembered it?

A. Yes, I think I would.

Q. You say you never have?

A. I didn't never mend any.

Q. When he was living at your house here in Trenton, and you and your husband were living together, you washed his clothes?

A. Yes, with our washer.

Q. At the same time refusing to wash your husband's clothes?

A. Never; he had sent his shirts to the laundry. Mr. Banks wore soft cuffs and collars, and he said, "How is it you can wash his shirts and not mine?" I said, "You have stiff bosoms and your cuffs are stiff;" he said, "Then I'll get soft collars and soft cuffs like his;" "Well," I said, "I'll wash them." That's all that was said about that; I never refused to wash any of his clothes.

Q. On these occasions when Banks has put his hands on your shoulders and kissed you, what have you done 10 with your hands?

A. Just—I don't know what I did with them; I didn't do anything with them.

Q. You kissed him back?

A. Well, I suppose I did.

Q. I think I asked you whether you had ever had intercourse with Banks here in Trenton, and you said you had not?

A. Positively, no.

20

Edward L. Mount, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct examination, by Mr. Falcey.

Q. You are a salesman for the Allfather Candy Company?

A. Yes.

Q. You sold some of your merchandise out at 792 or 794 East State street?

A. I have; yes.

Q. Who gave you the orders?

30

A. On State street, Mrs. Neubeck; on Chambers street, Mr. Neubeck.

Q. When you went in that place do you know who attended to the store?

A. Which store?

Q. On East State street.

A. Well, Mrs. Neubeck was there in the room, and they had a fellow they called "Will" that used to work around there.

Q. And you knew there was a poolroom there?

A. Yes.

Q. Do you know who attended to the racking of the balls?

A. I have seen nobody but the fellow that was working there in the poolroom; either that fellow or the fellows themselves.

Q. You would have special days of the week to go there?

10 A. Yes, sir; but I don't know whether it was Wednesday or Tuesday; I had one day to go there, yes.

By the Court—

Q. One day a weeks?

A. One day a week.

Q. And on the days you went was Mrs. Neubeck in the store?

A. As a rule, and sometimes this other gentleman was there, and Mrs. Neubeck wasn't there.

Q. Did it ever happen you went there and Mrs. Neubeck wasn't in the store?

20

A. Yes.

Q. Would you get an order then?

A. Yes.

Q. How would it be done?

A. The gentleman in the store used to give it to me; he used to have it on a list.

Q. Do you know in whose handwriting that was?

A. I do not.

No cross-examination.

30

William Klemann, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direction examination, by Mr. Falcey.

Q. You are a brother of Mrs. Neubeck here?

A. I am.

Q. Do you remember when the barber shop was conducted on Chambers street?

A. I do; yes.

Q. Did you go out there at that time to see your sister?

A. Yes, I went out frequently; about once a week.

By the Court—

Q. How old are you?

A. Twenty-four.

Q. Do you remember what work, if any, your sister performed on Chambers street?

Mr. Hunt—That is objected to; the question ought to be directed to the work this witness saw her do. 10

Q. What did you see your sister do on Chambers street?

A. I have seen her clean the shop out, besides doing her housework, and that's as far as I know she done, besides taking care of the towels and things like that; I know she did that; I have often seen her sewing them.

Q. Do you know anything about the hair sheets?

A. No.

Q. Do you remember when your sister moved to East State street? 20

A. Yes, I remember that.

Q. Do you remember the alterations performed there?

A. Yes, I worked on them.

Q. Just tell us what you saw your sister do on East State street, not only in the alterations, but also in the candy store, and pool room and cigar counter, if any?

A. When we first started to clean out the old wood and stuff out of the cellar, I helped her with them, and then she scraped the paper off the walls; I remember that, and that's as far as I know, until we finished the alterations, and then she worked in the cigar store and the pool room. 30

Q. Do you know what hours she had on duty there?

A. I couldn't tell you that exactly; but I know every time I went out I found her in the cigar store—very nearly.

Q. How about the pool room?

A. Well, I have seen her rack up the balls already, and that's about all I have seen her do in there.

Q. Did you see her sell candy and cigars?

A. Yes.

By the Court—

Q. How often did you go out there?

A. I couldn't tell you exactly.

Q. Once a week or once a month?

A. About once a month, I guess; no oftener,
10 probably.

Mr. Hunt—No questions.

Ernest Klemann, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct examination, by Mr. Falcey.

Q. After your daughter married Mr. Neubeck, did you see much of her?

A. Did I see much of her?

Q. Yes.

20 A. Well, she was home for a while yet, until they got the barber shop in shape to move in.

Q. Would you go and visit your daughter after they were married?

A. Sure.

Q. What work did you see her do?

A. Why, she would do all kinds of work, what had to be done in the shop, clean the shop and anything that had to be done to keep the place clean.

Q. Did they discuss their money matters with you
30 when they were first married?

A. Well, they always said, "We are working together in partnership."

Q. And did you know they had a joint bank account?

A. Well, that's what they always said; what's one got is the other's—just the same.

Q. Did they tell you any object they had in saving this money?

A. Well, no.

Q. What object did they say they had to save this money?

A. Well, they often talked.

Mr. Hunt—I think that question ought to be directed to a time when this defendant was present.

Q. You understand I am not asking you what your daughter said to you alone, but what your daughter said to you in the presence of her husband, or what her husband told you, with or without the presence of his wife? 10

A. They were always together; they come to my house every Sunday; they never missed one, hardly, and they always stuck together, and what belonged to one belonged to the other; that's all I know.

By the Court—

Q. Who said that?

A. They worked in partnership.

Q. Who told you that?

A. The both of them; they both mentioned the same thing. 20

Q. Do you know what they had in mind in saving this money?

A. I couldn't exactly say what they had in mind; of course, they were trying to make headway and save what they could.

Q. You know Tony Hurschler, do you not?

A. Yes.

Q. What do you know about the transaction—

A. Tony Hurschler said he had a lot for sale, and I went to see Mr. Neubeck about that, and my daughter, 30 about buying this lot, you know; I said it would be a good thing to make a start and build a couple of houses on that lot; so they seen Mr. Hurschler and they made a bargain about the lot, and they bought it; I think they paid something like \$350.00 for the lot; he wanted more, but I talked him down to that price.

By the Court—

Q. You were not present when they made the bargain?

12 Neu

A. Yes, I was there first, when they said they would buy it.

Q. When they made the bargain with Mr. Hurschler?

A. Yes, I was there.

Q. Where did that take place?

A. Right in my place.

Q. In what part of the house?

A. In the kitchen; I used to have a desk there, and
10 there is where we done our business.

Q. Did you try to persuade the both of them to buy the lot or one of them?

A. Both of them?

Q. Whom did you convince first?

A. That I couldn't say, but they both agreed to buy it.

Q. Did they have any thoughts about whether they would be able to carry out the proposition?

Mr. Hunt—He can't testify to that.

20 Q. Did they express any thought to you that they would be able to carry out the proposition?

A. I told them, after they had bought the lot, they could build a couple of houses on it, and I drew plans for them, and they went on with the houses. When they got under roof, of course, then they made a mortgage. I didn't ask them for any money until that time.

Q. And to pay you off they got money from Harry E. Taylor, didn't they?

A. I think so.

30 Q. It was \$1,000.00 they borrowed, secured by a mortgage on each lot?

A. Yes, sir.

Q. That is, \$2,000.00 in all they got. Now, the cost of the building; how did you arrive at the cost of the building?

A. Well, we furnished everything; the plumbing, mason work, carpenter work, furnished all materials, painting, and when the job was completed we figured

it and it amounted to something like \$3,300.00, I think it was; I couldn't exactly say.

Q. You got \$2,000.00 for the mortgage, didn't you?

A. Yes.

Q. Did you get any other cash money?

A. Well, I don't know exactly how we got that.

Q. They finally bought Hurschler's lot?

A. Yes, sir.

Q. Do you know how it was that the property was put in both names?

10

Mr. Hunt—That is objected to.

Q. I ask you whether you know how the property came to be put in both names?

A. Because they always had everything together.

The Court—Strike that out.

Q. Yes or no?

A. Yes, they had everything together.

Mr. Hunt—I move to strike that out.

By the Court—

Q. Do you know, of your own knowledge, why this lot was put in both names? 20

A. Well, that I couldn't say.

Q. Do you or don't you know?

A. No, I don't know that part.

Q. When did you learn that the properties were in both names?

A. They always told me so.

Q. Now, before the property on Sweets avenue was bought, that is, before the deed passed, did you have any conversation with Mr. Neubeck, or with Mrs. Neubeck in the presence of Mr. Neubeck, in regard to the deed to this property, or did you hear Mr. Neubeck say anything in regard to the deed to this property? 30

A. They always told me the deed was made in both names.

Q. Before the deed was made did you hear anything about that?

A. No, not before the deed was made.

Q. Was there a regular contract drawn up for the building of that house on Sweets avenue?

A. No contract at all; it was day work; I kept count of everything.

Q. You remember when the property, 794 East State street, was bought?

A. Well, I know when they told me about it, yes.

Q. Who told you about it?

A. They both together in my kitchen, told me they were going to buy that property.

Q. What did they say?

10 A. They said there was a bargain on East State street that we can buy for \$2,400.00.

Q. That we can buy?

A. Yes, that we can buy for \$2,400.00. "Well," I said, "that's cheap enough on State street; that ought to be worth it."

Q. Did they ever speak to you about real estate at other times?

A. About different things, yes.

Q. How would they speak of the real estate?

20 A. They would say, "We're going to buy so and so," and after they bought that, then they bought another one to it next door; before they started the store, to make alterations.

Q. After the property, 792 East State street, was bought, you were hired to alter the building?

A. Yes, and I drew plans for them.

Q. Now, your son-in-law wanted to know how much the cost of the improvement would be?

A. That I couldn't tell him.

40 Q. After the alterations were completed, you received payment; can you tell me how you received the payment?

A. Well, he made me a payment, but I can't say any more how much it was, but I know he put a note in the bank for \$800.00, and I went on the note.

Q. Who was that note signed by?

A. By both of them, in the Trenton Banking Company, and they promised to pay off \$200.00 when the note come due.

Q. And when the note was paid off and renewed, were you there?

A. I was there when they renewed it; I didn't have to be there when it was paid off.

Q. Was your daughter there?

A. Yes; they had to be there.

Q. And your son-in-law was there?

A. Yes.

Q. When did you learn that the property, 796, was bought?

10

A. They told me about that.

Q. Who did?

A. They did.

Q. What did they say?

A. They said there was a bad neighbor there, and if we buy that property we can put them out if we want to, and get clear of them.

Q. After they bought it, did they tell you they bought it?

A. Yes, they told me about it; that they bought it.

20

Q. How would they say it?

A. Well, "We have bought the property next door."

Q. Did they tell you how much they paid for it?

A. \$2,800.00, I think.

Q. Before the Newell avenue property was bought, did you know anything about it?

A. All I know, they told me they were going to buy a property.

Q. Tell us the words, how they told you.

A. "We are going to buy a property; a home for ourselves, and retire," they said; and so they heard of this property on Newel avenue, and they bought that; what they paid for it I don't know.

30

Q. When your daughter and her husband went to East State street you visited them, did you?

A. Yes.

Q. What were your daughter's duties there?

A. To attend to the store and poolroom.

Q. Who did the ordering?

A. She did.

Mr. Hunt—That is objected to, unless he knows.

Q. Do you know?

A. Well, I have seen them both order.

Q. Do you know anybody else who assisted Mrs. Neubeck in the conduct of that store and poolroom?

A. Yes, she had a man to help her out at certain times; I can't tell you his name now; they changed off.

10 Q. Would you give me the substance of any one of the conversations which you had with Mr. Neubeck and his wife regarding their property?

A. Yes; regarding the property; the ownership of it?

Mr. Hunt—That is a pretty general question; I would like to interpose an objection, unless it is made more specific.

The Court—I think that may be answered.

Q. Did you hear me?

A. No.

20 Q. (Stenographer repeats the question.)

A. They always said, "We own it together, everything; we own all our property together," they said.

Q. Did they speak specifically?

A. That's the way they always talked; they owned it together, whatever they had.

Q. Did you know they had joint bank accounts?

A. Not exactly, no; I couldn't say that; that I don't know, but I used to see them going to the bank together; I often met them on State street and asked them where they were going, and they said they were going to the bank.

30

Q. On how many occasions would you have conversations to that effect with Mr. and Mrs. Neubeck?

A. About going to the bank together?

Q. About the ownership of the property.

A. Oh, well, they often talked about it in my kitchen home, Sunday.

Q. How often would you say?

A. Well, they come every Sunday in the year, almost.

Q. Did they talk about their property every Sunday they came?

A. Not every Sunday, but they often talked about it; "We done so and so;" they would tell me what they done.

Q. Did Mrs. Neubeck tell you, in the presence of her husband, or did Mr. Neubeck ever tell you about his desire to put—

Mr. Hunt—That is objected to as leading.

Mr. Falcey—I will withdraw the question. 10

Q. Did you ever hear from Mrs. Neubeck, in the presence of her husband, or from Mr. Neubeck, about any argument or quarrel they had about their property, or any one of them?

A. No, I couldn't say that.

Cross-examination, by Mr. Hunt.

Q. Do you remember Mr. Neubeck coming to see you about a week or ten days before your daughter first left him and went to Pittsburgh? 20

A. When he come to see me eight or ten days before?

Q. Yes; eight or ten days before she first went away?

A. That I don't remember.

Q. Didn't he come to see you a few days before she first went away?

A. Yes.

Q. And ask you if you would not come down to his house to see whether you could straighten her out?

A. Yes; he did.

Q. He told you he was having a great deal of trouble with her, and did not understand what the reason for it all was, didn't he? 30

A. Yes.

Mr. Falcey—That is objected to.

The Court—I will permit it.

A. I didn't go down.

Q. What did you tell him to do?

A. I don't know that I told him anything.

Q. Instead of your going down, you told him to do something, didn't you?

A. What did I tell him?

Q. I am asking you?

A. I don't know that I told him anything.

Q. Didn't you say, "Why don't you get rid of that boarder you got in the house?"

A. I don't remember saying that.

Q. You did say it, didn't you?

A. I don't remember saying it.

Q. Do you deny it?

10 A. I don't remember it at all.

Q. Frank Banks at the time was living in your son-in-law's house?

A. Yes.

Q. And you knew it?

A. Yes, he was, I think.

Q. You knew Frank Banks was at that time living in your son-in-law's house?

A. Yes.

Q. And that he had been living there for some time?

20 A. Yes.

Q. And you thought Frank Banks was responsible for the conduct of your daughter, did you not?

Mr. Falcey—Objected to.

The Court—Objection overruled.

A. Frank Banks was his friend.

Q. And you thought Frank Banks was responsible for the unhappy condition of your daughter's mind, didn't you?

A. I don't know.

30 Q. For her unhappiness?

A. I don't know.

Q. Didn't you know your daughter was interested in Banks?

A. No. I didn't know.

Q. You suspected she was?

A. I didn't know nothing about it; they never told me.

Q. Didn't you say to Neubeck on this occasion when he came to see you, "Billy, you get rid of that boarder?"

A. I don't remember saying that.

Q. Do you deny that you said that, Mr. Klemann?

A. I have to deny it if I don't remember.

Q. You think you might have said it?

A. No, I don't say that, either; because I didn't see anything wrong at the time.

Q. Did you say anything to your son-in-law at that time as to your opinion about whether his wife had a right to find fault with him as a husband or not?

A. No.

Q. You told your son-in-law at that time that he was a good husband, didn't you? 10

A. Oh, I might have told him that many a time.

Q. And that your daughter was foolish not to realize he was a good husband?

A. I don't remember; we haven't talked much together about that at all.

Q. At the time you thought your son-in-law was in the right, and that his wife ought to straighten herself out and go along with him, didn't you?

A. I didn't know what their trouble was at all; I never heard the trouble. 20

Q. Your daughter went to Pittsburgh eight or ten days afterwards?

A. Yes; I didn't know where she went.

Q. She stayed a week?

A. Yes.

Q. Then she came back to your house?

A. Yes.

Q. And you saw her husband come to see her and ask her to go back with him? 30

A. Yes.

Q. You were there at the time and heard the interview?

A. Yes.

Q. And you asked and advised your daughter to go back with her husband, didn't you?

A. Yes. I did do that.

Q. And she refused to go back with her husband?

A. Yes, sir.

Q. And she stayed at your house for about a week longer?

A. Yes.

Q. And during that week you and your wife in your presence frequently told her that Banks was no good, and that she ought to go back to her husband and let Banks alone, didn't you?

10 A. I didn't say that.

Q. You didn't say that?

A. No, I didn't.

Q. Did you hear your wife say that?

A. No.

Q. Did you mention Banks' name to your daughter at all?

A. No, I never talked about them things to her.

Q. During all that time you didn't mention the name of Frank Banks to your daughter?

20 A. I left the others do the talking.

Q. Did you hear your wife mention the name of Frank Banks to your daughter that week?

A. No, I—

Q. Answer the question?

A. I might, I don't know.

Q. You did know, during that week, that your daughter, against your advice, proposed to go back to Pittsburgh and have Banks go with her, didn't you?

A. I didn't know whether they were together; I didn't know she was going at all.

30 Q. She told you she was going, didn't she?

A. No; I thought she was going to stay home with us; but the first thing I know they was gone; I was surprised when they went; I didn't know they was going.

Q. Did your wife tell you anything of a confession which your daughter had made to her regarding her feelings for Banks?

Mr. Falcey—Objected to.

A. No, sir.

Q. When your daughter and Banks were brought back here under arrest you went your daughter's bail, didn't you?

A. I did, yes.

Q. And at that time she stayed with you at your house for several days?

A. Yes, sir.

Q. Did she tell you then anything about her intentions for the future?

A. No; she said she was going back, that's all, to 10
work on her job again.

Q. Did she tell you Banks was going back, too?

A. No, she never mentioned Banks going back at all.

Q. You know that since she did go back to Pittsburgh she and Banks have been living on the same floor of a lodging house there?

A. In the same house.

Q. You have been there and seen the arrangements, have you not?

A. Oh, no, I haven't been there. 20

Q. Excuse me; I was misinformed; I thought you had been. At the time your son-in-law bought the Newell avenue house, did your daughter tell you anything about the income that your son-in-law had, aside from his business?

A. Besides his business?

Q. Yes.

A. No.

Q. You said they bought this Newell avenue house and were going to retire? 30

A. Yes.

Q. Didn't your daughter tell you that her husband had got enough together now so that he could live without working so hard?

A. Yes, she said that.

Q. Didn't she say his rents from the houses would enable him to live without so much hard work?

A. Yes, sir.

Redirect examination, by Mr. Falcey.

Q. Where did this conversation take place?

A. Oh, that took place in my house.

Q. Who was present?

A. They was both there.

Q. How did they speak about those rents; how did they speak about it—if you can remember the words?

A. Oh, they said they had enough income from the store.

10 Q. They said “they?” I want you to relate just what they said—the words; they didn’t say “they?”

A. They said, “We have got enough income to retire with;” he didn’t have to work so hard any more—neither one of them.

Q. Neither one of them had to work so hard?

A. Yes.

Q. Did your daughter speak to you about working hard?

A. They did work hard in the store, and they got
20 tired, and they was going to retire.

Q. The rent from the Sweets avenue properties was paid at your home, wasn’t it?

A. They was left there, yes.

Q. During the years they were left at your home, who collected them?

A. Sometimes she would take it and sometimes he would take it; it was always put in my desk there, and sometimes I receipted the books for them.

30 *Margaret Blackwell*, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct examination, by Mr. Falcey.

Q. You are the sister of Mrs. Neubeck?

A. I am.

Q. Do you remember when they were married?

A. Yes, about.

Q. Mr. Neubeck then was in the barber business on Chambers street; is that right?

A. I remember him being in business.

Q. Do you remember what your sister did about the barber shop?

A. No more than cleaning and fixing towels and the clothes, and I seen her wash them and iron them.

Q. Do you remember when they went to the East State street property?

A. Yes, sir, but not the date; I couldn't tell you.

Q. Do you know what your sister did there?

A. Why, she did a good bit.

Q. What did she do?

10

A. I can give you the same statement as my brother did, and also my father; I saw her work around the place; I know she did lots of work, hearing them, but for myself, I don't know whether I ever went there while the building was being altered; but after that she was always looking after the pool room when I went there, and a good many times I was entertained right in the store.

Q. Did you ever have any conversation with your sister, in the presence of her husband, or with her husband alone, or with his wife, regarding their property?

20

A. No, I couldn't tell you anything about it.

Q. Did they ever tell you about their finances, as far as banks are concerned?

A. No, I couldn't answer that, although I have seen them in town, and also met them in the bank, but what they were doing I couldn't say.

Q. Did you know that the properties which they had accumulated at any time where in their joint names?

A. I couldn't tell you that. Many times I have heard they had been, but I couldn't tell you.

30

Q. How did you hear that?

A. I heard them in their presence saying what they were going to do; when it was said the other was always present.

Q. What would be the words they would use, substantially, to the best of your recollection?

A. I couldn't say that; I wouldn't answer that question; I couldn't say.

Q. Well, you said they were saying what they were going to do and what they were going to buy, or what they were going to sell, or what they were going to do; can you remember anything about any of these conversations?

A. No; the only thing I could tell you, I always knew they transacted together and were, always were, together as far as I knew. See?

Q. And what did they tell you about it?

10 A. About their business matters?

Q. Yes.

A. Nothing that I could tell you; I don't know anything about it.

Q. They must have told you something when they told you what they were buying together?

A. I have heard this spoke many times of how they would work together and what they were going to do with it; they expected to retire in their olden days; they said it together in my father's kitchen.

20 Q. What did they say?

A. I heard my sister say, in his presence, and he gave some answer which I couldn't say, but it was regarding what they were saving, and they weren't going to work when they got a certain age; and they expected to work together so they could retire and have things easy in their olden days; that's about all I could tell you. That I heard in my father's kitchen.

Cross-examination, by Mr. Hunt.

30 Q. After your sister and her husband moved from Chambers street to East State street, you didn't see anywhere near as much of your sister as you had before?

A. No, not when they first went.

Q. There was a little disagreement between you, so you didn't feel like going so often; is that so?

A. No, I couldn't say that.

Q. And once or twice you and your sister quarreled?

A. No, I don't think we quarreled; I don't think I quarreled with her; we had a disagreement, and also with her husband.

Q. And you went to see your sister at the East State street place only three or four times during the while they lived there?

A. I won't say how many times, because I couldn't tell you; I know at first I didn't go as much as towards the last.

10

Merritt Lawton, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct examination, by Mr. Falcey.

Q. Mr. Lawton, you worked in that store on East State street, didn't you?

A. Yes, sir.

Q. When did you first start to work there?

A. Why, it was sometime in the latter half of the year 1917.

Q. And you worked for how long?

20

A. Until about August 25, 1918.

Q. That is when you went away in the service?

A. Yes.

Q. And during that time what were your hours of duty?

A. On Monday I come to work at dinner time, and up to six o'clock I was there; and on Tuesday I went from eight to dinner time, and would go back at six o'clock at night and work until closing time.

Q. And you would rotate that way every day?

30

A. Yes; I was over there every day.

Q. When you were not on duty, do you know who took your place, or attended to your duties?

The Court—He can't answer that; how can he know?

Q. Do you know who relieved you?

A. Mr. and Mrs. Neubeck.

Q. Both of them?

A. Yes, sir.

Q. You would get back and stay around the pool room when you were not on duty?

A. At times I would go home and clean up and eat, and go where the crowd would go.

Q. When you got back, who would you find on duty there?

A. Mrs. Neubeck, and Mr. Neubeck at times.

Q. Do you know who did the buying?

A. Mr. and Mrs. Neubeck.

10 Q. Mr. Neubeck was engaged in the barber shop some of the time, wasn't he?

A. Some of the time, yes, sir.

Mr. Hunt—No questions.

John Schneider, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct examination, by Mr. Falcey.

Q. You are a customer at 792-794 East State street?

A. Very little.

20 Q. When you would go in the store, who usually waited on you?

A. Well, at that I think Mr. Bransfield; he and Mrs. Neubeck and Mr. Neubeck.

Q. Did you see Mrs. Neubeck attending in the pool room?

A. What do you mean, the pool room inside?

Q. Yes?

A. Racking up the balls?

Q. Yes?

A. I could never say I did.

30 Q. You saw her selling candy and cigars?

A. Candy and cigars and ice cream.

Cross-examination, by Mr. Hunt.

Q. You are quite a friend of Frank Banks?

A. Very personal, yes.

Q. And also a friend of Mrs. Neubeck's?

A. Not a bit.

Q. You knew that Banks and she designed to go away from Trenton together sometime before they went, didn't you?

Mr. Falcey—That is objected to.

The Court—That is not cross-examination.

You may make him your witness, if you so desire.

Q. You knew that Banks and Mrs. Neubeck had gone away together, before the general run of people who had known them were aware of it, did you not? 10

A. No, sir.

Q. You knew that Mrs. Neubeck had gone to Pittsburgh and adopted the name of Miss Betty Hess, didn't you?

A. No, sir; you are speaking of before they went?

Q. No, I am speaking of the time they went.

A. No, I don't know that; that was—I don't know how long; it's since they went away, but I got a letter shortly after.

Q. You knew they were going before they did go? 20

A. No, I didn't know they were going.

Q. Before they went, you didn't know about it?

A. No, sir.

Q. But you did know it very shortly after they arrived there?

A. No, I couldn't say; I don't know.

Q. When did you know it?

A. When they sent me a letter to send the "Trenton Times" to them.

Q. What is that?

A. Banks asked me—or sent me a letter, asking me to send him the "Trenton Times"—not they. 30

Q. Not "they"?

A. No.

Q. He told you not to address his letters to him?

A. No.

Q. You did address letters which were written to him to "Miss Betty Hess," at a certain address?

A. Something similar to that.

Q. And that was in consequence of instructions from Banks to use that name, wasn't it?

Mr. Falcey—That is objected to; that can't be binding on the complainant in this case.

The Court—I will allow it.

Q. (Stenographer repeats the question.)

A. Yes, sir.

Q. When did you first learn that Mrs. Neubeck was going to use the name of "Betty Hess" in Pittsburgh?

A. When Mr. Banks sent me the letter to send the paper.

Q. There was a good deal of talk just about the time that Banks and Mrs. Neubeck went away, as to whether they had eloped together, wasn't there; some saying they had and some saying they hadn't?

Mr. Falcey—That is objected to.

A. I don't know; it was very quiet.

Q. You heard people indulge in speculation about it?

A. People? What are you talking about.

Q. Friends?

A. Of who?

Q. Of Banks and Mrs. Neubeck?

Mr. Falcey—That is objected to.

A. I haven't heard people; I have heard one or two friends.

Q. And one man, in particular, said to you that they had gone away together; and you seemed to be very much surprised, didn't you?

A. I was.

Q. But you were not surprised?

A. I didn't—

Q. You told him afterwards you had already known about it, didn't you?

A. No, sir.

Q. Is that your signature (showing witness a letter)?

A. Yes.

Q. Did you write that letter?

A. I guess that looks like my writing.

Q. That is addressed to "Dear Friend Frank;" that is Frank Banks?

A. Yes.

Q. And this is the envelope you sent it in?

A. Yes.

Q. And that is addressed to "Miss Betty Hess?"

A. Yes, sir.

Q. 5708 some street, Pittsburgh, Pennsylvania?

A. Yes.

Q. What street is that?

10

A. Wilburn street.

Q. That is the envelope in which you sent this letter?

A. Yes.

Mr. Hunt—I would like to have the letter marked for identification.

Said letter is marked *Exhibit D 1 for identification.*

Q. You had talked to Banks about affairs in the Neubeck household before he left Trenton, hadn't you?

A. No, sir.

Q. You never had?

20

A. No, sir.

Q. Not at any time?

A. No, sir.

Q. You didn't know he was paying attention to Mrs. Neubeck?

A. I did not.

Q. Have you ever since talked about his relations with Mrs. Neubeck?

A. I can't say I ever did.

Q. Have you seen Banks during this last week?

30

A. This week?

Q. This last week; yes.

A. I saw him this morning.

Q. Did you see him any time last week?

A. Yes.

Q. How many times?

A. I saw him, I think, it was Monday night—Tuesday night—I don't remember. Yes, I saw him Friday evening, shortly after supper, and I saw him Saturday.

Q. Was Mrs. Neubeck's name mentioned in the conversation between you and him?

A. No, sir; what do you mean, this week or last week?

Q. Either time.

A. Last week it was.

Q. Did Banks tell you where he was living in Pittsburgh?

A. Where he was living?

10 Q. Yes.

A. No, he didn't tell me.

Q. Can you tell me where Banks is in Trenton?

A. Can I tell you?

Q. Yes.

A. He is stopping at the Moose Home and eating at his sister's.

Q. Where is his sister's house?

A. On Cleveland avenue, I think.

Q. What is the name?

20 A. I couldn't tell you that.

Q. Have you ever talked with Banks at a time when Mrs. Neubeck was present?

A. Once.

Q. When was that?

A. I couldn't say when it was; it was the last time they were on.

Q. To the best of your recollection, when was it?

A. That I couldn't say; I don't remember.

Q. Was it the time when they were here under arrest?

30 A. I think it was.

Q. Whereabouts did you talk with them?

A. You got me; I could take you there, but I couldn't tell you where.

Q. Where is it?

A. In back of the beefhouse; that street off Pennington avenue.

Q. Do you mean Tucker street?

A. I couldn't say.

Q. Where did you leave Pennington avenue to get into this street?

A. Go up Warren until you reach Pennington.

Q. That is, up by the Battle Monument, you mean?

A. Yes, go up Warren until you reach the Battle Monument and then go down Pennington.

Q. How many blocks did you go before you made the turn into this street?

A. That I couldn't say.

Q. What else is there on this street that you can identify the street by?

A. That I couldn't say.

10

Q. You said something about the beefhouse?

A. Well, the beefhouse is right across from the Battle Monument, isn't it?

Q. Do you mean it was right near that beefhouse?

A. No; around Pennington avenue.

Q. One block down Pennington avenue, or two?

A. I couldn't say.

Q. Do you turn to the right or left to get into this street from Pennington avenue?

A. Left.

20

Q. You turn to the left and you go down Pennington avenue away from Warren?

A. Yes.

Q. Then, is the house on the right-hand side or the left-hand side of that street?

A. We didn't taly in any house.

Q. You were talking on the street?

A. Yes, sir.

Q. How did you happen to meet them on the street?

A. Banks took me up there.

30

Q. Where did Banks find you?

A. On the corner where we always hang out.

Q. When you got there, did you find Mrs. Neubeck?

A. Yes.

Q. Where was she?

A. She came on the corner.

Q. Where did she come down from?

A. I don't know.

Q. Do you know where she was residing?

A. I don't know.

Q. Did you hear either of them, in the presence of the other, speaking about the place where they were stopping?

A. Here?

Q. Yes.

A. No.

Q. Why did Banks take you up there to meet Mrs. Neubeck?

A. He said she wanted to see me.

10 Q. What for?

A. I don't know.

Q. Well, she saw you?

A. Yes.

Q. Did she say anything about her relations with Banks?

A. She did not.

Q. Did Banks, in her presence there, say anything about the relations between them?

A. He did not.

20 Q. Did they tell you where they were living in Pittsburgh?

A. No.

Q. Did they tell you they had been in Pittsburgh?

A. Yes.

Q. And been arrested and brought here?

A. Yes, sir.

Q. And that the charge against them was adultery?

A. Yes.

30 Q. Did they tell you what had been done with them after they landed here?

A. Only when he told me they hadn't found no indictment against them.

Q. That they had been let out on bail?

A. Yes.

Q. Did they say whether they had or had not committed adultery?

A. No, I can't say they did.

Q. Did they say anything about what they intended to do after leaving Trenton?

A. I can't say they did.

Q. Did they tell you they were going back to Pittsburgh?

A. I couldn't say they did.

Q. And they gave you an address?

A. Not they; Banks gave it to me.

Q. Banks, in her presence, gave you an address where you could write to them in Pittsburgh?

A. No, sir.

Q. Where?

10

A. Banks always sent his address to me; he never gave me an address in Trenton.

Q. He told you he would send you an address?

A. He told me he would; no, he said he would write to me.

Q. Did he write to you?

A. I believe he did.

Q. And did that letter give an address?

A. Yes.

Q. And the name in that address was "Miss Betty Hess?" 20

A. No, sir.

Q. What was it?

A. "Frank W. Banks."

Q. What was that address?

A. Well, I couldn't say; I don't remember.

Q. Have you written any letters to that address?

A. I have; I think it was, as near as I can remember, "Penn avenue," if I am not mistaken.

Q. In what town or city?

30

A. Pittsburgh.

Q. Would you remember the number if you heard it?

A. I couldn't say that I could.

Q. At the time of this talk in the neighborhood of Pennington avenue, did Banks tell you he was going back to Pittsburgh?

A. I couldn't say he did.

Q. Did Mrs. Neubeck tell you she was going back to Pittsburgh?

A. I couldn't say she did.

William H. Neubeck, the above-named defendant, being called by the complainant and being duly sworn, testified as follows:

Direct examination, by Mr. Falcey.

Q. What rent is received from 792 East State street?

A. Well, now, you want the barber shop separate; there are three different rents in that building.

Q. Detail them. On October 10, 1919, what rents were received from 792 East State street?

10 A. \$25.00 from the barber shop, \$30.00 from the dwelling upstairs, and \$35.00 at the store.

Q. That is, at 792 you have a total rent of how much in October, 1919?

A. That is the total building, 792 and '94, barber shop and cigar store and dwelling house upstairs.

Q. Does it also include 796?

A. No, sir.

Q. How much does the total rent amount to?

A. \$25.00 for 796.

20 Q. What rents were received from 102 Sweets avenue on October 10, 1919?

A. \$14.00.

Q. \$14.00 or \$15.00?

A. Now, I can't recall for sure whether it was \$14.00 or \$15.00; one was fourteen and the other was fifteen for the two houses.

Q. Wasn't 102 \$15.00 and 104 \$16.00?

A. At that time?

Q. Yes.

30 A. I know there was just a time I had raised the rent and I don't recall how close that was to that; but the rent books—

Q. Have you got the rents books here?

A. No.

Mr. Hunt—I am not prepared to give counsel those details this afternoon; I thought if there was a decree it would go to an accounting.

Q. Since that time these rents have been raised?

A. Some, yes.

Q. Can you give me the date of the raise of the rent on each of the properties?

A. No, sir.

Q. What do they pay now?

A. The Sweets avenue pay \$16.00 and \$18.00—no, \$17.00 and \$18.00; 102 pays seventeen and 104 pays eighteen.

Q. What do the State street properties bring, 792?

A. 792, the dwelling house upstairs is \$37.00 and the store \$42.00, and—

10

Q. 796, what does that pay?

A. \$27.00.

Q. And you also received rent from the garage in back of 118 Newell avenue?

A. I did do, yes.

Q. What rent does that pay?

A. It did pay \$7.50.

Q. A month?

A. Yes, sir.

Q. Do you receive any rent whatsoever from 118 Newell avenue?

20

A. No, sir.

Mr. Hunt—No questions.

Complainant rests.

Testimony taken in the above-entitled cause, at the State House, Trenton, New Jersey, on Thursday, the sixth day of October, 1921, at 10:30 A. M., before Hon. Malcolm G. Buchanan, Vice-Chancellor.

30

Appearances as heretofore noted.

Anthony J. Hurschler, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct examination, by Mr. Falcey.

Q. Where do you live, Mr. Hurschler?

A. 960 Princeton avenue.

15 Neu

Q. How long have you lived in Trenton?

A. Sixty-two years.

Q. Do you know Mr. and Mrs. Neubeck?

A. Yes, sir.

Q. Do you remember giving a certain deed to Mr. Neubeck and his wife? I show you deed marked "C 4."

A. Yes, sir.

Q. I show you this (pointing to paper)—

10 By the Court—

Q. Is that your signature?

A. Yes, sir.

Q. Do you remember who first approached you about the sale of this lot?

A. Yes, sir.

Q. Who?

A. Mr. Klemann—Ernest Klemann.

Q. And as a result of that conference with Mr. Klemann, did you have a meeting later?

20 A. I had with his son-in-law and daughter.

Q. Where?

A. At Klemann's kitchen or dining room, as they call it.

Q. Was Mr. Klemann there?

A. Mr. Klemann, Mr. Neubeck and his wife.

Q. Do you remember what was said in regard to the purchase of this property at that time?

Mr. Hunt—I object to anything except the things said by Mr. Neubeck or in the presence of Mr. Neubeck.

30

The Court—He said Mr. Neubeck was present.

A. Mr. Klemann, Mr. Neubeck and Mr. Neubeck's wife was there, and they come to the conclusion to buy, and they both consulted in my presence that they would take it, as to the worth of the lot, and when I sold it, I sold it to Mr. Neubeck and—

By the Court—

Q. What did they say in this conversation?

A. That is a little bit further back than—what did they say? I can almost say sure, “Well, are you satisfied?” and she said, “Yes,” and then that settled the bargain.

Q. What did she mean she was satisfied with; let us have the entire conversation.

A. Buying this lot.

Q. You came there and found these three people 10 there; what started the conversation?

A. Mr. Klemann said, I had a lot and they thought about buying it, and Mr. Neubeck finally said—

Q. Not what he finally said. Mr. Klemann said he had talked to you about this lot; is that right?

A. Yes.

Q. Then what was next said? Did they ask where the lot was or what it was?

A. They knew where it was. The old gentleman said he wanted to build them a couple of houses on it. 20

Q. He wanted to build them a couple of houses?

A. For Mr. and Mrs. Neubeck, and I said I would sell the lot.

Q. Did you say what the price would be?

A. \$350.00; it is so long ago.

Q. Mr. Klemann said he wanted to build these houses on it; was he going to buy it?

A. Mr. Neubeck was going to buy the lot.

Q. What was said about Mr. Neubeck's buying it?

A. He said his son-in-law and daughter wanted the house, and Mr. Neubeck said to his wife, “Are you 50 satisfied?” and she said “Yes,” and that is about all was said; and Charlie Patterson was drawing the deed; and generally, Scott Scammell drew the deeds for me; Patterson drew the deed—

Q. You say that if Mr. Klemann said, if his son-in-law and daughter wanted to buy the lots, he would build a couple of houses on it.”

A. That's it.

Q. It was not if his son-in-law wanted to buy the lots?

A. No; he said if his son-in-law and daughter would take it.

Q. Are you sure he spoke about both of them?

A. He said they wanted to buy the lot, and "I will build a couple of houses on it."

Q. Did you tell them the price?

A. Yes, \$350.00.

10 Q. Then it was that Mr. Neubeck turned to his wife and said, "Are you satisfied?"

A. Yes.

Q. And she said "Yes"?

A. Yes, sir.

Q. What else?

A. Nothing.

Q. Did either one of them say they would buy?

A. Both agreed.

Q. What did they say?

20 A. "Are you satisfied?" and he said "All right," and the father afterwards built a couple of houses.

Q. Well, now, did you have any further conversation; was anything more said that day?

A. I think not.

Q. Did you see them again before the deed was drawn.

A. I don't think so.

Q. You took the papers down to Mr. Scott Scammell and had the deed drawn?

30 A. No, Charlie Patterson.

Q. You took them to Mr. Patterson?

A. I think he had them down there.

Q. How did Mr. Scammell come to draw the deed?

A. I think Patterson drew the deed, but Scammell witnessed it.

Q. Who told Mr. Patterson how the deed was to be drawn?

A. Maybe I said to Neubeck and his wife, or maybe Mr. Neubeck did; I am not certain.

Q. What chance would Mr. Neubeck have had to tell Mr. Patterson that?

A. I don't know; I couldn't say.

Q. Did Mr. Neubeck go down with you?

A. That I can't say, whether he went down with me; whether Mr. Neubeck was there at the time I couldn't say; no more than he was there at the time the lot was paid for.

Q. Where did that transaction take place?

A. In Charlie Patterson's office.

10

Q. And who was there then?

A. Now, that I can't say; I couldn't say that he was there then; it's so long ago, and I didn't follow it up.

Q. Were you there then?

A. Yes, I was there.

Q. Was Mr. Neubeck there?

A. He had to be there, yes.

Q. Was he there?

A. Yes.

20

Q. Was Mrs. Neubeck there?

A. I couldn't answer that. He was there, and I was there, and Charlie Patterson was there, but whether Mrs. Neubeck was there. I couldn't say.

Q. Was Mr. Klemann there?

A. No.

Q. What was done when you got there for the purpose of closing the transaction?

A. The papers were all written out and signed and he give me his money for it—

30

Q. The papers were written out when you got there?

A. I imagine so; I am not sure, positive.

Q. Had you signed the deed before that time?

A. I guess—

Q. Had you?

A. I guess not.

Q. You signed it there in Mr. Patterson's office that day?

A. Yes, sir.

Q. Was your wife there, too?

A. Yes.

Q. And she signed that day?

A. Yes, sir.

Q. Did you read the deed over before you signed it?

A. Yes.

Q. Did you read it out loud, or did you read it to yourself?

A. I read it.

10 Q. To yourself?

A. Yes, I think so.

Q. Did Mr. Neubeck read the deed?

A. I couldn't say; he might have; I couldn't say for sure whether he read the deed or whether it was read to him.

Q. Had he signed the deed before that time?

A. Mr. Neubeck?

Q. Yes.

A. That I couldn't say.

20 Q. Who paid the money?

A. Mr. Neubeck.

Q. How did he pay it?

A. I couldn't say whether he gave me the money or a check for it; I couldn't remember it. He paid cash, whatever it was.

Q. Did he take the deed away with him, or did he leave it with Mr. Patterson?

A. After he paid for it, I don't know whether he did.

30 Cross-examination, by Mr. Hunt.

Q. When was this deed signed, Mr. Hurschler; do you remember the month or the year?

A. No; that is fifteen or sixteen years back; I didn't look.

Q. If I say it is in the year 1908, according to the deed—

A. It's along there.

Q. Now, when, after that, was your attention ever directed to this transaction?

A. Yesterday.

Q. And by whom, yesterday?

A. Mr. Falcey; he asked me if I sold the lot to Mr. Neubeck, and I said "Yes;" and he said, "You come over to court to-morrow morning?"

Q. Was anything said to you yesterday about the importance of it appearing from your testimony that Mrs. Neubeck was an active party in the purchase of this property?

A. I asked Mr. Falcey what the trouble was; he said 10
there was trouble between Mr. Neubeck and his wife about some property, "And I wish you would come over to the court house at half-past ten;" and that's about all I had time to say anything to him; I saw him, then, over in the hallway, that was it.

Q. Did he ask you, either yesterday or at any other time, before you came into court to-day, about the things that had taken place in connection with your sale of this lot?

A. Not any more than asked me if I sold the lot; 20
I said, "Yes."

Q. Did he say anything to you about the fact that Mrs. Neubeck's name was in the deed?

A. He didn't have much time; he asked me in the hallway about the matter, whether I remembered who I sold the lot to; whether I sold it to Mr. Neubeck or he and his wife, or how.

Q. The day before yesterday, before anything had been said to you about it, would you have remembered to whom you sold it?

A. I can remember the conversation from the old 30
gentleman first asking me about the lots for his son-in-law and daughter, and I said I will take so much, and I saw Mr. Klemann afterwards, and he told me to stop at the house, and Mr. Neubeck was there, and he agreed to take the lot.

Q. The day before yesterday, before this was called to your attention, would you have remembered whether the name in this deed was Mr. Neubeck's name or his wife's name?

A. I could remember during any time during the years that I sold it to Mr. Neubeck and his wife.

Q. Now, before Mr. Neubeck turned to his wife and said to her, "Are you satisfied?" he said something to you, had he not?

A. Well, more than likely he might have, but I don't remember seeing him before that.

Q. Let me refresh your recollection: On this occasion, when Mr. Klemann and Mr. and Mrs. Neubeck
10 were talking to you about purchasing this lot, before Mr. Neubeck turned to his wife and said, "Are you satisfied?" had he not already said to you that he was satisfied to take it?

A. Well, I wouldn't say he did say so, and I wouldn't say he didn't; that is too long for me to remember.

Q. You say this conversation took place at Mr. Klemann's house, don't you?

A. Yes, sir.

Q. Didn't it take place at Mr. Neubeck's house, where
20 he and his wife were living?

A. Not the time I speak about, and I don't remember being in Mr. Neubeck's house; if I was he might remember it better.

Q. In the dining-room of Mr. Neubeck's house?

A. Where was he living then?

Q. Did it take place in the dining-room of Mr. Neubeck's house, on Chambers street?

A. No; the time I spoke about Mr. Neubeck and Mr. Klemann, that took place at Mr. Klemann's house, and then I might have been to Mr. Neubeck's house; I
30 wouldn't say that I was or wasn't; I couldn't remember that.

Ida Van Camp, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct examination, by Mr. Falcey.

Mr. Falcey—I would like to make a statement. In my replication I have set up the fact that, in answer to the defendant's claim that the com-

plainant has forfeited her dower rights by reason of the adultery, that the defendant himself has also been guilty of adultery.

Mr. Hunt—If I may be permitted to interpose an objection, I want to say that it is irrelevant—

The Court—By what authority was a replication filed to contain such a charge as that?

Mr. Hunt—It has just this minute been handed to me at the counsel table; I had not seen it before that.

10

Mr. Falcey—I assumed that I had a right to reply to them.

The Court—In the ordinary way, but no one has a right to file a special replication without special leave.

Mr. Falcey—I was going to state that I expected to prove that matter alleged in the replication, or partially prove some of the matters alleged in that replication; and the next witness on the stand—the defense will also attempt to prove 20 acts against my client, and I would suggest, if your honor please, that this matter in regard to the adultery by both parties be left until later, until after the motions to strike out that part of the counter-claim relating to the barring of dower be decided, because if that is decided, of course, all that testimony will be irrelevant.

The Court—If you have no further testimony than testimony as to the adultery at the present time, you may let that wait; I have very grave 30 doubts as to your being permitted to bring such testimony as that, but that can be decided later.

Mr. Hunt—I desire to move now that this replication be not only struck out, but expunged from the records; it has no business there.

The Court—I will hold your motion; I will hear argument on that when the other testimony is in.

Q. You are the sister of Mrs. Neubeck?

A. I am.

Q. And Mr. Neubeck very frequently visited your house; isn't that so?

A. Yes, sir.

Q. Now, shortly after your sister left Mr. Neubeck, did you have any conversation with him in regard to their property interests?

A. No.

10 Q. (Stenographer repeats the question.)

A. Well, we didn't talk about it; we didn't talk about it much at that time, because Mr. Neubeck was kind of worried at the time, and we didn't talk about the property right away, no.

Q. How soon afterwards did you have any conversation with him about the property?

A. Well, just lately was all; since this case has come up.

20 Q. Has he spoken in regard to the Newell avenue house?

A. What do you just mean about that?

Q. Has he spoken to you in regard to the ownership of the Newell avenue house?

A. Well, at first he said it was the home she had left; he said she wasn't entitled to anything there; and then afterwards I understood it was in both their names.

Q. Did you understand that from him?

A. From him and her both.

Q. Did you understand—

30 Mr. Hunt—I object to her understanding.

The Court—The answer will be confined to "Yes" or "No."

Q. Did you understand anything from Mr. Neubeck in regard to the ownership of the other properties?

Mr. Hunt—I object to that as calling for this witness' conclusion.

The Court—The question may be answered "Yes" or "No."

By the Court—

Q. Did you have any understanding gained from anything he told you?

A. I understood—

Q. Did you have an understanding? Answer "Yes" or "No."

A. Well, I—

Q. Answer the question "Yes" or "No."

A. I will say "Yes," then.

Q. Was that understanding arrived at from what Mr. 10
Neubeck told you; what did Mr. Neubeck tell you?

A. Well, he said that their both names was in the property, and that he was willing to give her one-third, and he wanted the boy to have one-third and himself one-third.

Q. She was to have one-third?

A. He said he was willing to give that; and the boy and her should have one-third.

Q. He said that?

A. The boy one-third and her one-third. 20

Q. What did he say about the ownership of the property?

A. They both owned the property, it being in both their names.

Q. Well, will you give me, as best you can, your best recollection as to what he would say as to the ownership of the property?

A. That's all I knew; it was in both names, as I heard them both say. I never said much about it; in fact, I wasn't much interested in it.

Q. Did Mr. Neubeck tell you what Mrs. Neubeck was 30
fighting for in this suit?

A. Yes, half.

Q. What did he say in regard to that?

A. He said he was willing to give her one-third, but he wanted the boy to have his third and him a third.

Cross-examination, by Mr. Hunt.

Q. This was after Mrs. Neubeck's suit had been commenced, wasn't it?

A. Yes.

Q. And Mr. Neubeck was telling you the terms upon which he would be willing to make a settlement?

A. Yes.

Q. You have written to his wife?

A. No. I have never written to her once.

10 Q. Not once?

A. Not once.

Q. While Mr. Neubeck and your sister were still living together as husband and wife, did you ever hear Mr. Neubeck say, in his wife's presence, anything about the reason why these deeds were taken in both names?

A. No, they never discussed their property or anything in front of any of us girls.

Q. Did you ever hear him say anything in his wife's presence, as to the reason why these properties were
20 taken in both names?

A. No, I never did.

Redirect examination, by Mr. Falcey.

Q. Did you hear the ownership of the property discussed before this suit occurred?

A. No.

Frank W. Banks, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

30 Direct examination, by Mr. Falcey.

Q. You were living in the Newell avenue property when Mrs. Neubeck left her husband?

A. Yes, sir.

Q. Do you remember the letter that Mrs. Neubeck left?

A. Yes.

Q. Who called your attention to it?

A. Mr. Neubeck.

Q. In that letter did he call your attention to any particular part?

A. Why, yes.

Q. What part?

A. The part where he said that—

Mr. Hunt—Is that letter in evidence?

Mr. Falcey—Yes.

A. The part where she said she left on the 10th of October, and she wanted half her share from that time on.

10

Q. What did he say?

A. He said she couldn't get it: he would fight her in court for it.

Q. Did you see him the next morning?

A. Yes, sir.

Q. Do you know where he went?

A. That morning?

Q. The next morning after you had that conversation?

A. I believe he went to work that morning.

20

Q. Do you know whether he sought any legal advice?

A. I believe he did that day sometime.

Q. And after he came back, what did he say in regard to your previous conversation?

A. You mean that day?

Q. After he came back, yes?

A. I didn't see him that day no more.

Q. What did he say afterwards?

A. I saw him next morning, and he said he had been down to a lawyer, and the lawyer said she could get her money, but he was going to make her eat it all up in court.

30

Q. Were you running Mr. Neubeck's automobile for him at any time?

A. Yes, sir.

Q. What time?

A. Almost all the time.

Q. Do you remember about the time that the Newell avenue property was bought, any conversation that you

had with Mr. Neubeck in that automobile while you were running him around?

A. Not the time it was bought, no.

Q. Well, at any time, then?

A. Yes, sir.

Q. What was it?

A. One day he told me to bring his wife down to the road where he was working, so that he could come down and sign for the property, that they were fifty-fifty.

10 Q. Did Mr. Neubeck ever tell you about how the East State street property was put in both their names after they had moved from Chambers street?

A. How it was put in both their names?

Q. Yes?

A. No.

Q. Did he tell you any reason why?

A. No.

Q. Did he tell you that Mrs. Neubeck had refused to go with him to the East State street property from
20 Chambers street?

Mr. Hunt—Objected to as leading.

The Court—That may be answered.

A. Refused to go, yes.

Q. Why?

A. Because he didn't want her name put on it?

Q. What did she say about it?

A. She said she wouldn't go unless—

Q. Unless what?

A. Unless her name was put on the property for
30 fifty-fifty.

Cross-examination, by Mr. Hunt.

Q. This conversation with Mr. Neubeck, after Mrs. Neubeck had first left his house, was sometime during the week or so that intervened between her leaving and her coming back, was it not?

A. Yes, sir.

Q. When she came back, how long did she stay?

A. I don't know.

Q. Only a short time, didn't she?

A. Only a short time.

Q. Then she went away again?

A. Yes, sir.

Q. And where did she go to?

A. To Pittsburgh, I believe.

Q. And you went to Pittsburgh at about the same time, didn't you?

A. Not the same time.

Q. About the same time?

10

A. About the same time, yes.

Q. How many days' difference?

Mr. Falcey—I would ask that this testimony on this line, at least, be temporarily discontinued until the question as to the right to bar dower is passed upon; otherwise all this time will be taken in vain.

The Court—Motion denied.

Q. (Stenographer repeats the question.)

A. One or two, I don't know.

20

Q. It is true, is it not, that at the time you had the conversation with Mr. Neubeck to which you have testified, you and Mrs. Neubeck had already arranged that you were going to Pittsburgh?

A. No, sir.

Q. How long afterwards was it that you made that arrangement?

A. After she had come back.

Q. After she had come back?

A. Yes, sir.

Q. Before she left the second time, you and she had made an agreement that you would go to Pittsburgh and meet there; that is true, isn't it?

30

A. Yes, sir.

Q. And you carried that agreement out?

A. Yes.

Q. Where do you live in Pittsburgh now?

A. 5480 Penn avenue, East Liberty.

Q. On the third floor of that house?

A. Yes.

Q. Who else?

A. Mrs. Neubeck.

Q. Anybody else but you two?

A. No, sir.

Q. How long have you two been living on the third floor of that house?

A. Why, just about a year, or a little over a year.

Q. How old are you?

10 A. Going in my 34th year.

Q. Are you in good health?

A. Yes, sir.

Q. Have you always been in good health?

A. Yes.

Q. Are you married or single?

A. Single.

Q. Do you know a man named Clarence F. Preston?

A. I know him when I see him.

Q. You were brought back from Pittsburgh to Tren-
20 ton under arrest by Mr. Preston, weren't you?

A. Yes.

Q. And at the Mercer County Jail, on February 13, 1920, you took and subscribed an affidavit before Mr. Preston, did you not?

A. I told him a few things; I didn't know it was an affidavit.

Q. You signed your name to it?

A. Yes, sir.

Q. And he went through the form of having you
30 take an affidavit that it was true, did he not?

A. I suppose he thought so, but it wasn't.

Q. You notice he had written at the bottom of it: "Sworn to before me the 13th day of February, 1920," and signed his name there, didn't he?

A. Yes.

Q. In that affidavit did you say that Mrs. Neubeck told you that she didn't love her husband any more?

A. I don't remember saying that, no, sir.

Q. If it is in the affidavit, did you say it?

A. I don't know; I would have to see my writing.

Q. And did you say that "after this we gradually became closer to each other?"

A. I don't remember saying that either.

By the Court—

Q. Well, whether you said it or not, is it true?

A. No, sir.

Q. In that affidavit, did you say, "I had talked about going to Oklahoma to the oil fields, but never with her; it was after she went up to her mother's for a week that we decided to go to Pittsburgh?" 10

A. Yes.

Q. And is that week there referred to the time you referred to in your direct examination? You told of talks to Mr. Neubeck in which he told you he had consulted a lawyer, and the lawyer advised him so and so?

A. I don't understand what you mean.

Q. That week you refer to in this affidavit is the first week Mrs. Neubeck withdrew from her husband, isn't it? 20

A. Yes, sir.

Q. In this affidavit did you say, "She told me that her mother had told her to go away somewhere and be away from me?"

A. No, sir.

Q. Do you say you didn't say that in this affidavit?

A. I don't remember saying it.

Q. I want to know the truth, because this affidavit—in this affidavit did you say, "She told me that her mother had told her to go away somewhere and be away from me?" 30

A. No, sir; I didn't, not as I can remember; no, sir.

Q. Well, did you; that is what I want to know.

A. Not as I can remember; no, sir.

Q. Do you deny that you did?

A. No, I won't deny it, but I don't remember saying it; I said so much, I was so excited I didn't know what I was saying.

Q. If it is in the affidavit signed by you, is it true?

A. If it is in my handwriting; I can tell my handwriting.

Q. This affidavit was not in your handwriting, was it?

A. No.

Q. It was written on a typewriter?

A. No, sir; Mr. Preston wrote it with pen and ink.

Q. And you signed it?

10 A. Yes.

Q. Now, if it is in that affidavit, is it true?

A. If it is in pen and ink, yes; but if it is written in typewriter, they could put anything into it.

Q. Did you say in that affidavit, "It was when she told me that, that we decided to go together?"

A. I don't remember.

Q. Did you say in that affidavit, "She left in the morning and I in the afternoon?"

A. I don't remember saying that either.

20 Q. That is true, though, isn't it?

A. I don't know; I don't know when she left; I left in the afternoon.

Q. Did you say in that affidavit, "While in Pittsburgh we saw each other every night; I would meet her at her home and sometimes at the corner of Euclid"—

A. Yes.

Q. That is true, isn't it?

A. Yes.

30 Q. Did you say in that affidavit: "I never said anything about getting married in the spring and going west?"

A. Yes.

Q. And did you say, "It is understood between us that we will get married as soon as she is free?"

A. I don't ever remember saying that; no, sir.

Q. Is it understood between you—on February 13, 1920, was it understood between you that you would get married as soon as she was free?

A. No, sir; we never had that understanding.

Q. Did you say in that affidavit, "I have had her on my lap and hugged and kissed her?"

A. No, sir; I said I had kissed her and put my arms around her; I didn't say nothing about hugging her.

Q. You deny you said in that affidavit that you said "I have had her on my lap and hugged and kissed her?"

The Witness (to the Court)—Do I have to answer that question.

The Court—Yo do. Do you deny you said that in that affidavit?

10

The Witness—I don't deny it, no.

Q. Did you say that you had her on your lap and hugged and kissed her about twice while she was in Trenton?

A. I don't remember saying that.

Q. Do you deny that you said that?

A. I don't remember saying it.

Q. Do you deny that you said it?

A. If it is in that letter, why, I said it; in that pen and ink letter.

20

Q. Did you say in that affidavit also, "loved her, hugged and kissed her in Pittsburgh?"

A. I don't remember; no, sir.

Q. Do you deny you said that in that affidavit?

A. If it's in that pen and ink letter I said it, yes.

Q. Is it true that you loved her and hugged and kissed her in Pittsburgh?

A. No, sir.

Q. Did you ever hug her in Pittsburgh?

A. Never had my arms around her; no, sir.

Q. Did you ever—

30

A. I never had my arms around her; I had them on her shoulders.

Q. Did you ever kiss her in Pittsburgh?

A. On the hand.

Q. Never anywhere else?

A. No, sir.

Q. Did she ever kiss you in Pittsburgh?

A. No, sir.

Q. Did you love her in Pittsburgh?

A. What do you mean by that.

Q. You may answer; I will ask you about your meaning a little later.

A. I think a lot of her; yes.

Q. When in this affidavit you said you loved her in Pittsburgh, what did you mean by that phrase?

A. I don't remember saying that, but if I did say it, I meant that I thought a lot of her.

10 Q. Did you say in this affidavit, "She told me that she liked me long before I liked her, but, of course, I didn't know it?"

A. I don't remember saying it, no, sir.

Q. Do you deny that you said that in this affidavit?

A. If it is in that pen and ink letter, I said it, I guess.

Q. Do you deny you said it in that affidavit? Answer that "Yes" or "No."

Q. When did you last kiss her hand?

A. I don't remember.

20 Q. When did you come to Trenton the last time?

A. Monday afternoon.

Q. Did she come at the same time?

A. Yes, sir.

Q. On the same train?

A. We didn't come on the train.

Q. How did you come?

A. By auto.

Q. Whose auto?

A. Mine.

30 Q. You and she drove together?

A. No, I did all the driving.

Q. You and she rode together in the car?

A. We rode together, yes.

Q. Anybody else with you?

A. No, sir.

Q. Did you drive all the way from Pittsburgh?

A. Yes.

Q. When did you leave Pittsburgh?

A. Sunday morning.

Q. And you got here Monday afternoon?

A. Yes.

Q. Where did you stop Sunday night?

A. Lancaster.

Q. What place?

A. The Hotel Weber.

Q. What name did you register under at the Hotel Weber?

A. Frank W. Banks.

Q. What name did she register under?

10

A. "Miss Betty Hess," I guess; I didn't see her register.

Q. What room did you occupy?

A. Room letter E, on the second floor.

Q. What room did she occupy.

A. I don't know, sir.

Q. What floor was she on?

A. I don't know, sir.

Q. Did you ask her?

A. No, sir.

20

Q. Did you eat supper together at the Hotel Weber?

A. No, sir; we had lunch.

Q. Did you eat breakfast together the following morning?

A. Yes.

Q. At the same table?

A. Yes.

Q. What time?

A. About half-past seven, I guess it was.

Q. Which got into the dining room first?

30

A. Mrs. Neubeck.

Q. Where did you first see her that morning?

A. In the lobby, the hotel lobby.

Q. You don't know in what part of that hotel she spent the night?

A. I never asked her.

Q. You didn't see the room she occupied in that hotel?

A. No, sir.

Q. You don't know what floor it is on?

A. No, sir.

Q. You don't know how close it is to the room you occupied?

A. No, sir.

Q. Was there any connecting door between the room you occupied and any adjoining room?

A. No, sir; only the bathroom.

Q. There was a bathroom attached to your room?

10 A. Yes.

Q. Was that bath attached to any other room there?

A. Only mine.

Q. How many times were you there in the bathroom?

A. One.

Q. Did she have a room with a bath?

A. I don't know; I didn't ask her.

Q. Who engaged these rooms?

A. I engaged mine and she engaged hers.

Q. Did you go there apart?

20 A. I registered first.

Q. She registered immediately after you did?

A. Yes.

Q. What did you mean when you said you had lunch; where did you have lunch?

A. We had lunch with us.

Q. You spoke to the clerk about the rooms?

A. I asked him if he had two rooms, yes.

Q. You asked for a room with a bath for yourself?

A. Yes; the clerk asked us, and I said "Yes."

30 Q. So you ordered a room with a bath, too?

A. I didn't order a room with a bath, no, sir, not for her; I just ordered two rooms, and he asked me if I wanted a bath, and I said "Yes."

Q. Didn't he ask you if she wanted a bath, too?

A. I don't know.

Q. Did he ask her?

A. No, sir.

Q. You went up to your rooms at the same time?

A. No, sir, I went first; I don't know when she went.

Q. What was she doing when you went?

A. She was registering when I went up to the elevator.

Q. Have you and she ever stopped at a hotel before?

A. No, sir.

Q. Are you and she living at the same place in Trenton while you are here?

A. No, sir.

Q. This affidavit upon which I have been examining you, that was written down by Mr. Preston in the presence of William Olsen?

A. Yes.

Q. And that is this gentleman sitting here in the corner?

A. Yes.

Q. And he saw you sign it, did he not?

A. Yes.

Q. And heard you sworn upon it by Mr. Preston?

A. I believe he was there.

Q. You also had a talk with Mr. Preston in the cell room of police headquarters at Pittsburgh on or about February 12, 1920, didn't you?

A. I don't remember what day it was.

Q. But you do remember the talk at that place with Mr. Preston?

A. Yes.

Q. Mr. Olsen was present, was he?

A. I believe so.

Q. And it was that time you told Mr. Preston that the reason you and Mrs. Neubeck were in Pittsburgh was because you cared for each other, didn't you?

A. No, sir.

Q. Didn't you tell him anything like that?

A. No, sir.

Q. What reason did you give him for the two of you being in Pittsburgh?

A. I don't remember giving him any reason.

Q. Do you remember having the second talk with him about this girl the same day?

A. I don't; oh, yes, I do.

Q. What did you tell him in the talk about the relations between you and Mrs. Neubeck?

A. I don't think we had any talk at that time; he come in; I thought he was going to take me, and he said, "You are going to stay until morning; we are going to the theatre."

Q. Didn't you tell him at that time that you and Mrs. Neubeck hoped to marry some day?

10 A. I don't remember.

Q. Do you deny that you did?

A. Yes.

Q. Didn't you tell him you and Mrs. Neubeck were in love with each other?

A. No, sir.

Q. Didn't he ask you if you didn't think you had been pretty mean to Mr. Neubeck, didn't he?

A. No, sir; I don't think so.

Q. He didn't ask you that?

20 A. I don't think so; I don't remember it.

Q. Didn't you tell him you guessed you were pretty mean to Neubeck, but you couldn't help it?

A. No, sir.

Q. Nothing like that?

A. No, sir.

Q. As a matter of fact, Neubeck took you in his house and gave you a home?

A. No, sir; I had a job, and he come and took me off it, and said, "Come and live at my house."

30 Q. Who got that job for you?

A. Mr. Neubeck helped to get it, I guess.

Q. And you didn't like it?

A. I never said so.

Q. But that is true?

A. I didn't like it, but I never said so.

Q. But, unless you had some other means of support or of taking care of yourself, you had to stick at it whether you liked it or not?

A. No, sir.

Q. Didn't you tell Neubeck that you had given up your boarding house and didn't have any place to go?

A. I told him I had given up my boarding house and I didn't have any money and I—

Q. What did Neubeck say?

A. He said, "Come to my house; I got a bed and three meals a day for you."

Q. How long did you stay?

A. I don't know just how long, a month or two.

Q. Then you ran away with his wife?

10

A. I didn't go with his wife.

Q. Well she ran away with you?

A. No, she had gone seventeen days before I went.

Q. This statement you made that she went in the morning and you went in the afternoon isn't true?

A. That she went in the morning and I went in the afternoon?

Q. That's what you say.

A. That wasn't the day she went away from her mother; she had been gone seventeen days then; she left on the 10th and that was on the 27th. 20

Q. She went away and stayed with her mother for a while, didn't she?

A. No, she come back; she stayed with her mother; she had gone a week and nobody knew where she was.

Q. Then she stayed with her mother?

A. Yes.

Q. And at that time her husband tried to persuade her to come back to him?

A. I don't know?

Q. She has told you so?

30

A. No, sir.

Q. Mr. Neubeck has told you so?

A. He told me, yes.

Q. He at that time didn't know of any intimacy between you and his wife?

A. There wasn't; we were only friends.

Q. When Mrs. Neubeck came back after this week's

absence, and went to her mother's, you saw her, didn't you?

A. I saw her, yes.

Q. And during that time that she was staying at her mother's, you and she arranged it about going to Pittsburgh?

A. She said she was goin out to Pittsburgh, and I asked her how the work was, and she said, "Good," and I said, "I'm going out there."

10 Q. Go on.

A. What?

Q. She said "good," and what else?

A. I said I was going to go out.

Q. Then you arranged where you would meet each other after you got there?

A. What?

Q. You arranged then where you would meet each other after you got there?

A. Where we would meet each other?

20 Q. Yes.

A. Yes, I told her I would meet her in the station.

Q. And from that time on you have seen her in Pittsburgh practically every day?

A. Yes, sir.

Q. That is, for a period of more than a year and a half now?

A. Yes, sir.

Mr. Falcey—That concludes my witnesses on the point of the ownership of the property. As to the replication, I have witnesses on that.

30

The Court—I will not listen to that at this time.

Mr. Falcey—I want to make a motion to strike out that part of the defendant's answer which alleges that by reason of the wife's adultery that she has forfeited her dower; and that part of the answer which seeks to debar the wife from her dower because of her alleged adultery.

The Court—I will not hear the argument now; I have Mr. Hunt's brief, and yours I have not yet had. You have filed no brief, and I am not prepared to dispose of it now. That being so, I am not going to delay the hearing listening to argument, as I told you on the last hearing. The parties are here with witnesses.

Mr. Falcey—Then I wish to offer witnesses to show the husband's adultery.

The Court—If you should be allowed to do 10
that at all, it would be only by way of rebuttal.

William H. Neubeck, being recalled in his own behalf, testified as follows:

Direct examination, by Mr. Hunt.

Q. Where do you live, Mr. Neubeck?

A. 118 New York avenue.

Q. You are the husband of the complainant in this cause?

A. Yes.

20

Q. Whose money paid for the properties which are described in the deeds marked her as *Exhibits C 4, 5, 6, 7 and C 9*?

A. In regard to the first property?

Q. Whose money paid for that?

A. My money.

Q. How did you get that money?

A. By operating a barber shop and cigar store at 7 Chambers street.

Q. State what occurred, what part, if any, your wife, 30
this complainant, took in the operation of this barber shop?

A. The barber shop was on Chambers street; she helped four or five times in cleaning the place, or something like that; and then after that we hired a woman to do it.

Q. Afterwards you moved into a barber shop on State street?

A. Afterwards we moved into a barber shop on State street, yes.

Q. State what she did there or contributed to the earning of what you describe as your money.

A. She would help in the store, and relieve during meal hours, or when I was short of help, and then in return for that she would hire someone to do the work in the house.

Q. Who paid that someone?

10 A. That came out of the money I took in in the store and barber shop.

Q. I show you a deed which is marked *Exhibit C 4*, and I ask you to inform the Court in what manner the cash payment first made on account of the purchase of that property was made.

A. That was drawn out of the bank account.

Mr. Hunt—I will withdraw that question; there is no dispute about that.

Q. I ask you whether a pair of houses was after-
20 wards constructed on the land covered by that deed?

A. Yes.

Q. Who built those houses?

A. Mr. Ernest Klemann, my father-in-law.

Q. Who paid him for that?

A. I did.

Q. Have you any evidence of payment?

A. I have the stub book here, which will show where the check was taken from, that made him the first payment of \$1,000.

30 Q. What is the date?

A. August 4, 1908.

Mr. Hunt—I offer in evidence check stub No. 39, dated August 4, 1908, to E. Klemann for \$1,000.

Said check stub is marked *Exhibit D 2*.

Q. Whose check book stub is this?

A. Mine.

Q. An account that stood in your own name?

A. Yes, my own drawing account; my business account.

Q. And did you give to E. Klemann a check for \$1,000 of the number and of the date shown on this stub?

A. I did.

Q. Have you got the check?

A. No, sir.

Q. Can you explain its absence?

A. Yes; in moving from our place of business our 10 papers were all mislaid or thrown around, as the fellow says, and wasn't picked up, and a lot of stuff I throwed away on account of being owed, and some of them were checks; I thought they were outlawed.

Q. Did Mr. Klemann collect the money on it?

A. Yes.

Q. And it was charged against your bank account?

A. Yes.

Q. I show you *Exhibit C 5*, deed from Yard to Neu-
beck and wife, and I ask you to inform the court how 20
the money that was paid on delivery of that deed was
paid and whose money it was.

A. It was taken from my money.

Q. Have you any evidence of that payment here?

A. I have a certified check here, which I paid to clear
up the mortgage on the property, drawn from my own
personal account, which stub will show.

Q. I don't understand that myself.

A. That represents my check out of the bank; I asked
for a certified check so I could pay the mortgage off,
and being no trouble about whether the check was legal, 30

Q. What do you mean?

A. Well, that isn't my check—

By the Court—

Q. Is it a cashier's check?

A. Yes, a certified check; it isn't my own personal check, but that is the certified check that paid off this mortgage.

Q. This is the bank's Voucher to you that you gave that certified check?

A. Yes.

Q. And in order to get that check certified, to whom did you draw a check?

A. C. A. Comp, the real estate man here in Trenton.

Q. I show you a check stub, and ask you if that is the stub you gave to Mr. Comp?

A. Yes, sir.

10 Mr. Hunt—I offer in evidence a book of check stubs on the First National Bank of Trenton, the particular stub I refer to is No. 21, dated May 26, 1913, to Charles Comp, for mortgage; amount this check \$1,500.00.

Said check stub book and check for \$1,500.00 are marked *Exhibit D 3* and *Exhibit D 3a*, respectively.

Q. I show you *Exhibit C 6*, deed, Hendrickson to Neubeck and wife, and ask you to state how much money was paid at the time of the purchase of that property, and whose money it was and how it was paid.

20 A. I had some money, but I didn't have enough to see me through, and I took a mortgage on this property at 792 East State street for \$2,000, which was placed to my credit at the bank to purchase the property at 794.

Q. That is the property covered by the deed *C 6* in your hands?

A. Yes.

Q. And then have you any check to show the payment of that money?

30 A. I have a check book stub also showing where I paid the \$1,000.

Mr. Hunt—I offer in evidence check on the First National Bank of Trenton, dated September 23d, 1915, No. 114, to the order of John T. Jemison, for \$1,000.

Said check is marked *Exhibit D 4*.

Q. Now, was that check a payment on account of the purchase of the property covered by deed *C 6*.

A. 794 East State street, yes.

Q. In connection with the purchase of that property, after the payment of that \$1,000, was there a small balance left unpaid?

A. Yes, a second mortgage of \$300.00.

Q. And who paid that?

A. I did.

Q. I show you this paper, and ask you what it is.

A. This is our credits where I paid Mr. Jemison the \$25.00 every three months and cleaned up the second mortgage of \$300.00.

10

Q. Where did you get the money with which you made those quarterly payments?

A. Out of my own personal account.

Mr. Hunt—I offer that in evidence.

Said statement of payments on account of the \$300.00 mortgage is marked *Exhibit D 5*.

Q. I show you *Exhibit C 7*, deed from Edgar H. Freeman to William Neubeck and wife, and ask you whose money made the payment on the purchase of that property and where the money came from?

20

A. It was my money, out of my own account (showing stub in the amount of \$800.00 of First National Bank).

Q. This is a personal account which stood in your name exclusively?

A. Yes.

Q. Nobody had any right to draw checks against this account?

A. I am the only one.

Q. Is that true of all the other personal accounts to which you have referred?

30

A. Yes.

Mr. Hunt—I offer book of check stubs of the personal account of William H. Neubeck in the First National Bank, referring especially to stub No. 105, dated March 19, 1919, payable to the order of E. H. Freeman, for \$800.00.

Said check stub book is marked *Exhibit D 6*.

Q. Did that check afterwards come back with the endorsement of Mr. Freeman charged up against your account?

A. Yes, sir.

Q. Have you that check now?

A. No, I have not.

By the Court—

Q. Where is it?

10 A. Through moving, a lot of them got mislaid and thrown around, and some of them turned up—

Q. When was the moving?

A. Two years ago last June.

Q. What is the date of this check?

A. Two years last March, if I recall that, 1919.

Q. At the time of the moving to which you refer, you and your wife still lived together?

A. Yes, sir.

20 Q. And were on the best of terms?

A. Yes.

Q. You had no reason to doubt that your wife was faithful?

A. No doubt whatever.

Q. I show you a deed from Frank Russo and wife, and ask you whose money made the payments on that property—C 9?

A. The same, my money.

Q. Have you any evidence of the payments?

30 A. Yes, one receipt and check, from returned check receipts, for \$50.00, that I paid him on deposit to bind the agreement, and fourteen hundred some odd dollars to purchase the property.

Mr. Hunt—I offer in evidence a receipt dated May 10, 1919, reading: "Received from William H. Neubeck \$50.00 on account of \$3800.00, being purchase price of premises 118 Newell avenue. Frank Russo."

Said receipt is marked *Exhibit D 7*.

Q. Is that the signature of Frank Russo?

A. Yes.

Q. 118 Newell avenue is the property described in the deed C 9?

A. Yes, sir.

Q. In what shape was this \$50.00 paid?

A. Cash money.

Q. Whose money was it?

A. Mine.

Q. I show you a check, signed "W. H. Neubeck," to 10 the order of Frank Russo, dated June 30, 1919, for \$1,460.00, and endorsed "Frank Russo, Special;" for what purpose was that check given?

A. The purchase of the house 118 Newell avenue.

Q. Against whose account was this check drawn?

A. Mine.

Q. Anybody else besides you have any interest in that account?

A. No, sir.

Q. Or any power to draw checks against it? 20

A. No, sir.

Mr. Hunt—I offer it in evidence.

Said check is marked *Exhibit D 8*.

Q. Mr. Neubeck, how were the funds against which these various checks were drawn built up in the bank in your name?

A. Why, through my place of business.

Q. Was any part of the funds against which these checks were drawn got into your individual and personal account by being transferred out of any other 30 bank account in which anybody else had an interest?

A. Only on the purchase of the first property on Sweets avenue.

Q. That is the Hurschler property?

A. Yes.

Q. From the time that you acquired each of these properties, respectively, who acquired the rent from these properties?

19 Neu

A. I did.

Q. And what was the manner of collecting the rents?

A. Well, the property on Sweets avenue, we had very good tenants there, and they used to bring the rent down to my father-in-law's, and they would be placed on the desk there, and when I went up they would tell me "There's your rent," and I would take it.

Q. Did anybody besides you ever take it?

A. At one time, yes.

10 Q. What time was that?

A. During the week, I believe, that Mrs. Neubeck was home after she had left me; she came back to her mother's for a week, and there were two rents left there for me, and they told her about it, and she said, "Well, it's mine as well as it is his," and she took the money and kept part of it and gave the other part to my son.

Q. Did she ever take any other rents of that house or any of the other houses for herself?

A. No, sir.

20 Q. I show you this book and ask you what it is?

A. That is the rent receipt book.

Q. Of whom?

A. Mrs. Reikosky.

Q. Are there receipts written in it?

A. Yes.

Q. For which house?

A. 102 Sweets avenue.

Q. In this book I see the name "W. H. Neubeck" written frequently?

A. Yes.

30 Q. In whose handwriting is that?

A. Mine.

Q. In every case in which it appears there?

A. Yes, sir.

Q. I see other names written there; whose names are they?

A. That was one that was left up there to my mother-in-law's, and one of the sister-in-laws would sign the book "Per W. H. N.," my wife's sisters.

Q. What did she sign?

A. "F. M. Klemann, per W. H. N.," meaning me.

Q. F. M. Klemann is your wife's sister, who testified here this morning, is she?

A. No, sir; that is another sister.

Mr. Hunt—I offer that in evidence.

Said rent receipt book is marked *Exhibit D 9*.

Q. I show you another book and ask you what that is?

A. The rent receipt book for property 796 East State 10 street.

Q. I notice this begins only with February, 1920; were you and your wife living together at that time?

A. No, sir.

Q. Were you and your wife living together in December, 1919?

A. No, sir; the reason of that is, several of the tenants have moved out, and new ones moved in, and I couldn't get the old tenant to get the rent books.

Q. Who paid the taxes and the interest on the mortgages against these properties? 20

A. I did.

Q. How did you make those payments, as a usual thing?

The Court—Is that disputed?

Mr. Falcey—Yes, it is. These checks, we claim, were really taken out of their joint account.

The Court—But you admit that these taxes were all paid by checks on his individual account, as was also the interest? 30

Mr. Falcey—Yes, we do.

Q. How were repairs and improvements on these properties paid for?

A. Out of my personal check account or business account.

Q. What money went in to build up the deposits to your personal account?

A. All the money I would take in, both business and rents.

By the Court—

Q. What else was done with the moneys of those individual personal accounts of yours, besides paying the interest, taxes, and part payments on the property and repairs?

10 A. I would pay for what I did in my own business there, pay all bills through that, any bill that came along was paid through my personal account.

Q. The bills in your barber business, too?

A. Yes, sir; and my cigar store and ice cream and confectionery.

Q. How as to the bills for your food and clothing and personal expenditures?

A. I had a bag of change in the house; we needed it, and we used that.

Q. You paid for all your food in cash?

20 A. No, we never had any store bill of any kind.

Q. How about your milk bill?

A. Yes, the milk man would come in; and I would pay him.

Q. How?

A. Cash money.

Q. Every day?

A. No, probably two or three weeks, or probably once a month; that was about the only bill we did have.

30 Q. How about clothing for yourself and your wife?

A. I paid cash for it.

Q. How much cash did you keep on hand in the store?

A. Well, it's a mean sort of thing to say, I kept more than I should; the men were paid by check, and they would have an account with me, and if I didn't have change for that check I

ran a good chance of getting stung for it, and I kept a little too much. They always had big bills when they started to pay off by cash; some of them would have an account by the month with me.

Q. How were Mrs. Neubeck's expenses for clothing and everything of that sort met, who paid them?

A. Well, the money all came right out of my business stores there.

Q. Now, Mr. Neubeck, did you give instructions that these deeds which have been offered in evidence here were to be taken in your name and that of your wife, too? 10

A. Yes, I did.

Q. State to the Court what your purpose and intention was in directing that these deeds should be drawn in that manner.

Mr. Falcey—That is objected to on the ground of *Lister vs. Lister*; it is incompetent, irrelevant and immaterial. 20

The Court—The objection will be overruled and the question permitted to this extent, that is, that it is not competent unless it be coupled with some overt act.

Q. (Stenographer repeats the question.)

A. I remember very plainly talking to Mr. Patterson, who drew up the first deed of any land that I acquired, and I stated to him at the time: "Now, Mr. Patterson, I want these deeds drawn in case anything happens to me that I should die, that the wife will have no trouble claiming it through court." 30

Q. Was you wife present when that statement was made?

A. Yes, and she was present several times when that statement was made.

Q. Did you at any time make that statement to her in connection with the other properties?

A. Yes, several times.

Q. State the times and occasions.

A. Nearly every occasion when we bought property, or when we were talking about buying property.

Q. In any of your conversations with your wife upon the subject was anything said about her being given an interest in these properties of her own, individually, during the time while both of you should still be living?

A. No, sir, positively not.

10 Q. Before you and your wife separated, did she ever make a claim to have any individual interest of her own in these properties while you two were both living?

A. No, sir.

Q. At any time before you separated, did she demand that any of the rents or income from any of these properties be paid over to her?

A. No, sir.

20 Q. Did you at any time prior to the purchase of any of these properties inquire of counsel and receive advice concerning the interest which a deed of this character would give to your wife in this property during the time that both of you were living?

A. No, sir.

Mr. Falcey—I object to that.

Q. Did you at any time before the commencement of this suit, and before you consulted counsel in connection with the defense of this suit, have knowledge that such a deed as this, reading to a man and his wife together, gave the wife an interest in that property while the husband and wife were both living?

30 A. I don't understand the question.

Q. (Stenographer repeats the question.)

Mr. Falcey—That is objected to on the ground that his lack of knowledge of the law was no excuse.

The Court—No excuse for what?

Mr. Falcey—He can't plead ignorance of the law.

The Court—Objection overruled.

A. I didn't have any knowledge, no, sir.

Q. In the purchase of these properties was it your intention to give your wife any interest in any of the properties other than the dower interest that wives ordinarily have, so long as you yourself should be living?

Mr. Falcey—Objected to as incompetent, irrelevant and immaterial.

The Court—Objection overruled.

A. No, sir.

Q. Now, did you go to see your father-in-law, Mr. Klemann, about a week or ten days before your wife first went to Pittsburgh? 10

A. Yes, sir.

Q. Did you ask him if he wouldn't come down to your house to see whether he could straighten your wife out?

A. Yes, sir.

Q. Did you tell him that you were having a great deal of trouble with her, and didn't understand what the reason for it all was? 20

Mr. Falcey—I object to this.

The Court—Objection overruled.

A. Yes, sir.

Q. Did Mr. Klemann come down?

A. Yes, sir.

Q. Did he tell you anything?

A. Yes.

Q. What?

A. To get rid of the boarder.

Q. Whom did he refer to as the boarder? 30

A. Mr. Banks.

Q. Has your wife ever been present when you have had any talk with her father about her relations with Banks?

A. I don't know; no, she hasn't.

Q. Or when you have had any talk with her mother about her relations with Banks?

A. My wife hasn't been present, no.

Q. How often did Mr. Klemann go to your house on the average when you and your wife were living together?

A. When we were on Chambers street and State street he used to stop in quite often, but after we went on Newell avenue it seems as though he felt he wasn't welcome by his daughter, and he didn't come around there very often.

Q. How often did Mrs. Blackwell come to 792 while
10 you were there?

A. I think she was there about twice.

Q. Well, there was testimony in the complainant's case, referring to a note for \$800.00, given to somebody named Ernest; was that Ernest Klemann?

A. Yes.

Q. What was that note for?

A. That was part payment on property for repairs and alterations.

Q. Now, I ask you whether it was part payment on
20 the purchase of the property?

A. No, sir.

Q. What was it?

A. For repairs and alterations.

By the Court—

Q. Alterations on what property?

A. The store property, 792 and 794 East State.

Q. Who signed that note, do you remember?

A. I think, if I remember right, myself and wife, and
30 charged to my account.

By the Court—

Q. Why did you and your wife sign it?

A. In going down to the bank, I tried to have a friend go on my note personally, but Mr. Wood said he thought it would be a better idea to have her and I sign it, then you wouldn't have to bother an outsider.

Q. He is the cashier of the First National Bank?

A. Yes.

Q. And it was there the note was discounted?

A. Yes.

Q. And the note was finally charged up against your personal account in that bank?

A. Yes.

Mr. Hunt—There is a witness in the court room called by the complainant, but who has not been called to the witness stand. I will call him myself, before cross-examination, if the court please, in order to let him get away; I see he is 10
leaving the court room.

By the Court—

Q. This note of \$800.00 you say Mr. Wood, the cashier of the First National Bank, suggested it be signed by yourself and wife?

A. Yes.

Q. How did he come to suggest that to you?

A. Well, he said to me, after we had our arrangements, he asked me how our properties were arranged, and I told him "W. H. Neubeck and 20
wife," and he said, "Then you and your wife go on the note."

Q. Because you and your wife owned the properties?

A. Yes.

Q. Did he explain that to you at that time?

A. No, not outside of that; I had no idea what he really meant, because she was a wife, and I was under the impression at all times that a wife's name should be on the deed; I never had 30
that explained before; I thought when a man was married—

Q. How did Mr. Wood know anything about the note?

A. I had to borrow money to pay off the alterations.

Q. Who did the alterations?

A. My father-in-law, Ernest Klemann.

Q. And he took your note?

20 Neu

A. No, I got the money and paid him; I paid him the money and then kept the note in the bank I was dealing with.

Q. He didn't take the note?

A. No.

Q. He didn't accept the note without discount?

A. No.

10 Q. He wanted to have the money, and, in order to get the money, he agreed to have your note discounted?

A. Yes, the bank discounted it for me where I was dealing all the time, and they took it out of my account, and I would renew the note each and every time it was due, and they would take the interest money and whatever I agreed to pay on the principal.

Q. Then you had the note discounted?

A. Yes, sir.

20 Q. And the proceeds were turned over by you to Mr. Klemann?

A. Yes, sir, that's the idea.

Cross-examination, by Mr. Falcey.

Q. You say Mr. Wood said that your wife should sign the note because she owned the property, too?

A. No, sir; he didn't.

Q. What did he say?

A. I told him the property was in joint ownership, the way I understood it, as man and wife, and he said,

30 "You sign the note."

Q. What do you mean?

A. Man and wife.

Q. What does "joint" mean?

A. I took it for granted, man and wife.

Q. What does "joint" mean?

A. I don't know, outside of what I explained to you.

Q. Not what it means?

A. Not in this deal, probably.

Q. Ordinarily, do you know what it means?

A. Together.

Q. You explained to him that you owned it jointly?

A. I told him my name as well as hers was on the deed.

Q. And you owned it jointly with your wife?

A. I don't recall saying "jointly"; what I mean by "W. H. Neubeck and wife," of course, whether—

Q. You testified you did say "jointly"?

A. Well, all right; W. H. Neubeck and wife.

Q. Jointly?

10

A. W. H. Neubeck and wife.

Q. Now, if you owned the property and your wife had nothing whatsoever to do with it, didn't you inquire the reason why she had to sign the note?

A. Only as Mr. Wood told me.

Q. Didn't you ever sign notes before jointly with your wife?

A. I can't recall.

Q. You signed that note for the building of those two houses on Sweets avenue?

20

A. Yes, I did.

Q. Do you know why?

A. Do I know why?

Q. Yes.

A. Yes, sir; to finish paying off for doing it.

Q. Why did your wife's name have to be on there?

A. I don't recall whether it was on there or not; it may have been. I know my father-in-law was the man that took care of the note.

Q. I show you a book, Trenton Savings Fund Society, William H. Neubeck or Minnie Neubeck, marked *Exhibit C 8*; there shows there a withdrawal on May 20th, 1908, of \$400.00?

30

A. Yes.

Q. Where did that \$400.00 go?

A. To purchase the lots on Sweets avenue.

Q. Where did you next open a bank account after you left the Trenton Savings Fund Society?

A. The First National.

Q. Those deposits which you see here, \$5.00, \$7.00, \$10.00, the Trenton Savings Fund Society—

A. Yes.

Q. Did you make all those deposits?

A. It was money that was taken from my place of business where I run the barber shop on Chambers street, and what I made on the side.

Mr. Falcey—I ask that that be struck out as not responsive.

10 The Court—I think it is responsive.

Q. Who carried the money to the bank?

A. That was done by either of us or both of us.

Q. The next property you bought was the Yard property, 794 East State street; is that so?

A. 792 East State street.

Q. 794?

A. 794 is right; yes, sir.

By the Court—

Q. I thought it was 792 and 794.

20 A. This property was practically turned into one; they were bought at different times.

Q. The price of that house was \$2,400.00; isn't that so?

A. Yes, sir.

Q. Cash \$900.00, and the assumption of a mortgage of \$1,500.00?

A. Yes.

Q. Your wife was present at that transaction?

A. Yes, sir.

30 Q. It wasn't necessary for her to be present, was it?

A. Yes.

Q. For the purpose of signing the mortgage?

A. Yes.

Q. What mortgage did she sign?

A. \$1,500.00 mortgage.

Q. That mortgage was bought with the property?

A. It was transferred, I believe.

Q. This deed reads that the premises are conveyed subject to a mortgage encumbrance of \$1,500.00.

A. Yes, sir.

Q. She didn't sign any mortgages, did she?

A. I can't recall whether she signed a mortgage or what she signed, but she signed something, I believe, the day Mrs. Jemison was there.

Q. Now, on January 12, 1911, was the date of the deed—is that right? (Showing witness deed.)

A. Yes, sir.

Q. Do you see a withdrawal of \$488.48 on that date?

A. Yes, sir.

Q. From the bank account?

10

A. Yes, sir.

Q. Where did you get the rest of the money?

A. Out of my own account, and some that was loaned to me by a friend.

Q. Now, you bought the next property—it was the William C. Hendrickson property, wasn't it.

A. Yes, sir.

Q. That was September 25, 1915?

A. Yes, sir.

Q. The price of that was \$2,800.00?

20

A. \$2,800.00.

Q. There was an assumption of mortgage for \$1,500.00, cash \$1,000, and a second mortgage to Hendrickson for \$300; is that right?

A. Yes, right.

Q. Now, I show you a withdrawal from the account of the First National Bank pass-book on May 23, of \$775.00; where did you get that money?

A. Placed in my private bank account.

Q. It was in your private bank account?

30

A. Yes.

Q. You had been discussing the purchase of 792 East State street at that time?

A. Yes; 794, East State.

By the Court—

Q. It was placed in your private bank account for the purpose of being used for the property?

A. Yes.

Q. Now, the next transaction was March 20, 1919; isn't that so?

A. Yes, sir.

Q. That was the Freeman property?

A. That was the Freeman property; yes, sir.

Q. I am going to ask you, before going on with that Freeman property, what happened to this joint account after January 15, 1915, which is the last entry there?

A. Some of it—I was tied up so with debts that I
10 couldn't place any more money in the bank; I had notes for alterations on the property.

Q. When next did you start up a joint account?

A. I didn't start.

By the Court—

Q. Where did the moneys come from in the joint accounts?

A. Out of my own personal account. When I
felt I had a few dollars left over, I would put
them away for a rainy day. If I could make a
few dollars extra by going out, that would go
20 into it. Our first savings account came from a
watch club I ran nights.

Q. The question is, where the money came from that went into this joint account. You have a bank book here on the Savings Fund Society?

A. Yes.

Q. And a joint account in the First National Bank?

A. Yes, sir.
30

Q. Are those two separate accounts?

A. I transferred them.

Q. From the Savings Fund to the First National Bank?

A. Yes, sir; simply quit at the Savings Fund.

Q. Is that money still down there?

A. No, there's nothing there.

Q. What was done with the money there?

A. The first property that we bought on Sweets avenue, that was the one from the Savings account.

Q. And the money that went into this joint account was money that came from your business or from extra things you did?

A. Most everything, wherever it came from, it didn't make any difference, it was thrown into the pot.

Q. That is the same money you paid into your individual account? 10

A. Yes, the same money, because I would have a few dollars left over, and I would figure out a few dollars to put into the savings account.

Q. This joint account was a savings account?

A. That was the idea, yes.

Q. The consideration of that was \$2,800.00, of which \$800.00 cash was paid?

A. Yes.

Q. And the mortgage was given at that time? 20

A. Yes.

Q. Signed by you and your wife?

A. Yes.

By the Court—

Q. What number is that?

A. 796 East State street.

Further cross.

Q. Your wife was present, however, at the last transaction around July, 1919, in which you took 118 Newell 30
avenue from Frank Russo?

A. Yes.

Q. And her name was in the deed?

A. As "W. H. Neubeck and wife."

Q. The consideration of that was \$3,800.00?

A. Yes.

Q. And cash was \$1,550.00; is that so?

A. Yes.

Q. And there was an assumption of mortgage of \$2,250.00; isn't that so?

A. Yes.

Q. No mortgages were given by you and your wife at that time, but the mortgages were assumed which had already been on the property, amounting to \$2,250.00?

A. Yes.

Q. What was the reason for your wife's presence at that transaction?

10 A. What was the reason?

Q. Yes?

A. Simply that I always took my wife along wherever I went to do any business.

Q. Why did you take her along?

A. It was customary for her and I to go out together and go to these places.

Q. At that time you hadn't been on such friendly relations with your wife, had you?

A. Yes, I think I had.

20 Q. For some time back you hadn't been on friendly relations with her; you were not so very close as you were; isn't that so?

A. I was, all the time, yes.

Q. I am not asking about you, I am asking about both of your relations.

A. I could explain it to you more thoroughly than I could answer the question outright.

Q. Explain it?

30 A. The only thing I know in regard to my wife, that she got so irritable and crabby that you could hardly live with her, and that's the reason I sent to her father. As far as I was concerned, I was trying to pacify her.

Q. That was true on East State street?

A. Yes, she led me to believe she had a nervous breakdown; that is why we sold the business and bought this home, so she could recuperate.

Q. If she was so irritable, why did you take her along when you purchased this Newell avenue house?

A. I did everything in my power to pacify the woman and keep her in good shape?

Q. Is that the reason you had the deeds in both names?

A. What?

Q. To pacify her.

A. In one way, I guess that is right.

Q. She insisted on the deeds being put in both names?

A. No, she didn't insist.

Q. What did she say?

10

A. She said she would like to have her name on the deed; I thought it was customary for a man when he was married to have the deeds that way, and she knows I—

Q. As a matter of fact, you wanted the property, 796 East State street, the property you bought from Freeman in March, 1919, you wanted that put in your own name, didn't you, in order that you could go bail and on bonds?

A. No, sir. I thought it was customary, and I explained that to her; she knows that.

Q. Well, what property was it that you wanted to have in your own name so that you might go bail?

A. 794 East State.

Q. And what did she say to you then about that when you asked her?

A. I don't know that I could say exactly the words she said, but she objected to it, and she put up such an awful yell about it.

Q. Didn't she say, "If I am working with you, I want my name on the deed also"?

30

A. No, sir.

Q. What did she say?

A. She didn't say that.

Q. What did she say?

A. There was something, I believe, regarding the mortgage on the other property; I had to place a mortgage on the other property to get the money to purchase this house. *

Q. Was it 796 East State street, or 792 East State street, that the question of your name on the deed on account of going bail was discussed; which property was it?

A. I think it was the two, 792 and 794.

Q. 794 was bought first, isn't that so?

A. Yes.

Q. That was in January, 1911?

A. Yes.

10 Q. And when it came to the purchase of 794, which was the first property on East State street purchased, no mortgage had to be signed by her, did there?

A. I can't recall; it may have been a mortgage transferred; I can't remember whether she did or not.

Q. What you have reference to, undoubtedly, is the mortgage which was made to Lydia A. Massey on the property 794 East State street, the proceeds of which mortgage were used to pay on the property 792 East State street purchased from Hendrickson in 1915, isn't
20 that so?

A. Yes.

Q. You say she made a kick about signing the mortgage on the property; that may have been true about the property 792 East State street, and because of her kick you may have been forced on 792 East State street to put the property in both names; but on the property 794 East State street she didn't have to sign any mortgages, no mortgages were signed at that time; now, you say that she said she wanted the property in both
30 names; why did you do it?

A. To pacify her.

Q. Because she insisted on it?

A. She insisted, domineered—

By the Court—

Q. Which property was it you wanted in your name?

A. 792 and 794 East State street, where I had my business.

Q. When was it that you wanted it put in your name so you could go bail?

A. When I purchased the property 792 East State.

Q. That was after you bought 794?

A. Yes.

Q. You wanted the entire property put in your name?

A. Yes, because I explained that I could buy better and get more credit from these houses 10 by having a property in my own name?

Q. How did you know that?

A. I was informed about that after Mr. Wood told us about this note business, and I inquired.

Q. What did you inquire?

A. I inquired how a man in business could get more credit, and they told me by having property directly in his own name.

Q. Who told you that?

A. A real estate man and different people; 20 I think, probably, Senator Hammond; he used to come to the barber shop, and I used to ask these questions.

Q. Why couldn't you have as much credit if it was in your name and your wife's as if it was in your own name?

A. I don't know, only what they told me.

Q. What did they tell me?

A. They told me I could borrow money and I wouldn't have to have my wife to sign a note, and I could get credit, and, if they foreclosed, 30 they wouldn't have as much trouble getting it as where there is a wife tied up into it.

Q. You say the first one who told you was Mr. Wood, about that you could get more credit than if it was in both names?

A. No, I won't say Mr. Wood was the first one; I talked it over with several people; my idea was to branch out larger in a business sense, and I wanted to know the best way to go about it, so I would have no trouble.

Q. Isn't it a fact that this \$800.00 note which was launched at the First National Bank was subsequent to your purchase of 794 East State street from Benjamin D. Yard?

A. No, sir.

Q. Wasn't that \$800.00 for repairs and the breaking in of the both properties?

A. Yes.

Q. 794 East State street was purchased in 1911 and
10 792 East State street was purchased in 1915?

A. After the alterations were practically done, that was for paying for alterations after things were completed.

Q. 792 and '4 together?

A. Yes.

Q. I said to you, wasn't the conversation you had with Mr. Wood about this \$800.00 note subsequent to the purchase of 794 East State street?

A. No, no, sir.

20 By the Court—

Q. Of course, it was; it was after 1911, wasn't it?

A. Yes, it was in 19— let me see, 1915.

Q. The plain thing is, you couldn't alter your property until you owned it?

A. Oh, no.

Q. And, therefore, the conversation with Wood must have been subsequent?

A. Before the purchase of the property.

30 Q. It must have been after 1911?

A. Yes.

Q. When you disputed about the property 794 East State street being in your name, which title was taken January 12, 1911, you had known previous to Mr. Wood's conversation with you that the property in the name of the husband alone was a great deal different than a property in the name of a husband and wife?

The Court—No; his testimony was that 794 was already purchased at the time.

Q. 794 had already been purchased before 792?

A. Yes, sir.

Q. Which is the Hendrickson property?

A. 792.

Q. Which is the Yard property?

A. 794.

Q. The Yard property was purchased in 1911?

A. The Yard property was purchased in 1911.

Q. And the Hendrickson property, 792, was purchased in 1915?

10

A. 1915; no, you are wrong there; the Yard property—yes, that was next, but Mrs.—the deeds will tell you; I can't recall the dates.

The Court—The witness' testimony was that at the time he wanted to have the property put in his own name, individually, was at or about the time of the purchase of 792 East State street, and at that time he wanted to have 792 and 794, which he already owned, put in his own name.

That is as I understand the effect of his testimony.

20

Recess until 2 P. M.

AFTER RECESS.

James Hammond, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct examination, by Mr. Hunt.

Q. Mr. Hammond, you are an attorney and counselor-at-law of this State?

A. I am.

30

Q. Practicing here in Trenton?

A. Yes.

Q. I show you a deed which has been offered by the complainant in this suit, and marked C 7, and ask you whether that was drawn in your office?

A. Yes, sir, that deed was executed in my office.

By the Court—

Q. Was it drawn in your office?

A. Yes.

Q. And also executed in your office?

A. Yes.

Q. What instructions for the drawing of the deed were given to you? Such instructions were given to you?

A. Yes.

Q. By whom?

A. By Mr. Neubeck.

Q. In connection with giving you directions for the
10 drawing of this deed, did he ask of you any advice or information regarding any of the properties, or the condition of the title, or anything about that, when land is conveyed to husband and wife—anything about what estate is created?

Mr. Falcey—That is objected to.

A. He did.

Q. State in your own words about what he did ask and about what information and advice you gave him.

A. Mr. Neubeck came to my office with a gentleman
20 by the name of Freeman; I don't recall the date of the month that he came, but the fact is impressed upon my mind because Mr. Neubeck and Mr. Freeman got into the wrong office; they got into Mr. Oliphant's office instead of mine, and I remember walking from my office across the reception room to the room where Mr. Freeman and Mr. Neubeck were. Mr. Neubeck told me that he desired to have this deed drawn in the name of himself and his wife; I asked his wife's name, and he told me her name. I had always known Mrs. Neubeck under
30 the name of "Minnie," but not knowing her exact name, that was the reason I inquired as to her proper name. Mr. Neubeck then asked me whether or not it would be necessary to draft a will in relation to this property; I told him "No," it wouldn't be necessary unless he wished some other disposition of the property in the event of he and Mrs. Neubeck dying and their not desiring the property to go to Henry.

Q. Henry being their son?

A. Henry being their son. I told Mr. Neubeck that

the nature of the deed which he would execute would be a deed conveying this land by the entirety, the estate by the entirety being effected thereby, and in the event of the death of Mr. Neubeck, the property would be Mrs. Neubeck's, in the event of them both dying, the property would go to Henry, and, of course, if she died, the property would still be his.

Q. Did you tell him anything about the effect of such a conveyance upon the property during the joint lives of both of them?

10

A. I did not.

Q. Did he ask any questions about it?

A. He did not.

Q. From what he said to you, are you able to give the court any information as to the object which he desired to obtain in connection with the acquisition of this property?

A. I am to the extent that Mr. Neubeck was solicitous of knowing whether or not it was necessary to execute a will to effect that purpose.

20

By the Court—

Q. What purpose?

A. The purpose of the property going to Mrs. Neubeck in the event of Mr. Neubeck's death, and in the event of Mrs. Neubeck's death, the property going to him; or, in the event of the death of both, the property going to Henry.

Q. Did he show any solicitude or interest as to desiring to know where the property would go in the event of Mrs. Neubeck's death?

30

A. Well, I would have to draw a conclusion there, if your Honor please.

Q. (Stenographer repeats the question.)

A. He did.

Q. How did she show that?

A. His general demeanor seemed to indicate that he was quite anxious to know just what would happen to the property in the event of Mrs. Neubeck's death.

Q. What did he say that evinced that to your mind?

A. The questioning which he put to me, in your Honor please.

Q. What did he say?

A. He wanted to know if it was necessary for Mrs. Neubeck to draft a will.

Q. In order for what to occur?

10 A. In order that he might get title to the property in the event of her death.

Q. You are perfectly positive about that?

A. That is the best of my recollection, in your Honor please.

Q. Will you reconstruct the conversation that took place, as nearly as you can?

A. In your Honor please, it is rather difficult to reconstruct the exact conversation.

20 Q. I appreciate that; but the testimony is of so much importance—it is as to the precise issue which is vital in this case—that I want to know if in anywise possible, exactly what the conversation was, and I want to know whether your recollection as to the conversation is a positive, clear recollection.

A. My recollection is just as clear and as positive as the intervening years will admit of.

Q. That goes without saying.

A. I recall very distinctly Mr. Neubeck and Mr. Freeman coming to my office; I can't recall the date.

30 Q. They came to your office and you went over the thing with them?

A. Yes.

Q. What was the first thing that was said?

A. Mr. Neubeck introduced to me Mr. Freeman, and Mr. Neubeck told me that he was buying this piece of property from Mr. Freeman.

Q. Did he say he was buying it, or—

A. No; he said, "I am buying it from Mr. Freeman."

Q. He didn't say "we?"

A. No; he said, "I am buying this piece of property from Mr. Freeman." I then asked him how he desired the deed to be drawn, and he told me he wanted it drawn in the name of husband and wife, and as I remarked before, I had always known Mrs. Neubeck by the name of "Minnie." I then desired to know Mrs. Neubeck's full name, and he told me her full name. I then, not on that day but a few days after, I had 10 the deed drawn. Now, at the time when he told me her name, he asked me these various questions—

Q. I want them in the regular order, just what was said after he told you her name.

A. He then asked me what the effect of that would be in the event of his wife's dying.

Q. He asked you what the effect of that would be in the event of his wife's death?

A. Yes, sir.

20

Q. Not that he asked you what that would be in the event of his death?

A. He asked that afterwards.

Q. He asked you just what would be the effect of that deed in the event of his wife's death?

A. Yes.

Q. You are perfectly positive of that?

A. Yes, sir.

Q. Did he add to it as to whether his son would take it or not?

30

A. No, he didn't say that; he wanted to know what the effect would be in the event of his wife's dying, as to whether or not the title would go to him or the boy; it was then that I explained to him, I remember just the exact words, "That in the event of your wife dying, you will take title to the property," and I told him that this is the estate by the entirety, and

where a deed is given to husband and wife as such, the survivor takes all." I said that to him in so many words; and then I illustrated it with, "If your wife dies first, it all goes to you; if you die, it all goes to your wife; if both of you die, and no other disposition is made of the property, it then goes to the son; Henry would get it." Those, as near as I can recollect, were the exact words that I said.

10 Q. Was there anything else further said by him?

A. He then asked me if I thought it necessary for him to draft a will.

Q. Or his wife?

A. No, he asked me if it was necessary for him to draft a will; he was evidently thinking of Henry.

Q. Did he say anything to show he was thinking of Henry?

20 A. He wanted to know where his boy would be in the event of his dying or his wife dying, or both dying; he wanted to know what the effect would be on the boy; he seemed to be very solicitous, not only what he said, but in his general manner, that he was exercising a concern about Henry. Of course, I have known Mr. Neubeck and Mrs. Neubeck for many, many years, and when Mr. Neubeck came to see me, there was nothing in my mind that would suggest that there had been any trouble in the family. I never knew of any trouble in the Neubeck family until the unhappy event occurred a few months ago. Now, had Mr. Neubeck disclosed to me at the time when he came to see me, that there had been any family trouble of any kind, I would certainly have advised him of the effect of such an estate during the lifetime.

3)

Q. The date of the deed was prior to the time any trouble had occurred?

A. As far as I know.

Mr. Hunt—She first left him on October 10, 1919.

A. That is the best of my recollection, if your Honor please. Mr. Neubeck was not at my office any more than, probably, fifteen or twenty minutes.

Q. And at that express conversation, Mrs. Neubeck was present?

A. No, she was not there.

Q. At no time?

10

A. No, I have no recollection of Mrs. Neubeck being in my office. I will not say she was not there; I don't recollect her being there.

Q. Neither on that occasion or at the time of the closing of the transfer?

A. No, she may have been there, but I have no recollection of her being there.

Q. Was there anything further said along this line at the time that the transfer was effected and the deed delivered?

20

A. No, nothing said to Mr. Neubeck. We then went through with the usual formality. I didn't take the acknowledgment, my stenographer, in my presence, took the acknowledgment of Mr. and Mrs. Freeman.

Q. Senator Hammond, you are the assistant prosecutor of this county, and you were so at the time Mrs. Neubeck and Frank Banks were brought back here under arrest?

A. Yes, sir.

30

Q. While they were at the Mercer County Court House under arrest, did you hear any conversation between Mr. Neubeck and his wife?

A. I didn't hear the conversation between Mr. Neubeck and his wife; no, Mr. Hunt, I didn't.

Q. Did you at any time hear any conversation between Neubeck and his wife after she first separated herself from him?

A. No, I can't recollect any conversation; however, I have been present when Mr. and Mrs. Neubeck were together at the prosecutor's office, but I heard no conversation between Mr. and Mrs. Neubeck.

Q. You didn't hear Mr. Neubeck say anything to his wife?

A. Yes, I heard Mr. Neubeck ask Mrs. Neubeck to return to him.

Q. And live with him again?

10 A. Yes.

Q. What did she say?

A. And she replied that she would not.

Q. After Mr. Neubeck had left, did you have any conversation with Mrs. Neubeck on the same subject?

A. Within a few minutes after Mr. Neubeck's leaving I was talking with her, and I remember expressing to her my own deep sorrow in the happening that happened, and she said she didn't intend to live with Mr. Neubeck again, that she intended to go back to Pittsburgh, and also the gentleman involved was going back, too.

20

Q. Mr. Banks?

A. Banks—I think that was his name.

By the Court—

Q. Did she say what she was going to do when she got back to Pittsburgh?

A. She said she was going to work when she got back.

Q. Was she going with Banks?

A. She said she was going back to Pittsburgh, and that Mr. Banks was going back, too; she didn't say she was going back *with* Mr. Banks, but she did say she was going back to Pittsburgh and Mr. Banks was going back also.

30

Q. Did she say why she wouldn't live with her husband any more?

A. She told me that she had had quite some trouble with Mr. Neubeck; that she was tired of his conduct toward her. She characterized

him as being a very disagreeable man to live with, and she put up with it just as long as she possibly could, and intended to leave him.

Q. Did she specify anything as to what his conduct that was intolerable to her consisted of?

A. Irascible, intolerant, strong-headed—she spoke of him as being a very fine gentleman to meet on the street, but a tyrant in his household.

Q. Did you ask her why it was, even if she wanted to leave him for that reason, why she 10 should have gone away with this other man?

A. No, I didn't, Vice-Chancellor; I was placed in rather an embarrassing position, because I was representing the State in this elopement, and we always refrain from interviewing defendants if we can.

Q. Oh, it is no reflection. I wanted to know what was said.

A. My interest with her in asking the question was purely personal; I felt much grieved 20 at what had happened; I knew Mr. Neubeck for 35 years, and I had known Mrs. Neubeck from working in one of the potteries; I have known her for 22 or 23 years.

Q. She was admitted to bail on this charge?

A. She was.

Q. And Banks was admitted to bail?

A. That is my recollection.

Q. Have you any knowledge of anything said by Mrs. Neubeck in connection with the fact that she had 30 the bail and he hadn't?

A. Well, within a very few minutes after Mrs. Neubeck had been bailed, I learned that Mr. Banks had not been bailed, and Mrs. Neubeck said that if Banks could not be let out she didn't care to leave him.

By the Court—

Q. Was this bail to await the action of the Grand Jury?

A. Yes, sir.

Q. Did they indict?

A. I don't think they did.

Q. There never was any trial?

A. No.

Q. And no conviction by confession?

A. No; that is my recollection; I feel that that is right.

Cross-examination, by Mr. Falcey.

10 Q. Before this occurrence in your office, at the time of the Freeman transaction, you had known that the properties which they had held theretofore were in both names?

A. Mr. Neubeck told me that he had property in the name of husband and wife, yes.

Q. And you had conversations while you were in his barber shop?

A. Yes, I presume I did.

20 Q. During those conversations that you had had while you were in the barber's chair, is that when it was that he told you?

A. Well, I think it was while I was frequenting his barber shop, Mr. Falcey, yes.

Q. And he asked you in regard to the effect of the deed at that time, didn't he?

A. No, he didn't.

Q. Can you remember just what he said while you were frequenting that barber shop, about the ownership of his properties?

30 A. No, I can't, Mr. Falcey. He did tell me that he owned a couple of properties and that they were in his name and also his wife's name, but he never asked me anything about what the effect of that would be.

By the Court—

Q. Did he ever say anything from which could be gathered what his belief as to what the effect of that was?

A. No, he did not, Vice-Chancellor.

Q. Did he ever say anything as to the reason why he had had the properties conveyed to himself and wife?

A. He did.

Q. What did he say in that regard?

A. Now, if your Honor please, the conversation that then took place was a subsequent one, in which Mr. Neubeck came to see me after Mrs. Neubeck had left him, and the relationship of attorney and client existed between us; and I don't care to relate that conversation unless your Honor insists upon it being done.

10

The Court—Mr. Hunt, does your client care to waive—

Mr. Hunt—We are perfectly willing to waive the obligation.

By the Court—

Q. Very well, go ahead.

A. After Mrs. Neubeck went away, Mr. Neubeck came to see me. I can't recall the date, but I do recall the fact that Mr. Neubeck was excited; he was angry, and at the same time he was filled up with emotion; he told me that the properties which he had were in the name of husband and wife; that she had gone away and left him; that she had fled with a man by the name of Banks. He rehearsed to me the story of how Banks came to his house, and how Banks had apparently woven his way into the affections of his wife. He said he had just learned that it had been going on for quite some time. He told me that he had purchased the properties on East State street, I think it is; there are two properties, if my memory serves me rightly, one used as a barber shop and the other used as a cigar store; and at the rear of the cigar store and the barber shop there was a poolroom; I think that is right. I asked him how it was then that he had all of his properties put in the name of husband and wife, and he said to me, "Jim," he said, "I couldn't get my wife to move from Chambers street to State street unless I divided the whole thing fifty-fifty;" and that whenever

20

30

he wanted to buy a piece of property, to use his own language, "she raised hell" unless the property was put in the name of husband and wife. He then suggested the thought of going out to Pittsburgh; that was the first thought, going out to Pittsburgh and having them arrested out there. Before I could get him calmed down, he had expressed the desire that he go out to Pittsburgh and put a bullet through Mrs. Neubeck and one through Banks—

10 Q. Was there anything more said, bearing upon the joint ownership of the property, or his understanding?

A. Yes; he told me he had never understood for a moment that Mrs. Neubeck would have any title or right to any of the proceeds of this property during his lifetime.

Q. How did he come to say that?

A. Because I was talking to him and pointed out to him then on this occasion what he was up against, so to speak.

20 Q. Prior to the time when he told you what you have just said, namely, that he never had any idea she would have any right to the property or proceeds until his death, prior to that, he told you that he had put the property in the joint names of himself and wife, because his wife insisted upon his giving the property to her fifty-fifty as a condition of her moving out there. How did you reconcile those two statements?

A. I didn't say anything about it. In the first place, at the first interview, I didn't know anything about this trouble.

30 Q. I am speaking about when he came to consult you; he told you first that—

A. Because I pointed out to him then the fact that she would be entitled to the proceeds on a fifty-fifty basis, because they were in the name of husband and wife.

Q. You then asked him why he put them that way?

A. I then asked him why he put them that way, and his thought was then, that he was simply securing the title to her in the event of his death.

Q. You pointed out to him that properties being in the joint names they were joint owners?

A. Exactly.

Q. And you asked him why it was he had them put that way?

A. Yes.

Q. And then it was not until then that he told you the reason why he had it put that way?

A. Yes, exactly.

Q. Just recall, as exactly as you can, just what it was he told you in response to that question. 10

A. In order that he might be able to move from his Chambers street place—

Q. Just what did he say, as near as you can recall? You said to him, after explaining what it was, you said, "Why did you have it put in the name of yourself and wife?" What occurred after that?

A. He said to me that "She raised hell with me until I consented to do it."

Q. I want you to testify as to his statement. You 20 said that he told you in effect she wouldn't move over to State street unless he consented to put the property in the joint names and give it to her fifty-fifty, or words to that effect?

A. Yes.

Q. Did he say that?

A. Yes, that's what he said.

Q. That is different from what you have just now said.

A. Then he continued to say that "She would raise 30 hell unless I did those things."

Q. This is the vital part; the essence of the thing is as to whether at the time he had the deed made to her and himself as husband and wife he knew he was doing it so they would have a fifty-fifty interest. Now, if he told you, in response to your question, that his wife had insisted upon his having the property put in the joint names, so they would have a fifty-fifty interest, as a

condition to her moving from there, obviously he did know they were giving her a present interest in the property. That is why I want to know whether you are sure that is what he told you in response to your question at that time.

A. Well, I am not quite definite, Vice-Chancellor; I do remember telling him at my office that that was the effect of what he had done. But he also told me that he never intended that to be effected; that was only to
 10 secure the property going to his wife in the event of his death.

Redirect examination, by Mr. Hunt.

Q. The question I am about to put I may put in an improper form. Senator Hammond, isn't it true that at this interview at your office, after Mrs. Neubeck's elopement, what her husband said was that when he wanted to buy the State street property and move over there that if he didn't put her name in the deed she would not
 20 move over there with him?

A. Yes, that is my recollection, Mr. Hunt; that is my recollection.

Q. Isn't it true that the phrase giving her a fifty-fifty interest, or fifty-fifty used in any way, was not injected into this conversation by Mr. Neubeck?

A. I think you are right about that, too.

Q. It is a pet phrase of yours?

A. Well, I suppose I am addicted to that.

30 Recross-examination, by Mr. Falcey.

Q. Senator Hammond, you testified as to the conversation as near as you could recollect it

A. Yes.

By the Court—

Q. How long after the running away of the wife was it that this interview took place?

A. I would say, Vice-Chancellor, about three days; about three days, I think.

Q. Can you say as to how long Mr. Neubeck, prior to the time he came to see you, had known or realized that his wife had left him for good?

A. No, I can't; I can't say how long it was.

Q. It may be she went away three days before that, but he didn't know that she had gone away for good until the day he came to see you?

A. It appears that he came to see me about three days after he had realized she had gone for good; I think after he had learned of her disappearance and where she was, I think that was on Friday; and I think he tried to reach me on Saturday, and he couldn't get me on Sunday, and then it was on Monday he came to see me; I think that was it. 10

Q. In reply to the Vice-Chancellor's question as to your best recollection of what occurred at that conversation with Neubeck in your office after Mrs. Neubeck left him, you testified, "I asked him why they put their properties in both names;" and he said, "Jim, I couldn't 20 get my wife to move from Chambers street to State street unless I divided all in fifty-fifty;" that whenever he wanted to buy a piece of property she raised hell unless the property was put in the name of husband or wife; is that true, or isn't it true?

A. Well, Mr. Falcey, I may be wrong as to the exact words that were used; I remember talking to Mr. Neubeck about the fifty-fifty proposition. You see, I have had so little time to refresh my mind as to what actually took place, that it is very difficult on the spur of 30 the minute to come here and tell just exactly what happened without refreshing my mind, particularly so under the conditions under which I had been laboring in relation to these two litigants.

Q. Then, give us your best recollection now.

A. My best recollection now is, after the questioning of the Vice-Chancellor and Mr. Hunt, my best recollection now is, that Mr. Neubeck told me very positively and very definitely—

Q. That unless—

A. No, don't put words in my mouth—that Mrs. Neubeck insisted upon her name going in that deed and in the prior deeds, and particularly so in this deed, because she wouldn't move from the barber shop on Chambers street to the place on East State street unless her name was in that.

Q. And “unless I divide all fifty-fifty”?

A. I may be mistaken about that.

10 Q. You are not quite sure one way or the other?

A. Not positive about that.

Q. Either one way or the other?

A. I am not positive.

Q. Is that your best recollection he did say that?

A. I am not positive, Mr. Falcey.

Q. I ask you if that is your best recollection?

A. My best recollection is that which I have just repeated; had I been interviewed prior to this matter, I might be able to testify better.

20 Q. I am asking you as to your best recollection, whether now your best recollection is—

A. That Mrs. Neubeck insisted upon her going in those deeds.

Q. I am asking you what your best recollection is, not whether you are positive; whether your best recollection is, that he said to you, “Jim, I couldn't get my wife to move from Chambers street to State street unless I divided it fifty-fifty”?

30 A. No, my best recollection now would be, Mr. Falcey, that Mr. Neubeck told me that she raised hell unless her name appeared upon the deeds; that is my best recollection now.

By the Court—

Q. And what as to the moving?

A. And that she would not move unless her name appeared on the deed.

Q. And what is your best recollection as to the fifty-fifty conversation?

A. My best recollection as to that is, that I probably asked Neubeck that question; that is probably my own suggestion to him.

Q. Mrs. Neubeck, Senator, was there at the time of the transaction of the Freeman property, that is, at the consummation of the deal, because, you remember, there was a mortgage given back to E. H. Freeman in the sum of \$2,000.00?

A. Was that mortgage executed in my office?

Q. I couldn't tell you; but there was a mortgage given 10
back to E. H. Freeman in the sum of \$2,000.00; it was contemporaneous and dated the same date as the deed.

A. I don't recall that; if you have your mortgage here, it might help to refresh my mind. I don't recall Mrs. Neubeck being in my office; she may have been.

By the Court—

Q. She might have come to execute the mortgage before your stenographer, when you were not there?

A. Exactly. She may have done. May I in- 20
quire who took the acknowledgment?

Q. I couldn't tell you. If your name appeared on that acknowledgment, then undoubtedly Mrs. Neubeck appeared at your office?

A. If the name of my stenographer, who was at that time a notary public—

Q. What was her name?

A. Her name was Cahill.

Q. Was she married at that time?

A. I think she was.

Q. Was it Roberts? 30

A. No, the name was Holzbaur.

Q. If either of your names were on the paper, then she came to your office?

A. That would not make it so, but in all likelihood, that would be true.

Redirect examination, by Mr. Hunt.

Q. Senator, are you addicted to the use of any particular pet phrase?

The Court—I don't think that will help us.
A. Well, I do use "fifty-fifty" once in a while, yes.

William H. Neubeck resumes the stand.

Cross-examination (continued), by Mr. Falcey.

Q. Mr. Neubeck, I understood you in your direct examination this morning, to have said you consulted no lawyer or had any legal advice upon the effect of a deed in the name of husband and wife until after the
10 filing of the bill in this case; is that true or not?

A. Until after the filing of the bill in this case?

Q. Yes.

A. Yes.

Q. Is that true?

A. Yes, sir.

Q. You consulted Senator Hammond, didn't you?

A. When this trouble happened, yes.

Q. And didn't you consult him at the time this property of Freeman's was bought?

20 A. In this way, yes; I told him I wanted the property—

Q. "Yes" or "No."

A. I can explain it.

By the Court—

Q. Did you consult Mr. Hammond at the time you bought the property 796 East State street?

A. Yes.

Q. You said this morning that you thought that was the way a husband took property, that is, meaning in
30 both names?

A. Yes, sir.

Q. You found out, however, that a property in the name of both husband and wife would affect your credit; isn't that so?

A. Yes.

Q. Then there must have been some other way of doing it; isn't that so?

A. It must have been.

Q. And that was at the time you consulted Mr. Wood; that was before you bought the Freeman property, wasn't it, before March, 1919?

A. I think so, yes.

Q. If there were some other way of doing it, why didn't you consult counsel and find out the way in which you could put the Freeman property in such a way that your credit would be bolstered more than if it were in both your names?

A. For the simple reason, that if I had done it, and had it fixed that way, there would have been hell on earth; there would have been no living with the wife. 10

Q. You would have put the property in both names, no matter what?

A. To keep peace in the family, yes.

Q. Even though you understood the entire effect of tenancy by the entirety?

Mr. Hunt—I object to that hypothetical question being put without any foundation.

The Court—Yes, I don't think the witness' answer to that question ought to be binding upon him as you have phrased it. 20

Q. Then you would have put the properties in both names, understanding that she was to have an equal interest with you during your joint lives, and that the survivor should take all, even after Mr. Wood had told you about this, and you had been apprised of some other way in which this property could be put in order to keep peace in the family?

Mr. Hunt—I object to the hypothetical question without any proper foundation. 30

By the Court—

Q. Would you, Mr. Neubeck at the time of the taking of title to 796 East State street, the Freeman property, would you have taken title to that by deed to husband and wife, for the sake of keeping peace in the family, under the circumstances that existed in that regard, if you had then known that taking the deed that way

would give your wife an interest in the property during your joint lives?

A. No, sir.

Q. Well, if you didn't know that a deed to husband and wife gave your wife an equal interest in the property during both your lives, why did you object to having her name in both deeds?

10 A. Simply because I was told how a man could boost his credit, and thinking I was going in there in business with the expectation of branching out larger, my credit would be much better, as the other dealers claimed they would only have one party to fight instead of two.

Q. It was a matter of controversy, then, between yourself and your wife at the time of the purchase of the Freeman property, as to whether or not the deed should be put in the name of husband and wife?

20 A. Yes.

Q. And it had been a matter of controversy in the same way at the time each property was bought?

A. Yes, sir, she always insisted on having her name on everything, and if she didn't get it there, you can imagine what happened.

Q. There was that same controversy in 1915, at the time of the purchase of 792 East State street?

30 A. Yes.

Q. And there was a controversy in 1911 at the time of the purchase of 794 East State street?

A. Yes, sir.

Q. She insisted that her name should be put in the deed, and you tried to insist that it should be in your own name?

A. Yes, sir.

Q. And what was the property purchased before that?

A. The Sweets avenue property.

Q. Was there the same controversy at that time?

A. Most all the way through our life, yes.

Q. With the Sweets avenue property?

A. Yes.

Q. That was purchased in 1908?

A. Yes, '07 or '08.

10

Q. And at that time there was the same controversy, she wanted to have the property put in the joint names, and you wanted to have it put in your name alone?

A. Well, I won't say that, no; I don't say I wanted to have that put in my own name.

Q. What was the controversy?

A. We would discuss it and talk it over, and I decided to have it fixed that in case I died she would have no trouble claiming it at my death.

20

Q. What was the controversy?

A. I told Mr. Patterson—

Q. Not the conversation, the controversy; what was the argument or the quarrel?

A. There was none.

Q. Then, there was no controversy?

A. There was none at that time.

Q. But there was in regard to—

A. 792 and 794 East State street; yes, sir.

Q. Why was there a controversy at the time of the purchase of 794 East State street in 1911?

30

A. I wanted to branch out in business further on a larger scale, and I had been informed during the time, that if I had a property in my own name, my credit would be extended.

Q. You were not informed of that until the time of the purchase of 792, in 1915?

A. Well, when we transferred those two properties, that was the time.

Q. I asked you whether a controversy was had in 1911?

10 A. I was thinking that was the time we purchased the last property on State street; I got the dates mixed; that was the time we got the money, on 794 for 792, and combined them in one place. That was the reason that was done, and I was going to branch out in a larger business.

Q. You told Mr. Hammond that your wife would raise hell and wouldn't go with you from Chambers street to State street unless the property was put in both names?

A. Yes.

Q. And when you first went to East State street, it was the Yard property in 1911?

20 A. We bought that property; then we didn't go over there then.

Q. You wanted the deed in your own name then?

A. No.

Q. Then, why did you tell Senator Hammond that your wife wouldn't go with you unless the property was in both names?

30 A. We bought 792 later, and when we decided to tear out both properties, that's when we were to go on State street from Chambers; we wasn't to move on State street until some time in 1915, if I recall, not 1912 or 1911, but 1915.

Q. Did you move in the Yard property before you bought the Hendrickson property?

A. No, sir.

Q. Then, why did you tell Mr. Hammond that the reason you bought the properties, the State Street properties, in both names was that she would raise hell and wouldn't go to Chambers street unless you did, or to State street unless you did, when previous to your moving from there, four years prior to your moving

from there, you had put the State Street property in both names?

A. Because I was taking a mortgage out on the first State Street property to buy the second one; I had to borrow money on the first property.

Q. You hadn't asked Mrs. Neubeck to go to State street around 1911, had you?

A. No, we didn't intend to go over there at that time.

Q. Then, why did you give as a reason to Mr. Hammond, that the reason why the East State Street properties—I am speaking particularly with reference to this Yard property, January 12, 1911—why did you tell Mr. Hammond that the reason why you put that property in particular in both names was because she would raise hell and wouldn't move to East State street unless the property was in both names, when, as a matter of fact, you had no intention in 1911 of moving to the property you had bought, 794 East State street? 10

A. As I told you before, I intended to borrow \$2,000 on the property at 794 to purchase—

Q. That mortgage which you talk about of \$2,000— 20

The Court—Let him finish.

A. I had the house at 794 paid for; I paid for it; then I borrowed \$2,000 on that to buy 792 and combine the two in one property to make a business place, as I had a business on Chambers street, and it was growing so big I couldn't take care of it there; it was too small.

Q. That mortgage you speak of, of \$2,000, was made to Lydia A. Massey?

A. Yes.

Q. Dated September 23, 1915, which was just four 30 days previous to this purchase of the Hendrickson property, 792 East State street?

A. Yes.

Q. Then, how is the mortgage, the taking the mortgage four years later, any explanation of the reason why you put the property in both names, and the reason why you told Mr. Hammond that the reason why the property was in both names was that she would raise hell

and wouldn't move to Chambers street unless you did put the property in both names?

A. That is what I have tried to explain; I borrowed the money on 794, so I could buy the property 792; then I wanted to have the property placed in my name alone, so I could go out on a bigger scale in business, to combine the two properties to one title.

Q. Let us assume, Mr. Neubeck, today is January 12, 1911?

10 A. Yes.

Q. You have just bought 794 East State street; the mortgage has four years to go yet, of \$2,000, so that it has not entered into your mind; now, why did you say to Mr. Hammond that you put this property in your name and your wife's name because she wouldn't move over to Chambers street and would raise hell, when, as a matter of fact, today, January 12, 1911, you have no intention of moving there?

A. Well, my dear man, we bought the second prop-
20 erty; that is why I figured—

By the Court—

Q. You bought the property at 794 East State street in the year 1911?

A. Yes, sir.

Q. And had it put in the names of yourself and wife?

A. Yes.

Q. You didn't have it put in the names of
30 yourself and wife because she raised hell unless you did, did you?

A. Not at that time.

Q. And you didn't have it put in the joint names at that time, 1911, because she insisted upon it as a condition to move to East State street?

A. No.

Q. Then, why did you tell Senator Hammond that—

A. This was in 1915, when we bought the second property, that I told Senator Hammand that.

Q. The conversation Senator Hammond testified to was in 1919, and he asked you why it was you had had all these properties put in the name of yourself and wife?

A. Yes.

Q. And you told him it was because she had insisted upon it as a condition to moving to East State street, and because she would raise hell if 10 you didn't?

A. Yes.

Q. Well, that was not true; the answer you gave to Senator Hammond was not true as to the Sweets avenue property or 792 East State street?

A. Yes, to a certain extent.

Q. At the time you bought it?

A. At the time I bought 794 East State street she insisted to have her name placed on every- 20 thing.

Q. And you were perfectly willing to do it?

A. With the understanding that she would get what was coming to her at my death.

Q. Did you discuss that?

A. Yes, sir, it has been talked in my home many, many times.

Q. That the only reason was for the purpose of giving it to her at your death?

A. Yes.

30

Q. You hesitated at having it put in both names?

A. No.

Q. That is what I say; there was never any quarrel or hesitancy until subsequent to 1911?

A. Yes.

Q. Therefore, it was not true, what you told Mr. Hammond, at the time you told him, it was not true that the reason you had put 794 in your

joint names in 1911 was because your wife insisted upon it, and because she would not move to East State street unless you did?

A. Up to that, when we bought 792 East State street—I don't quite understand.

Q. You told Senator Hammond the reason you had them put in both names was because your wife insisted upon it?

A. Not all of them, only up to State street.

10

Q. That was not true as to the Sweets avenue property or 794 East State street?

A. No.

Q. Why did you tell Senator Hammond that?

A. I wouldn't say I told him in regards to the Sweets avenue property, while I did say that she insisted at all times to have her name on all deeds, that is, I think that she insisted at all times to have her name on the deeds.

Q. She didn't have to insist until after 1911?

20

A. She always did say, "I want my name on the deeds."

Q. But there was no controversy about it, was there?

A. I can't recall to say that there was or wasn't; I wouldn't answer that question that way. There was a controversy in this way, or conversation, that it was thoroughly understood between us the reason why the deeds were placed that way was that she would have no trouble claiming them at my death; it was never understood she was to get one dollar during my lifetime.

30

Q. There was never any discussion of that, was there?

A. Yes, there was.

Q. When?

A. At numerous times; I couldn't say just when, but it has often been in her parents' home or our home.

Q. A discussion as to whether she should get any interest in the property during your lifetime?

A. Yes.

Q. What was the discussion?

A. I heard her say she didn't have to work to get anything out of the property, she had plenty in the house where it was.

Q. What did you say to that?

A. She did it the same as the change in the 10 house, she would help herself.

Q. But you said it was thoroughly understood because of discussions and conversations, that she was to have no interest in the property during her lifetime. Now, I ask you what was said about that?

A. We had often talked it over.

Q. What was said?

A. I had spoken to my father-in-law about it; I have been asked why we had the property put 20 that way, and I told—

Q. What was said between yourself and your wife about her having no interest in the property during your lifetime?

A. I have heard her say she didn't have to have any money from the property during the lifetime—

Q. You said that it was definitely understood that she was to have no interest in the property during your lifetime. Now, what evidenced that distinct understanding; what caused her to have 30 that distinct understanding?

A. Why, in the first place, when we bought property we gat talking about the different deeds, and like that, and I don't know why it came about; I can't express it that way. We discussed it. She said she would like to have the deeds fixed so that in case of death she would

have no trouble claiming it. Of course, that was her own words.

Q. You have said she distinctly understood and definitely understood, or expressly understood; therefore, something was said expressly that she was to have no interest in the property during her lifetime; now, what was said in that behalf?

10 A. Well, there has been so much in regard to that, I couldn't recall exactly to say what was said.

Q. I see no reason why you couldn't recall that, if you recall the other things.

A. We have discussed it many and many a time in the house, and I have heard her pass remarks that she was protected when I died, she would get the property.

Q. That is not saying she had nothing in it while you were living?

20 A. And when the rents were left at home I have heard her say, "Well, Bill will get the rents," when they told her.

By Mr. Hunt—

Q. What do you mean by "at home"?

A. My father-in-law's.

Q. As a matter of fact, Mr. Neubeck, you testified on your direct examination, that nothing was said about the beneficial interest in the property during your lifetime?

30 A. Nothing was said?

Q. Nothing was said about the beneficial interest in the property during your lifetime; that is what you testified to on direct examination; isn't that so?

A. Yes.

Q. And that is true, isn't it?

A. Yes.

Q. At no time nothing was said?

A. Well, what I would say was this, that Mrs. Neubeck—

Q. "Yes" or "No," about the beneficial interest in the property during your joint lives.

A. Nothing was said?

Q. You testified on direct examination that nothing was said about the beneficial interest in the property during your lifetime?

The Court—He has already said it is true.

Q. And that is true?

By the Court—

Q. What was said?

10

A. Mrs. Neubeck often said she didn't have anything to do with the properties, I was the one to take care of those.

Q. That meant rents and the repairs?

A. That meant everything.

Q. But those rents you gave to her, didn't you, to carry to the bank, and they were put in your joint names?

A. For a little time.

Q. Up to 1915?

20

A. I don't recall how long it was, for a little while.

Q. This First National Bank book deposits end in 1915, and the rents from these properties were taken and deposited in that joint bank book up to 1915; isn't that do?

A. I believe so, yes.

Q. And she took it some of the times and you took it some of the times?

A. Yes, sir.

Q. You said at the time of the break in these two properties, which occurred sometime around the year 1915, in which there was an \$800.00 note discounted by the First National Bank for the benefit of Mr. Klemann, who did the breaking in of those two properties, that you thought that was the way a husband took property, in both names; isn't that so?

30

A. I thought that all my life, yes.

Q. Well, now, you testified that you told Senator Hammond that the reason why they were put in both

names, the East State street properties, was because she insisted on having her—or she wanted her name on the deed, and she raised hell if she didn't get it on the deed; isn't that right?

A. Yes, sir, I did.

Q. Well, now, if you knew of no other way around September, 1915, after the purchase of the Hendrickson property, then why did you tell Senator Hammond that the reason why you put it in both names was be-
10 cause she raised hell if she didn't get it that way and wouldn't move over to East State street?

A. Because I wanted them placed on one deed, so I could borrow money.

Q. Then why did you say you told Mr. Wood, which was subsequent to September, 1915, the purchase of the Hendrickson property, that you thought that was the only way a husband took property, in both names?

A. I can explain that to you more thoroughly; it just came to me. Mr. Harry Taylor went down to the
20 bank with us and arranged it at that time so we could borrow a little money, not a great amount, on a note by her and I signing it, and then I continued final endorser and it would be charged to my account. That is how I come to find out that a man couldn't borrow a whole lot of money on properties where he had it that way.

Q. You testified this morning that how you came to find out was at the time of the \$800.00 note; is that true or isn't it?

A. I am trying to recall; I can't recall which one of
30 those times it was; I can't recall whether it was the time with Mr. Taylor or the time with Mr. Wood alone; I can't recall the exact time, but that was where I found it out, was at the bank.

Q. The note to Mr. Taylor was secured by a mortgage; is that right?

A. No.

Q. When was the note to Mr. Taylor made?

A. Let me see—

Q. Wasn't it after the property 792 East State street was torn out that the note to Taylor was given?

A. No, sir.

Q. Was it before?

A. Yes, sir.

Q. For what purpose was that note given?

A. I believe he finished paying off the mortgage.

Q. What mortgage?

A. On the property 794 East State street.

Q. Isn't it true, Mr. Neubeck, that Mr. Taylor never 10
had a mortgage on 794 East State street; that the property was bought for the sum of \$2,400.00 on January 12, 1911, and that consideration was paid as follows—

The Court—He has not testified that Mr. Taylor did have a mortgage on 794 East State street.

Q. Then, I want to know, Mr. Neubeck, how there was a note on 794 East State street?

The Court—A note on 794 East State street?

The witness didn't say the mortgage was held by 20
Mr. Taylor.

Q. I understood you to have said this note was used to pay off a mortgage on 794 East State street?

A. No, the note wasn't, the money was.

Q. Who held that mortgage?

A. There was no mortgage.

By the Court—

Q. You said there was.

A. In the beginning; I can't say who held it, but Charles Comp was the real estate agent, and 30
he was the man I paid the money to.

Q. That property, Mr. Neubeck, was bought for \$2,400.00?

A. Yes.

Q. Of which \$900.00 was paid in cash?

A. Yes.

Q. And the mortgage was assumed for \$1,500.00?

A. Yes.

Q. A mortgage had already been on the premises?

A. Yes.

Q. Now, that was the only mortgage on the property at that time?

A. Yes.

Q. And that mortgage has not since been paid, has it?

A. Oh, yes.

Q. When did you pay off that mortgage of \$1500.00?

A. I can't recall the date; the check will show it.

Q. If I told you that you subsequently placed a mortgage on that same property on September 23, 1915, to Lydia A. Massey, in the sum of \$2,000, what would you say as to the date that you paid off the \$1500.00 mortgage?

A. Oh, I think it was about two years before that; I think it was somewhere around 1913 that that was paid off.

Mr. Hunt—May 23, 1913.

Q. As a matter of fact, did you ask Mrs. Neubeck to put 792 East State street and 796 East State street in your own name so you could go bail?

A. No, sir.

Q. Wasn't there any discussion about bail or a reason why you wanted the property in your own name?

A. Yes.

Q. What was that discussion?

A. In regard to 792 and 794 East State street.

Q. What did you say about bail?

A. I said it would be a good idea if I had that property in my own name directly, so I could go people's bail in case they got in trouble, or branch out in business on a larger scale, because I could get more credit.

Q. Did you tell that to Mrs. Neubeck before you went into the property 794 East State street, that is, previous to January 12, 1911?

A. Now, that was talked over after we had the two properties there, before we bought the second property.

Q. Before you bought the second property?

A. Yes, sir.

Q. How soon before you bought the second property?

A. I couldn't say exactly how soon.

Q. When did you think of buying the second property?

A. Well—

Q. Wasn't it the year before?

A. Oh, no.

Q. Was it six months before?

A. No; I'll tell you how that came about: Harry Taylor and I had talked over—I told him my landlord was raising my rent and I wanted to get a property where I could establish a business if they raised it too high. He said, "I'll keep my eyes open for you;" then, I bought the 794 property, and then after I had that paid for I decided I wanted to go over there and open a barber place where I could take care of the trade better.

Q. After you had the mortgage paid off on 794?

A. Yes, sir; some time after that.

Q. Then, you went to your wife about the bail; is that right?

A. That's right.

Q. And it was after that that you talked to Mr. Taylor, too, wasn't it?

A. After that.

Q. You talked to Mr. Taylor?

A. I talked to Mr. Taylor on several occasions right around that time.

Q. In which you told him that was the only way a husband took property?

A. I told him I thought it was compulsory for a wife to be on property; I didn't talk to him about the property being in one name; I didn't talk to him about that then, because I had heard different after that.

Q. What did you hear after that?

The Court—He has already testified to that two or three different times in different ways.

Q. You say she was domineering and wanted the property in both names. Now, if she was domineering in regard to the East State Street property, then she was in regard to 794 East State street, wasn't she?

A. It was when we purchased 792.

Q. 792 or 794?

A. 792.

Q. 794 was on January 12, 1911?

A. Yes.

Q. She was domineering then?

A. Not so domineering, no; but she was insistent that her name be on all deeds.

Q. Did you want it in your own name?

A. Not at that time; no.

10

Redirect examination, by Mr. Hunt.

Q. When did the first disagreement arise in regard to the name in which the property should be taken?

The Court—I think that has been made pretty clear.

Q. On what date did you pay off that \$1500.00?

The Court—I don't care anything about that.

Q. Does that note have any connection with the payment of a \$1500.000 mortgage?

20 A. Yes.

Q. What connection?

A. I had some money in the bank in my own personal account.

By the Court—

Q. The proceeds of this note went to pay the \$1500 mortgage?

A. Yes, sir.

Mr. Hunt—I offer in evidence a note signed "W. H. Neubeck" and endorsed by "H. E. Taylor," dated May 23, 1913, for \$500.00 in three months.

30

Said note is marked *Exhibit D 10*.

Mr. Hunt—I offer in evidence a renewal of the same, dated August 23, 1913, for \$400.00.

Said note is marked *Exhibit D 11*.

Q. This withdrawal of \$775.00 under date of May 23, 1913, on the joint account in the First National Bank, also went toward the payment of that mortgage?

A. Yes.

Q. And there was no deposit made in this joint account in the First National Bank later than April 13, 1913?

A. Yes.

Q. That is the last deposit anybody ever made in any joint account in any bank to the credit of yourself and wife?

A. Yes.

Q. After that date, all the moneys that were received as rentals for these houses came into your pocket, with 10 the sole exception of \$15.00 that your wife took the week before she deserted you, and if they passed into any bank account, it was your bank account?

A. Yes, positively.

Q. You testified that while you were living on East State street your wife became irritable and told you she was suffering from a nervous breakdown?

A. Yes.

Q. Was Frank Banks living in your house at that time?

20

A. No, sir.

Q. Was he spending any time about your premises at that time?

A. Yes, sir.

Q. How much time?

A. Three or four or five times a day he would come and go, I don't know how long he would stay.

Q. What was your employment at that time?

A. Barber, also pool room and cigar store.

Q. In the conversation which you had with Senator 30 Hammond following your wife's elopement, was the phrase "fifty-fifty" used with reference to any of these properties?

A. Not that I know of; no, sir.

Q. Did you use it?

A. No, sir.

Q. What did you say to Senator Hammond regarding your wife's interest in this property?

A. I told Senator Hammond that my reasons for placing them that way was in case I died she would have no trouble claiming them through law.

Q. Did you, at any time prior to the purchase of any of these properties, ask Senator Hammond what the effect of a deed of this character was upon the property and the income from the property during the joint lives of the husband and wife?

A. No, I didn't.

10

W. Henry Neubeck, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct examination, by Mr. Hunt.

Q. How old are you, Henry?

A. Seventeen.

Q. And while your father and mother were living home, you lived in the home with them?

A. Yes.

Q. And since your mother left, you have continued
20 to live with your father?

A. Yes.

Q. Do you remember the times when your father and mother purchased any of the properties which are covered by these deeds?

A. Yes, sir.

Q. Which ones do you remember? Here is one purchased from Mr. Freeman in 1919; do you remember the purchase of that one?

A. Yes, sir; I do.

Q. And here is one purchased from Mr. Russo in
30 1919; do you remember anything about the purchase of that one?

A. Yes, I remember that.

Q. At or about the time that either of those properties were being purchased, did you ever hear your father say anything to your mother about taking the deed for the property in his name and her name, and about any reason for his doing that?

A. Yes, I did.

Q. What did you hear your father say?

A. I heard him say that the properties were put that way so in case he died she would have no trouble getting the property through any court matter at all.

By the Court—

Q. When did you hear him say that; to whom did he say it?

A. To my mother, on more than one occasion.

Q. How did he come to say it?

A. Well, I don't recollect how he came to say 10
it.

Q. You say he said it on more than one occasion; how did he come to say it the second or third time, if he had already said it once?

A. Well, he said that when we moved to the Newell avenue home; I remember that. That was at the—let's see—that was at the time she said she had a nervous breakdown; I remember he said something about it then.

Q. But how did he come to say it? She knew 20
it already, didn't she?

A. Yes, I suppose she did.

Q. Then, how was it he came to say it?

A. I don't remember just how it was he came to say it.

Q. He didn't make that statement right out of a clear sky?

A. No, he didn't.

Q. It was made as a part of some conversation, I suppose?

A. I suppose so. 30

Q. What was it they were talking about that led up to his saying it?

A. I don't remember just what he did say.

Q. Well, what did she say that led to his saying it?

A. I don't remember what she said.

Q. How do you remember he said that?

A. That is one fact that always stood out very clearly in my mind when the properties were discussed.

Q. Why?

A. Well, I suppose because it had been mentioned more than once.

Q. Do you ever remember your father or mother, or the two of them, talking about these properties and the way in which they owned them at the time there
10 were other people at your house that owned property, too?

A. No, I don't know when there was anyone else present. I didn't, not when there was anyone else there.

Q. Can you recall people coming to the house sometimes and visiting your parents when the subject of the ownership of property would be talked about; can you remember ever hearing any discussion there when there were callers there, about what was the best way and the right way and the sensible way for people to hold prop-
20 erty, or anything of that kind, or any discussion as to what was the best way to hold property so as to insure, if a man died, that his wife would get it?

A. Yes, sir, I faintly recollect that, but not very clearly.

Q. Can you remember who the other people were?

A. No, I couldn't say that.

Q. Do you have any recollection at any time of having heard your mother demand of your father any part of the rents from these houses?

30 A. No, sir.

Q. Do you have any recollection of ever having heard your mother make any complaint to your father because the rents were paid to him and not paid to her?

A. No, she never made any complaint in that respect.
Mr. Falcey—No questions.

Defendant rests.

Mr. Falcey—I move to dismiss the bill at this time on the ground that there has been no oral

trust or any intention of any kind alleged in the answer proven.

The Court—You may make your motion later, and I will dispose of it at the close of the hearing.

Anthony J. Hurschler, being recalled in rebuttal, testified as follow:

Direct examination, by Mr. Falcey.

Q. You were present in the old Masonic Temple 10 Building in Charlie Patterson's office, at the time of the conveyance of the property from you to Mr. Neubeck and his wife, weren't you?

A. I was.

Q. Did you hear Mr. Neubeck say that he wanted the deed drawn so that in case "I die, the wife would not have trouble claiming it through court"?

A. I did not.

Cross-examination, by Mr. Hunt.

Q. How distinct is your recollection of what took place in the conversation thirteen years ago? 20

A. I don't remember much about any of it; I was there and them papers were made out, and I signed them and my wife signed them, and I got my money, and that was all.

Q. You don't mean to deny that Mr. Neubeck said any such thing; you mean, you don't remember?

A. I couldn't recall any such conversation.

Ernest Klemann, a witness recalled on behalf of the complainant, testified as follows: 30

Direct examination, by Mr. Falcey.

Q. You were present in this court room when Mr. Neubeck testified?

A. Yes.

Q. That your daughter said the rents belonged to Mr. Neubeck; is Mr. Neubeck's statement true?

A. I never heard that; I always thought the rent belonged to both.

Q. From whom did you gain that understanding?

A. From both of them, what one owned the other one owned; they were partners.

Cross-examination, by Mr. Hunt.

Q. Did you ever see Mr. Neubeck come up to your house and take the money the tenants had left there away with him?

A. Yes.

10 Q. And sign his name in the book?

A. Yes, and so did she.

Q. Just show me where she signed it (handing witness book).

A. I wouldn't know her writing.

Q. Well, you know his writing, don't you?

A. I guess that is his.

Q. That is his?

A. Yes.

Q. Show me some there that is not his.

20 A. What book is this?

Q. The rent book for the Sweets avenue property.

A. Well, she has took the rent money times, I don't care who signed it.

By the Court—

Q. Well, I care who signed it; you said sometimes she signed it; are you mistaken about that?

A. Well, I think I seen her take the book.

Q. You show me where she signed it.

A. Well, I wouldn't know her writing, anyhow, I
30 don't think.

By the Court—

Q. You don't know whether she ever signed it or not, do you?

A. No, I don't know her writing.

Q. You don't know whether she ever signed it or not, do you?

A. No.

Q. Why do you say she signed it, then?

A. Well, I think she did; I know she took the rent money times.

Q. Tell me a time when she took the rent.

A. She took the rent and then, maybe, he would sign it when he come in.

Q. You tell us a time when she took the rent.

A. How can I remember that?

Q. You can't remember any time?

A. No.

By the Court—

10

Q. She took it to take it over home?

A. Yes, she come out home and there was lots of times when they took it.

Redirect examination, by Mr. Falcey—

Q. Can you read that? (Showing witness book.)

A. Mrs. William H. Neubeck.

Q. Do you see this rent book starts from 1915?

A. Yes, sir.

Q. Now, they owned that property from 1908, didn't 20 they?

A. On Sweets avenue?

A. Yes.

A. Something like that.

Q. And what would you say in regard to the taking of the rents and signing—or the taking of the rents; were most of the rents taken by Mrs. Neubeck before 1915 or since 1915?

A. Well, I couldn't say; they was most always together when they come to my house, and the rent was 30 there in the desk, and either one of them sometimes looked for it and took it out. I had a little place in the desk there where the rent always was in.

Wilhelmina Neubeck, the complainant in this cause, being recalled in rebuttal, testified as follows:

Direct examination, by Mr. Falcey.

Q. Mrs. Neubeck, you heard your husband testify?

A. Yes.

Q. That there was a talk in Charlie Patterson's office, and that he said to Patterson in front of you, "I want these deeds drawn, that in case I die the wife will not have trouble claiming it through court?"

Mr. Hunt—I object to the form of the question, on the ground that it is not in evidence that the statement was made to Mr. Patterson by Neubeck at a time when his wife was present.

The Court—I don't recall that that was testified to.

Q. Were you present?

A. No, sir; if I was I never heard such a conversation.

Q. Were you present in Charlie Patterson's office?

A. Yes, I was, but I never heard that conversation—never heard Mr. Neubeck say that.

Q. Mr. Hurschler was present, too, wasn't he?

A. Yes, sir.

By the Court—

Q. What did you sign?

A. I signed a deed for that lot on Sweets avenue, on lots 102 and 104.

Q. You are positive of that, are you?

A. Yes, sir, I am.

Q. When was it?

A. As near as I can recall, it was in 1907.

Q. Do you know what you are talking about when you say you signed a deed for the Sweets avenue lots?

A. Yes, sir. Well, I signed—yes, I signed for the lots, it was in both; we both signed for the lots from Mr. Hurschler.

Q. You and your husband both signed a deed to Mr. Hurschler?

A. Yes, sir; it was to that effect, I believe; I remember very plainly being in Mr. Patterson's office and signing; at that time we were buying a lot; we had to wait; Mr. Neubeck and I had

to wait, I don't know whether it was for Mr. Hurschler to come or what the hold-up was, but there was a little wait and I had to sit there.

Q. Was there ever any understanding between you and your husband that he was to have the whole benefit of that property bought in your joint names during his lifetime?

A. No, sir; there never was such a conversation, never, or an agreement.

Q. Did you ever say distinctly to anyone, that you 10 were to have no interest in the property during your lifetime?

A. No, sir; I never did.

Mr. Hunt—No cross-examination.

Mr. Falcey—The only other testimony I have would be on the line I suggested to you this morning.

The Court—Tending to show adultery on the part of the husband?

Mr. Falcey—Yes, sir.

20

The Court—And that is the only other testimony you have?

Mr. Falcey—That is the only other testimony I have.

The Court—Technically, Mr. Hunt's motion to strike out your special replication would come first; that would be the situation. That will be done, because there was never any leave given to file a special replication. You may file a general replication, and I will also assume you are 30 now making an application to file a special replication of the nature of the one you have assumed to put upon the record without leave; and that application I will deny; I don't see that the testimony will be relevant.

Mr. Falcey—May I have leave to file a general replication, specially pleading the Statute of Frauds and Perjuries?

The Court—No, I will not permit any special pleading at this time.

Mr. Falcey—I move to strike out that part of the pleadings of the defendant which alleges adultery on the part of the wife.

The Court—I have already told you that I am going to deal with that only as a part of the entire case.

Case closed.

10

EXHIBIT C 1.

THE FIRST NATIONAL BANK

34 & 36 E. State St., Trenton, N. J.

SAVINGS DEPARTMENT

The First National Bank.

Book No. 3378

20

Dr. *In account with* W. H. or Minnie Neubeck Cr.

	<i>Date</i>	<i>Withdrawals</i>	<i>Deposits</i>	<i>Balance</i>
	Sep 20 1909		28	28
	Oct. 11		28	56
	Nov 15 1909		28	84
	Dec. 14 1909		28	112
	Jan 17 1910		28	140
	Feb 14 1910		28	168
	Mar 11 1910		28	196
30	Apr 26 1910		28	224
	May 31		28	252
	Jun 30 1910		28	280
	Aug 5		28	308
	Aug 26 1910		28	336
	Jun 1 10 Int to date		2 47	338 47
	Sep 22 1910		28	366 47
	" 28	350		16 47

<i>Date</i>	<i>Withdrawals</i>	<i>Deposits</i>	<i>Balance</i>
Oct 6		350	366 47
Dec 1 10 Int		3 01	369 48
2		77	446 48
2		14	460 48
6		14	474 48
12		14	488 48
11			
Jan 12	488 48		00

10

Mar 30 1911	15	15
Apr 18 1911	31	46
May 16	47	93
Jun 19 1911	32	125
July 6	10	135
Jul 14 1911	14	149
Aug 8 1911	33	182

<i>Date</i>	<i>Withdrawals</i>	<i>Deposits</i>	<i>Balance</i>
Fwd			182 20
Aug 15		32	214
Aug 23	150		64
Sep 20 1911		47	111
Jan 8 1912		15	126
Dec 1 Int		2 71	128 71
Jan 15 1912		33	161 71
Feby 13		33	194 71
20		169	363 71
Mch 14		48	411 71
Jun 6 1912		33	444 71 30
1 Interest		3 90	448 61
13		36	484 61
17		18	502 61
Jul 19 1912		48	550 61
27 Neu			

	<i>Date</i>	<i>Withdrawals</i>	<i>Deposits</i>	<i>Balance</i>
	Aug 1 1912		9	559 61
	Dec 16 1912		18	577 61
	Dec 1 12 Int.		7 83	585 44
	27		30	615 44
	Jan. 21 1913		18	633 44
	28		30	663 44
	Feb 28 1913		48	711 44
	Mar 28 1913		18	729 44
10	Apr 3 1913		30	759 44
	15		18	777 44
	May 23	775		2 44
	Jun 1 13 Int.		8 26	10 70
	Dec 1 13 Int.		15	10 85
	Dec 1 14 Int.		30	11 15
	Jan 15 1915	10		1 15

EXHIBIT C 2

3% Trenton Trust and Safe Deposit Co.

Signature—William H. Neubeck Sr. or

Mrs. Minnie Neubeck.

Address—7 Chambers St.

Business—

Introduced by—

30 First Deposit—June 29/05 \$60.00

EXHIBIT C 3

THE TRENTON TRUST & SAFE DEPOSIT CO., TRENTON, N. J.

Sheet No. 1

Account No. 63.

Name—William Neubeck Sr. or Minnie Neubeck

Address—

<i>Date</i>	<i>Checks</i>	<i>Deposits</i>	<i>Balance</i>	<i>Interest Balance</i>
1905				10
June 29		60		
Oct 19		15	75	
Nov 27	5		70	
29	25		45	
Dec 7	15		30	
	45			
Jan 9 1916 Int.		78		
16		65	95 78	
Feb 26		50	145 78	
Mar 28		30	175 78	
Jul 16 1906 Int.		1 99	177 77	20
		222 77		
Sept 24 Int		88	178 65	
Clo.				
24 Bal.	178 65			
	223 65	223 65		

EXHIBIT C 4.

30

THIS INDENTURE,

Made the twenty-sixth day of June in the year of our Lord One Thousand nine Hundred and eight, Between Anthony J. Hurschler and Anna B. Hurschler, his wife, of the City of Trenton in the County of Mercer and State of New Jersey, party of the first part; And William H. Newbeck and Wilhelmina, his wife, of the City

of Trenton in the County of Mercer and State of New Jersey, party of the second part:

Witnesseth, That the said party of the first part, for and in consideration of Three Hundred and Fifty Dollars lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part being therewith
10 fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the second part, and to his heirs and assigns, forever, All that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Trenton in the County of Mercer and State of New Jersey, being lot
20 Number Sixty-two (62) on a plan of lots laid out by the "Butler Land Association" of the County of Mercer in said State, a copy of said plan being filed in the Clerk's office of said County, bounded and described as follows, to wit:—Fronting or in width twenty-five feet on the Northerly side of Sweets Avenue, and extending back from thence in a Northerly direction the same width, by and between lot Number Sixty-one (61) on the Easterly side, and Lot Number Sixty-three (63) on the Westerly side thereof, one hundred and two feet, more or less, to the rear line of lot Number Twenty-six
30 (26) on said plan.

Being the same premises conveyed to the said Anthony J. Hirschler by Maria S. Dayton (widow) by deed dated June 30, 1907, and recorded in the Mercer County Clerk's Office in Book 298 of Deeds, page 37, &c.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions,

remainder and remainders, rents, issues and profits thereof.

And also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the above described premises, and every part and parcel thereof, with the appurtenances.

To have and to hold, all and singular, the above mentioned premises, together with the appurtenances, unto the said party of the second part, their heirs and assigns, 10
to their own proper use, benefit and behoof forever.

And the said Anthony J. Hurschler, for himself, his heirs, executors and administrators, does covenant, grant and agree to and with the said party of the second part, their heirs and assigns, that the said Anthony J. Hurschler at the time of the sealing and delivery of these presents, is lawfully seized in himself of a good, absolute, and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted, bargained and described premises, with the appurte- 20
nances thereunto belonging, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid.

And that the said party of the second part, their heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said party of the first part, their heirs or assigns, or of 30
any other person or persons lawfully claiming or to claim the same.

And that the same now are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of what nature and kind soever.

And also, that the said party of the first part, and their heirs, and all and every other person or persons whomsoever, lawfully or equitably deriving any estate,

right, title, or interest, of, in or to the hereinbefore granted premises, by, from, under or in trust for either of them, shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, their heirs and assigns, make, do, and execute, or cause or procure to be made done or executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and

10 more effectually vesting and confirming the premises hereby intended to be granted, in and to the said party of the second part, their heirs and assigns forever, as by the said party of the second part, their heirs or assigns, or their counsel learned in the law, shall be reasonably advised or required.

And the said Anthony J. Hurschler, his heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, their

20 heirs and assigns, against the said party of the first part, and their heirs, and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever Defend.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ANTHONY J. HURSCHLER [L. S.]

ANNA B. HURSCHLER [L. S.]

30

Signed, Sealed and Delivered
in the Presence of

SCOTT SCAMMELL

State of New Jersey, }
County of Mercer } ss.: Be it Remembered, That
on this 27th day of June in the year of our Lord One
Thousand nine Hundred and eight, before me, the sub-
scriber, a Master in Chancery of New Jersey, personally

appeared Anthony J. Hurschler and Anna B. Hurschler, his wife, who, I am satisfied, are the grantors mentioned in the within Indenture, to whom I first made known the contents thereof, and thereupon they acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed; And the said Anna B. Hurschler, being by me privately examined, separate and apart from her said husband, further acknowledged that she signed, sealed and delivered the same as her 10
voluntary act and deed, FREELY, without any fear, threats or compulsion of her said husband.

SCOTT SCAMMELL
M. C. C. of N. J.

[Endorsed.]

DEED.

Anthony J. Hurschler & Wife

to

William H. Newbeck.

20

and Wilhelmina, his wife.

Dated,.....I

Received in the Clerk's Office of the County of Mercer on the 29th day of June, A. D. 1908 at 12:45 o'clock in the afternoon, and Recorded in Book 308 of DEEDS for said County, on pages 22, &c.

GEO. R. ROBBINS

Clerk

SCOTT SCAMMELL,

Counsellor at Law,

30

Mechanics Bank Building,

\$1.50 Pd.

Trenton, N. J.

Lot No 33 Page 31 City Atlas

Transferred June 29 1908

Vol. 11 • Page 302 City Transfer.

ABRAM SWAN JR.

City Engineer.

S.

EXHIBIT C 5.

THIS INDENTURE,

Made the twelfth day of January, in the year of Our Lord One Thousand Nine Hundred and Eleven (1911) Between Benjamin D. Yard and Addie Ford Yard, his wife, of the Township of Washington in the County of Mercer and State of New Jersey of the First Part;

- 10 and William H. Neubeck and Wilhelmina Neubeck, his wife, of the City of Trenton in the County of Mercer and State of New Jersey of the Second Part;

Witnesseth, That the said party of the first part, for and in consideration of the sum of One Dollar and other good and valuable considerations, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said

- 20 party of the first part, therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to their heirs and assigns forever, All that certain house and lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Trenton in the County of Mercer and State of New Jersey, bounded and described as follows, to wit:—

- 30 Beginning in the Northerly line of East State street, at a point distant Westerly thirty feet from the Westerly line of Chambers Street, and running thence (1) Northerly at right angles to East State Street and through the middle of the partition wall between the house hereby conveyed and the house adjoining on the Easterly side thereof, one hundred and thirty-five feet and ten inches, more or less, to an alley eight feet in width; thence (2) Westerly along said alley, fifteen feet

more or less; thence (3) Southerly, parallel with and distant fifteen feet from the first course and through the centre of the partition wall between the house hereby conveyed and the house adjoining on the Westerly side thereof, one hundred and thirty-three feet, more or less, to the Northerly side of East State Street; thence (4) Easterly, fifteen feet to the place of Beginning.

Being the same premises which were conveyed to the said Benjamin D. Yard by Mary E. Hankins and George S. Hankins, her husband, by Deed dated March 10 25, 1909 and recorded in the Mercer County Clerk's Office in Book 314 of Deeds, pages 181 &c.

The within premises are conveyed subject to a mortgage encumbrance of Fifteen Hundred Dollars (\$1500.00) which the said party of the second part hereby agrees to assume and pay off as a portion of the purchase price.

Together with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in 20 anywise appertaining:

Also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof,

To have and to hold, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, their heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, their heirs and assigns 30 forever:

And the said Benjamin D. Yard does for himself, his heirs, executors and administrators covenant and grant to and with the said party of the second part, their heirs and assigns, that he, the said Benjamin D. Yard, is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances

thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered, or defeated in any way whatsoever. Except as hereinbefore stated.

- 10 And also, that the said party of the first part now has good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid:

And also, that he, the said Benjamin D. Yard, for himself, his heirs, will Warrant, secure, and forever defend the said land and premises unto the said William H. Neubeck and Wilhelmina Neubeck, their heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly
 20 freed and discharged of and from all manner of encumbrance whatsoever. Except as hereinbefore stated.

In Witness Whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

BENJ. D. YARD [L. S.]

ADDIE FORD YARD [L. S.]

Signed, Sealed and Delivered
 in the presence of

CHARLES A. COMP

30

State of New Jersey, } ss. Be it Remembered, That on
 County of Mercer. }
 this 12th day of January in the year of Our Lord One
 Thousand Nine Hundred and Eleven (1911) before
 me, a Commissioner of Deeds of the State of New Jersey personally appeared Benjamin D. Yard and Addie
 Ford Yard, his wife, who, I am satisfied, are the
 grantors mentioned in the within Indenture, and to

whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed: And the said Addie Ford Yard being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, FREELY, without any fear, threats or compulsion of her said husband.

CHARLES A. COMP 10
Commissioner of Deeds of N. J.

[Endorsed.]

DEED.

Benjamin D. Yard & Wife,

—To—

William H. Neubeck & Wife, Wilhelmina.

Dated January 12 1911

20

Received in the Clerk's Office of the County of Mercer, on the 12th day of Jan'y, A. D., 1911, at 2:50 o'clock, in the afternoon and recorded in Book 333 of Deeds for said County, on pages 519, &c.

GEO. R. ROBBINS

\$1.50 Pd.

Clerk

Lot No. 13 Page 102 City Atlas.

Transferred Jan. 12 1911.

Vol. 13 Page 4 City Transfer.

30

ABRAM SWAN JR.

City Engineer.

S.

EXHIBIT C 6.

[Revenue Stamps.]

THIS INDENTURE,

Made the twenty-fifth day of September, in the year of Our Lord One Thousand Nine Hundred and fifteen,

Between William C. Hendrickson and Mary P. Hendrickson, his wife of Belle Meade, in the County of

10 Mercer and State of New Jersey, of the First Part;

And William H. Neubeck and Wilhelmina Neubeck, his wife of the City of Trenton, in the County of Mercer and State of New Jersey, of the Second Part;

Witnesseth, That the said party of the first part, for and in consideration of One Dollar and other valuable consideration, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby

20 acknowledged, and the said party of the first part, therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to their heirs and assigns forever, All that certain house and lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Trenton, in the County of Mercer and State of New Jersey, bounded and described as follows, to

30 wit:
Beginning in the Northerly line of East State Street, at a point distant Westerly forty-five feet from the Westerly line of Chambers Street, and running thence (1) Northerly at right angles to East State Street and through the middle of the partition wall between the house hereby conveyed and the house adjoining on the Easterly side thereof, one hundred and thirty-five feet and ten inches, more or less, to an alley

eight feet in width; thence (2) Westerly along said alley, fifteen feet more or less; thence (3) Southerly, parallel with and distant fifteen feet from the first course and through the centre of the partition wall between the house hereby conveyed and the house adjoining on the Westerly side thereof, one hundred and thirty-three feet, more or less, to the Northerly side of East State Street; thence (4) Easterly, fifteen feet to the place of beginning.

Being the same lands and premises conveyed to the 10
said William C. Hendrickson by Henry H. Cook, by deed dated February 16, 1888, and recorded in the Mercer County Clerk's Office in Book 158 of Deeds, pages 173, &c.

This conveyance is made subject to a mortgage encumbrance in the sum of One Thousand Five Hundred Dollars, which the said party of the second part agrees to assume.

Together, with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, 20
with the appurtenances to the same belonging or in any-wise appertaining:

Also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof,

To have and to hold, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, them heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, them heirs and assigns 30
forever:

And the said William C. Hendrickson, does for himself his heirs, executors and administrators covenant and grant to and with the said party of the second part, their heirs and assigns, that he the said William C. Hendrickson is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appur-

tenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered, or defeated in any way whatsoever.

- 10 And also, that the said party of the first part now has good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid:

And also, that William C. Hendrickson will Warrant, secure, and forever defend the said land and premises unto the said William H. Neubeck and Wilhelmina Neubeck, his wife, their heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrance whatsoever.

In Witness Whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

WILLIAM C. HENDRICKSON [L. S.]

MARY P. HENDRICKSON [L. S.]

Signed, Sealed and Delivered in the presence of

A. J. VAN NUYS

- 30 State of New Jersey, }
County of Mercer } ss.

Be it remembered, That on this twenty-fifth day of September, in the year of our Lord One Thousand Nine Hundred and before me a Commissioner of Deeds of the State of New Jersey, personally appeared William C. Hendrickson and Mary P. Hendrickson who, I am satisfied are the grantors mentioned in the within Indenture, and to whom I first made

known the contents thereof, and thereupon, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed: And the said Mary P. Hendrickson, being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, FREELY; without any fear, threats or compulsion of her said husband.

A. J. VAN NUYS

10

Commissioner of Deeds of N. J.

[Endorsed.]

Deed.

William C. Hendrickson and
Mary P. Hendrickson, his wife

to

William H. Neubeck and Wil-
helmina Neubeck, his wife

Dated, September 25th 1915

20

Received in the Clerk's Office of the County of Mer-
cer on the 27th day of Sept A. D., 1915, at 10:00
o'clock, in the forenoon and recorded in Book 383 of
DEEDS for said County, on pages 309 &c

GEO. R. ROBBINS

1.50 Paid

Clerk

Lot No. 20 Page 102 City Atlas

Transferred Sept. 27 1915.

Vol. 17 Page 82 City Transfer

ABRAM SWAN JR

30

Engineer H

EXHIBIT C 7.

[Revenue Stamp.]

THIS INDENTURE, Made this 19th day of March in
the year of our Lord one thousand nine hundred and
nineteen Between Edgar H. Freeman and Emma A.

Freeman, his wife, of the city of Trenton, county of Mercer and State of New Jersey party of the FIRST part, and William H. Neubeck and Wilhelmina Neubeck, his wife, of the same place, party of the SECOND part, Witnesseth, That the said party of the FIRST part, in consideration of the sum of one dollar and other valuable considerations lawful money of the United States, to them the said party of the FIRST part, in hand well and truly paid by the said party of the SECOND

10 part, before the sealing and delivery of these presents, the receipt whereof the said party of the FIRST part do hereby acknowledge, have granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, release, convey and confirm unto the said party of the SECOND part, their heirs and assigns, all that certain tract or parcel of land and premises, hereinafter particularly described, situate lying and being in the City of Trenton, in the county of Mercer and State of New Jersey, Fronting

20 fifteen feet on the northerly side of East State Street.

Beginning fifteen feet west of the Northwest corner of East State and Chambers Streets, being the southwest corner of lot now or late of Harriet Elizabeth Garwood and Augustus T. Garwood thence west along the north side of East State Street, fifteen feet; thence north at right angles to East State Street, one hundred forty-three feet ten and one-half inches more or less to land of the Camden and Amboy Railroad Company; thence east along land of said Company fifteen feet

30 more or less to land of said Harriet Elizabeth Garwood and Augustus T. Garwood; thence south along land of said Garwood one hundred and forty-four feet nine and one-quarter inches more or less to East State street and Beginning.

Being the same premises which were conveyed to the said Edgar H. Freeman et ux by Warranty deed bearing date the 15th day of November 1916 and recorded in the clerk's office of the county of Mercer in book # 395 of deeds pages # 368 &c.

Together with all and singular the buildings, improvements, ways, woods, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof; And also, all the estate, right, title, interest, use, possession, property, claim and demand whatsoever, both in law and equity, of the said party of the FIRST part, in and to the said premises, with the appurtenances. 10

To have and to hold the said property, hereditaments, and premises hereby granted, and every part and parcel thereof, with the appurtenances, unto the said party of the SECOND part, their heirs and assigns, to the only proper use, benefit and behoof of the said party of the SECOND part, their heirs and assigns forever.

And the said Edgar H. Freeman and Emma A. Freeman, his wife party aforesaid of the FIRST part, for their heirs, executors and administrators, do hereby covenant, promise and grant to and with the said William H. Neubeck and Wilhelmina Neubeck, his wife party of the SECOND part, their heirs and assigns: That at the time of sealing and delivery hereof the said party of the FIRST part seized in their own right of an absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the premises hereby granted, with the appurtenances, and have good right, full power and sufficient authority in the law to grant, bargain, sell and convey the same unto the said party of the SECOND part, their heirs and assigns forever, according to the true intent and meaning of these premises. 20 30

And also, that it shall and may be lawful, for the said party of the SECOND part, their heirs and assigns, at all times forever hereafter, peaceably and quietly to have, hold, use, occupy, possess and enjoy the said premises, with the appurtenances, and every part and parcel

thereof, without the lawful let, suit, eviction, interruption or disturbance of the said party of the FIRST part, their heirs or assigns, or any other person or persons whomsoever lawfully claiming or to claim the same; and that the said premises are free and clear, and freely and clearly acquitted and discharged of and from all former mortgages, judgments, executions, and of and from all other encumbrances whatever.

And lastly, that the said Edgar H. Freeman and
 10 wife the said party of the FIRST part, and their heirs, all and singular the said property and hereditaments and premises hereby granted, with the appurtenances, unto the said party of the SECOND part, their heirs and assigns, against the said party of the FIRST part, and their heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same, shall and will warrant and forever defend.

In Witness Whereof, The said party of the FIRST
 20 part have hereunto set their hands and seals the day and year first above written.

EDGAR H. FREEMAN [L. S.]

EMMA A. FREEMAN [L. S.]

Signed, sealed and delivered in the presence of

ALICE J. HOLZBAUR

State of New Jersey, }
 County of Mercer } ss.

Be it Known, That on the nineteenth day of March
 30 in the year of our Lord one thousand and nineteen before the subscriber, a Notary Public in and of the State of New Jersey, personally appeared Edgar H. Freeman and Emma A. Freeman, his wife who I am satisfied, the grantors mentioned in the foregoing Deed of Conveyance, and the contents thereof being by me first made known unto them, they did thereupon acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

And the said Emma A. Freeman on a private examination before me, separate and apart from her said husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threat or compulsion of her said husband.

EMMA A. FREEMAN..

ALICE J. HOLZBAUR (nee Cahill)

Notary Public of New Jersey.

10

[Endorsed.]

Deed—Warranty.

Edgar H. Freeman

et ux

TO

William H. Neubeck

et ux

Dated March 19, 1919

Received in the Clerk's office of the county of Mercer on the 20th day of Mar., A. D. 1919, at 2:15 o'clock in the afternoon, and recorded in Book 420 of Deeds for said County, on pages 384 etc. 20

JOHN H. FETTER,

1.25 Pd.

Clerk.

Page 102 Lot No. 12 City Atlas

Transferred Mar. 20 1919.

Vol. 21 Page 30 City Transfer

ABRAM SWAN, JR.,

Engineer.

F.

30

EXHIBIT C 8

No. 74614

Ledger 35

THE TRENTON
SAVING FUND SOCIETY,
In Account with
William H. Newbeck

or

10

Minnie Newbeck

The TRENTON SAVING FUND SOCIETY, In account with
William H. Newbeck

or

Minnie Newbeck

Dr.

			Dollars.	Cts.
	1907			
		Bal from old book	1169	00
20	Dec. 2	Cash	5	00
	Dec. 9	Cash	5	00
	" 16	Cash	35	00
	" 23	Cash	5	00
	" 31	Cash	5	00
	Dec. 31,	Int.	24	31
	1908			
	Jan. 1,	Amt.	1248	31
	Jany. 3	Cash	17	00
30	" 6	Cash	5	00
	" 13	Cash	12	69
	" 17	Cash	38	00
	" 28	Cash	7	00
	Feby. 3	Cash	5	00
	" 18	Cash	40	00
	Mch 2	Cash	10	00
		Carried forward, . .	1383	00

		Dr.			
1908				Dollars. Cts.	
		Brought forward, . . .		1383	00
Mar.	10	Cash		5	00
"	19	Cash		5	00
"	27	Cash		7	00
"	30	Cash		5	00
Apr.	28	Cash		10	00
May	8	Cash		5	00
"	"	Cash		5	00
"	18	Cash		5	00
June	1	Cash		10	00
June	11	Cash		5	00
"	16	Cash		5	00
"	22	Cash		5	00
"	29	Cash		5	00
Aug	3	Int		21	22
All 8/3 Close				1481	22

10

20

		Cr.			
1908				Dollars. Cts.	
May	20	Self		400	00
Aug	3	Self		1081	22
				1481	22

30

EXHIBIT C9.

[Revenue Stamps]

THIS INDENTURE, Made this twenty seventh day of June in the year of our Lord one thousand nine hundred and nineteen, Between Frank Russo and Pia Russo, his wife, Gennaro Tuccillo and Santa Tuccillo, his wife, all of the City of Trenton, in the County of Mercer and

State of New Jersey, party of the first part, and William H. Neubeck and Wilhelmina Neubeck, his wife, of the City of Trenton, County and State aforesaid, party of the second part,

Witnesseth, That the said party of the first part, in consideration of the sum of One dollar, lawful money of the United States, and other valuable considerations, to them the said party of the first part, in hand well and truly paid by the said party of the second part, before
10 the sealing and delivery of these presents, the receipt whereof the said party of the first part do hereby acknowledge, have granted, bargained and sold, aliened, released, conveyed and confirmed and by these presents do grant, bargain and sell, alien, release, convey and confirm unto the said party of the second part, their heirs and assigns, all that certain dwelling, lot, tract or parcel of land and premises situate, lying and being in the City of Trenton, in the County of Mercer and State of New Jersey, being designated and known as lot No. nine in
20 Block B on a Revised Plan of Riverside, made by John C. Nevius, Surveyor, December, 1909, (but thereon inadvertently designated by the number "11"), bounded and described as follows, to wit:

Beginning at a point in the southeasterly line of Newell Avenue distant one hundred and twenty five feet northeasterly from the northeasterly line of Riverside Drive, said point being in range with the centre of the partition wall between the house on the lot hereby conveyed and the one adjoining the same on the northeast-
30 erly side thereof, and running thence (1) southeasterly, at right angles to said Newell Avenue, passing through the centre of the said partition wall and continuing the same course beyond, one hundred feet; thence (2) southwesterly, parallel with Newell Avenue, twenty five feet; thence (3) northwesterly, and parallel with the first course, one hundred feet to a point in the southeasterly line of Newell Avenue aforesaid; and thence (4) northeasterly, along the same, twenty five feet to the place of Beginning.

Being a part of the same premises which were conveyed to the said Frank Russo and Gennaro Tuccillo by Martha J. Updike and husband, by deed dated Jan. 4, 1919, and recorded in Mercer County Clerk's office in Liber 419 of Deeds on pages 201-202.

This conveyance is made subject to the restrictions and conditions contained in a deed made by Riverside Heights Improvement Co. to Frederic L. Hulme, dated April 14, 1916, and recorded in Mercer County Clerk's office in Liber 390 of Deeds on pages 355 &c. 10

Subject, also, to a certain Indenture of Mortgage, given to secure the principal sum of Twenty two hundred and fifty dollars, which the parties of the second part hereby assume and agree to pay and satisfy as a part of the purchase money.

Together with all and singular the buildings, improvements, ways, woods, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, 20 issues and profits thereof, and of every part and parcel thereof; And also, all the estate, right, title, interest, use, possession, property, claim and demand whatsoever, both in law and equity, of them the said party of the first part, in and to the said premises, with the appurtenances; To have and to hold said lot, tract, or parcel of land, hereditaments, and premises hereby granted, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, their heirs and assigns, to the only proper use, benefit and behoof 30 of them the said party of the second part, their heirs and assigns forever.

And the said Frank Russo and Gennaro Tuccillo, party aforesaid of the first part, for themselves their heirs, executors and administrators, do hereby covenant, promise and grant to and with the said William H. Neubeck and Wilhelmina Neubeck, his wife, party of the second part, their heirs, and assigns—That, at the time of the sealing and delivery hereof, they the said party of the first part are seized in their own right of an

absolute and indefeasible estate of inheritance, in fee-simple, of and in all and singular the premises hereby granted, with the appurtenances, and have good right, full power and sufficient authority in the law to grant, bargain, sell and convey the same unto the said party of the second part, their heirs and assigns forever, according to the true intent and meaning of these presents; And also, that it shall and may be lawful for the said party of the second part, their heirs and assigns, at all
 10 times forever hereafter, peaceably and quietly to have, hold, use, occupy, possess and enjoy the said premises, with the appurtenances, and every part and parcel thereof, without the lawful let, suit, eviction, interruption or disturbance of the said party of the first part, their heirs or assigns, or any other person or persons whomsoever lawfully claiming or to claim the same; and that the said premises are free and clear and freely and clearly acquitted and discharged of and from all former mortgages, judgments, executions, and of and
 20 from all other encumbrances whatever, except as aforesaid.

And lastly, That they the said party of the first part, their heirs, all and singular, the said lot, tract or parcel of land, hereditaments and premises hereby granted, with the appurtenances, unto the said party of the second part, their heirs and assigns, against them the said party of the first part, and their heirs and against all and every other person or persons whomsoever lawfully claiming or to claim the same, shall and will warrant and forever
 30 defend.

In Witness Whereof, The said party of the first part, have hereunto set their hands and seals the day and year first above written.

FRANK RUSSO [SEAL]

PIA RUSSO [SEAL]

GENNARO TUCCILLO [SEAL]

her

SANTA X TUCCILLO [SEAL]

mark

Signed, sealed and delivered

in the presence of

F. L. HULME

State of New Jersey, }
 County of Mercer } ss.

Be it known, That on the twenty seventh day of June in the year of our Lord one thousand nine hundred and nineteen, before the subscriber, a Master in Chancery of the State of New Jersey, personally appeared, Frank Russo and Pia Russo, his wife, Gennaro Tuccillo and Santa Tuccillo, his wife, who are, I am satisfied, the grantors mentioned in the foregoing Deed of Conveyance, and the contents thereof being by me first made known unto them they did thereupon acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed. 10

FREDERIC L. HULME
M. C. C. of N. J.

[Endorsed.]

GENERAL WARRANTEE DEED

20

Frank Russo et ux et al

—To—

William H. Neubeck et ux

Dated June 27th 1919.

Received in the Clerk's Office of the County of Mercer on the 1st day of July A. D. 1919 at 9:50 o'clock in the forenoon, and recorded in Book 429 of Deeds for said County, on pages 87 &c.

JOHN H. FETTER,
Clerk.

30

\$1.50 Pd.

Page 408 Lot No. 183 City Atlas

Transferred July 1 1919.

Vol. 21 Page 1a City Transfer

A. SWAN JR.

Engineer,

H.

30 Neu

EXHIBIT C 10.

Oct.—10—1919.

I've left at last I waited for you to go but you made no effort to go so it was up to me.

You know you admitted this was all your own fault and yet I gave you lots of chance to do different and you never did so it was more than I could stand.

- 10 You are the only one in this world that ever called me a damn grouch or a crank that I know of, but of course you had to say something after you worried me the way you did so I considered. I am sorry I didn't confide in some one before now as I am gone and no one will know about my worries but then my boy knows how I worried as he put his little arm around me many a time and comforted me. These worries date years back you know and now that my boy is getting older and is not with me so much I miss him but I didn't want to spoil any of his pleasures by keeping him home with me.
- 20 From this date on Oct.—10—1919 I want my share of the income so keep all repair bills, as far as taxes and interest I know how much has to be paid so I will expect half and when I need my money I will send some one for it. You know I have always been a good wife to you so therefore you have got nothing on me and let me be where I am going and don't worrie me any more but blame yourself. My boy knows I've cried enough tears to start another river but I won't cry any more. Take good care of the boy until I see him again
- 30 it won't be soon. Henry knew I was going but he didn't know when.

Henry's Mother.

EXHIBIT C II.

The Torch of Liberty.

UNITED STATES

GOVERNMENT

WAR-SAVINGS

This is the Property of

Mrs. W. H. Newbeck

10

The enclosed certificate is valueless to other than the owner. If lost the finder should drop it in the post office or letter box and the postmaster will return it to the owner. No postage is necessary.

EXHIBIT D I.

20

*(Envelope.)**Miss Betty Hess**5708 Walnut St.**Pittsburg**Pa.**(Back of Envelope.)*

Jack Schneider

48 So Walter Ave

Trenton

N. J.

30

(Letter.)

Trenton N. J.

Dec. 9—19

Dear Friend Frank

I rec. your letter and was glad to hear from you and that you are doing fine

Well old Pal everything is allright hear as far as I know and I will do just what you ask me to I have already mail the letter you told me to and your farther is allright so is Neubeck and the boy I have only saw Neubeck once since you went away But every body is trying to find out off of him if you realy did go away with the Mises and he gets real peeved if any body asked him about it Well Frank no body knowed a thing about it untill two weeks after you had gone and
10 wish you could hear all the tail that was made up I had to laugh to myself a many a time Every body thought they knowed it all Hears one tail was going around that you and the Mises went to Oklahoma. But every thing is pretty quiet now and if any thing turns up I will let you no when you write again So Frank I will not write to you until you tell me to so be sure and put your address in your next letter for I am going to burn this one up and take it from me that I will not let no one no about it

20 The boys around the corner are in good health but they are newsy as h—— Bill Voorhees came around with a tail that he saw you and Mises in Philadelphia Charlie was the first to tell me about you and I looked suprised at him and said I don't believe it and he said he didn't ether But don't you worry Frank every thing will be allright They are all done talking now Well I gave my job up at Freeman and I am working down at Motts at my old job but we are short of coal just at present Well Frank you will see that I am on the
30 job with this letter and hope you will get it alright So this is all this time wishing all the luck in the world and dont forget if you get in hard luck let me no and I will do my best so be good old Pal solong

SCHNEIDER

48 So Walter

Ave

P. S. Do not forget to tell me where to write in your next letter.

I wish you and the Mises a Merry X Mas and a Happy New Year solong

EXHIBIT D 2.

No. 39

Aug 4 1908

E. Klemann 1,000

10

EXHIBIT D 3.

No. 21

May 26 1913

To Chas Comp
For Mortgage

	Dollars.	Cents.	
Bal. Brot. Ford.	136	80	
Amt. Deposited	1478	45	20
Total	1615	25	
Amt. this Check	1500	00	
Bal. Car'd. For'd.	115	25	

30

EXHIBIT D 3a.

TRENTON, N. J., May 26, 1913. No....
THE FIRST NATIONAL BANK
OF TRENTON.

Pay to the order of.....\$1500.00.
..... Dollars
CERTIFIED. CHG. W. H. NEUBECK.

EXHIBIT D 4.

TRENTON, N. J., Sept. 23, 1915. No. 114
THE FIRST NATIONAL BANK 55-75
OF TRENTON.

Pay to the order of John T. Jemison \$1000.⁰⁰/₁₀₀
One Thousand ⁰⁰/₁₀₀ Dollars

W. H. NEUBECK

10

[Endorsed.]

John T Jemison

4 Received Payment
through

Trenton Clearing House

Prior Endorsements Guaranteed

Sep 25 1915

Broad St. Nat'l. Bank

Trenton, N. J.

20

EXHIBIT D 5.

Bell Phone 3984-W

Houses for Rent
Rents Collected

JOHN T. JEMISON

Real Estate Mortgages and Insurance
236 Mercer Street Trenton, New Jersey

Sept. 23, 1915.

Wm. H. Neubeck—To Wm. C. Hendrickson Dr. To amt. 2nd Mortg. viz. \$300.00 Payable
\$25.00 every 3 months from Sept. 23, 1915. Int. rate 6%.

Dec. 23rd.	Recd on the within agreement	\$29.50	\$25.00 on Prin. John T. Jemison.
			4.50 " Int. for W. C. Hendrickson.
Mar. 23.	" " " "	29.13	25.00 Prin.
			4.13 Int. for W. C. Hendrickson.
June 23.	" " " "	28.75	25.00 Prin. per J. T. Jemison.
			3.78 Int. for W. C. Hendrickson.
Sept. 23.	" " " "	28.38	25.00 Prin. per J. T. Jemison.
			3.38 Int. J. T. Jemison.
Dec. 23.	" " " "	28.00	25.00 Prin.
1917.			3.00 Int. J. T. Jemison.
Mar. 23.	" " " "	27.62	25.00 Prin. John T. Jemison.
			2.62 Int. John T. Jemison.
June 23.	By Check	27.25	25.00 Prin.
			2.25 Int. John T. Jemison.
Sept. 23.	" " " "	25.00	
		1.50	
		26.50	John T. Jemison.

EXHIBITS.

239

[Endorsed.]

Total Amt. Principal,	\$300.00
Dec. 23. Paid on ac.,	25.00
	\$275.00
Mar. 23. Paid on ac.,	25.00
	\$250.00
June 23. Paid on ac.,	25.00
	\$225.00
10 Sept. 23. Paid on ac.,	25.00
	\$200.00
Dec. 23. Paid on ac.,	25.00
1917.	\$175.00
Mar. 23. Paid on ac.,	25.00
To. bal. due,	\$150.00
June 23. Cash,	25.00
	\$125.00
20 Sept. 23. Cash,	25.00
To bal. due,	\$100.00

EXHIBIT D 6.

30

No. 105

March 19 1919

E. H. Freeman 800 00

EXHIBIT D 7.

TRENTON, N. J. May 10 1919

Received from Wm H Neubeck fifty Dollars on account of \$3800 being purchase price of premise 118 Newell Ave.

\$50⁰⁰/₁₀₀

FRANK RUSSO.

3800

2250

10

1550

40

EXHIBIT D 8.

55-75

TRENTON, N. J. June 30 1919

No. 153

[SEAL] THE FIRST NATIONAL BANK

20

of Trenton, N. J.

Pay to the order of Frank Russo \$1460⁰⁰/₁₀₀

Fourteen Hundred and Sixty Dollars——Dollars

W. H. NEUBECK.

[Endorsed.]

Frank Russo

Special

30

5 Received Payment
Through
Trenton Clearing House
Prior Endorsements Guaranteed

Jul 2 1919

Trenton Trust & Safe Deposit Co.

Trenton, N. J.

31 Neu

EXHIBIT D 9.

STUART'S RENT BOOK

Mr. Reikosky

in account with

W. H. Neubeck.

For House 102 Sweets Ave.

10

<i>Date.</i>	<i>Amount Paid.</i>	<i>Signatures.</i>
1915		
June. 1	15 00	W. H. Neubeck
July. 1	15 00	W. H. Neubeck
Aug. 1	15 00	M. Klemann per W. H. N.
Sept. 1	15 00	Mrs. W. H. Neubeck
Oct. 1	15 00	M. Klemann per W. H. N.
Nov. 1	15 00	W. H. Neubeck
Dec. 1	15 00	W. H. Neubeck N.

20

<i>Date.</i>	<i>Amount Paid.</i>	<i>Signatures.</i>
1916		
Jan. 1	15 00	F. M. Klemann per W.H.N.
Feb. 1	15 00	F. M. Klemann per W.H.N.
Mar. 1	15 00	W. H. Neubeck
April. 1	15 00	W. H. Neubeck
May. 1	15 00	W. H. Neubeck
June. 1	15 00	W. H. Neubeck
July. 1	15 00	W. H. Neubeck
30 Aug. 1	15 00	W. H. Neubeck
Sept. 1	15 00	W. H. Neubeck
Oct. 1	15 00	W. H. Neubeck
Nov. 1	15 00	W. H. Neubeck
Dec. 1	15 00	W. H. Neubeck

<i>Date.</i>	<i>Amount Paid.</i>	<i>Signatures.</i>
1917		
Jan. 1	15 00	W. H. Neubeck
Feb. 1	15 00	F. M. Klemann
Mar. 1	15 00	W. H. Neubeck
April. 1	15 00	W. H. Neubeck
May. 1	15 00	F. M. Klemann
June. 1	15 00	W. H. Neubeck
July. 1	15 00	W. H. Neubeck
Aug. 1	15 00	W. H. Neubeck
Sept. 1	15 00	F. M. Klemann
Oct. 1	15 00	W. H. Neubeck
Nov. 1	15 00	W. H. Neubeck
Dec. 1	15 00	W. H. Neubeck

10

<i>Date.</i>	<i>Amount Paid.</i>	<i>Signatures.</i>
1918		
Jan. 1	15 00	W. H. Neubeck
Feb. 1	15 00	W. H. Neubeck N.
Mar. 1	15 —	W. H. Neubeck E.
April. 1	15 00	W. H. Neubeck N.
May 1	15 00	W. H. Neubeck N.
June. 1	15 00	W. H. Neubeck
July. 1	15 00	W. H. Neubeck
Aug. 1	15 00	W. H. Neubeck
Sept. 1	15 00	W. H. Neubeck
Oct. 1	15 00	W. H. Neubeck
Nov. 1	15 00	W. H. Neubeck
Dec. 1	15 00	W. H. Neubeck

20

30

Fixing

	<i>Date.</i>	<i>Amount Paid.</i>	<i>Signatures.</i>
	1919		
	Jan. 1	15 00	W. H. Neubeck N.
	Feb. 1	15 00	W. H. Neubeck
	Mar. 1	15 00	W. H. Neubeck
	April. 1	15 00	W. H. Neubeck
	May. 1	15 00	W. H. Neubeck
	June. 1	15 00	W. H. Neubeck
10	July. 1	15 00	W. H. Neubeck
	Aug. 1	15 00	W. H. Neubeck
	Sept. 1	15 00	W. H. Neubeck
	Oct. 1	15 00	W. H. Neubeck
	Nov. 1	15 00	Mrs. J. Moss
	Dec. 1	15 00	W. H. Neubeck

Fixing Fixtures in bath room 2.50 to Ed. Williams

	<i>Date.</i>	<i>Amount Paid.</i>	<i>Signatures.</i>
20	1920		
	Jan. 1	15 00	W. H. Neubeck
	Feb. 1	15 00	W. H. Neubeck
	Mar. 1	15 00	W. H. Neubeck
	April. 1	15 00	W. H. Neubeck
	May. 1	17 00	W. H. Neubeck
	June. 1	17 00	W. H. Neubeck
	July. 1	17 00	W. H. Neubeck
	Aug. 1	17 00	W. H. Neubeck
	Sept. 1	17 00	W. H. Neubeck
30	Oct. 1	17 00	W. H. Neubeck
	Nov. 1	17 00	W. H. Neubeck
	Dec. 1	17 00	W. H. Neubeck

Fixing Roof & Front Porch \$5.77 Paid Reikosky

<i>Date.</i>	<i>Amount Paid.</i>	<i>Signatures.</i>	
1921			
Jan. 1	17 00	W. H. Neubeck	
Feb. 1	17 00	W. H. Neubeck	
Mar. 1	17 00	W. H. Neubeck	
April. 1	17 00	W. H. Neubeck	
May. 1	17 00	W. H. Neubeck	
June. 1	17 00	W. H. Neubeck	
July. 1	17 00	W. H. Neubeck	
Aug. 1	17 00	W. H. Neubeck	10
Sept. 1 to 15	8 50	W. H. Neubeck	

EXHIBIT D 10.

OK

AHW

TRENTON, N. J. May 23 1913

Three months after date I promise to pay to the order
of First National Bank

\$500⁰⁰/₁₀₀

7.50

Five Hundred ————— Dollars
at the FIRST NATIONAL BANK OF TRENTON, N. J. for 20
value received.

No. 4459

Due 8/23

W. H. NEUBECK

Paid—8-25-13

[Endorsed.]

H. E. Taylor.

W. H. Neubeck.

EXHIBIT D 11.

R 500

TRENTON, N. J. Aug. 23 1913

30

Three months after date I promise to pay to the order
of First National Bank

\$400⁰⁰/₁₀₀

Four Hundred ————— Dollars

at the FIRST NATIONAL BANK OF TRENTON, N. J. for
value received.

No. 7374

Due 11-23

W. H. NEUBECK.

Paid—11-24-13

[Endorsed.]

H. E. Taylor.

W. H. Neubeck.

IN CHANCERY OF NEW JERSEY.

BETWEEN,

WILHELMINA NEUBECK,

Complainant,

AND

WILLIAM H. NEUBECK,

Defendant.

(Not for print)

10

CONCLUSIONS.

(Filed October 24, 1921.)

Mr. Charles J. Falcey, for Complainant.

Messrs. Katzenbach & Hunt, for Defendant.

BUCHANAN. V. C.

The bill is filed by the complainant against the defendant, her husband, asking for an accounting of the rents and income from several parcels of improved real estate, the title to which stands in the name of both parties as husband and wife. The parties are living separate and apart from each other, and her claim is that she was compelled to leave her husband, and justified in so doing, because of cruel conduct on his part toward her. This the husband denies, saying that she left him without cause, and that she further has been guilty of adultery at or since her desertion.

20

The real estate in question was purchased from time to time during the married life of the parties, with moneys earned out of the business carried on by the husband—who is a barber and also carried on a small tobacco and confectionery store and pool room. No separate money of the wife's went into these properties; indeed, she had none. She aided her husband in the conduct of his business, to some extent at least, but of course this did not make any of the earnings or profits of the business hers. The husband is entitled to his wife's services.

30

It is contended on behalf of the wife that the husband had made a transfer to the wife of the ownership of

a half interest in these earnings or profits, but this I do not find to be the fact. It is true that for some years the earnings were deposited in a savings account in bank, made out in the so-called "joint account" form, i. e., "to the credit of William H. Neubeck or Wilhelmina Neubeck, or the survivor." As has been repeatedly pointed out, however (see *Kaufman v. Edwards*, 113 Atl. 598, and cases there cited), the mere opening of an account in this form does not prove a transfer of ownership, and I find no other evidence in the case 10 proving that any such transfer was thereby made by the husband to the wife. The bank account was used by the husband precisely as it would have been if it had been in his name alone, for the purchase of the properties, and the payment of the taxes and expenses on the same, and the expenses of his business and of his household. The wife swears that at the commencement of the married life it was agreed between them that they should own equally what money was accumulated. This the husband denies, and I believe him. 20 The "joint account" was only kept up a few years and thereafter the account was in his individual name alone. (It may also be noted that such a promise by the husband would be without consideration.)

As to the facts of the separation, the evidence is also to my mind conclusive against the wife. She left him without justification and went away with a man whom the husband had befriended and taken into his home as a boarder, and who repaid the kindness of his benefactor by stealing the wife's affections and running 30 away with her.

The two have ever since been living practically together in Pittsburgh, and although they both deny adultery, I think there can be no doubt but that that also is proven—in fact, complainant's counsel so admitted on the argument.

Upon this state of facts it is clear that the wife is not entitled to relief. It was so decided in *Black v. Black*, 30 N. J. Eq. 215. Indeed, the facts in this case

are much stronger against the wife than in the Black case. There the wife had used some of her own separate moneys in improvements upon the husband's property and in the purchase of furniture, and the wife's marital offense was merely desertion. But it was held that she was not entitled to the aid of this court to recover from the husband compensation for the improvements or possession of the chattels.

Vice-Chancellor Van Fleet in his opinion quotes the following language of Chancellor Runyon in dealing with a preliminary phase of the same case:

20 "This motion must necessarily be based on the broad ground that a married woman is, without regard to circumstances, entitled to the aid of equity to obtain possession of her property when it is withheld from her by her husband; and, further, that if she chooses to abandon her husband's house, though she may be actuated by caprice merely, or even by a worse motive, she has, by virtue of her legal right alone, a claim upon a court of equity to its aid in obtaining possession of that property, even though it be household furniture which, up to the time of her departure, was in the joint use of her husband and herself in their household, and is still in his possession, in the use of the family. A decent regard for the interests of society would forbid the court from entertaining such a proposition. Equity will not lend its aid to the causeless disruption of family relations, or countenance the unjustifiable disregard of the obligations of the marriage contract. They, therefore, who come into this court for relief in such cases, must not only come with clean hands, but must show a reason valid in conscience, as well as a legal right, for the assistance which they seek."

30 And then proceeds as follows:

"These views command my hearty assent. They rest on obvious considerations of justice and sound policy. It was long ago declared that a wife who deserts her husband to enjoy the society of her paramour, would, on account of her misconduct, be refused the aid of a court of equity against her husband, in respect to her separate estate, which, under other circumstances, she would have a right to claim. *Lee v. Lee*, 2 *Dick.* 806; *Clancy on Mar. Wom.* 354. 10

If the complainant's legal right is sufficient, notwithstanding her desertion, to entitle her to the aid of this court, she would, in legal theory at least, upon the same ground, be entitled to the same aid, even if she was living in a state of open adultery.

In refusing to aid the complainant, no question of legal right is determined. On the contrary, her legal right is admitted. She may, perhaps, have such complete dominion over the chattels in controversy as to be able to invest her vendee with a title which her husband cannot successfully resist in a court of law. *Houston v. Clark*, 50 *N. H.* 482; *Jones v. Jones*, 19 *Iowa*, 242. But she is repulsed simply because her desire to sue, if not her right of action, flows directly from her own wrongful act. She wants her husband to give up the property which she has contributed to their home, because she has deserted him. Because she has taken herself away, she wants to take her property also. Her suit is the sequence of her desertion; if there had been no desertion, there would have been no suit. She asks the court to help her in her wrong. Such a suitor, with such a case, has no right, in my judgment, to the aid of this court." 20 30

Apparently this doctrine in *Black v. Black* has seldom, if ever, been questioned, for I have not been able to find

any reported decision where it has been applied, nor any disapproval or reversal. (It is frequently cited on other points, and there was a partial reversal in 31 *N. J. Eq.* 798, but on another entirely distinct branch of the case involving promissory notes.) It is therefore still the law of this State.

Assuming, *arguendo*, that the husband, by taking title to the properties in the name of himself and complainant as husband and wife, thereby intended and effectuated

- 10 a gift to the wife of a joint interest in the properties, nevertheless the very nature and designation of the grantees as husband and wife indicates the nature of the estate as inseparably linked up with the marriage relationship. The interest given was because she was his wife; the interest she took was that of a wife; her right to enjoy was contemplated to be under the usual circumstances of continued marital relationship, and coupled with the duty of a continual assistance of her husband so far as she was able. By depriving her husband of
- 20 her services and assistance in his affairs, including the care and management of these properties, she comes into this court with unclean hands, being guilty of misconduct directly connected with the subject matter of the litigation.

This, of course, leads to a dismissal of the wife's bill.

- The husband, however, counterclaimed, setting up, first, that the deeds to himself and wife as grantees were the result of mistake, and that they were intended to have conveyed the properties to himself for life, with
- 30 remainder to his wife, if she survived him, otherwise to his heirs, and praying a reformation accordingly; and second, setting up his wife's adultery, and praying a decree barring her dower, therefore, in the properties in question.

Assuming that the reformation of the deeds could be decreed without the presence of the grantors as parties in this suit, and assuming that the mistake was mutual by the husband and wife (or that, in a case of voluntary conveyance, reformation will be made of grantor's uni-

lateral mistake), the difficulty is that there is nowhere in the case any competent evidence that there was a mistake.

The presumption from the deeds themselves and their acceptance and retention by defendant is that he intended just what they effectuate by their terms. To overcome that presumption strong evidence is required under the rule in this State. Cf. *Whelen v. Osgoodby*, 62 N. J. Eq. 571.

The only evidence offered here is the testimony of the husband now as to what his intention was then, and testimony of statements or declarations by the husband subsequent to the deeds. Neither class of testimony is competent. *Lister v. Lister*, 35 N. J. Eq. 49; *aff'd* 37 N. J. Eq. 331. It is also urged by defendant's counsel that the conduct of the wife is evidential in that she made no claim to part of the rents until at and after her desertion of her husband, although by her own testimony she had long before lost her love and respect for him, and his conduct toward her had been harsh and cruel. But, on the other hand, until she left she was, of course, sharing in the enjoyment of this income, not by receiving an equal division in money, but by participating in the things the money was used for, to wit, a home, clothes, food, entertainment, &c., and the upkeep of the properties themselves.

It is true that the husband testifies that at the time of the purchase of the first property he told the draftsman (now dead) of the deed, in the presence of his wife, that he desired the deeds to be drawn in such a way that his wife would have the property at his death without any trouble going to court, or words to that effect; and there is also testimony by the husband and by his son as to similar statements to or in the presence of the wife, tying up to purchases of the other properties. The wife's denial I do not believe; none of her uncorroborated testimony is entitled to credence. The difficulty is, however, that this testimony does not prove that the husband did not know the effect of the deeds as actually

executed and accepted. Those deeds did accomplish what he said he wanted to have accomplished. They also accomplished something more in that they gave to the wife a present interest in the properties, as well as a "remainder" at the husband's death; but the testimony to which I have referred does not prove that the husband did not know of this additional effect of the deeds at the time he took them; nor does it prove, even if we assume that he did not know of such additional effect, that he
10 would not have taken the deeds in that form if he had been told of such additional effect.

Personally, I am inclined to believe the husband's testimony as to what he knew and did not know, and what he intended and did not intend, but I cannot see how a decree in his favor can be justified under the evidence—or, rather, lack of evidence—in the case.

Reformation failing, then, for lack of necessary or adequate proofs, the prayer for the barring of dower obviously fails, for there is no dower to be barred.

20 Costs will be awarded to the husband. I will hear counsel on a motion day as to counsel fee.

IN CHANCERY OF NEW JERSEY.

BETWEEN

WILHELMINA NEUBECK,

Complainant,

AND

WILLIAM H. NEUBECK,

Defendant.

} On Bill, &c.

DECREE.

10

(Filed November 22, 1921.)

This cause coming on to be heard in the presence of Charles J. Falcey, Esq., of counsel for the complainant, and of Katzenbach & Hunt, of counsel for the defendant, and the court having considered the pleadings, proofs and the arguments of counsel, and it appearing to the court that the complainant is not entitled to the relief sought and prayed for by her in her bill of complaint, and that the defendant is not entitled to the relief sought and prayed for by him in his counter-claim—

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It is, on this twenty-second day of November, A. D. 1921, on motion of Katzenbach & Hunt, solicitors for the defendant, ordered, adjudged and decreed that the complainant's bill of complaint and also the defendant's counter-claim be and the same hereby are each dismissed;

And it is further ordered that the complainant pay to the defendant, or his solicitors, his costs of this suit to be taxed, in which shall be included the sum of six hundred dollars, hereby fixed and allowed as a reasonable and proper sum by way of counsel fee, to be paid by the complainant to the defendant, and that execution for costs issue according to the practice of this court.

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E. R. WALKER, C.

MALCOLM G. BUCHANAN, V. C.

IN CHANCERY OF NEW JERSEY.

BETWEEN

WILHELMINA NEUBECK,

Complainant,

AND

WILLIAM H. NEUBECK,

Defendant.

} On Bill.

10

NOTICE OF APPEAL.

(Filed January 26, 1922.)

The complainant appeals from the final decree made in this court in the above-stated cause, and the whole and every part thereof, to the Court of Errors and Appeals, to the last resort in all causes.

CHARLES J. FALCEY,
Solicitor of Complainant.

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

ELLERY ROBBINS,
Of Counsel with Complainant.

Service of the within notice of appeal is hereby acknowledged this 20th day of December, A. D. 1921.

KATZENBACH & HUNT,
Solicitors for Defendant.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN

WILHELMINA NEUBECK,
Complainant-Appellant,
 AND
 WILLIAM H. NEUBECK,
Defendant-Respondent.

PETITION OF APPEAL.

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*To the Honorable, the Court of Errors and Appeals in
 the last resort in all causes:*

The petition of Wilhelmina Neubeck, the appellant in the above-stated cause respectfully shows that your petitioner finds herself aggrieved by a final decree made in the Court of Chancery by His Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date the twenty-second day of November, 1921, in the cause wherein William H. Neubeck is defendant, in this respect to wit: That the said decree adjudged that "the complainant's bill of complaint . . . be and the same hereby is dismissed; and it is further ordered that the complainant pay to the defendant or his solicitor, his cost of this suit to be taxed in which shall be included the sum of \$600.00 hereby fixed and allowed as a reasonable and proper sum by way of counsel fee to be paid by the defendant to the complainant, and that execution for costs issue according to the practice of this Court."

And your petitioner humbly appeals from that part of the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous, for that the complainant was entitled to the relief prayed for in her bill of complaint, and she should have been granted the prayer of her said bill with costs to be paid by the defendant.

Your petitioner, therefore, prays that the said decree of the Chancellor may be in the particulars of the 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.

CHARLES J. FALCEY,
Solicitor for Appellant.

ELLERY ROBBINS,
Of Counsel with Appellant.

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COURT OF ERRORS AND APPEALS OF NEW JERSEY.

BETWEEN

WILHELMINA NEUBECK,
Appellant,

AND

WILLIAM H. NEUBECK,
Respondent.

} On Bill, &c.

ANSWER TO PETITION OF APPEAL.

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(Filed February 4, 1922.)

The answer of the above-named respondent to the petition of appeal of the above-named appellant.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, says and admits that a decree was, on the 22d day of November last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

KATZENBACH & HUNT,

*Solicitors for and of Counsel
with Respondent.*

NEW JERSEY Court of Errors and Appeals

BETWEEN

WILHELMINA NEUBECK,
Complainant-Appellant,

AND

WILLIAM H. NEUBECK,
Defendant-Respondent.

} On Bill.

Brief of Appellant.

FACTS.

The bill is filed by the wife-complainant against the husband-defendant, asking that a receiver be appointed and an accounting taken of the rents and profits of real estate held by the entirety from the date of their separation, and, after all the expenses, including interest, taxes, repairs and insurance, are deducted, that the Court decree that the wife receive one-half of the net rents, issues and profits.

Defendant admitted that the deeds of the properties (*Exhibits C4*, Case, p. 211; *C5*, Case, p. 216; *C6*, Case, p. 220; *C7*, Case, p. 223; *C9*, Case, p. 229) were in both names, but attempted to set up an oral trust between them that he was to take title, so that in his lifetime they should be his individual properties, but that at his death, provided she survived him and remained a faithful wife, she should become the owner, without the necessity of a will.

Complainant separated from the defendant, which separation the defendant said was due to reasons unbecoming to a faithful wife, and by such conduct had forfeited her right to the rents and profits arising from her share in the property, and prayed that the deeds be reformed so that the properties might be in his sole name and that her right of dower be barred.

The Vice-Chancellor found that an oral trust did not exist, and no facts upon which to base reformation of the deeds, and further found that the wife was guilty of deserting her husband, and also of conduct unbecoming to a faithful wife.

The Vice-Chancellor held that he found as a fact that the wife was not entitled to any relief because by her misconduct as a wife she forfeited every claim she had to any share of the income in the property during her misconduct and while living apart from her husband, and based his opinion on the case of *Black v. Black*, 30 *N. J. Eq.* 215.

The points decided in the *Black* case are:

1. That the complainant contributed her money to the real estate and chattels for the purpose of making a home for herself, husband and family, which the complainant admitted by her pleadings.
2. That the wife violated the condition annexed to her advancement of the money on the real estate and chattels, and denied her relief as to the real estate and chattels.

Attention, however, is called to these points:

1. The real estate in that case was in the name of the husband alone.
2. The Court, while denying her rights in the real estate and chattels, did grant complainant a money decree on three notes due her from her husband.

The complainant did not appeal, but the defendant did appeal from the money decree, and the Court of Errors reversed as to two of the notes, affirmed the decree as to the other note, thereby granting the wife relief on a vested property right, regardless of her misconduct.

The decisions of the Court of Chancery and Court of Errors, when united, hold in effect that the money advanced on the real estate and chattels, upon condition there should be a home for husband and wife, was forfeited when she by her conduct placed herself outside of the home circle, but that the money she loaned to her husband on a note was held to be an advance of money without any condition whatever, and was not subject to be forfeited by her conduct, and the Court granted her her rights in that property. Hence we submit that the Black case does not control the case at bar.

The case at bar is to be determined on the law relating to estates by the entirety as it has been interpreted and applied in the State of New Jersey. We submit that the doctrine of "clean hands" is not applicable in this case because her conduct is not a condition of her estate and does not arise out of the original acquisition of title to the properties. It is admitted that her name was placed in the deeds without any mistake of fact or wrongdoing, directly or indirectly, connected with the creation of the title, hence we say that her conduct years later cannot bar her from asserting her rights in the property.

Let us assume that the defendant was destroying the property. Can it be said the court would deny to the complainant an injunction against the defendant to prevent waste of her estate and the income thereof because of her conduct as a wife?

Let us further assume that the defendant on the day his case was tried obtained a divorce from his wife for her misconduct. The moment the final decree in said divorce became effective, she instantly would become a tenant in common in the property with the right at law and in equity, to partition the same, and sue for the rents and profits thereof. Can it be said in that case that she would be denied her partition in equity because of her conviction of adultery in that court? Can it be said that her hands would be any cleaner after the divorce than at the time of the divorce? This demonstrates

that her rights in this property are in the vested title, and not dependent on her motives or her conduct in presenting a bill to the court for the rents, issues and profits thereof. The doctrine of "clean hands" does not apply to the case at bar, because it was not a condition upon which title to the property was taken.

This view of the Black case, by the combining of the two opinions, is followed out in the case of

Dixon v. Dixon (~~Ct. of E. & A.~~), 24 N. J. Eq. ¹³³ 135, where a bill was filed to set aside a conveyance made to a trustee for the complainant's wife. This conveyance was in settlement of a suit by the wife against the husband for maintenance. As a reason for setting aside the conveyance, it was alleged and proved that she had been guilty of adultery after but not before the conveyance. It was held:

"The deed in this case is unqualified in terms, and empowers the trustee at any time, upon the wife's written request, to convey to her, or any person she might appoint. It must be construed most strongly against the grantor, and NO CONDITION OF GOOD BEHAVIOR ON THE PART OF THE WIFE, HOWEVER WISE AND JUST THEIR INSERTION MIGHT HAVE BEEN WHEN THE DEED WAS MADE, CAN NOW BE INSERTED OR APPENDED BY THE COURT."

The Court further held:

"A conveyance made by a husband to a trustee for the use of his wife, on the execution of articles of separation between them, will not be set aside on account of the subsequent adultery of the wife while living separate from him."

In *Lister v. Lister*, 35 N. J. Eq. 49, affirmed by the Court of Errors in 37 N. J. Eq. 331, the husband placed a large amount of property in the name of his wife, and he divorced her for adultery. He proved that he paid his own money for the properties and prayed that the properties might be reconveyed to him. On page 57 the Court said:

"Nor can any relief be granted on the ground that the defendant has been guilty of adultery, and the complainant has been divorced from her for that cause. * * * The adultery of the wife has been held to be no defense to a suit for specific performance of marriage articles. * * * In a suit for an annuity under an agreement of separation between husband and wife, a plea of subsequent adultery of the wife and a consequent divorce was held bad. * * * In *Seagrave v. Seagrave*, 13 Ves. 439, there was a separation between husband and wife on account of the adultery of the wife, and a bond was given by the husband in support of the wife, and it was held, on bill filed by the wife, that the fact that she had been subsequently guilty of adultery did not disentitle her to relief. THE COMPLAINANT'S RIGHT TO THE AID OF EQUITY DEPENDS ENTIRELY ON THE NATURE OF THE TITLE OF THE DEFENDANT, IRRESPECTIVE NOT ONLY OF THE FACT OF HER ADULTERY, BUT OF HIS SUBSEQUENT DIVORCE FROM HER."

This Court further held:

"Where lands are bought and paid for by the husband, but the title thereto put in the name of his wife, the ordinary presumption of a settlement which in this case was fully corroborated by his actions and declarations at the time of the purchase and transfer, cannot be rebutted by his subsequent declarations of his intention then.

"Nor will equity aid him on account of the subsequent adultery of the wife, and his subsequent divorce from her therefor.

"Nor will the possibility of curtesy in the property entitle him to relief.

In *Devine v. Devine*, 89 N. J. Eq. 51, the Court of Chancery held that the wife could not recover under a separation agreement where adultery had been proven after the agreement was made. There was no condi-

tion in the agreement that the wife should remain chaste, and the Vice-Chancellor in that case applied the same doctrine as has been applied in the case at bar, but the application of the doctrine in that case has been held erroneous, and that case has been reversed by this Court in the case of *Whittle v. Schlemm*, 94 N. J. L. 112.

The case of *Whittle v. Schlemm*, 94 N. J. L. P. 112 (*Court of Errors and Appeals*) suit was commenced in the District Court to recover installments due from the husband under articles of separation. The husband had, previously to the beginning of said action, obtained a divorce on the ground of adultery. The wife sued for installments unpaid for a period between the time of the separation until the time of the divorce decree, and the husband's defense was that she had been guilty of adultery. The District Court gave judgment for the wife, and the husband appealed unsuccessfully to the Supreme Court and Court of Errors. The Court of Errors affirmed the Supreme Court, but for different reasons, and overruled the Devine case. The Court held:

"The right of a wife, while living separate and apart from her husband, to secure funds provided for her support in a separation agreement, persists even after the commission of an act of adultery by her, unless there is an express stipulation in the agreement that payment shall cease in the event that she becomes unchaste, for, without such provision, the common law obligation of a husband to support his wife continues, unless and until he procures a divorce from her. *Devine v. Devine*, 89 N. J. Eq. 51, overruled."

In the deeds in the case at bar there is no qualification or condition as to the wife's conduct, and under the opinions of the Court of Errors in the above cases no implication as to the wife's conduct can be inferred or implied.

We submit that under the law of this State, the Court of Chancery erred in denying the complainant the prayer of her bill, for the following reasons:

First. The effect of a deed to a husband and wife, is an estate by the entirety, which gives her a vested interest in one-half of the rents and profits as a tenant in common.

Second. Notwithstanding who pays for the property or how it is paid for—whether it is bought through a trustee in favor of the wife, or the wife's name is placed in the deed with the husband's—it is presumptively a gift or settlement, on the wife, which presumption cannot be overcome unless by convincing proof beyond a reasonable doubt.

Third. She can sue in equity for the rents and profits thereof, because they are her vested separate estate.

Fourth. Under the law of this State, if a husband and wife hold title by the entirety, by divorce, the estate becomes a tenancy in common.

FIRST REASON:

The Effect of a Deed to a Husband and Wife is an Estate by the Entirety, Which Gives Her a Vested Interest in One-Half of the Rents and Profits as a Tenant in Common.

In *Buttler v. Rosenblath* (Ct. of E. & A.) 42 N. J. Eq. 651, the Court held:

“At common law, the husband, during the joint lives, could, for his own benefit, take all the profits of the lands, and could mortgage and convey an estate to continue during the joint lives—

“In virtue of the marriage relation, the husband took possession and deprived the wife of the enjoyment of her estate or interest in the lands during their joint lives. In my opinion the object and effect of the married woman's act is to extinguish this right, which the husband had

at common law, to appropriate to his own use, during the life of the wife, her estate in lands and real estate thus held, *and to enable her to possess and enjoy it as fully as if she were a single woman.*"

And at page 657 the Court said:

"I think, therefore, that the just construction of this legislation, and the one in harmony with its spirit and general purpose, is that the wife is endowed with the capacity, during the joint lives, to hold in her possession, *as a single woman*, one-half of the estate in common with her husband, and that the right of survivorship still exists as at common law."

In *Aubry v. Schneider*, 69 N. J. Eq. 632 (*affirmed by Ct. of E. & A.*, 70 N. J. Eq. 809), the Court said:

"But how does she take these rents, issues and profits during the joint lives? As joint tenant or as tenant in common? As I read *Buttler v. Rosenblath*, *she takes as tenant in common*. The question there was, could a creditor sell the interest of the husband? The court below held that the estate by the entirety has been altogether abolished by the indirect operation of the Married Woman's act, and that husband and wife held the land as tenants in common. This the Court of Errors and Appeals denied. They said the fee was still held as before, but that the rents, issues, and profits were, during the joint lives, held (to use Justice Van Syckel's expression) 'in common' and so they decided that a creditor could sell the husband's undivided interest in them."

At page 633, the Court further said:

"By the act, the wife, as against her husband, is to hold what she holds as her separate property. If husband and wife are deemed to hold choses in action, given to them jointly, by distinct moieties, each can, upon payment, receipt

for one-half and hold the part receipted for in his or her own right."

SECOND REASON:

Notwithstanding Who Pays for the Property or How it is Paid for—Whether it is Bought Through a Trustee in Favor of the Wife, or the Wife's Name Placed in the Deed With the Husband's, it is Presumptively a Gift or Settlement on the Wife, Which Presumption Cannot be Overcome Unless by Convincing Proof Beyond a Reasonable Doubt.

In *Linker v. Linker*, 32 N. J. Eq. 177, the complainant paid for the property, and put it in his wife's name because she threatened to make a disturbance if he did not, and later she violated her marriage vows, and upon the husband's suit, the Court said, on page 177:

"Where a purchase of land is made by the husband in the name of his wife, it is presumed in the first instance to be a *provision and settlement*, though the presumption may be rebutted."

And the Court held:

"Where there is conflicting evidence as to a husband's object in making a conveyance of lands to his wife, the ordinary presumption that it is intended as a provision or settlement for her benefit is not rebutted."

In *Lipp v. Fielder* (Ct. of E. & A.), 72 N. J. Eq. 439, the husband purchased property with his own money, and placed it in his wife's name. He claimed there was an understanding that when she died he was to get the property. The Court said, on page 442:

"Where a husband purchases and pays for lands and takes title in the name of his wife, a presumption arises that the husband has caused the conveyance to be made by way of *settlement* upon her, and that this presumption will only be overcome by clear proof to the contrary."

And the Court held:

"Complainant purchased certain land with his own money, but caused it to be conveyed to his wife to prevent his children by a former marriage from obtaining the same at his death. On the death of the wife he sued to establish a trust in the same, and that if one died the other would get the property.—*Held*, that the evidence was insufficient to rebut the presumption that the wife took the property by irrevocable gift."

In *Herbert v. Alford*, 75 N. J. Eq. 428, the property was conveyed to the wife, but paid for by the husband's money, and there was considerable evidence before and after the conveyance as to the facts, but not any to form a part of the *res gestæ*. The Court held:

"2. Where property conveyed to a wife was paid for by her husband, proof to overcome the presumption that a settlement or an advancement was intended, except as to acts or declarations of the party to be charged, must be of facts antecedent to or contemporaneous with the purchase or so immediately thereafter as to form a part of the *res gestæ*, and must be so convincing as to leave no reasonable doubt of the intention of the party.

"4. Where, at the time a husband purchased certain property, which he caused to be conveyed to his wife, they were living happily, and there was no reason to suppose that his earning capacity would not continue, and even increase, evidence that the property represented all the husband's savings during his entire married life, except his household goods, was insufficient to rebut the presumption that the conveyance was a settlement on the theory that it amounted to an unreasonable provision for the wife."

THIRD REASON.

She Can Sue in Equity for the Rents and Profits Thereof Because They Are Her Vested Separate Estate.

Section 3, Married Woman's Act, 3 *Comp. Stat.* 3225:

"The real and personal property, *and the rents, issues and profits thereof*, which any married woman has received or obtained since the 4th day of July, 1852, or which she shall hereafter receive or obtain by purchase, gift, grant, devise, descent, bequest, or in any manner however, shall be her sole and separate property *as though she were a single female.*"

In view of the decisions above quoted and the above section of the Married Woman's Act, a wife-tenant by the entirety has the same legal status as her husband-tenant by the entirety, and has a right to sue her husband in equity for the same.

In *Collins v. Babbitt*, 67 *N. J. Eq.* 166, a deceased husband-tenant by the entirety received all the rents, saying he would reduce the mortgage, but applied them to his own use. His wife sued his estate and recovered one-half of the rents, and her suit must have been considered as a simple action for money had and received.

In *Buttler v. Buttler* (*Ct. of E. & A.*), 57 *N. J. Eq.* 645, a wife sued under a separation agreement. At page 652, this Court said:

"We agree with the opinion of the learned Vice-Chancellor who heard the cause in the Court of Chancery, to the extent that this suit may be regarded and, to use his expression, 'must be considered as a simple action for money due by contract;' but notwithstanding this view, he felt constrained to hold that having been brought in a court of equity, the defendant might avail

himself of any equitable defense, and admitted evidence of the defense of 'hard bargain,' which if offered in any court of law would have been overruled. Does it follow because the wife has, perforce, brought her suit to assert her legal rights, under an agreement founded upon a valuable consideration, in a court of equity—to which forum her marital status forced her to resort under the penalty of a submission to a serious invasion of those rights—that they are to be determined by rules of evidence which would be rejected in a court of law? * * *

"It is clear that evidence offered in support of such a defense, if set up in any court of law in any action founded on this agreement, would have been overruled, and the question to be now determined is whether it should have been entertained in the court below. The reason which enables a married woman to assert a right in a court of equity is that to deny her such right is to deny her all remedy and redress for a wrong done her, such a denial being contrary to every system of jurisprudence because at the foundation of the existence of all courts lies the ancient maxim of universal application, 'ubi jus ibi remedium.' Blackstone in his 'Commentaries' translates it into the common law in these words, viz., 'It is a settled and invariable principle in the laws of England that every right when withheld must have a remedy, and every injury its proper redress.' The rule, which has grown up in equity relating to the specific performance of contracts that the hardship of the contract may be set up as a defense, exists under the assumption that the party seeking specific performance and having the choice of remedies, either at law or in equity, rejected the remedy at law and selected a court of equity in preference to that of law, in order to obtain a more complete re-

dress for the injury complained of. But in a case where no such choice can be made, where the injured party is confined to a court of equity or otherwise must go absolutely without redress, the reason of this rule ceases. It would, it seems to me, be a clear denial of a 'remedy' to hold that in such a case the injured party is obliged to waive her rights at law. The complainant was entitled to the benefit of the rules of evidence which a court of law would have enforced * * *."

FOURTH REASON.

Under the Law of This State, if a Husband and Wife Hold Title by the Entirety, by Divorce the Estate Becomes a Tenancy in Common.

There is no doubt but that if this wife had been divorced for her alleged misconduct she would immediately become a tenant in common and could sue in equity for one-half of the rents and profits. Assuming that she was the party at fault in the divorce proceedings, yet it would not bar her right in the Court of Chancery to obtain an accounting and the possession of one-half of the rents and profits. If her conduct allowed her to sue after divorce, there seems to be no rule in reason or justice to prevent her from suing before divorce.

In *Buttlar v. Buttlar*, 67 N. J. Eq. 136, affirmed by Ct. of E. & A., 67 N. J. Eq. 729, it was held:

"1. A husband and wife, having an estate in land by the entirety and living separately, and having entered into an agreement whereby the husband was to receive all the rents and profits in consideration of his paying the wife a certain sum each month, were divorced from the bonds of matrimony by a competent decree—Held, that the result of the decree of divorce was to change

the estate to a tenancy in common, and that the agreement of support was no defense by the divorced wife against the suit by the husband for partition of the premises."

And in the case of *Sbarbaro v. Sbarbaro*, 88 N. J. Eq. 101:

"1. Where a husband and wife holding an estate by the entirety are divorced, the divorce works a severance of their interests and they become either joint tenants or tenants in common, according to the law of the State where the land is located.

"2. By virtue of 2 *Comp. Stat.* 1538, section 15, they become tenants in common when divorced."

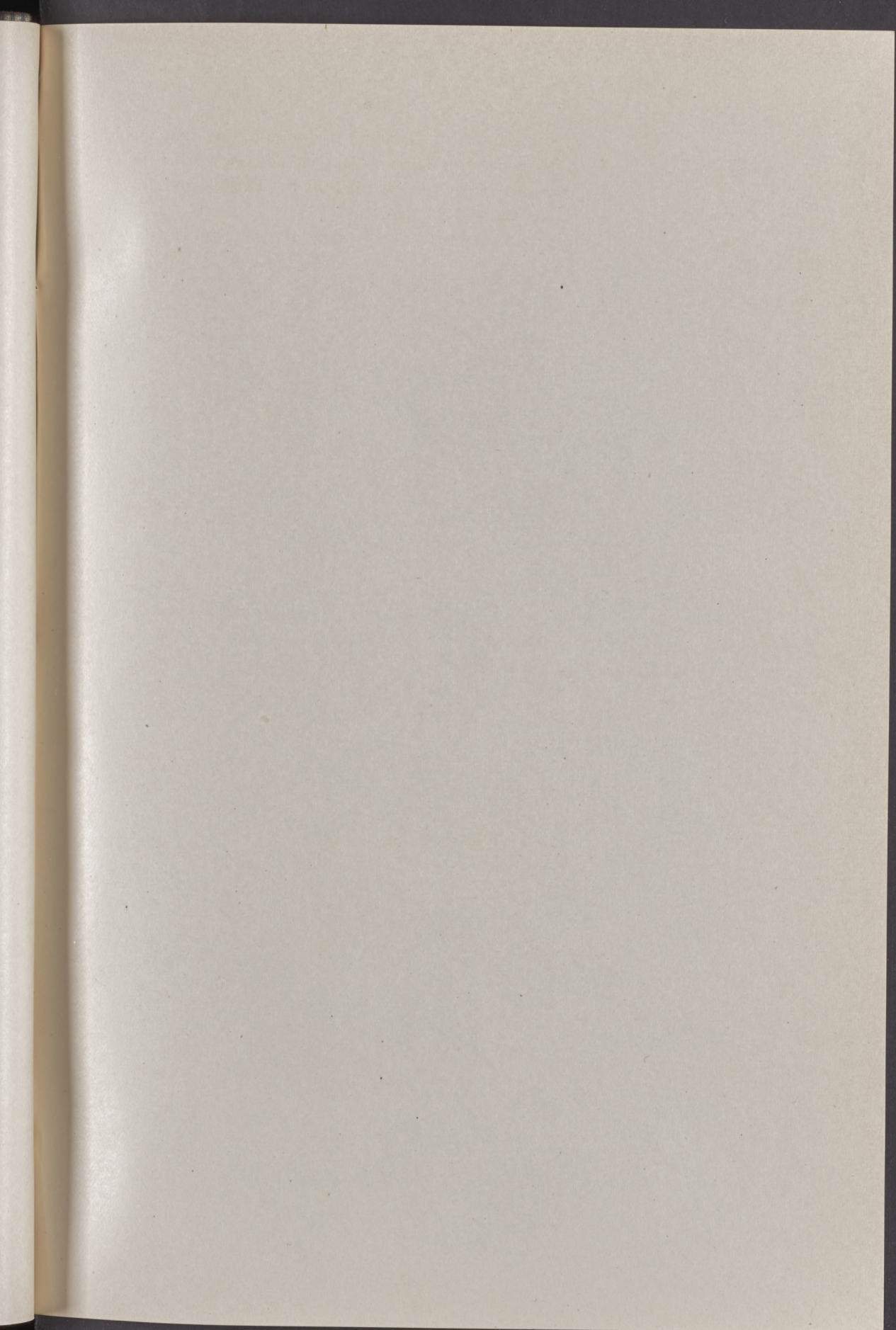
And in the case of *Ringold v. Ringold*, 116 *At. Rep.* 690:

"Where land was purchased and title taken jointly by the husband and wife, on partition after divorce the husband is not entitled to contribution for payments made, as payments by the husband in the purchase of land in the wife's name, in the absence of proof of a contrary intent, are presumed to be gifts."

For the above reasons the decree of the Vice-Chancellor should be reversed and the prayer of the complainant be granted.

Respectfully submitted,

MARTIN P. DEVLIN,
Of Counsel with Appellant.
JOHN H. KAFES and
CHARLES J. FALCEY,
Solicitors of Appellant.





NEW JERSEY

Court of Errors and Appeals

BETWEEN

WILHELMINA NEUBECK,
Complainant-Appellant,

AND

WILLIAM H. NEUBECK,
Defendant-Respondent.

Brief of Complainant-Appellant in Reply to Supplemental Brief of Defendant- Respondent.

The counsel for the defendant and respondent in his supplemental brief urges that the maxim of "clean hands" was not raised in the case of *O'Connell v. O'Connell, N. J. C. of E. & A.*, opinion filed June 19, 1922.

We submit that the O'Connell case is a parallel in every detail to the case at bar. In the O'Connell case the complainant sued for maintenance and also for her share of the rents and profits of property held by the entirety.

In the suit she sued for two things:

1. A domestic remedy (maintenance) arising out of the domestic relation of husband and wife.
2. She sued also for the remedy for the right arising out of her property rights.

Whether the question of "clean hands" was pleaded or argued makes no difference so far as formalities are concerned. The Court of Chancery below held that her husband was not guilty of the matrimonial offense of abandonment of her under the statute, and if he did not violate his duty as a husband when she separated herself from him she must have denied his right as a husband and violated her duty as a wife. Whether it was desertion, abandonment or adultery makes no difference as to the legal effect of the offense except as to the degree of aggravation.

Although the court held her guilty by denying her a remedy for the alleged matrimonial offense of her husband, yet the court took up the question of her property rights and did not involve her failure to perform her duty as a wife, as a bar to her recovering her property rights in this court. The only distinction between this and the case at bar is of the nature of the matrimonial offense, and this distinction does not in any manner affect the result.

In neither the Black case, 30 *N. J. E.*, p. 215, nor the O'Connell case referred to above, does the court make a distinction in formal language between domestic rights and property rights, and yet in both cases the effect of the decision is to make substantial difference between a domestic right and the property right.

In the Black case a lack of "clean hands" barred rights rising under the property that was given for the benefit of the domestic relationship, but it did not deny the right of property that was not conditioned upon a domestic relationship, but, on the other hand, gave the right to the remedy covering the property that did not depend upon the condition of domestic relations.

The case of *Gifford v. Gifford et al.*, 115 *At. Rep.*, p. 654, *Pamph. Feb.* 9, 1922, involved facts where the wife paid the premiums on an endowment policy of insurance for her husband's life, and the court held:

"A wife who paid premiums on an endowment policy on her husband's life, naming her as bene-

ficiary, but providing for payment to the husband if he survived the endowment period, without any expectation that they would be paid, and with no intention as to keeping or holding the policy as security, acquired no lien on the fund from the mere payment of the premiums."

"A wife's payment of the premiums on an endowment policy on her husband's life, naming her as beneficiary, but providing for payment to the husband if he survived the endowment period, when made without any agreement for repayment or a lien, were in the nature of gifts to the husband from the wife."

"Where a wife paid the premiums on an insurance policy on her husband's life without any agreement for repayment or a lien, the validity of the gifts were not affected, and they could not be set aside because of the husband's subsequent willful and obstinate desertion of his wife, for which the wife obtained divorce."

In the above case this question was gone into, and though the husband was the offending party in the domestic relationship, yet the wife was unable to recover the premiums paid on the insurance policies, and was held to be a gift. Vice-Chancellor Backes in his opinion discusses some of the questions involved in the case at bar, and at the bottom of page 655 he makes a note in relation to the Black case. This note explains the confusion created by the Court of Appeals partial reversal of the Black case in 31 *N. J. Eq.*, page 798. Until the case of *O'Connell v. O'Connell*, referred to above, there has not been any case squarely in point with the one at bar, but when you analyze the case of *Black v. Black* you will find that Mrs. Black, according to the pleadings and proofs, would have been denied that much of her property that was given on condition, to wit: for the benefit of husband and wife and family—her rights would have been denied (regardless of the nature of her matrimonial offense) by her just leaving the home

and refusing to abide therein, provided the husband did not drive her from that home. So that conduct of a less serious nature than that of which she was found guilty would have defeated her claim to her property. Her husband's claim to keep it would have been defeated had he been guilty of driving her from that home. The court made a distinction in that case not observed by my adversary, because it separated the domestic rights from the property rights, denied her remedy on the domestic right, but granted her a remedy on the property right, which was the three notes, and though the Court of Appeals reversed on two of those notes, they still granted the wife's property rights on the remaining note.

When you group together the case of *Dixon v. Dixon*, 24 N. J. E., p. 135; *Lister v. Lister*, 35 N. J. E., p. 49; *Whittle v. Schlemm*, 94 N. J. L., p. 112, it is plain to be seen that property rights are not defeated unless the doctrine of "unclean hands" rose in the creation of the property right.

In *Butler v. Rosenblatt*, 42 N. J. E., p. 651; *Aubrey v. Snyder*, 69 E., p. 652, and *Butler v. Butler*, 67 N. J. E., p. 136, and also section 3 of the Married Woman's Act, 3 *Compiled Statutes* 3325. These decisions at common law and by statute, grouped together make a conclusion that the estate held by the entirety by the husband and wife is an established property right, that each hold as tenants in common in the rents and profits, and also that that property right cannot be defeated by any wrong conduct of either spouse arising out of the relation of husband and wife, but if defeated at all, it must rise out of the creation of the property right and cannot rise out of the violation of any rights or duties that rise out of the domestic relation of husband and wife.

In conclusion, we submit that notwithstanding that my adversary says that the question of "clean hands" was not raised in the case of *O'Connell v. O'Connell*, above referred to, yet the court undoubtedly acted on

that question, and whether or not counsel of either side failed to raise it, or to see it, the opinion undoubtedly shows that this court noticed it sufficiently strong enough to base its decision without making a formal mention of the fact that there was a difference between rights rising out of domestic relations and rights rising out of property. My adversary quotes decisions from outside jurisdiction. I will not answer these decisions, because I consider this question fully settled by the combined decisions of the highest courts in this State, and quoted in my main brief and reply.

We respectfully submit that the decree of the Court of Chancery below should be reversed.

MARTIN P. DEVLIN,

Of Counsel with Appellant.

JOHN H. KAFES,

CHARLES J. FALCEY,

Solicitors of Complainant and Appellant.



NEW JERSEY Court of Errors and Appeals

BETWEEN

WILHELMINA NEUBECK,
Complainant-Appellant,

AND

WILLIAM H. NEUBECK,
Defendant-Respondent.

Brief for Defendant-Respondent.

FACTS.

Complainant and defendant are wife and husband. The complainant filed her bill in the Court of Chancery for an accounting of the rents and profits received by the husband for six dwelling houses in Trenton conveyed to the parties after their marriage by deeds which apparently created the estate by entireties, and for the appointment of a receiver to collect rents due at the filing of the bill, or subsequently to become due.

The accounting and receivership is sought as well in respect of the dwelling formerly the family domicile, and still the husband's domicile, as of five others which are in the possession of tenants. October 10, 1919, is the date fixed by the complainant (Case, p. 3, l. 32) as the beginning of the period respecting which an accounting is demanded, and this appears (p. 41, l. 8) to be the date

on which complainant left her husband and withdrew from the family domicile.

The Vice-Chancellor found in his conclusions (p. 246, l. 27) that the money with which the properties were purchased was the husband's, and counsel understands that the appellant takes no exception to this finding. The wife's interest in the property, such as it is, therefore arises only by gift from the husband. Her theory of why the gift was made appears in the evidence as follows:

On direct examination (p. 20, l. 1) she was asked:

"Q. What is the reason it was in both your names?"

She answered (p. 20, l. 5):

"A. Well, we both decided that we would work together, and have that so that if anything happened to either one of us, or we got old in any way, and hadn't brought it, we would have a protection."

At p. 100, Ernest Klemann, father of the complainant, on re-direct examination testified as follows:

"Q. Who was present?"

"A. They were both there."

"Q. How did they speak about those rents; how did they speak about it—if you can remember the words?"

"A. Oh, they said they had enough income from the store."

"Q. They said 'they'? I want you to relate just what they said—the words; they didn't say 'they'?"

"A. They said, 'We have got enough income to retire with'; he didn't have to work so hard any more—neither one of them."

"Q. Neither one of them had to work hard?"

"A. Yes."

"Q. Did your daughter speak to you about working hard?"

"A. They did work hard in the store, and they got tired, and they was going to retire."

At p. 102, Margaret Blackwell, sister of the complainant, on cross-examination, testifies:

"Q. They must have told you something when they told you what they were buying together?

"A. I have heard this spoke many times of how they would work together and what they were going to do with it; they expected to retire in their olden days; they said it together in my father's kitchen.

"Q. What did they say?

"A. I heard my sister say, in his presence, and he gave some answer which I couldn't say, but it was regarding what they were saving, and they weren't going to work when they got a certain age; and they expected to work together so they could retire and have things easy in their olden days; that's about all I could tell you. That I heard in my father's kitchen."

On p. 204, l. 1, Ernest Klemann, recalled, testifies on direct examination:

"Q. From whom did you gain that understanding?

"A. From both of them, what one owned the other one owned; they were partners."

The Vice-Chancellor also found (p. 247, l. 25, *et seq.*) the wife to be living in adultery, after an elopement, pointing out that her counsel so admitted in the argument. Admissions of the wife and paramour on cross-examination seem to leave no doubt upon this if the doctrine of inclination and opportunity is to be followed. She left her home and went to Pittsburgh on October 10, 1919. A week later she came to her father's house in Trenton and her husband then asked her to return to him and she refused. She then went back to Pittsburgh and there met Banks, her paramour (p. 47, l. 24, to p. 49). She and Banks were brought to Trenton under arrest in February, 1920 (p. 50, l. 22). She was bailed

and Banks was not, and she told the Assistant Prosecutor that if Banks could not be let out of jail she did not care to leave him (p. 173, l. 29). They were not indicted and went back to Pittsburgh (p. 51, l. 32). There they became the sole occupants of the top floor of a rooming house (p. 52, l. 1; p. 68, l. 33, *et seq.*). She has a kitchen and bedroom, he a bedroom (p. 54, l. 25). Banks sometimes joins in her cooking (p. 52, l. 25).

She goes by the assumed name of Miss Betty Hess (p. 72, l. 20), and her acquaintances in Pittsburgh, introduced to her by Banks, understand her to be a young woman to whom he is paying attention (p. 75, l. 27). She told the constable she was in love with Banks and if conditions ever made it possible would marry him (p. 51, l. 20). She told the proprietress of her earlier rooming house in Pittsburgh, that she and Banks were going to be married, but says, "This was just to get her off the track, not to mean it" (p. 73, l. 24).

On pages 76, 78 and 80 are reluctant and qualified admissions and uncertain and inadequate denials dealing with kissing and displays of affection that tell a plain story. On p. 85, l. 9, it appears that they kiss each other. The paramour came into court with the woman as a witness in her behalf, and admitted on cross-examination (p. 127, l. 30) that before she left Trenton the second time (after refusing her husband's request to return to him) she and he had made an agreement to go to Pittsburgh and meet there, and that they carried the agreement out. He also (bottom of p. 127, *et seq.*) confirms the living arrangements as stated above, and says that they have existed for over a year and admits himself to be thirty-four years old, in good health and single. On p. 131, l. 1, he confirms having admitted to the constable that he had "kissed her and put his arms around her." At p. 132, l. 5, he says, "I think a lot of her." On the same page it appears that they motored together from Pittsburgh to Trenton for the trial, stopping over night at a hotel, where he insists they had separate rooms, but his testimony regarding registering, etc., is

so improbable as to hardly warrant belief. This appears on pp. 133 and 134.

Counsel will not weary the Court by pointing to other parts of the evidence. In its every part it well justifies the Vice-Chancellor's finding of fact that:

"As to the facts of the separation, the evidence is also to my mind conclusive against the wife. She left him without justification and went away with a man whom the husband had befriended and taken into his home as a boarder, and who repaid the kindness of his benefactor by stealing the wife's affections and running away with her.

"The two have ever since been living practically together in Pittsburgh, and although they both deny adultery, I think there can be no doubt but that that also is proven—in fact, complainant's counsel so admitted on the argument."

In disposing of the wife's case the Vice-Chancellor decided only one point, namely, that a court of equity would not lend its aid to a wife who came before it under such circumstances as are above stated, praying the relief which was sought in this suit, and he bases his decision on the equity maxim that he who comes into equity must come with clean hands.

THE QUESTION INVOLVED.

Taking into consideration the facts of this case as above stated, it appears that the only question involved in this appeal is:

Can a married woman who possesses by gift from her husband an estate by entireties with him in several properties, one of which is the common domicile of the parties, and who asserts that the reason for the gift was the husband's desire to provide for old age or the other contingencies of life in both of them, after deserting her husband and fleeing with an adulterer, with whom she

While the parties lived together the rents were treated as the husband's (Case, pp. 40, 1. 4; 56, 1. 35 to 58, 1. 18; 145, 1. 36 to 147; 242 to 245), apparently by mutual consent.

continues to live, come into a court of equity, dispossess her husband of the estate by means of a receiver, collect through the receiver the half of the income to accrue in future, and require from her husband an accounting with respect to rents received by him prior to the appointment?

ARGUMENT.

I.

At first view the phrase "and who asserts that the reason for the gift was the husband's desire to provide for old age or the other contingencies of life in both of them" might seem an improper and unwarranted interpolation in the question as stated. Not so, however, it is respectfully submitted, for the reason that the phrase serves to impart into the question an element put into the case by the appellant herself—a condition upon which she herself says that she received her estate—and so it serves to invoke against her the maxim of equity that "He who seeks equity must do equity." Upon this maxim, and the other upon which the Vice-Chancellor grounded his decision, that "He who comes into equity must come with clean hands," the respondent relies to sustain his decree.

Counsel for the appellant lays great stress upon the nature of the estate by entireties, and especially upon the vested and present interest in the rents and profits which it is asserted such an estate gives the wife during their joint lives, relying especially on the doctrine of the Lister case, 35 *N. J. Eq.* 49, affirmed, 37 *Ib.* 331. In so doing, it is respectfully submitted, counsel misapprehends the question before the court in the present case. The question here does not refer to the wife's *rights*, but to her *remedies*. She has sought an equity forum; will it afford her a remedy on an inequitable claim, even assuming that she has a legal right? *

For two reasons it will not. The first reason is that seeking equity, she does not do equity. She seeks to



 Neubeck v. Neubeck. Attached to page 6 of Respondent's brief.

Eg. Jur.
In Pomeroy's ~~4th~~ 4th Edition, Vol. 1, section 131, it is said: " * * * the question whether a given case falls within the equity jurisdiction is entirely different and should be most carefully distinguished from the question whether such case is one in which the relief peculiar to that jurisdiction should be granted or in which the equity powers of the court should be exercised in maintaining the primary right, estate or interest of the plaintiff. * * * The equity jurisdiction may exist over a case although it is one which the doctrines of equity jurisprudence forbid any relief to be given, or any right to be maintained * * * and yet the equity jurisdiction is constantly confounded with the right of the plaintiff to maintain his suit, and to obtain the equitable relief."

take advantage of an estate which she asserts her husband built up as provision for old age or sickness in himself and his wife as *husband and wife*, while she is living separate from him and in a state of adultery. She has put herself outside the reason which, by her own evidence, moved her husband to invest his money in an estate by entireties rather than in an estate in himself alone. She comes to an equity court admitting that she has violated the conditions of the deed and yet asking that court to give her the benefit of the deed. The court will decline. Courts of equity do not grant relief simply because a party has a legal title or a legal right.

A preliminary phase of the case of *Black vs. Black*, reported in 26 *N. J. Eq.* 296, supports this contention. There was a motion for an order requiring the defendant husband to deliver to complainant wife, or to a receiver to be appointed by the court, certain household furniture which the bill asserted, and the answer did not deny, was the property of the wife. The wife had deserted the husband and it was in dispute whether the desertion was justified or not. Chancellor Runyon denied the motion, saying:

"* * * *this motion must necessarily be based on the broad ground, that a married woman is, without regard to circumstances, entitled to the aid of equity to obtain possession of her property when it is withheld from her by her husband; and, further that if she chooses to abandon her husband's house, though she may be actuated by caprice merely, or even by a worse motive, she has, by virtue of her legal right alone, a claim upon a court of equity to its aid in obtaining possession of that property, even though it be household furniture which, up to the time of her departure, was in the joint use of her husband and herself in their household, and is still in his possession, in the use of the family. A decent regard for the interests of*

society would forbid the court from entertaining such a proposition. Equity will not lend its aid to the causeless disruption of family relations, or countenance the unjustifiable disregard of the obligations of the marriage contract. They, therefore, who come into this court for relief in such cases, must not only come with clean hands, but must show a reason valid in conscience, as well as a legal right, for the assistance which they seek." (*Italics ours.*)

It is respectfully submitted that the first ground for the decision of this motion, which we have stated in italics above, is sufficient ground for the decision, and also that the decision may as well be based upon the maxim that he who seeks equity must do equity as upon the clean hands maxim alluded to by the Chancellor. This will be apparent when it is considered that, if the wife had been living with her husband, and had desired, against his opposition, to have the furniture for the purpose, for instance, of selling it in order to buy other furniture for the household, or for some other proper purpose, the court would not have withheld its aid. Under the circumstances assumed, no question of clean hands would be involved, the wife would not have been attempting an inequitable act, and she would not have been denied an equitable remedy.

II.

Second, the complainant was properly denied relief because she came into a court of equity with unclean hands, which was the reason upon which the Vice-Chancellor based the decree below.

In appellant's brief it is stated that "we submit that the doctrine of clean hands is not applicable in this case because her conduct is not a condition of her estate and does not arise out of the original acquisition of title to the property." Here is again illustrated the appel-

lant's misconception of the question involved in the case. He speaks as though the wife's *right or title in the property* were under consideration, instead of, merely, her standing in a court of equity. It is her *standing in court* to which the "doctrine of clean hands" does apply, and it applies regardless of her claims of legal right. In *Prindiville vs. Johnson & Higgins*, 116 Atl. 785, this court, speaking by the Chief Justice, at the last term, declared itself "unwilling to consider the meritorious questions decided by the Vice-Chancellor" (and sought to be reviewed by the complainant-appellant), because of the appellant's unconscientious conduct. The Court says, "It is a maxim of equity that a court of conscience will not even listen to a suitor who comes into that tribunal with unclean hands * * *." (Italics ours.) True, the Prindiville case involved facts wholly different from those in the present case, but the difference in facts does not affect the living principle. If the hands be unclean, whatever the particular facts of the controversy be, "*the court will not even listen,*" and, of course, a court which does not listen to an intending suitor cannot grant his suit.

That appellant's hands are unclean, and unclean with respect to the very subject matter in question, is too clear for discussion. It is because a state of matrimony subsisted between the parties that the deeds raised an estate by the entirety. It is because she was his wife that the respondent gave her the interest which she possesses in the properties. She herself adduces the evidence to show that the motive back of the gift was her husband's desire to make provision for the old age or sickness of himself and his wife. It nowhere appears that it was within his contemplation to make provision for himself living alone in Trenton and for his wife living in adultery in Pittsburgh. It is not denied on this appeal that the provision the respondent made for his wife turns out to have been a foolish and ill-advised one. It is not denied that she possesses an estate by the entirety, with all the usual incidents of

such an estate. It is not in issue whether, having such an estate, she is without any means to render the estate of present use and value to her.

It is simply asserted that, under the circumstances here existing, a court of equity will not afford a remedy for the enforcement of the alleged legal right. The question of right or no right the court does not assume even to discuss. As was said by Vice-Chancellor Van Fleet in the *Black* case, on page 226 of 30 *N. J. Eq.*, "In refusing to aid the complainant, no question of legal right is determined. On the contrary, her legal right is admitted." In the instant case, all that was decided, and all that is involved in this appeal, is that, under the circumstances stated, a court of equity will not put forth its powers to aid the wife in the enforcement of her alleged legal right. "It will not even listen." What the appellant contends for is, necessarily, that under the circumstances stated the Court of Chancery is forsooth *compelled* to put forth its powers, and that this court by its decree will make the compulsion effective.

The declination of the court to aid the wife in the instant case was based upon the decision in *Black vs. Black*. The Vice-Chancellor in his conclusions quotes the language of Chancellor Runyon from 26 *N. J. Eq.* 296, which is quoted above, and also the words of Vice-Chancellor Van Fleet in his opinion on final hearing reported in 30 *N. J. Eq.* 215 (at p. 225), as follows:

"These views command my hearty assent. They rest on obvious considerations of justice and sound policy. It was long ago declared that a wife who deserts her husband to enjoy the society of her paramour, would, on account of her misconduct, be refused the aid of a court of equity against her husband, in respect to her separate estate, which, under other circumstances, she would have a right to claim. *Lee vs. Lee*, 2 *Dick.* 806; *Clancy on Mar. Wom.* 354. If the complainant's legal right is sufficient, not-

withstanding her desertion, to entitle her to the aid of this court, she would, in legal theory at least, upon the same ground, be entitled to the same aid, even if she was living in a state of open adultery.

"In refusing to aid the complainant, no question of legal right is determined. On the contrary, her legal right is admitted. She may, perhaps, have such complete dominion over the chattels in controversy as to be able to invest her vendee with a title which her husband cannot successfully resist in a court of law. *Houston vs. Clark*, 50 N. H. 482; *Jones vs. Jones*, 19 Iowa 242. But she is repulsed simply because her desire to sue, if not her right of action, flows directly from her own wrongful act. She wants her husband to give up the property which she has contributed to their home, because she has deserted him. Because she has taken herself away, she wants to take her property also. Her suit is the sequence of her desertion; if there had been no desertion, there would have been no suit. She asks the court to help her in her wrong. Such a suitor, with such a case, has no right, in my judgment, to the aid of this court."

The language, just quoted, employed by Vice-Chancellor Van Fleet, referred to Mrs. Black's second claim, which is stated at page 216 of 30 N. J. Eq. to be for "certain chattels belonging to her which are in her husband's possession and use and which he refuses to surrender to her." Earlier in his opinion he had refused her claim for (page 216) "money expended by her in erecting buildings on the defendant's lands," which (page 217) she asserted in her bill she had made "to furnish a home for herself, her husband and her children during life" and in her testimony "to provide a home for herself and her children." She asserted that her husband's cruelty drove her from their home, wherefore she claimed a right to have back her money

put in his real estate. The expenditures were not disputed, but the issue of cruelty was determined against the wife; her desertion was found to be unjustified and she was denied relief on this claim also.

A third claim of Mrs. Black's was for money of hers alleged to have been wrongfully appropriated by her husband. The fact of misappropriation was found against her.

Her fourth claim was for borrowed money evidenced by three promissory notes. This was determined in her favor. Mrs. Black did not appeal from any part of the decree in Chancery. Her husband did appeal from that part which held him liable on the three notes, on the ground that he did not owe the amount of the notes, or any part thereof. The decree of the Court of Errors and Appeals reversed that of the Court of Chancery in so far as two of the notes were concerned and affirmed as to the third note.

(This statement as to the appeal, which is based on the papers in the files, is made because the report of the case on appeal in 31 *N. J. Eq.* 798 is misleading in that it states that "the decree of the Vice-Chancellor was reversed, except as to the amount due on the \$1,000 note.")

It thus appears that, on the ground of the maxim that "he who comes into equity must come with clean hands," a wife who was a mere deserter was refused the aid of an equity court to recover back *her own money* advanced for the improvement of the family home, which stood in her husband's name, and her own furniture supplied for use in it.

In the case now before the court an eloping adulteress asks such aid in order that she may have for herself and her paramour the income from the husband's savings, which she herself says he laid up (Case, p. 20, l. 5) "so that if anything happened to either one of us, or we got old in any way, and hadn't brought it, we would have a protection;" and of which her father says (p. 100, l. 13), both parties declared "*we* have got

enough income to retire with; he didn't have to work so hard any more—neither one of them.”

Counsel for the appellant would doubtless retort that in the Black case the property was the homestead. The point is immaterial. By the plain implications of the evidence put in by the wife, the income was to support the two in a common home, and, as was truly written in the play, “You take my house when you do take the prop that doth sustain my house.” Furthermore, the bill seeks relief with respect to the homestead property no less than with respect to that which is rented to tenants. 118 Newell Avenue was the home at the time of the desertion (Case, p. 41, l. 3-8). It is specifically mentioned in the bill (Case, p. 3, l. 1) and the prayer for relief is general, making no distinction between this property and the others (Case, p. 3, l. 15, *et seq.*) The complainant offers the deed for the homestead property as an exhibit (C 9, Case, foot of p. 229).

Counsel for complainant seeks to turn the Black case to his own advantage because in the final analysis it does hold the husband liable on a single promissory note for \$1,000. Speaking with regard to all the notes, Vice-Chancellor Van Fleet says, at page 227 of 30 *N. J. Eq.*, “The defendant admits that he borrowed the money and admits that he has not paid it” * * * There is no explanation regarding the loan or its reasons or purposes. The books do not inform us which of the three notes was sustained in this court. The sustaining of one of them—a mere executory promise for the repayment by the husband of money borrowed from the wife, and nothing more—certainly affords no precedent to support the claims of the complainant in the case now before the court. There is no necessary inconsistency between equity lending aid to Mrs. Black to recover her own money loaned to her husband and for which she held his promissory note, and refusing its aid to Mrs. Neubeck in her desire to have a part of the income from her husband's own accumulations for

the support of herself while she is living with her paramour.

Application of the doctrine of unclean hands, in a suit between husband and wife, was made recently in Pennsylvania, in the case of *Wagner vs. Wagner*, 60 Pa. Sup. Ct. 526, which was on appeal from the decree of the Common Pleas of Allegheny County in favor of complainant, upon a bill in equity. The bill was by the husband to restrain his wife from interfering with his rights to use and occupy certain land which he owned in fee, in effect an ejectment suit. The decree was reversed by the Superior Court for the reason, among others, that complainant did not come into equity with clean hands. In 1910 complainant and defendant were married and went to live on the premises in dispute. In 1911 complainant went on a trip to Germany, leaving his wife on the premises. Upon the return of the husband from Germany the wife insisted upon his conveying the farm or part thereof to her, which he refused to do. Quarrels occurred between the parties and complainant was arrested for non-support. At the hearing of those proceedings he promised to permit his wife to occupy the house and lot as her residence.

In denying the relief, the Court said:

"It may be that the defendant is quarrelsome, but there is abundant evidence that the complainant has the same infirmity of disposition and that he often beat his wife. It is not in dispute that he abandoned her twice, at one time going to Germany and remaining a length of time, and he was adjudged guilty of desertion in the Court and required to pay the defendant a weekly allowance for her support. There was evidence too that at the hearing in the County Court he promised to permit his wife to occupy the house and the lot appurtenant to it. If the defendant is unlawfully in possession of the premises, the complainant has an adequate remedy at law.

There is the additional consideration that the complainant does not come into court with clean hands and with a clearly established equitable demand. It is doubtless true that the domestic relations of the parties are very unsatisfactory, but it is not at all manifest that the responsibility is all on one side. A proceeding in Chancery is not an appropriate method of settling domestic squabbles and the law furnishes adequate means for redressing any injury which the plaintiff believes he has suffered."

Appellant relies upon the case of *Buttlar vs. Buttlar*, decided by this Court and reported in 57 *N. J. Eq.*, at page 645, from the opinion in which her brief quotes at length. She apparently seeks to derive a benefit from the case by arguing that it has the effect of requiring the present action to be considered as "a simple action for money due by contract," and that it holds that the defendant-respondent in the present case may not avail himself of any equitable defense, the insinuation being that the maxim "he who comes into equity must come with clean hands" is to be considered as an equitable defense set up by the party in whose favor the Court applies the maxim.

In both respects appellant is wrong. *Buttlar vs. Buttlar* was a suit in equity based on a separation agreement. The equity forum was resorted to because the parties were husband and wife. The present suit is one for an accounting and for a receivership, and equity would be a proper forum if the parties were not husband and wife. Furthermore, the equity maxim is not properly to be described as an equitable defense. It is much more fundamental. It is the rule of equity itself. It is applied by the court on its own motion, whether the party invokes it or not. It goes much deeper than a defense which a party may assert or abandon at his option. In a case proper for its application, the court, in vindication of its own integrity and the purity of the

See
Pomeroy's
Eq. Jur.
4th ed.
Vol. I
secs. 359-36

system of law which it administers, would itself invoke it.

Furthermore, subsequent judicial interpretation of the opinion in 57 *N. J. Eq.* shows that the case does not hold what appellant evidently relies upon it as holding. In a subsequent proceeding between the same parties, reported in 71 *N. J. Eq.* 671, 65 *Atl.* 485, Vice-Chancellor Garrison, commenting upon the opinion in 57 *N. J. Eq.* says:

"The complainant insists that the Court of Errors has decided that this identical contract is valid; that, although suit upon it must be brought in equity, it is not open to equitable defenses; and, therefore, that the defendant is restricted, in the present suit, to those matters which would be defenses at law. In support of this contention she points out those parts of the opinion in the case in the Court of Errors (57 *N. J. Eq.* 654, 42 *Atl.* 757), in which the court says: 'Such suit is held to be a form of legal proceeding which is carried on in a court of equity merely because the legal right cannot be asserted in the form of a suit at law.' And again: 'It would * * * be a clear denial of a remedy to hold that in such a case the injured party is obliged to waive her rights at law.' It will be observed, however, that in disposing of the case the learned judge writing the opinion of the Court of Appeals did not rest his decision upon the point that no equitable defenses were admissible, but proceeded to analyze the equitable defenses which were set up, and reached the conclusion that they were not sustained by the proofs. I do not think, therefore, that it can be safely concluded that the Court of Errors in the reported case decided that equitable defenses were not admissible in these suits in equity to enforce agreements entered into between married people."

And the Vice-Chancellor, following the view stated in the quoted portion of his opinion, permits the defendant to interpose equitable defenses in the proceeding then pending.

It remains to briefly mention the other cases cited in appellant's Brief and relied upon by her.

Dixon v. Dixon, 24 N. J. Eq. 133, was in Chancery, not in this court. The wife left the husband on account of his ill treatment of her and brought suit for maintenance, which was settled by the husband conveying lands to a trustee for the sole and separate use of the wife. Afterwards he brought suit to set the deed aside on the ground that he was drunk when he made it. His bill was dismissed. Then he filed another bill in which he alleged adultery (a) prior to the deed and unknown to him when the deed was made, (b) subsequent to the deed. The prior adultery was not proven, the subsequent was. Relief was denied.

In *Lister v. Lister*, 35 N. J. Eq. 49, the husband divorced his wife for adultery, and then sought to compel her to convey to him certain properties which he alleged were paid for with his money although put in her name. The court found that part of the consideration was paid with her property, and as to the balance found that he had made a gift to her. The court also found that the husband was well convinced of the wife's infidelity before any of the conveyances to her were made. Relief was denied.

Neither of the foregoing cases decides anything more than that under the circumstances stated affirmative relief will not be granted the husband. The decisions are not in any respect authority for the proposition that in such a case as that now before the court equity will afford the wife a forum or a remedy.

Devine v. Devine, 89 N. J. Eq. 51, 104 Atl. 370, is not relied upon by the respondent, and neither this decision nor its subsequent overruling in *Whittle v. Schlemm* (*infra*) aids the appellant.

Whittle v. Schlemm, 94 N. J. L. 112, 109 Atl. 305, was an action at law and obviously the doctrine of "clean hands" could not be invoked. It was not in fact attempted to be raised. This case decides nothing more than that, in the absence of express stipulation, adultery is not a bar to the recovery of money due under articles of separation. The ground of the decision is the common law obligation of a husband to support his wife, which continues unless and until he procures a divorce from her. The appellant, in the case before the court, did not rely upon this doctrine and would not have been in a position to invoke it, as it appears by her own admission that she voluntarily left her husband and refused his request to return to him (Case, p. 47, l. 24-26; p. 48, l. 1-11).

Buttlar v. Rosenblath, 42 N. J. Eq. 651, is beside the point. It relates to the nature of the wife's right in the property, while the present case relates to the wife's right to maintain a suit in equity for an accounting and receivership. The right to sue in equity, as has been pointed out before, is not a necessary and ever present concomitant of her property right. She may possess the property right, and yet lack the right to maintain an equity suit, or, by her conduct, close to herself the doors of an equity court.

Aubrey v. Schneider, 69 N. J. Eq. 632, only decides that where a bond and mortgage are given to husband and wife, and one dies, the interest afterwards accruing belongs one-half to the survivor and one-half to the representatives of the deceased. It discusses *Buttlar v. Rosenblath*, but, like that case, affords no precedent in the present case.

Linker v. Linker, 32 N. J. Eq. 177, and *Lipp v. Fielder*, 72 N. J. Eq. 439, 66 Atl. 189, are authority for nothing but the proposition that where a husband purchases and pays for lands and takes title in the name of his wife, a presumption arises that the conveyance was made by way of provision for and settlement upon the wife, and that in a suit to obtain such property for him-

self, the husband must overcome this presumption by clear and convincing evidence. This again relates only to the wife's *title*, and not to her *remedy*, and is therefore outside the present issue.

Herbert v. Alford, 75 N. J. Eq. 428, 72 Atl. 946, involves the same principle as the two cases last mentioned and deals with the nature of the proof necessary to overcome the presumption. It is not an authority on the disputed issue involved in this case.

As we read the case of *Collins v. Babbitt*, 67 N. J. Eq. 166, the wife was held entitled to have the rent money, collected by her deceased husband in his lifetime, applied to the reduction of the mortgage if she so directed. (See p. 176 of 67 N. J. Eq.) This right arose as the result of an understanding between herself and her husband, coupled with the subsequent conduct of the parties. The statement of the facts of this part of the case begins at the middle of p. 173 of 67 N. J. Eq. In any event this decision is of no value to the appellant, because neither of the equity maxims relied upon by the respondent in this case was applicable to the case under discussion. The Vice-Chancellor plainly states (last par., p. 177 of 67 N. J. Eq.) that the parties "were living together as husband and wife and the husband was supporting his wife * * *."

The case of *Sbarbaro v. Sbarbaro*, 88 N. J. Eq. 101, 102 Atl. 256, holds only that divorce works a severance of the tenancy by entireties. It is of no moment here. The respondent has the right to refrain from divorcing his adulterous wife and take his chances on outliving her and having the benefit of the right of survivorship. On the record before the court it appears conclusively that she could not divorce him and thereby obtain for herself the benefit of a severance.

The case of *Ringgold v. Ringgold*, 116 Atl. 690, involves only the doctrine that payments made by the husband in the purchase of land in the wife's name are presumed to be gifts.

In conclusion, the respondent respectfully submits that the question for decision relates to the particular remedy sought, and not to the property right, and that the decree of the Court of Chancery is correct and based upon sound equitable principles and should be affirmed.

Respectfully submitted,

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*Solicitors for and of Counsel
with Respondent.*



