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Filed December 28, 1917.

Petition of Appeal.

New Jersey Court of Errors and Appeals

Between THE SUMMIT SILK COMPANY, Complainant-Appellant, and FIDELITY TRUST COMPANY OF BALTIMORE, a corporation of the State of Maryland, Guardian of the Estate of Emily E. deForest, a lunatic, and EMILY E. DEFOREST, Defendants-Respondents.	On Appeal from Chancery: (Lewis, Vice Chancellor). Petition of Appeal.

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The petition of The Summit Silk Company, the appellant in the above-stated cause respectfully shows that your petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 10th day of December, in the year 1917, in a cause wherein your petitioner The Summit Silk Company was complainant and the said Fidelity Trust Company, of Baltimore, a corporation

of the State of Maryland, Guardian of the Estate of Emily E. deForest, a lunatic, and Emily E. deForest were defendants, in this respect, to wit, that the said final decree orders that the bill of complaint in said cause be and the same was thereby dismissed with costs, and that the solicitors for said defendants be allowed a counsel fee of $750 to be taxed as a part of said costs against said complainant. And your petitioner humbly appeals from that part of the said decree of the Chancellor which orders as aforesaid upon the ground that the same is erroneous for that the said decree should have adjudged, ordered and decreed that the said Fidelity Trust Company should be enjoined and restrained from prosecuting its action at law against your petitioner and should have adjudged, ordered and decreed that the deed set forth in the bill of complaint purporting to have been executed by the Summit Silk Manufacturing Company to the said Emily E. deForest, was at the time of filing the bill of complaint in said cause and had been from the time of the execution and delivery thereof null and void and of no force or effect whatsoever in law or in equity, and that the said defendants deliver up said deed to your petitioner to be cancelled, together with all deeds, muniments of title and rights in their possession or power relating to the premises described in said deed and in the bill of complaint, and that the said defendants convey the said premises to your petitioner and surrender all claim to the title or possession of the same:

And the said Chancellor should have refused to find the facts set forth in the recitals in said final decree and should have refused to dismiss the bill of complaint, and should have refused to allow a counsel fee of the amount stated in said decree or any other amount, and should have refused to give costs to said defendants, the proofs in the said cause supporting the

bill of complaint and fully warranting the granting of the prayer of said bill.

Your petitioner therefore prays that the said decree of the Chancellor may be 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.

McDERMOTT & ENRIGHT,
Solicitors of Complainant-Appellant.
FRAUN P. McDERMOTT,
Of Counsel with Complainant-Appellant.

(Endorsed) : "Filed Dec 28 1917 Thomas F. Martin, Register."

Filed January 30, 1918.

Answer.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between THE SUMMIT SILK COMPANY, Complainant-Appellant, and FIDELITY TRUST COMPANY OF BALTIMORE, a corporation of the State of Maryland, Guardian of the Estate of Emily E. deForest, a lunatic, and EMILY E. deFOREST, Defendants-Respondents.	On Appeal from Chancery. Answer.

The answer of the above-named defendants-respondents to the petition of appeal of the above-named complainant-appellant.

The said respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, say and admit that a final decree was, on December 10th, 1917, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as therein stated, but as to the substance and form thereof these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe that the said decree is agreeable to equity, and pray that the same may be affirmed, with costs to be adjudged to these respondents.

VREDENBURGH, WALL & CAREY,
Solicitors for and of Counsel with
Defendants-Respondents.

Filed October 20, 1913.

Bill of Complaint.

IN CHANCERY OF NEW JERSEY.

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

Humbly complaining shows unto your Honor your orator the Summit Silk Company, a corporation organized and existing under the laws of the State of New Jersey, with its principal office at Summit, in the County of Union and State of New Jersey.

(1) That in the month of February, Nineteen hundred and eight The Summit Silk Manufacturing Company, a corporation organized and existing under the laws of the State of New Jersey, sold and conveyed to your orator, its successors and assigns, a certain plant

for the manufacture of silk located at Summit, in the County of Union and State of New Jersey, together with a tract of land containing about twelve acres, upon which was located a manufacturing plant, together with houses for the operatives employed in said plant, the whole constituting a property of great value, to wit, of the value of Two hundred thousand dollars.

(2) That the principal tract of land so sold and conveyed to your orator is described as follows:

ALL that certain lot, piece or parcel of land and premises, hereinafter particularly described, situated in the Township of Summit, in the County of Union and State of New Jersey, and known as No. 3B, Section 2 on Map of Partition of Estate of Nicholas D. C. Moller, deceased, on file in the Clerk's Office of Union County, described as follows: BEGINNING in the middle of the road leading from Summit Railroad Depot to Chatham and in the northeast corner of No. 2B belonging lately to Clemencia H. Thebaud and running thence (1) along the westerly line of said lot south fifty degrees west nine hundred and eighty-eight feet to an iron spike in the line of Isabella J. Morrison's land and iron spike being also in this line twenty-three feet and six inches from said point of beginning; thence (2) along her line north twenty-six degrees west four hundred and ninety-seven feet to an iron spike; thence (3) north forty-nine degrees and fifteen minutes east eight hundred and nineteen feet along a line of Alfonso N. Moller to the middle of the aforesaid road, an iron spike being in this line at a point distant from said middle of said road southwesterly twenty-seven feet and six inches; thence (4) along the middle of the road south forty-five degrees and forty minutes east four hundred and ninety-one feet to the beginning; containing about ten and forty-one thousandths acres, more or less, being the same

premises conveyed to Charles F. Wiegand by a deed of Henry B. Corwin and wife dated the 12th day of May, 1888, and recorded in the office of the Clerk of the County of Union on May 19th, 1888, Book 198 of Deeds, page 534; and conveyed by Harriet deForest and William H. deForest, Jr., her husband, to The Summit Silk Manufacturing Company by deed dated August 22nd, 1892, and recorded August 27th, 1892, in the office of the Clerk of the County of Union in Book 248 of Deeds, page 596.

Excepting and reserving therefrom those separate lots, pieces or parcels of land known and designated as Lots Nos. 17, 18, 19, 20, 21 and 22 upon a certain map of the property of The Summit Silk Manufacturing Company made by Mead & Taylor, surveyors, filed in the office of the Clerk of the County of Union and known and indexed as Map No. 206D, in the map index in the office of said clerk.

(3) That your orator paid for the said lands and premises and manufacturing plant the full consideration agreed upon between your orator and the said The Summit Silk Manufacturing Company, and thereafter took possession of said plant, houses and property and have at all times since the said month of February, Nineteen hundred and eight been in the control, charge and possession of the same.

(4) And your orator further shows that on or about the twelfth day of December, Nineteen hundred and twelve an action at law in the nature of an action of ejectment was brought against your orator by Fidelity Trust Company, a corporation of the State of Maryland, claiming to be Guardian of the estate of Emily E. deForest, a lunatic, in which the said Fidelity Trust Company claims that it is entitled to the possession of certain lands and premises described in the complaint in said action, as follows:

ALL those certain lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Township of Summit, in the County of Union and State of New Jersey, and butted and bounded, as follows:

BEGINNING at a point in the southerly side of a new street opened through line of The Summit Silk Manufacturing Company distant on a course of north fifty degrees and eleven minutes east one hundred and fifty-one and six one-hundredths feet from land of one J. S. Palmer, and at the north-westerly corner of Lot No. 7, on a map of property of The Summit Silk Manufacturing Company; running thence (1) along the southerly line of said New Street north fifty degrees and eleven minutes east two hundred and fifty feet to the northwesterly corner of Lot No. 17 on said map; thence (2) between Lots 16 and 17 south thirty-nine degrees and forty-nine minutes east one hundred and twenty-five feet to land of one Peet; thence (3) south fifty degrees and eleven minutes west two hundred and fifty feet to the southeasterly corner of Lot No. 6; and thence (4) between Lots 6 and 7 north thirty-nine degrees and forty-nine minutes west one hundred and twenty-five feet to the place of beginning. Being designated on said map as Lots 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16; being a part of the same premises conveyed to The Summit Silk Manufacturing Company by deed recorded in the Union County Clerk's Office, in Book 248 of Deeds for said county on pages 595, etc.; and being the same premises which were conveyed by The Summit Silk Manufacturing Company to the said Emily E. DeForest by deed dated July 10, 1895, recorded in the Office of the Register of Deeds for Union County, in Book 295 of Deeds, pages 49, etc.

(5) And your orator further shows that the said premises so described in said complaint and claimed by said Fidelity Trust Company, the plaintiff in said action, are part of the lands and premises hereinabove described, conveyed as above recited to your orator by The Summit Silk Manufacturing Company for a full and adequate consideration. That at the time the said lands and premises were so conveyed to your orator the said Emily E. DeForest, who was then in her right mind and competent to transact business and had full knowledge of the making of said conveyance to your orator, was the principal owner of the capital stock of the said The Summit Silk Manufacturing Company and the said conveyance was so drawn to include the real estate now claimed by the said Fidelity Trust Company with her full knowledge and consent and with the intention on her part as well as on the part of the said the Summit Silk Manufacturing Company, that said lands and premises now claimed by said Fidelity Trust Company as plaintiff should pass to your orator; that said premises described in said complaint were with other property of said The Summit Silk Manufacturing Company in the possession of said last mentioned Company for over twenty years prior to the conveyance to your orator; that while so in the possession of said lands and premises the said The Summit Silk Manufacturing Company erected thereon five dwelling houses of the value of Ten thousand dollars, which said dwelling houses were on said premises at the time of the conveyance to your orator and were seen and purchased by it and the value whereof was included in the consideration paid by your orator to said The Summit Silk Manufacturing Company.

(6) That the said Fidelity Trust Company, as plaintiff in said action, claims that the said lands and premises described in its complaint in said action were conveyed to the said Emily E. DeForest by a

certain deed bearing date the tenth day of July, eighteen hundred and ninety-five, purporting to be between The Summit Silk Manufacturing Company as grantor and said Emily E. DeForest as grantee, and purporting to be in consideration of the sum of Two thousand dollars, which said deed was recorded in the Register's Office of the County of Union in Book 295 of Deeds for said County on page 49, etc., on the twenty-fourth day of July, eighteen hundred and ninety-five.

(7) And your orator further shows that the said Emily E. DeForest, who, as above recited, was the principal stockholder of said The Summit Silk Manufacturing Company, was the wife of Othniel DeForest, who was at the time of the pretended execution of said last mentioned deed the president of the said The Summit Silk Manufacturing Company; that no consideration passed to the said The Summit Silk Manufacturing Company from the said Emily E. DeForest for said premises, and that said conveyance was wholly without consideration. That the making and execution of the said deed were not authorized by the directors or stockholders of said The Summit Silk Manufacturing Company, nor was the sale of said premises to her or the conveyance thereof to her authorized by the directors or stockholders of said company; that said deed was signed by the said Othniel DeForest, as President, and attested by William H. DeForest, Jr., a relative of the said Othniel DeForest and Emily E. DeForest; that the said William H. DeForest, Jr., made an affidavit in an attempt to prove the execution of the deed, which is attached thereto; that said affidavit fails to disclose that either the stockholders or directors of the said The Summit Silk Company authorized the making of said deed, to which said deed and affidavit, copies of which are hereto annexed, your orator begs leave to refer.

(8) And your orator further shows that after the recording of said pretended deed to the said Emily E. DeForest the said The Summit Silk Manufacturing Company, with the knowledge and consent of said Emily E. DeForest, continued in possession of the said premises described in said last mentioned deed, which, as nearly as your orator can ascertain, were of the value of Two thousand dollars or less, treating said premises as its own, and erected and placed upon the said premises the said five dwelling houses hereinabove referred to of the value of Ten thousand dollars; that the said premises were occupied by the said The Summit Silk Manufacturing Company and said dwelling houses erected thereon by it in good faith during the period when the said Emily E. DeForest was in her right mind and competent to transact business and was the principal stockholder of the said last-mentioned company, with her knowledge and consent, and that the said lands and premises with the said dwelling houses thereon were a part of the property purchased by your orator and delivered to it with the knowledge, consent and cooperation of the said Emily E. DeForest, who was then the principal stockholder of said The Summit Silk Manufacturing Company, and then in her right mind and competent to transact business.

(9) And your orator further shows that the said Emily E. DeForest is not in equity the owner of the said lands and premises described in said complaint, and that if the said Fidelity Trust Company has acquired any rights as the guardian of said Emily E. DeForest or otherwise, that said Fidelity Trust Company is not in equity the owner of said lands and premises, but that on the contrary your orator is in equity the owner of the said premises and entitled to the possession of the same, and that your orator, by a decree of this Court, should be declared to be the

owner of said premises and entitled to receive a conveyance thereof from the said Emily E. DeForest or from the said Fidelity Trust Company, if said trust company be in fact the guardian of said Emily E. DeForest.

(10) And your orator further shows that while in equity it is the owner of said lands and premises and entitled to the possession thereof, it cannot safely defend itself in the said action at law for the reason that the facts upon which it relies do not constitute an adequate defense at law, while sufficient to obtain relief in this honorable court.

In consideration whereof and for as much as your orator is without adequate remedy in the premises at and by the strict rules of the common law, and can only obtain relief in this honorable court, where matters of this nature are properly cognizable and relievable.

TO THE END THEREFORE that the said Fidelity Trust Company, a corporation of the State of Maryland, guardian of the estate of Emily E. DeForest, a lunatic, and the said Emily E. DeForest may, but without oath, to the best and utmost of their respective knowledge, remembrance and belief, full, true and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated and they and each of them distinctly interrogated thereto, and that the said Fidelity Trust Company may be enjoined and restrained from prosecuting its said action at law against your orator; and that a decree may be made ordering, adjudging and decreeing that the said deed purporting to have been executed by The Summit Silk Manufacturing Company to the said Emily E. DeForest as hereinabove described is and was from the time of the execution and delivery of the same null and void,

and of no force or effect whatsoever in law or equity, and that the said defendants deliver up the said deed to your orator to be cancelled, and that they also deliver up to your orator all deeds, muniments of title and rights in their possession or power relating to the said premises, and that the said defendants convey the said premises to your orator, and surrender all claim to the title or possession of the same, and that your orator may have such other or further relief in the premises as the nature of the case may require and as may be agreeable to equity and good conscience.

May it please your Honor, the premises considered to grant unto your orator not only the State's writ of injunction issuing out of and under the seal of this court, to be directed to the said Fidelity Trust Company, a corporation of the State of Maryland, restraining and enjoining it from prosecuting the said action at law against your orator, but also the State's writ or writs of subpoena issuing out of and under the seal of this honorable court, to be directed to said Fidelity Trust Company, a corporation of the State of Maryland, as guardian of the estate of Emily E. DeForest, a lunatic, and the said Emily E. DeForest, commanding them and each of them, by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this honorable court, then and there to answer all and singular the said premises, and to stand it, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator as in duty bound will ever pray, etc.

McDERMOTT & ENRIGHT,
Solicitors for and of Counsel
with Complainant.

State of New York,
City and County of New York, } ss:

Parchal J. Ferrara, of full age, being duly sworn according to law, on his oath says, that he is the treasurer of The Summit Silk Company, a corporation organized and existing under the laws of the State of New Jersey, the complainant in the foregoing bill of complaint.

Deponent further says that he has read over the foregoing bill of complaint and is familiar with the facts stated therein, and that the statements in said bill of complaint are true.

PARCHAL J. FERRARA.

Sworn and subscribed to before me, a notary public of the State of New York, duly commissioned and sworn and qualified to take oaths and affirmations in the County and State aforesaid, this 20th day of October, Nineteen hundred and thirteen.

Geo. B. Williams,
Notary Public,
New York County, No. 4154.
New York Register No. 5215.
Commission expires March 30th, 1915.
(Notarial seal.)

The Summit Silk Manufacturing Co
To
Emily E. DeForest.

This indenture made the tenth day of July, in the year of Our Lord One thousand eight hundred and

ninety-five, between the Summit Silk Manufacturing Company of the Township of Summit, in the County of Union and State of New Jersey, of the first part, and Emily E. DeForest, wife of Othniel DeForest, of the Township of Summit, in the County of Union and State of New Jersey, of the second part.

Witnesseth; that the said party of the first part for and in consideration of two thousand dollars, lawful money of the United States of America, to it 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 therewith fully satisfied, contented and paid has given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed and by these presents does give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part and to her heirs and assigns forever, ALL those certain lots, tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the Township of Summit, in the County of Union and State of New Jersey and butted and bounded as follows:

BEGINNING at a point in the southerly side of a new street opened through land of The Summit Silk Manufacturing Company distant on a course of north fifty degrees and eleven minutes east one hundred fifty-one and six one-hundredths feet from land of one J. S. Palmer and at the northwesterly corner of lot No. 7, on a map of property of the Summit Silk Manufacturing Company running thence (1) along the southerly line of said new street north fifty degrees and eleven minutes east two hundred and fifty feet to the northwesterly corner of lot No. 17 on said map; thence (2) between lots 16 and 17 south thirty-nine degrees and forty-nine minutes east one hundred

and twenty-five feet to land of one Peet; thence (3) south fifty degrees and eleven minutes west two hundred and fifty feet to the southeasterly corner of lot No. 6, and thence (4) between lots 6 and 7 north thirty-nine degrees and forty-nine minutes west one hundred and twenty-five feet to the place of beginning. Being designated on said map as lots 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16. Being a part of the same premises conveyed to said party of the first part by deed recorded in the Union County Clerk's office in Book 248 of Deeds for said county, on pages 595, etc. Together with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages with the appurtenances to the same belonging or in anywise appertaining. Also all the estate, right, title and 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, her heirs and assigns to the only proper use, benefit and behoof of the said *part* party of the second part, her *heris* and assigns forever, and the said party of the first part does for itself and its successors covenant and grant to and with the said party of the second part, her heirs and assigns, that it, the said party of the first part, is the true, lawful and right owner of all and singular the above-described land and premises and of every part and parcels thereof, with the appurtenances thereto 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 encumbrances whatsoever by which the title of the said party of the second part hereby made or in-

tended to be made for the above-described land and premises can or may be changed, charged, altered or defeated in any way whatsoever, 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 the said party of the first part will warrant, secure and forever defend the said land and premises unto the said party of the second part, her *heris* 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 encumbrances whatsoever.

In Witness Whereof the said party of the first part has caused these presents to be signed by its president and its common seal to be hereto affixed, the day and year first above written.

THE SUMMIT SILK MFG. CO. (Seal.)
Othneil DeForest,
Prest.

Singed, sealed and delivered
in the presence of

The word "Fifty" in 3rd & 9th lines on opposite page was obliterated and the *wrod* "twenty-five" was written in before execution.

William H. DeForest, Jr.
S. L. McKergan.

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

Be is remembered that on this twenty-third day of July, in the year of Our Lord one thousand eight hundred and ninety-five, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared William H. DeForest, Jr., who being by me duly sworn, doth depose and make proof to my satisfaction that he well knows the corporate seal of *the* The Summit Silk Manufacturing Company, the grantor named in the foregoing deed, that the seal thereto affixed is the proper corporate seal of said Company, that the same was so affixed thereto and the said deed signed and delivered by Othneil DeForest, who was at the date and execution thereof the president of said company, in the presence of the said deponent, as the voluntary act and deed of the said company, and that he, said deponent, thereupon signed the same as subscribing witness.

WILLIAM H. DEFOREST, JR.

Sworn and subscribed before me
at the date aforesaid.
S. L. McKergan,
M. C. C. of N. J.

Rec'd July 24, 1895, at 12:15 P. M. No. 1899.

Filed July 18, 1913.

Answer.

IN CHANCERY OF NEW JERSEY.

Between THE SUMMITT SILK COMPANY, Complainant, and FIDELITY TRUST COMPANY, a corporation, etc., *et al.*, etc., Defendant.	On Bill, etc.

The answer of Fidelity Trust Company, a corporation of the State of Maryland, as guardian of the estate of Emily E. DeForest, a lunatic, and Emily E. DeForest, a lunatic, by John A. Hartpence, as her guardian *ad litem,* defendants, to the bill of complaint of The Summit Silk Company, complainant.

These defendants, respectively, now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise that can be taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, severally answering, say:

1. They have not sufficient knowledge to form a belief of the matters alleged in paragraph (1) of the bill of complaint, except such as the record may disclose, and therefore deny the same, and leave the complainant to its proof thereof.

2. They have not sufficient knowledge to form a belief of the matters alleged in paragraph (2) of the bill of complaint, except such as the record may disclose, and therefore deny the same and leave the complainant to its proof thereof.

3. They have not sufficient knowledge to form a belief of so much of paragraph (3) of the bill of complaint as alleges that the complainant paid for the land and premises and manufacturing plant in said bill described, the full consideration agreed upon between complainant and The Summit Silk Manufacturing Company, and therefore deny the same, and leave the complainant to its proof thereof; and as to all the rest and remainder of said paragraph (3) they deny the same.

4. They admit paragraph (4) of the bill of complaint substantially as alleged.

5. They deny paragraph (5) of the bill of complaint.

6. They admit paragraph (6) of the bill of complaint.

7. They deny so much of paragraph (7) of the bill of complaint as alleges that the said Emily E. DeForest was the principal stockholder of said The Summit Silk Manufacturing Company; that no consideration passed to the said The Summit Silk Manufacturing Company from the said Emily E. DeForest for said premises, and that said conveyance was wholly without consideration; that the making and execution of the said deed were not authorized by the directors or stockholders of said The Summit Silk Manufacturing Company, nor was the sale of said premises to her, or the conveyance thereof to be authorized by the directors or stockholders of said company; and as to all the rest and remainder of said paragraph (7) of the bill, they admit the same substantially as alleged therein.

8. They deny paragraph (8) of the bill of complaint, and aver that (even though it be true as alleged therein, which they deny), the said The Sum-

mit Silk Manufacturing Company, from and after the conveyance to said Emily E. DeForest, therein referred to, did and performed the acts therein set forth as the agent of said Emily E. DeForest and for and in her behalf, and not in its own right and behalf.

9. They deny paragraph (9) of the bill of complaint.

And said defendants, further answering, aver that on or about the tenth day of July, 1895, The Summit Silk Manufacturing Company, being then the owner of the same in fee simple, conveyed to the said Emily E. DeForest, by deed of warranty:

ALL those certain lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Township of Summit, in the County of Union and State of New Jersey, and butted and bounded, as follows:

BEGINNING at a point in the southerly side of a new street opened through line of The Summit Silk Manufacturing Company distant on a course of north fifty degrees and eleven minutes east one hundred and fifty-one and six one-hundredths feet from land of one J. S. Palmer, and at the northwesterly corner of Lot No. 7, on a map of property of The Summit Silk Manufacturing Company; running thence (1) along the southerly line of said New Street north fifty degrees and eleven minutes east two hundred and fifty feet to the northwesterly corner of Lot No. 17 on said map; thence (2) between Lots 16 & 17 south thirty-nine degrees and forty-nine minutes east one hundred and twenty-five feet to land of one Peet; thence (3) south fifty degrees and eleven minutes west two hundred and fifty feet to the southeasterly corner of Lot. No. 6; and thence (4) between Lots 6 and 7

north thirty-nine degrees and forty-nine minutes west one hundred and twenty-five feet to the place of beginning. BEING designated on said map as lots 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16; being a part of the same premises conveyed to The Summit Silk Manufacturing Company by deed recorded in the Union County Clerk's Office in Book 248 of Deeds for said County on pages 595 &c., and being the same premises which were conveyed by the Summit Silk Manufacturing Company to the said Emily E. DeForest by deed dated July 10, 1895, recorded in the Office of the Register of Deeds for Union County, in Book 295 of Deeds, pages 49 &c.

And defendants aver that said deed was executed and proved in due form of law by the said The Summit Silk Manufacturing Company, by and through its duly constituted officers, and that said conveyance was made upon a full and adequate consideration passing from the said Emily E. DeForest to said The Summit Silk Manufacturing Company; and that said deed of conveyance was recorded in the office of the Register of Deeds for Union County, in Book 295 of Deeds, page 49 &c., on July 24, 1895; a copy of which deed and certificate of record is annexed to said bill of complaint.

And defendants, further answering, aver that at the time of the alleged conveyance by The Summit Silk Manufacturing Company to Summit Silk Company, of the premises referred to and described in paragraphs (1) and (2) of the complaint, the deed of The Summit Silk Manufacturing Company to Emily E. DeForest aforesaid was recorded and certified of record in said Union County Clerk's Office, and was due and complete notice to subsequent purchasers, of the conveyance of the land and premises therein described, and that even though it be true, as alleged in said paragraph (2) of the complaint (which they

deny), that said conveyance by The Summit Silk Manufacturing Company to said Summit Silk Company embraces the lands and premises by the said deed of The Summit Silk Manufacturing Company to Emily E. DeForest, still said conveyance to said Summit Silk Company was made subsequent to the making and recording of said deed of The Summit Silk Manufacturing Company to Emily E. DeForest, and was accepted by said Summit Silk Company with full knowledge of the said deed of the Summit Silk Manufacturing Company to Emily E. DeForest, and, therefore, subject thereto and to the right of said Emily E. DeForest, her heirs, executors and assigns and legal representatives thereunder.

And these defendants further answering, aver that after the conveyance to said Emily E. DeForest, of the premises referred to and described in paragraph 4 of the bill of complaint, and after the erection and construction of the houses and buildings thereon, said Emily E. DeForest or someone in her behalf, received the rents, issues, income and profits arising and accruing therefrom, and paid the taxes and other fixed charges thereon and all other expenses, including the repairs thereto; and that this was known to and acquiesced in by said Summit Silk Company from and after the alleged conveyance to it in the year 1908 by said Summit Silk Manufacturing Company of the lands and premises referred to and described in said paragraphs 1 and 3 in said bill of complaint, and that thereafter and between the years 1908 and 1910 said Summit Silk Company itself, by and through its servants and agents, collected the said rents, issues, income and profits of said premises of said Emily E. DeForest as aforesaid and paid the same to her or to someone for her, and in her behalf, after retaining therefrom certain sums to defray the expenses and charges pertaining thereto; but that since sometime

in said year 1910, while still continuing so to collect and receive the said rents, issues, income and profits of said premises, said Summit Silk Company has neglected and refused to pay the same over to the said Emily E. DeForest or to such person or corporation as may be lawfully entitled to represent her, but has retained the same to its own use and still neglects and refuses to pay over the same, although often requested to pay the said rents, income, issues and profits to said Emily E. DeForest, or to someone lawfully entitled to receive the same for her and in her behalf, and as said Emily E. DeForest or such other lawful representative of her as aforesaid, well hoped it would do, and as in equity and good conscience it should have done.

And these defendants aver, therefore, that said Summit Silk Company has by its conduct and by its laches in this respect acquiesced in and confirmed the claim and rights of said Emily E. DeForest and her legal representatives, in and to the lands and premises, together with the hereditaments and appurtenances thereunto appertaining, and should not be permitted at this time to aver or establish anything to the contrary.

And defendants submit to this Honorable Court that all and every of the matters in said complainant's bill mentioned and complained of are matters which may be tried and determined at law, and with respect to which the said complainant is not entitled to any relief in this Court; and these defendants hope they shall have the same benefit of this defence as if they had demurred to the said complainant's bill.

And these defendants humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

VREDENBURGH, WALL & CAREY,
Solicitors for and of
Counsel with Defendants.

Testimony.

IN CHANCERY OF NEW JERSEY.

Between:

THE SUMMIT SILK COMPANY,
Complainant,
and
FIDELITY TRUST COMPANY, a corporation, etc., *et al.*,
Defendants.

On Bill, etc.

Transcript of testimony taken in the above-entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the twenty-second day of December, 1914, before Hon. Vivian M. Lewis, Vice Chancellor.

Appearances:

McDermott & Enright, Esqs., for the complainant.
John Hartpence, Esq., for the defendants.

Mr. McDermott: Our case will take about twenty minutes today. I don't think your Honor has heard anything about this case at all. Either ought to read the pleadings or state what it is about. I will state the facts.

Some little time ago, an action in the nature of an action in ejectment was brought by the Fidelity Trust Company, a corporation of Maryland, claiming to be the guardian of Emily E. DeForest, against the Summit Silk Company, my client. That suit was brought and the pleadings upon both sides were filed. Then we filed a bill in this Court on behalf of the Summit Silk Company against the Fidelity Trust Company, and Mrs. DeForest, claiming that we had equitable defences which we could not urge and enforce at law, and asking the aid of this Court and obtaining

a restraining order at the outset, restraining the action at law. That is the condition in which the case has remained up to this time. The facts which are pertinent to this inquiry are these: In 1895, there existed in Summit a silk company known as the Summit Silk Manufacturing Company. That is a different corporation from the Summit Silk Company. The Summit Silk Manufacturing Company was owned principally, almost entirely, by Mrs. DeForest—the old manufacturing company was Mrs. DeForest's company; her husband ran the business end of it, and she owned the principal part of the stock. In 1895, that corporation made a deed for several parcels of land to Mrs. DeForest—we say, without any authority and without any consideration whatever. The Summit Silk Manufacturing Company, some time after that, built houses upon this property which had been conveyed to her; then, still later than that, the company became involved, and Mrs. DeForest and her husband, and the other people representing that company, and representing the Summit Silk Company, which was organized afterwards, arranged that all the property of the Summit Silk Manufacturing Company, including, as we contend, this property which had been treated by the Summit Silk Manufacturing Company as its own, should be sold to the Summit Silk Company for the consideration of $200,000, but, perhaps, I ought to say in passing, that that was not $200,000 in real money, but money represented by a stock issue of the new company. The real purpose was to take care of the debts of the old company, and the Summit Silk Manufacturing Company then made a deed for all of its property, including the ten lots which had been previously conveyed to Mrs. DeForest; the deed embraces those lots, and the Summit Silk Company paid for it; then they took possession. It was discovered, I don't know just when

it was discovered, that these lots were included; they did not have the title examined and abstracted at that time at all; and after a time it was discovered that these ten lots had previously been conveyed to Mrs. DeForest; and then, some time after that, this suit at law was brought, and then, following that, this suit in equity. That, in brief, is the situation disclosed in this case. The suit now is to restrain the action at law because these defences could not be set up in the action at law.

Mr. Hartpence: I prefer to defer the opening until the complainant's case is in.

Mr. McDermott: I am going to put in the documentary evidence today, certainly, a large part of it; I am not able to get it all in today.

I wish to offer first, a certified copy of deed by Harriet DeForest and William H. DeForest, Jr., her husband—not the Mrs. DeForest who is in this matter—to the Summit Silk Manufacturing Company, dated August 22, 1892, conveying the lands therein described, containing about 10 41/100 acres, recorded August 27, 1892, in Book 348 of Deeds for Union County, on pages 595, etc.

Marked Exhibit C-1, Dec. 22, 1914.

Mr. Hartpence: We object to the admission of the deed on the ground that it is irrelevant and immaterial and incompetent.

Mr. McDermott: This is the purpose, this is offered to some extent to show the property itself. The deed to the Summit Silk Company refers to this same deed to the Summit Silk Manufacturing Company—

The Court: The identity of the people is different?

Mr. McDermott: Yes.

The Court: And the interests are different?

Mr. McDermott: The grantee of this deed is the Summit Silk Manufacturing Company, and in the

deeds made by it—two or three of them—it all refers to this same deed made to it by Harriet DeForest.

Mr. Hartpence: Our real objection to it is, that it apparently lays the foundation for a chain of title; I so understand the offer. Our objection, of course, is, that the title really has no place in this Court. That is the real basis of our objection. Therefore, it is incompetent testimony. The defences are limited.

Mr. McDermott: Both parties claim under this deed; Mr. Hartpence's client claims under it, and we claim under it. It is really offered for the purposes of identity rather than anything else.

The Court: I will allow it to go in, simply for the purpose of showing the chain of title. I will note your objection to it on the ground that this Court has no jurisdiction to try title; that the deed is incompetent evidence.

Mr. Hartpence: Also, irrelevant and immaterial, because it refers to a transaction prior to the issues raised by the pleadings.

Mr. McDermott: I offer certified copy of a deed made by the Summit Silk Manufacturing Company to Harriet S. DeForest—not the party in this suit—dated October 14.

The Court: The same property?

Mr. McDermott: No, sir; a part of it, showing it was cut out—recorded October 31, 1895, in Book 298 of Deeds for Union County, pages 432, etc. This deed conveys a portion of the property mentioned in the deed just offered, C-1, comprising Lots 17, 18, 19, 20, 21 and 22, and makes reference to the same deed, Exhibit C-1.

Mr. Hartpence: We object to that on the same grounds as already stated.

The Court: All right.

Marked Exhibit C-2, December 22, 1914.

Mr. McDermott: I next offer in evidence the orig-

inal minute book of the Summit Silk Manufacturing Company, containing the minutes from August, 1892, to the 2nd day of June, 1908, and call particular attention to the minutes of February, 20, 1908, in which the authority was given for the bargaining for and the sale of the property in dispute to the Summit Silk Company.

Mr. Hartpence: I object, on the ground that it is irrelevant, incompetent and immaterial.

Mr. McDermott: Do you object on the ground that it is incompetent. Of course, if you do, I shall have to identify the book. It is relevant, of course, because it lies back of the deed to us.

The Court: I will admit it as being material.

Mr. Hartpence: If the Court please, we think they ought to prove the book. It will, perhaps, become very important. We have no objection, if the Court is going to admit it over our objection, then we are perfectly willing to have the complainant produce the proof later to identify it.

Mr. McDermott: I will do that.

The Court: Of course, I suppose from what I have observed so far, from the statement of Mr. McDermott, that the book will be a very important matter in this litigation as to the accuracy of these minutes, etc., therefore, I suppose you want the best proof of it obtainable.

Mr. McDermott: It is not competent at this time.

Mr. Kingsley: What part do you refer to?

Mr. McDermott: I am going to offer the whole book.

The Court: For the present, I will not allow the book to go in, on the ground that it is incompetent.

Mr. McDermott: I offer in evidence the original deed by the Summit Silk Manufacturing Company to the Summit Silk Company, the complainant in this cause, dated February 20, 1908, and proved the same

day, and recorded in the Register's Office of Union County on February 21, 1908, at 11:52 A. M., and recorded in Book 502 of Deeds, page 250, etc.

Mr. Hartpence: That is objected to on the ground of its being irrelevant and immaterial—practically for the same grounds stated in our previous objection. It is a deed subsequent in time to the deed of the Summit Silk Manufacturing Company.

The Court: I will allow it to go in, and will note your objection.

Marked Exhibit C-3, December 22, 1914.

Mr. McDermott: I next offer the proceedings in the New Jersey Supreme Court—the action brought by the Fidelity Trust Company, a corporation of the State of Maryland, claiming to be guardian of the estate of Emily E. DeForest, a lunatic, against the Summit Silk Company.

Mr. Hartpence: We have no objection to that.

To be marked Exhibit C-4.

Mr. McDermott: I offer an agreement made by Paul Gerli, party of the first part, and Emily E. DeForest, party of the second part, dated the 4th day of March, 1908, and acknowledged on the 9th day of March, 1908, before Ferdinand S. Crossley, Notary Public of New York County.

Mr. Hartpence: No objection.

Marked Exhibit C-5.

Mr. McDermott: I offer now blueprint showing the location of this property, including the location of the buildings on the three lots conveyed to Harriet DeForest, as well as the location of the five houses upon the Emily E. DeForest property.

Mr. Hartpence: We have no objection, if the Court please. We desire to reserve the objection as to its competency, but will not object to its being admitted, subject to being proved later by competent proof.

Marked Exhibit C-6.

Mr. Hartpence: In view of the fact that this suit has been pending for a long time, and we were about ready to try it in the law court when it was restrained about a year ago, and the unfortunate condition of Mrs. DeForest, who, as the record will show, is incompetent mentally, we would like your Honor to fix as early a day as possible, considering Mr. McDermott's incapacity, at which the complainant might proceed. I don't want to hurry Mr. McDermott; I know he is not well. I had in mind to use one of my days next week.

Mr. McDermott: That is all for today.

Mr. Hartpence: There is one other phase of the case that might be taken into consideration, and that is the rents, income and profits from these houses that are in dispute; we really don't know just where we stand in that respect, except they are apparently being collected and retained by the complainant, and I suppose that they are perfectly safe there and are being kept so as to respond. I thought, probably, the complainant might state on the record just what our safety and security might be in that respect.

We received all the rents, income and profit down to about 1910, without question, and then they suddenly retained them themselves and have retained them ever since that time.

The Court: You might make an application next week, on Tuesday, to have the money paid into Court.

Mr. Kingsley: At the next hearing, we shall have to have the rents paid into Court or be properly protected by an order of the Court. Mrs. DeForest received the rents and income of this property from 1895 down to about 1911. That deed that Mr. McDermott refers to, was made in 1908, and the Summit Silk Company, the company now in existence, continued to pay the rents over to her from that time down to

1911, and we want to make sure that those rents are safeguarded.

Mr. McDermott: The fact is, that we are in possession and taking the rents and profits of the company; I have no doubt about that, at the present time, and for years have been doing so.

Mr. Hartpence: We shall make such application on the 29th, if that is sufficient notice to the other side, and will produce our proof at that time.

Adjourned to a day to be fixed.

Continuation of the taking of testimony in the above-entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the eighth day of March, 1915, before Hon. Vivian M. Lewis, Vice Chancellor.

Appearances:

McDermott & Enright, Esqs., for the complainant.

John A. Hartpence and Charles L. Kingsley, Esqs., for the defendants.

WILLIAM S. PORTER, sworn in behalf of the complainant, testified as follows:

Direct-examination by Mr. McDermott:

Q. What is your business at this time? A. Secretary and treasurer of the Summit Trust Company.

Q. Have you any relation to the Loan Association in Summit? A. Secretary.

Q. How many years have you been secretary of that association? A. Since September, 1896.

Q. Have you brought with you some of the books of that association? A. Yes, sir.

Q. In response to the subpoena? A. Yes, sir.

Q. And did you know a corporation in Summit, known as the Summit Silk Manufacturing Company? A. We knew it as the Summit Silk Company.

Q. And it is now the Summit Silk Company, but the name used to be the Summit Silk Manufacturing Company? A. Yes, sir.

Q. Do you know where the plant of the company is? A. Yes, sir.

Q. And did the Loan Association with which you are connected hold mortgages upon some part of that property? A. We held a mortgage on some tenement houses, built through the Building and Loan Association.

Q. And located near the factory? A. Yes, sir.

Q. Who is the counsel of the Summit Building and Loan Association? A. Edward L. DeCosta.

Q. How long has he been counsel of that association? A. Since its organization, 1891.

Q. You have been there since 1896? A. I have been secretary since 1896.

Q. Do you know the policy of the association, that is, under the advice of counsel, as to making loans to corporations? A. His advice was that we could not very well do it.

Q. And was it or not for that reason that the corporation should not hold stock of another corporation? A. That is, as I understand it.

Q. And in the case of the property which you have referred to, how was the mortgage made to the association, do you know?

Mr. Hartpence: Objected to; the record speaks for itself; it is the best evidence.

Mr. McDermott: I really want it as a preliminary statement before I put it in.

The Court: I shall sustain the objection.

Q. Do you know of the fact that the mortgage was made properly? A. Yes, sir.

Q. How were the payments—made by the association—made? A. Payments by the association—

Q. To the builders? A. The payments were made to the builders on certificates.

Q. Certificates of the architect or the borrower? A. I have the original orders here; I would be glad to submit those.

Q. I show you a paper which appears to be a certificate dated "Summit, July 19, 1895," signed by "John N. Cady, Architect," in the sum of $2,000, with various indorsements; is that one of the orders given to the builders of the buildings on the property in that instance? A. Against this order there was drawn the association—

Mr. Hartpence: We object to the materiality of this testimony.

Q. Is that one of the orders? A. Yes, sir.

Mr. Hartpence: We object to it on the ground that it is immaterial.

Mr. McDermott: Originally a suit was brought by the Fidelity Trust Company in ejectment against the Summit Silk Company, claiming these five tenement houses and the lands on which they stood; and we then filed this bill in equity to restrain that suit on equitable grounds; and the question which will be before your Honor for disposition is this: Whether in equity these houses belong to Mrs. DeForest, or whether they belong to the Summit Silk Company; Mrs. DeForest is incompetent; of course, I cannot produce her; but it is a fact that Mrs. DeForest was the sole owner of the stock of the Summit Silk Manufacturing Company, and the Manufacturing Com-

pany applied to the Loan Association for a loan either on these houses, or so that they might build these houses, and the association was advised by Mr. DeCosta not to loan to a corporation, for the reason that as he viewed the law at that time, one corporation had no right to hold the stock of another corporation; so, for that temporary purpose, or to accomplish the purpose of borrowing this money, the property was turned over by the Manufacturing Company to Mrs. DeForest, who held all its stock, and who was, in a way, identical with that company. Then the loan was made in her name, and these payments were made, and these orders were given and were indorsed by her, and were put through in that form, and they seem to me to be material; they are evidence also of the fact that the loan went through with her concurrence; in a way, they are against us, of course, but I think your Honor will agree with me, that ultimately I hope to make them beneficial.

The Court: I will allow them temporarily, Mr. Hartpence.

Mr. McDermott: I will offer this order; may I spread it on the record? This is an order dated, "Summit, N. J., July 19, 1895. This is to certify, that Messrs. Wood and O'Donnell is now entitled to the first payment of $2,000, as per contract, upon your house at Summit Silk Mill," to Mrs. Othniel DeForest," and signed by "John N. Cady, Architect."

Q. Do you know Mr. Cady's signature? A. Yes, sir; that is his signature.

Q. And it is marked on the back, "Approved, Emily E. DeForest, per Othniel DeForest, Summit B. & L.

Association; please pay within order and deduct from my loan, Emily E. DeForest. Mr. Church, please pay this order. Edward L. DeCosta and J. Burling, M. D." Who is Dr. Burling, who is he? A. One of the appraisers.

Q. Did that order go through, and was the amount paid? A. Yes, sir.

Mr. Hartpence: Objected to as immaterial.

The Court: You may take a general objection.

Mr. McDermott: I have several others of the same character.

The Court: I understand there is a general objection to that as immaterial.

Q. I show you another order, signed by John N. Cady, to C. E. Dodd, certifying that C. E. Dodd, is now entitled to the first payment of $1,250 for houses at Summit Silk Mill, addressed to Mrs. Othniel DeForest. Do you know the signature of Mr. Cady? A. Yes, sir.

Q. And indorsed "Summit B. & L. Association, please pay within order and deduct from my loan, Emily E. DeForest"; and then Mr. Church certifies this: "Please pay, as advised, Edward L. DeCosta, J. Burling, M. D." That went through and the amount mentioned therein was paid? A. Yes, sir.

Q. I show you another order #248, dated August 2, 1895, being certificate made by John N. Cady, Architect, certifying that Wood and O'Donnell are now entitled to the payment of balance, as per contract, $1,000, "as per contract upon your five double houses at Summit, New Jersey"; addressed to Mrs. Emily DeForest," and endorsed "Correct" by her? A. Yes, sir.

Q. Did that order go through and was the money paid? A. Yes, sir.

Q. I show you another certificate dated September 4, 1895, certificate signed by John N. Cady, certifying that "C. D. Dodd is now entitled to the second payment of $1,250 as per contract, upon your house at Silk Mill"—address to Mrs. E. E. DeForest. Did that order go through and was that money paid? A. Yes, sir.

Q. I show you what purports to be a letter or order, dated September 10, 1895, addressed to Summit Building and Loan Association, "Please pay to the order of Wood & O'Donnell, the sum of $1,380 and no/100 dollars, and charge the amount to the account of my loan, bid off at meeting of (blank) 1895"; signed "Emily E. DeForest"; was that order carried out and the money paid? A. Yes, sir.

Q. I show you another, being #274, the first part of which is a certificate signed by "John N. Cady," addressed to "Emily E. DeForest," certifying that "I have drawn plans and specifications for five double houses now being erected by you, and have superintended their construction, located on New Street, running off from Morris Avenue, and am entitled to payment of $120.00 on account of said services, John N. Cady, Architect." That is an order purporting to be signed by Emily E. DeForest, directing the payment of $120.00 and the certificate of the Finance Committee attached. Did that go through, Mr. Porter? A. Yes, sir.

Q. And was that amount paid to Mr. Cady as the architect? A. Yes, sir.

Q. Have you the checks that went out in payment? A. I have not the checks representing these payments, but I have here the original certificate of stock issued to Mrs. DeForest and the pass book which is attached.

Q. This association of which you are secretary is one of those, isn't it, in which dues and interest are both paid monthly? A. Yes, sir.

Q. And at a period to be determined when each share is worth $200.00? A. Yes, sir.

Q. The loan is cancelled? A. Yes, sir.

Q. That is to say, it is cancelled by the payment of so much upon the stock, and the payment of interest on the loan running concurrently? A. Yes, sir.

Q. Were some of these payments made to you, Mr. Porter? A. Yes, sir.

Q. And do you recall whose check paid those? A. The Summit Silk Company, as a rule, if not always.

Q. What you call the Summit Silk Company? A. Yes, sir.

Q. The Summit Silk Manufacturing Company? A. Yes, sir.

Q. And those checks continued to be made by that company down to the time that the loans matured, by reason of the shares becoming worth $200.00? A. Yes, sir.

Mr. Hartpence: We understand that our general objection went to all this line of testimony as being immaterial and outside of the issue.

Mr. McDermott: What I really want is this book, but the witness says he cannot part with this book; I would like to have it before the Court; also, I would like to have it to check up with some other things.

The Court: You can have it transcribed.

Mr. McDermott: I will have that transcribed.

Q. I see a number of cases here, the initials in this book, "W. S. P." with the date at the left and an amount at the right; does that indicate anything to your mind? A. That indicates payment to us at that time and credited on the account.

Complainant's Witness, William S. Porter, Cross

CROSS-EXAMINATION by Mr. Hartpence:

Q. Did you see all the checks, Mr. Porter, that were presented in payment upon this particular loan? A. All that were made while I was secretary; the loan was made prior to my becoming secretary, something over a year.

Q. Then it continued how long? A. It ran about twelve years, just under twelve years; the shares represented by this loan matured and were paid off in 1907, the first of February.

Q. What became of the checks that you say came in in payment of these dues? A. They were deposited with other checks and receipts, monthly, in our bank.

Q. And as they were paid, the credits were made upon this pass book that has been produced here today? A. Yes, sir.

Q. Who made those entries on the pass book? A. I made some of them.

Q. There were other persons who made them besides you during the time that the loan ran? A. Occasionally the treasurer made some entries, either the secretary or the treasurer or his representative made them.

Q. As I understand it, a loan was made by the Building and Loan Association upon the property that you have referred to, of a certain sum? A. Yes, sir.

Q. And then that was practically repaid by the payment of dues and interest? A. It was repaid by dues and the profits on the investment—the value of the shares; it was paid in that way.

Q. And when the loan was cancelled, what do you mean by that? A. When the shares matured, we then cancelled the certificate; we drew a check, or, in this case, two checks, for the full matured value of the shares, one of those checks being for $7,000, to the order of Emily E. DeForest; that check was endorsed by her and returned to us, which repaid the loan in full, we having paid her the full matured value of

her shares; she repays to us $7,000, the amount of her loan; cancelling the obligation on both sides.

Q. And you say there were two checks given? A. Yes, sir, in this case when these shares matured, they were worth $200.58 each; so that Mrs. DeForest was entitled to $20.30, for which we drew a separate check.

Q. And thereupon, the mortgage upon the property was cancelled? A. Yes, sir.

Q. Now, you say you recall the payment of the dues, from time to time, after you became secretary; how were they paid on this particular loan? A. My recollection is, by check of the Summit Silk Company of the Summit Silk Manufacturing Company; I don't recollect the exact signature; it came through the mail, as a rule.

Q. How long ago has that been? A. The loan was cancelled the first of February, 1901, and the loan was made, the money was paid off at a meeting of July 11, 1895, and these payments were made as stated, during July, August, September and October of that year, 1895.

Q. What record have you there to show that? A. Only these orders that have been already submitted.

Q. Those certificates? A. Yes, sir, I have also cash book of the then treasurer, but I have not got the cancelled checks of those he was unable to locate—

Q. You have a positive recollection that all these checks came in from the Summit Silk Company or the Summit Silk Manufacturing Company? A. That is my recollection.

Q. Do you know whether or not any loans were made by this company on any of the other tenement house properties there at the Summit Silk Manufacturing Company's plant, besides these five tracts? A. No, sir.

Q. There were none made? A. No, sir.

Q. That is the only loan that you made? A. Yes,

Complainant's Witness, William S. Porter, Re-direct

RE-DIRECT EXAMINATION by Mr. McDermott:

Q. Referring to the pass book which you produced, will you kindly look and see where the original share holding began? A. The first payment was made on June 13, 1895; taking 35 shares in a series of March, 1895, covering four months and the entrance fees; that is the first payment.

Q. Covering March, April, May and June, 1895, with the entrance fees? A. Yes, sir.

Q. And in the month of July, what payment was made? A. $35.00, payment of $35.00 on the shares.

Q. $1.00 a share? A. Yes, sir.

Q. And following that, what was the regular monthly payment? A. $75.20, made up of dues, $35.00, interest at 6%, $35.00 and premium 15 cents a share, $5.25.

Q. And that continued down to the maturity of the shares? A. Yes, sir.

Q. I find sometimes there is an amount of $154.00 apparently for two months— A. The additional being fines.

Q. In that association did you impose fines for nonpayment? A. Yes, sir.

Q. For failure to punctually pay? A. Yes, sir.

Q. What is the date of the first payment made in connection with this loan? A. June 13, 1895.

Q. And the amount? A. $143.65.

Q. It appears from this book that occasionally there were errors in the payment? A. Yes, sir.

Q. And in January, 1900, payment of $322.00; in January, 1901, payment of $411.25; that embraced these dues, interest and fine? A. Dues, interest, premiums and fine.

Q. In November, 1903, there appears to be a large

payment, Mr. Porter, $504.00; did that include the arrears for several months? A. Yes, sir.

Q. And May 12, 1904, payment of $497.70; is the same true of that date? A. Yes, sir.

Q. In December, 1904, there appears to be a payment of $587.65; is that also for several months unpaid and in arrear? A. Yes, sir.

Q. From that time on, the payments seem to be quite regular at $75.25, except occasionally there is one $78.75? A. In that case there is a fine included; that is all.

Mr. Hartpence: May I see the book, Mr. McDermott?

Mr. McDermott: Certainly (handing it over to counsel).

Mr. Hartpence: There will be a transcript made of this book?

The Court: Yes, the witness will make a transcript and send it to you.

MARCY STEPHENS, sworn in behalf of the complainant, testified as follows:

Direct-examination by Mr. McDermott:

Q. What is your business? A. Lumber, coal, masons' materials.

Q. You are a member of the firm of Stephens Brothers? A. Yes, sir.

Q. How long have you been in business in Summit, New Jersey? A. Since 1902.

Q. Have you, in the course of your business, furnished materials to the Summit Silk Manufacturing Company? A. Yes, sir.

Q. At Summit? A. Yes, sir.

Q. You know the plant, don't you, Mr. Stephens? A. Yes, sir.

Q. It consists of a factory and apartment house and various tenement houses? A. It does.

Q. Have you brought your book, showing sales of material to that property? A. Yes, sir.

Q. Will you be kind enough to get it? A. (Witness gets it.)

Q. I asked you over the telephone to pick out certain dates; can you turn to those now, Mr. Stephens? A. August, 1904.

Q. And what do you find there charged to the Summit Silk Manufacturing Company?

Mr. Hartpence: We object, on the ground that it is immaterial and irrelevant, and will ask that it go to the whole line of testimony made in reference to these books.

A. In August, 1904.

Q. On August 22nd there were charged five pieces, 1 x 4 x 16 N. C. flooring? A. Amounting to 85 cents.

Q. The next item? A. 24th, 54, 1 x 8 x 16 tongued and grooved pine, 570 feet, amounting to $20.16. On the 25th, four 2 x 3 x 16, amounting to $1.68; and twenty-two, 1 x 8 x 14, pine, tongued and grooved, $7.18. Four 2 x 3 x 16, $1.68.

Q. Making a total of how much? A. $31.55.

Q. Do you know, Mr. Stephens, where that material went? A. It went to the Summit Silk Manufacturing Company at Summit, to their property.

Q. Do you know which part of the property, what particular buildings it was used in? A. The books don't show to what part of the property it was delivered

Q. Have you any recollection about it? A. No, sir.

Q. Have you any other books showing the sale of

materials to the Silk Manufacturing Company, about that time? A. In July there were items charged, July 14, 1904, and another on July 21 and 27.

Q. What is the material covered by those items? A. Lumber of various descriptions.

Q. And the aggregate of the several items of lumber is how much? A. $49.78.

Q. Do you know where that was delivered? A. I don't know, other than that it went to the Silk Company's property.

By the Court:

Q. You know it was charged to them? A. Yes, sir.

Q. You have no memory as to the place where it went—just the particular buildings? A. No, sir.

Q. Have you another book? A. I have the same thing in the ledger; there are other charges from time to time.

Q. Look in the ledger, please, for a moment; these items to which you have referred, Mr. Stephens, are for building materials, not coal? A. That is right.

Q. The book which you now produce is what? A. The ledger.

Q. Of your firm? A. Yes, sir.

Q. And when do the charges against the Silk Manufacturing Company in that ledger begin? A. Begin in March, 1902; that was the month in which we took over the business.

Q. And they continued up to what period? A. they are continuing up to the present time, except that the title now is the Summit Silk Company.

Q. And did they continue against the Summit Silk Manufacturing Company until 1908, when the change was made? A. Until the time when the change was made; I don't remember when it was exactly; this book shows not as far as 1908, because this ledger was full and we got a new ledger.

Q. And this is for building materials— A. It is very largely for building materials—probably almost altogether, because we did not furnish them fuel.

Q. Do you know the plant up there, Mr. Stephens? A. I know the location of it, yes, sir.

Q. I show you a paper, a blueprint, made by C. J. Seiler, civil engineer, of Summit, and ask you if you identify that property by that blueprint?

Mr. Hartpence: Objected to, unless the blueprint is in evidence in some way.

The Court: Who made the blueprint?

Mr. McDermott: Mr. Seiler, a civil engineer. It was produced at the other hearing, the first hearing, and was offered, but it was not admitted, because it had not been proved.

The Court: Has it been proved now?

Mr. McDermott: No, sir, but I want to prove it.

Mr. Hartpence: It is incompetent and irrelevant. This is not the proper way to prove it.

Mr. McDermott: My understanding is, that it may be used by the Court, if it is identified; sometimes we have to prove a photograph that way; the photographer is the man who took it, of course, but it is often used by the Court to identify the particular things upon it.

The Court: I shall have to sustain the objection.

Q. Is Mr. Seiler still alive? A. No, sir, he is dead.

The Court: That will aid you then.

By the Court:

Q. Who has charge of his affairs? A. His son.

Mr. Hartpence: We renew our objection; I don't see how we can be bound by a diagram produced here in this way.

Complainant's Witness, Marcy Stephens, Cross

Q. Are you familiar with Seiler's blueprints at all? A. I cannot say that I am.

Mr. Hartpence: The witness has not shown that he is familiar with the reading of blueprints or knows what they mean.

The Court: I shall sustain the objection.

FURTHER DIRECT:

Q. Can you identify the property from this blueprint?

Mr. Hartpence: Objected to.

The Court: I think I shall rule it out.

CROSS-EXAMINATION by Mr. Hartpence:

Q. This book No. 3 that you read from first— A. That is the sales book.

Q. Is that a book of original entry? A. Yes, sir.

Q. When the sales are made, they are entered in there first? A. This is the first book of entry, yes, sir; the charging is made from delivery tickets directly into this book.

Q. Who makes the delivery tickets? A. The bookkeeper, or whoever happens to be handy, when the load comes in front of the office.

Q. As the load comes in front of the office a list is made? A. Yes, sir.

Q. These entries are made up from a slip? A. Yes, sir.

Q. Who made these entries? A. The bookkeeper at that time.

Q. Do you know who he was? A. His name is Bochner.

Q. From this book the charges were transferred in bulk to the ledger? A. Yes, sir, each month.

Q. What became of the slips after the entries were made in the sales book? A. They are filed in the office and kept for a time.

Q. And then destroyed? A. They might have been by this time.

Q. You do not keep them forever? A. No, sir.

Q. You don't know whether the bookkeeper transferred them correctly into this book? A. No, sir.

Q. Nor how soon after the slips were turned in to him; you don't know when he made them up? A. They are made each day.

Q. Do you know who ordered this material which you say was delivered to the Summit Silk Manufacturing Company? A. I could not tell you.

Q. Your statement that it was supplied to the Summit Silk Manufacturing Company is based on the fact that you find a charge to them in these books? A. Yes, sir.

Q. You have no personal knowledge of the fact that they went there, have you? A. No, sir.

Q. Nor any personal knowledge of who ordered the material? A. No, sir.

Q. You simply charged it up to the Summit Silk Manufacturing Company? A. Yes, sir.

By Mr. McDermott:

Q. It was paid for by whom? A. The Summit Silk Manufacturing Company.

FURTHER CROSS:

Q. Where does that show on your book? A. It shows the account balanced.

Q. At what periods? A. That August charge, for instance, was balanced September 20th.

Q. And you find a credit on the ledger account of

the Summit Silk Manufacturing Company of that amount? A. Yes, sir.

Q. You have no present recollection of its having been actually paid by the Summit Silk Manufacturing Company? A. No, sir, I have not, except as the books show that the credit was placed to their account.

By Mr. McDermott:

Q. Your general recollection is, that it was paid by the person to whom it was charged? A. That is the assumption.

JOHN WOOD, sworn in behalf of the complainant, testified as follows:

Direct-examination by Mr. McDermott:

Q. Where do you live? A. Summit, New Jersey.

Q. And you were a partner, were you not, of Mr. O'Donnell, under the firm name of Wood and O'Donnell? A. Yes, sir, in 1900.

Q. How many years were you in partnership with him? A. 17 years before 1900.

Q. You were a partner of his in 1895? A. Yes, sir.

Q. He died when? A. In 1901.

Q. Do you remember building some houses, tenement houses, on the Summit Silk Manufacturing Company property? A. We built five houses in Weaver Street, double houses.

Q. That is one street up from the— A. That is on the left-hand side coming up from the silk mill.

Q. On Weaver Street? A. Yes, sir.

Q. Do you know where the apartment house is on that property now? A. No, sir, I have not seen it in ten years; these five houses were on the left-hand side of Weaver Street, going from the silk mill towards Summit.

Complainant's Witness, John Wood, Cross

Q. Do you know how you were paid for these houses? A. No, sir, I had nothing whatever to do with looking after the payments.

Q. You were the laboring oar? A. Yes, sir; he was the man who collected the money and kept it; he got it all.

Q. These orders, then, from the Loan Association, which Mr. Porter had, would naturally go through Mr. O'Donnell's hands and not through yours? A. That is right.

Q. You have not had anything to do with those houses lately? A. No, sir, I have not seen those houses in ten years.

CROSS-EXAMINATION by Mr. Hartpence:

Q. Were there any other houses built right near those five double houses? A. Yes, sir.

Q. How many? A. Before and since—as I understand, there is a big tenement house put at one end and two or three houses below on the other side.

Q. Were those two or three houses below on the other side, were they there at the time you built the five? A. No, sir, there was no street there when we built the houses.

Q. They were the first that were built there? A. Yes, sir.

Q. And then that street was afterwards opened up? A. Yes, sir.

Q. And called Weaver Street? A. Yes, sir, there was no street at all there.

Q. When did you complete the building of them? A. In 1900.

Q. When did you commence building? A. About four months before that.

Q. Took about four months to build them? A. We put one house up in a week.

Q. Were there any other streets opened up along there at that time? A. No, sir.

Q. What was the nearest street that ran to that place? A. Morris Avenue.

Q. When you reached Morris Avenue, that was a public thoroughfare? A. Yes, sir.

Q. Many other houses near by there then? A. Not then; there are now; that is 15 years ago.

RE-DIRECT EXAMINATION by Mr. McDermott:

Q. Mr. Wood, when did your partner die? A. He died four days after Dewey had that parade in New York City; that was in 1900.

Q. Isn't it a fact that these houses were built in 1895? A. Yes, sir.

RE-CROSS-EXAMINATION by Mr. Hartpence:

Q. You said they were built in 1900, didn't you, a moment ago? A. No, sir, I said they were built prior to 1900; I could not say just when.

Q. I understood you to say they were completed in 1900? A. No, sir, that is a mistake; they were built prior to 1900.

Q. Didn't you say they were completed in 1900, and then you said you began them about four months before they were completed; now, your best recollection is, that it was sometime in 1895? A. I think it was after that, because, you understand, we were doing a big job on the silk mill at the same time, putting up all them weaver sheds, and this work was done in between times; and when we could not get material for the weaver sheds, we went over and put up one of these houses.

Q. How long was it before your partner died that the houses were completed? A. About a year or a year and half or two years, something like that.

Complainant's Witness, Alexander Thompson, Direct

ALEXANDER THOMPSON, sworn in behalf of the complainant, testified as follows:

Direct-examination by Mr. McDermott:

Q. You live at Summit? A. Yes, sir.

Q. And your business is that of plumbing? A. Yes, sir.

Q. Do you know these five tenement houses up on Weaver Street?

Mr. Hartpence: Objected to on the ground that it specifically refers to the five tenement houses indicated on the blueprint.

By the Court:

Q. You have heard the talk here of the witnesses about these tenement houses? A. Yes, sir.

Q. Do you know where they are located? A. Yes, sir.

Q. Where are they? A. On the left-hand side of Weaver Street; Weaver runs from Morris Avenue, north.

Further Direct:

Q. That would be south of Weaver Street? A. Yes, sir.

Q. When did you first see them? A. Between five or six years ago.

Q. Have you as plumber, put any repairs or improvements in those houses? A. Only in the first three from Morris Avenue.

Q. The first three; they are not the same as this five, or any part of the five? A. No, sir, they have no connection.

Q. That is the three houses that lie— A. The first three from the silk mill, or the first three from Morris Avenue.

Q. And they lie near the five, but they are not part of the five? A. Yes, sir.

Q. Have you done any work on the five? A. I never had anything to do with the five, to my recollection.

No cross-examination.

Adjourned to a day to be fixed.

Continuation of the taking of testimony in the above-entitled cause, at the Court House, Paterson, New Jersey, on the twenty-first day of June, nineteen hundred and fifteen, before Hon. Vivian M. Lewis, vice chancellor.

Appearances as heretofore noted.

ATWOOD L. DECOSTA, sworn in behalf of the complainant, testified as follows:

Direct-examination by Mr. McDermott:

Q. Mr. DeCosta, where do you live? A. Summit, New Jersey.

Q. How many years has that been your residence? A. Between 25 and 30 years.

Q. And have you any relation to the Summit Building and Loan Association? A. I am counsel for it.

Q. And how many years have you been counsel of that association? A. Ever since its organization—1891, I think it was.

Q. Do you recall, or have you examined your abstract and papers, so that you may recall it, a loan made on the Emily E. DeForest lots in Summit? A. Yes, sir.

Q. I show you certified copy of a mortgage made by Emily E. DeForest to the Summit Building and Loan Association, to secure $7,000, with special conditions, dated July 11, 1895, and I ask you if you remember the loan which was made at that time for $7,000? A. I do.

Q. Do you recall who made the application for that loan?

Mr. Hartpence: Objected to, because we think that if there was a loan made, which Mr. DeCosta says that he recalls, and a mortgage was given in pursuance of that loan, that the mortgage itself would speak for the transaction, regardless of any preliminaries that led up to it, that they would be irrelevant.

The Court: What is the object?

Mr. McDermott: My understanding is, that the application for this loan was originally made by the Summit Silk Manufacturing Company. Mr. DeCosta was the counsel of the Building and Loan Association, and he advised the Loan Association that it—

The Court: I will admit it on that ground. (Question read.)

A. I do.

Q. Who made it? A. The Summit Silk Manufacturing Company.

Q. And did you advise the Loan Association in connection with that? A. I did; I advised the association that in my opinion, a corporation could not hold stock in a building and loan association.

Mr. Hartpence: I move to strike that out.

The Court: Objection overruled; you may strike out the words "in my opinion."

Q. Following that advice, Mr. DeCosta, was the

property conveyed by the Summit Silk Company? A. Yes, sir, to Emily E. DeForest, and she made a mortgage to the association.

Q. And she became a nominal shareholder? A. Yes, sir, she became a shareholder.

Mr. McDermott: I offer in evidence the mortgage made by Emily E. DeForest to the Summit Building and Loan Association, dated July 11, 1895, and recorded July 24, 1895, in Book 128 of Mortgages for Union County, on pages 364, etc.

Marked Exhibit C. A. 1.

CROSS-EXAMINATION by Mr. Hartpence:

Q. When you say that the Summit Silk Manufacturing Company first made application for the loan referred to in your direct-examination, what do you mean by that? That the Summit Silk Manufacturing Company made the application? A. I don't understand your question.

Q. You stated, as I understood it, that the Summit Silk Manufacturing Company originally made the application for a loan that you referred to in your direct-examination? A. I don't understand whether you mean that that was not the name of the corporation or not; if that is the meaning of your question, that may be true; I don't remember the exact name of the Summit Silk Company at that time; we always call it the "Summit Silk Company"; it was the company.

Q. When you say the company made the application, do you mean that there was a written application made? A. Yes.

Q. Signed by the company? A. Yes, sir.

Q. Have you that written application at this time? A. No, sir.

Q. Do you know where it is? A. I suppose the secretary has it.

Q. How was it signed, do you remember? A. I do not.

Q. Did you personally know Mr. Othniel DeForest? A. Yes, sir, I did.

Q. Did you discuss this application with Mr. Othniel DeForest at the time? A. Yes, sir.

Q. He submitted it, didn't he? A. Yes, sir.

Q. Do you know what his relation was to the company at that time? A. Well, I don't know; I don't remember whether he was president of the company or not.

Q. Well, he was the one that was concerned chiefly in the management of the company, wasn't he? A. Yes, sir.

Q. Did any one but him talk to you about that application? A. For the company.

Q. Yes. A. I don't think so.

Q. Do you know where the land was located that this loan was to cover? A. Yes, sir.

Q. Whereabouts? A. Weaver Street, just back of the mill; just going from the center of the city; we turn into Weaver Street just at the side of the mill.

Q. The mill faces on Morris Street? A. Yes, sir.

Q. And as you face the mill on Morris Street, Weaver Street is just to the left of the mill, isn't it? A. Yes, sir.

Q. And this land was just back of the mill on Weaver Street? A. Yes, sir.

Q. A little bit to the left? A. Yes, sir.

Q. Did you look at the land before you loaned the money—before the loan was placed? A. I don't know that I did; that was not my duty.

Q. Had you ever seen the land before this loan was placed? A. I don't know that I had.

Q. You have seen it since? A. Well, I saw it while the buildings were being erected.

Q. When was that? A. Well, shortly after the loan was granted.

Q. Shortly after? A. Yes, sir.

Q. What do you mean by "shortly"? A. My impression is, that the loan was granted for the construction of these five buildings.

Q. And that it did not enter into the question of the land or the purchase of the land? A. I don't think so.

Q. Well, shortly after the loan was made; do you mean within a few months after that? A. Right you are.

Q. You saw the buildings in the course of construction? A. Yes, sir.

Q. Did you ever see them after they were finished? A. Yes, sir.

Q. How soon after the loan were they finished? A. Well, I cannot remember that; I should think in four or five or six months.

Q. At least within a year? A. I should think so.

Q. Would you say that you were reasonably certain that they were finished within five or six months? A. Yes, sir, I would, but I don't remember.

Q. Now, Mr. DeCosta, referring to this certified copy of mortgage marked C. A. 1, will you state the due date of that mortgage? A. Well, a building and loan mortgage has no due date.

Q. Well, there is a time, however, at which the mortgage is paid off? A. That is when the shares which are given as collateral mature.

Q. And that is the date that I refer to when I speak of it as the "due" date of the mortgage; can you tell what the date was when the shares in this building and loan association matured? A. I cannot, but it was about twelve years from the date of their issue; it may have been twelve years and six months.

Mr. McDermott: That is already in evidence.

Q. Was any bond given by the mortgagor in this mortgage C. A. 1? A. Yes, sir.

Q. In the usual form? A. Yes, sir.

Q. Of a money bond which is secured by a mortgage? A. Well, it is the usual form given to a building and loan association.

Q. Have you that bond? A. No, sir, that was delivered up when it was paid.

Q. Delivered up to whom? A. Well, I don't know that; the secretary would know that; it was not paid to me.

Q. In the usual course of a transaction of this character of building and loan association, is the bond delivered up to the mortgagor at the time the mortgage is satisfied and cancelled? A. Yes, sir.

Q. What becomes of the shares that you refer to in the building and loan association? A. The certificate of stock is endorsed and returned to the association; for that, in our association, we give a check for the value of the shares, and have that endorsed back to pay the bond and mortgage.

Q. And that was done in this case? A. I have no doubt it was; that is our custom.

Q. Mr. DeCosta, I show you a paper purporting to be a discharge of mortgage, Summit Building and Loan Association to Emily E. DeForest, dated July 16, 1908, and ask you if your signature appears on that certificate? A. Yes, sir.

Q. And in what capacity? A. I took the proof.

Q. As a Master in Chancery of New Jersey? A. Yes, sir.

Q. And that is your signature? A. Yes, sir.

Q. Accompanying that proof? A. Yes, sir.

Q. Mr. DeCosta, are you familiar with the signature of William S. Porter, the secretary of the Sum-

mit Building and Loan Association? A. Very well.

Q. And is that Mr. Porter's signature which attests this certificate of discharge? A. Yes, sir.

Q. And also his signature to the acknowledgment or affidavit? A. Yes, sir.

Q. Are you familiar with the signature of the president at that time? A. I am.

Q. And is that the signature of Henry L. Pierson, the president? A. Yes, sir.

Q. And is that the seal of the Summit Building and Loan Association? A. Yes, sir.

Marked Exhibit D. A. 1 for identification.

Q. In the mortgage, Exhibit C. A. 1, I call your attention to a provision which provides that "if the party of the first part shall pay the sum of $7,000, in payments of $75.25 per month, the first payment to be made on or before the second Thursday of August next ensuing the date of the mortgage, with the other covenants in the mortgage also being performed, the estate granted by this instrument shall cease and determine," and I ask you if that sum of $75.25 per month had been paid regularly, according to that provision, it would have matured in 12 years or 12½ years, or thereabouts, after the date of the mortgage? A. I cannot answer that.

The Court: I do not see that it is cross-examination.

Mr. Hartpence: I understood Mr. DeCosta to say in direct-examination that the sum to be paid was $75.25 per month; perhaps, I am mistaken about that.

The Witness: I did not say that.

Q. Was any other sum than $75.25 per month mentioned to be paid by the mortgagor in the satisfaction, or in order to discharge this mortgage in 12½ years,

Exhibit C. A. 1? A. I am hardly able to answer that; I will say this for you, that my understanding is that the stock ran out; it was paid, and then the holder of the stock would receive $7,600; she had 38 shares; they would have received $7,600, and out of that the mortgage would have been paid, and they would have had something left; that would be in the natural course; I think the shares run out.

Q. Now, in the payment of money into the building and loan association provided for in the mortgage, that covered all the payments that were to be made in order to discharge the mortgage; is not that correct? A. Yes, sir.

Mr. McDermott: I will admit that.

RE-DIRECT EXAMINATION by Mr. McDermott:

Q. You spoke of being up on the property when the buildings were being erected, shortly after the loan was made; the loan was made; the payments for the buildings as erected were made by the loan association by orders? A. Yes, sir.

Q. And in that way the money secured by the mortgage was paid out? A. Yes, sir.

JOHN D. HOOD, sworn in behalf of the complainant, testified as follows:

Direct-examination by Mr. McDermott:

Q. Where do you live? A. I live in Summit.

Q. What office do you hold? A. My position is cashier of the First National Bank of Summit.

Q. And you have held that office or been connected

with the bank, how many years? A. For a period of 18 years.

Q. I show you five books, purporting to be pass books of the First National Bank of Summit, in account with the Summit Silk Manufacturing Company, and the first one, which bears no number, apparently opened on March 25, 1897. The second opened November 1, 1899; the next, marked No. 3, opened July 1, 1901; the next, marked No. 4, opened January 31, 1903; and the last, marked No. 5, opened October 31, 1905. I ask you if you recognize those books, and what are they? A. I recognize them as being the pass books used in connection with the account of the Summit Silk Manufacturing Company with our bank.

Q. And during the period mentioned in the books? A. Yes, sir.

Q. You have seen them before? A. I have.

Q. Before you came on the witness stand? A. Yes, sir.

Q. And do you recognize the handwriting in these books as the handwriting of employees or officials of the First National Bank of Summit? A. Yes, sir.

Q. You have examined all the books for that purpose before you came on the witness stand? A. Yes, sir.

Q. And they are all originals? A. Yes, sir.

Q. And all in the handwriting of officers or employees of the bank during that period? A. That is correct.

Marked Exhibits D. A. 2 for identification, D. A. 3 for identification, D. A. 3½ for identification, D. A. 4 for identification, D. A. 5 for identification.

Q. Do you know Mr. Othneil DeForest A. Yes, sir.

Q. Of Summit? A. Yes, sir.

Q. And what relation did he bear to the Summit Silk Manufacturing Company? A. My understanding is that he was the president of that company.

Q. And did his check go through your bank as the president of that company? A. Yes, sir.

Q. Did you know William H. DeForest? A. Yes, sir.

Q. Was he connected with the same company? A. Yes, sir, he was treasurer of the company, I think.

Q. Are you familiar with the signature of these gentlemen? A. Yes, sir.

Q. I show you a bundle of checks bearing the numbers 24, 56, 113, 142, 211, 246, 336, 527, 529, 568, 593, 699, 728, 744, 807. Another dated January 11, 1900, with the number covered by the stamp, 1034, 1200, check dated May 9, 1901, $322.00, no number; 1380, 1577, 1629, 1825, 1886, 1927, 1988, 2169, 2403, 2409, 2426. Check dated April 9, 1902, $75.25, no number. Check dated July 10th, 1902, $85.35, no number. Check dated August 14, 1902, $75.25, no number. Number 2558, No. 2625, No. 2719. Now, Mr. Hood, have you examined these checks this morning before taking the witness stand? A. Yes, sir.

Q. How are they signed? A. They are all signed by Othneil DeForest, President Summit Silk Manufacturing Company.

Q. And the words "Summit Silk Manufacturing Company" being printed on the checks? A. Yes, sir, except in one or two cases, where it was written in Mr. DeForest's own hand.

Q. I show you, also, checks No. 459 and 2723; how are those two checks signed? A. They are signed "The Summit Silk Manufacturing Company, William H. DeForest, Treasurer."

Q. Those checks are all drawn to the order of the Summit Building and Loan Association, are they not? A. Yes, sir.

Q. And the indorsement seems to be by a rubber stamp? A. Yes, sir.

The Court: They may be examined in lump. Bunch marked Exhibit C. A. 6.

Mr. Hartpence: We object to the admission of these checks on the ground that they are incompetent. It does not show what these payments were for; merely checks purporting to be checks to the Summit Building and Loan Association, made by the Summit Silk Manufacturing Company, but as to how they can bind us in any way, we fail to see.

The Court: Note the objection on the record.

Q. Mr. Hood, I show you a book, purporting to be the book of minutes of the Summit Silk Company, and call your attention to page 23 of such book; at the bottom of page 23 are three signatures. Are you familiar with any of those signatures? A. I am familiar with Mr. Paul Gerli's signature, and with Mr. Othneil DeForest's.

Q. Are those their genuine signatures? A. Yes, sir.

Q. I call your attention to page 27, to a sheet attached to that page, and particularly to the signatures about two or three inches from the bottom of the page, of the lowest sheet; do you know what signatures they are? A. I recognize Mr. Paul Gerli's and Mr. Othneil DeForest's.

Q. And are they their genuine signatures? A. Yes, sir.

Q. I call your attention to page 30 of the same book, to a sheet fastened to the page and to the signatures at the bottom—fastened or attached—the bottom or fastened or attached sheet; do you recognize

any of the signatures there? A. I recognize Mr. Othneil DeForest's and Mr. Paul Gerli's.

Q. They are their genuine signatures? A. Yes, sir.

Mr. McDermott: Pages 23, 27, 30 are marked for identification.

Marked Exhibit C. A. 7 for identification, C. A. 8 for identification, C. A. 9 for identification.

Q. I call your attention to book already marked Exhibit C, 1 for identification, and purporting to be the book of minutes of the Summit Silk Manufacturing Company, and I call your attention to page 45, and particularly to the attached sheets partly in typewriting and partly in handwriting, fastened to that page, calling your attention now to the upper of these two attached sheets; do you recognize any of the signatures of the parties apparently signing? A. I recognize Emeline E. DeForest and Othneil DeForest.

Q. Have you any familiarity with the other signatures? A. No, sir.

Q. On the lower sheet do you recognize the signature? A. I recognize the signature of Emeline E. DeForest and of Othneil DeForest as the witness.

Q. And are those genuine signatures? A. Yes, sir.

Mr. McDermott: That is page 45; I ask now to have marked for identification page 45 of the book, which has already been marked Exhibit C. L. for identification.

CROSS-EXAMINATION by Mr. Hartpence:

Q. Mr. Hood, you say you are familiar with the signature of Mr. Othneil DeForest? A. Yes, sir.

Q. Where and under what circumstances have you ever seen his signature, other than those which you

have referred to today? A. We had on file such a signature at the time of his opening his account, and I have been in his presence and seen him write his signature, and I know it.

Q. Well, on how many occasions have you ever seen him write his signature? A. I would not like to say definitely.

Q. How many times have you seen it, about? A. I have seen him write it only a limited number of times; possibly not more than three or four times. 20

Q. But you have seen his signature on many other occasions? A. Yes, sir.

Q. Knowing it to be his signature? A. Yes, sir.

Q. Now, did you know Mrs. Emeline E. DeForest personally? A. Not personally.

Q. Did you know her when you saw her? A. I think not; I don't recall.

Q. How did you become familiar with her signature? A. That was the signature that was on file; I do not recall seeing her write it, but I know that is the signature. 30

Q. There is a specimen signature preserved of each depositor? A. Yes, sir.

Q. And that is the way you know it? A. Yes, sir.

Q. And by comparing the picture in your mind resulting from the examination of that signature, with these other signatures, you determine that they are the same signatures? A. Yes, sir. 40

Q. Have you ever seen Mrs. Emily E. DeForest's signature in any other places than on your signature card in the bank, and in these minutes that you have referred to to-day? A. On her own checks, the checks that were constantly being paid.

Q. She had an account with the bank? A. Yes, sir.

Q. How long a period did that account cover? A. I could not say; a number of years, say four or five years possibly.

Q. And commencing at about what time? A. I could not say that; I should say sometime, possibly, beginning with about 1900 and 1905.

Q. Running along through there? A. Yes, sir.

Q. Do you know what became of the checks, Mr. Hood, of Mrs. Emily E. DeForest, that you refer to as having been presented and paid, from time to time? A. I believe they were all returned to her.

Q. That is the usual custom? A. Yes, sir.

Q. Balancing the book and returning the checks? A. Yes, sir.

Q. As far as you know, that was done in Mrs. DeForest's case with all her checks? A. Yes, sir.

Q. Is there any other bank in Summit besides the First National Bank of Summit? A. Yes, sir.

Q. And what bank is that? A. At present?

Q. Yes? A. The Summit Trust Company.

Q. Do you know how long that has been established there? A. Under that title, I think, possibly, five years, a little shorter than that.

Q. Did it conduct business under some other title prior to that time? A. The Summit Bank.

Q. How long had that been in operation, to your knowledge? A. I don't know the date of organization, possibly, I think around 1890, somewheres in there.

Q. The checks deposited or presented by Mrs. Emily E. DeForest and credited to her account, did they ever go through your hands; do you recall any checks having been deposited by her, drawn upon the Summit Trust Company? A. I could not state positively, although, no doubt, that is true; but I would not want to state that.

Q. Do you recall any checks made by the Summit Trust Company to the order of Mrs. DeForest and deposited by her to her account in your bank? A. No, sir.

RE-DIRECT EXAMINATION by Mr. McDermott:

Q. Mrs. Emily DeForest was the wife of Othneil DeForest? A. Yes, sir.

Mr. McDermott: Will you admit that?
Mr. Hartpence: As far as I know.

JOHN J. KENTZ, sworn in behalf of the complainant, testified as follows:

Direct-examination by Mr. McDermott:

Q. Mr. Kentz, what is your profession? A. Civil engineer and surveyor.

Q. At what place? A. Summit, New Jersey.

Q. Were you ever associated with Mr. Seiler? A. Yes, sir, I was.

Q. In what business? A. Civil engineering and surveying.

Q. I show you a blueprint, which I will ask to have marked for identification C. A. 8 for identification (and it was so marked by the stenographer); what property does this blueprint delineate? A. Map of the property—

Mr. Hartpence: I object, on the ground that it is incompetent, unless Mr. Kentz knows as a fact whose property it is.

Q. As you understand it? A. Yes, sir.

Q. Mr. Kentz, did you have anything to do with the survey of this property? A. Yes, sir, I made the survey with Mr. Seiler.

Q. And with the making of this map? A. Yes, sir.

Q. Did you run the lines? A. Yes, sir.

Q. And have you compared the lines, the outer lines, with the description in the deed from Dr. DeForest to the Summit Silk Manufacturing Company, to the Summit Silk Company, marked Exhibit C 3? Exhibit C 1? A. I have, yes, sir.

Q. And also with the deed from the Summit Silk Manufacturing Company to the Summit Silk Company, marked Exhibit C 3? A. I have, yes, sir.

Q. And can you tell if the outer lines on this map embrace the property described in those two deeds? A. This deed covers the entire tract.

Q. Which deed? A. The deed marked Exhibit C 1; that was the entire tract shown by the outer boundary line.

Q. How many acres altogether? A. Containing about 10 acres and 41/1000 of an acre, more or less.

Q. Is there any exception in the deed which I showed you, also marked Exhibit C 3? A. Yes, sir, in this deed there is an exception.

Q. Will you look and see what it is? A. "Except lots Nos. 17, 18, 19, 20, 21, 22, comprising frontage of 150 feet on the south side of Weaver Street and Ocean," on the map now before me, including these three houses (witness points to the houses No. 1, No. 2, No. 3 on this map).

Q. Does the exception say to whom they had been conveyed? A. No, sir, it does not say.

Q. Otherwise, the description in this deed is the same as the description in the other deed which I showed you? A. With that exception.

Q. I show you a certified copy of the mortgage made by Emily E. DeForest to the Summit Building and Loan Association, marked Exhibit C. A. 1, and ask you if you have on this map located the premises described in that deed? A. Beginning at a point 151 6/100 feet easterly from the westerly boundary line of the property.

Q. Have you indicated that on this map by a point A. Yes, sir, and it extends from that point along Weaver Street 250 feet to the northwesterly corner of Lot 17, and includes this block containing houses Nos. 4, 5, 6, 7 and 8, as marked in lead pencil.

Q. You have gone over that description before you came to the witness stand? A. Not this description.

Q. You made your marks on the map from the deed? A. Yes, sir.

Q. From the Summit Silk Manufacturing Company to Emily E. DeForest? A. Yes, sir.

Q. Can you tell if it is the same description? A. The description is the same.

Q. I understand, Mr. Kentz, that both of these parcels, the one covering houses 1, 2 and 3 and the one covering 4, 5, 6, 7 and 8 are included in the deeds which you have already had in your hands, embracing the entire property? A. The original deed from DeForest to the Summit Silk Manufacturing Company, yes, it is included in that—

Q. And it is also included in the deed from the Summit Silk Manufacturing Company to the Summit Silk Company? A. With the exception of houses 1, 2 and 3.

Mr. McDermott: I now offer this blueprint in evidence.

The Court: All right.

Marked Exhibit C. A. 9.

Mr. Hartpence: We have no objection to it.

CROSS-EXAMINATION by Mr. Hartpence:

Q. At the time you ran the lines in the preparation of the map, Exhibit C. A. 9, did you make any examination of the physical condition of the property? A.

No, sir, we did not; we just made a boundary line survey, and, of course, located the houses and the buildings that were on it.

Q. At that time you saw the land as it lay there, physically? A. Yes, sir.

Q. Do you remember when you made the map? A. I think it was in the year 1911.

Q. Well, Weaver Street, which is the street upon which these houses face, begins at Morris Avenue? A. Yes, sir.

Q. At the right-hand side of the map? A. Yes, sir, it begins at this point on the map.

Q. That is, at the corner of Morris Avenue? A Yes, sir, just southeast of the mill.

Q. And then it runs in a southwesterly direction? A. Yes, sir.

Q. To this western boundary line of the property? A. Yes, sir.

Q. Now, how much further does it extend beyond that westerly boundary line? A. It does not extend any further; that is a dead end.

Q. And there is no outlet from Weaver Street either to the north or the south at that westerly end? A. No, sir.

Q. The only way is to go in on Morris Avenue and go out the same way that you come in? A. Exactly.

Q. As you go westerly, does the land become higher or lower than at Morris Avenue? A. The summit is at about the westerly end of the property, the westerly boundary line.

Q. There is considerable rise then? A. Yes, sir.

Q. Is there any development to the land to the south or southeast? A. No, sir, there is no lot development.

Q. Just open property? A. Yes, sir.

Q. Now, is there any development to the northwest? A. Yes, sir, there is.

Q. What sort of development do you find there?

A. A street cut through the property and building lots laid out.

Q. It is not on the Summit Silk property? A. No, sir, north of that property.

Q. About how far to the northwest does that street run through? A. About 200 feet north of their north boundary line.

Q. What is the character of the land west from these houses and south of the factory buildings; what is the surface condition today? A. It is open property, and it falls in a direction towards the mill; it is high on the west boundary line of the track and falls in a northerly direction towards the mill.

Mr. McDermott: This does not seem to me to be material in anywise.

Mr. Hartpence: There is nothing on the map to indicate the character of the land, and we thought that ought to be shown; we have gone as far as we care to, if the other side think we have gone far enough.

Mr. McDermott: I wish now to offer in evidence a transcript of the book which was produced by Mr. Porter at the other hearing. I said at that time that I would like to have the original book, and your Honor suggested I get a transcript, and Mr. Porter has had it transcribed; I now produce the transcript of the original book which was before the Court, and I ask to have it marked.

Marked Exhibit C. A. 10.

Complainant's Witness, John J. Kentz, Re-direct Re-cross

RE-DIRECT EXAMINATION by Mr. McDermott:

Q. You spoke of Weaver Street a moment ago; is that a comparatively new street laid out through the property? A. Well, it is not very new, no; it has been there for—

Q. Was it there in 1895? A. That I cannot say?

RE-CROSS EXAMINATION by Mr. Hartpence:

Q. Do you know when it was opened up as a street? A. I can remember it for four or five years past.

Q. That is all? A. Yes, sir.

Q. Those dotted lines running in front of the properties referred to and between which has been written "Weaver Street" in pencil, what do they indicate? A. That indicated the traveled road, at the time we made our survey.

Q. Filled in with cinders? A. It was rough earth graded.

Mr. McDermott: I wish to offer in evidence the testimony of Paschal J. Ferrara, taken before Frank E. Laughran, a Master in Chancery of New Jersey, on the 2nd day of March, 1915, and certified to by the Master. The testimony discloses that it was taken before the Master without requiring the statutory oath; taken stenographically, without requiring the statutory oath of the stenographer, and the signature of the witness waived; all objections to be reserved and made when the testimony is offered. It is now open to objection.

The Court: What is your objection to it, Mr. Hartpence?

Mr. McDermott: It was testimony taken to prove the book of minutes of the Summit Silk Manufacturing Company; this gentleman was the secretary and treasurer of the company for a long time, and, of course, it is material.

Mr. Hartpence: I have not had an opportunity to read it; Mr. Kingsley took it, and I should like to reserve the right to interpose an objection at the next hearing, if I wish to do so.

Mr. McDermott: There is no objection to its being competent, however?

Mr. Hartpence: I would merely like to reserve my right to object after having examined the testimony; I may not exercise it.

Mr. McDermott: I offer it. It was taken subject to objection to be made by Mr. Hartpence after reading the testimony, and it is to be noted on the record and considered by the Court.

Marked Exhibit C. A. 11.

Mr. McDermott: I offer now the original book of minutes of the Summit Silk Manufacturing Company; that is the book proved in part by this witness, and also proved by Mr. Hood this morning.

The Court: I will receive it and note the objection to it.

Mr. Hartpence: I would like to reserve my objection to that, also.

The Court: Very well, you may do so.

Marked Exhibit C. A. 12.

Mr. McDermott: I now offer in evidence copy of the certificate of incorporation of the Summit Silk Manufacturing Company; the copy which I have is an uncertified copy, but if counsel insists upon it, I will have it certified.

Mr. Hartpence: In view of the fact that we are representing an incompetent, we are a little

bit averse to waiving what otherwise we might, and we will ask that the usual certificate of the Secretary of State be affixed.

Mr. McDermott: I think that is all I can do today; Mr. Jourley was to be here, but he missed the train, and I told him he might as well not come.

Mr. Hartpence: We will ask the Court to fix a time when we may produce our case.

The Court: You are absolved from going on with your case, because Mr. McDermott cannot conclude his case today.

Mr. Hartpence: I should like to have the final day fixed at as early a date as possible.

Adjourned to a day to be fixed.

Continuation of the taking of testimony in the above-entitled cause, on Monday, the twenty-seventh day of September, 1915, at the Chancery Chambers, Jersey City, New Jersey, before Hon. Vivian M. Lewis, Vice-Chancellor.

Appearances as before noted, except that Mr. Albert C. Wall acted in the place of Mr. Hartpence.

Mr. McDermott: I now offer the certificate of incorporation of the Summit Silk Manufacturing Company, duly certified.

Marked Exhibit C. A. 13.

MISS HARRIET BELCHER, sworn in behalf of the complainant, testified as follows:

Direct-examination by Mr. McDermott:

Q. Where do you live? A. Chatham, New Jersey.
Q. Do you know the silk plant of the Summit Silk

Company, formerly the Summit Silk Manufacturing Company, at Summit? A. Yes, sir.

Q. Have you been employed at that plant? A. Yes, sir.

Q. When were you first employed there? A. June, 1889.

Q. And that was at the time of the Summit Silk Manufacturing Company? A. Yes, sir.

Q. Have you continued there ever since? A. Yes, sir. 20

Q. During the whole period, then, of the Summit Silk Manufacturing Company? A. Yes, sir.

Q. And, under the Summit Silk Company since its incorporation? A. Yes, sir.

Q. In what capacity were you employed? A. Stenographer and typewriter.

Q. And in whose office were you at that time? A. The president's. 30

Q. And was the superintendent in the same office? A. Yes, sir.

Q. And you did stenographic work and typewriting for the officers of the concern? A. Yes, sir.

Q. I show you a book indorsed "Rents, 1902," and I ask you if you recognize that book? A. Yes, sir.

Q. Did you have anything to do with that book at the time it was first written in, and during the period it was running? A. I entered the names of the tenants and the date of the month, and the numbers of 40 the houses—the street number of the houses.

Q. That begins with the year 1902—January? A. Yes, sir.

Q. And under the words, "Rents received" there are a number of names—whose names are those? A. The tenants.

Q. In whose handwriting is that? A. Mine.

Q. And is that so throughout the book; take that page now? A. Yes.

Q. All in your handwriting on that side of the page? A. Yes, sir.

Q. On the other side of the page you find "Rents deposited"; and the next entry is "Petty cash"; is that in your handwriting or not? A. No, sir.

Q. In whose handwriting is that? A. That is the superintendent's, Mr. Nightingale's.

Q. Have you seen him write frequently? A. Yes, sir.

Q. The next item is "First National Bank, $100"? A. Yes, sir.

Q. In whose handwriting is that? A. Mr. William H. DeForest's.

Q. He was the husband of Harriet DeForest? A. Yes, sir.

Q. What did he have to do with the company? A. He was secretary and treasurer.

Q. And who, at that time, was the president of the company? A. Othneil DeForest.

Q. And he was the husband of Emily DeForest? A. Yes, sir.

Q. Following that is an item of petty cash, $5.00; in whose handwriting is that? A. Mr. Nightingale's, the superintendent's.

Q. Was this a regularly kept kook at the office? A. Yes, sir, every month.

Q. And taking the right-hand pages of this book—taking the month of February—in whose handwriting are those entries? A. That is Mr. William H. DeForest's and Mr. Nightingale's—

Q. The several items of petty cash? A. Mr. Nightingale's.

Q. Now, the last word is "Balance, $9.00"; in whose handwriting as that? A. Mine.

Q. What became of that balance, $9.00—on the book, I mean? A. That was carried over to the next month, on the next page.

Q. That system was carried out throughout this whole book? A. Yes, sir.

Q. Do you find the handwriting of anyone in this book except your own and Mr. Nightingale's and Mr. William H. DeForest's? (No answer.)

Q. Were you familiar with Mr. William H. DeForest's handwriting? A. Yes, sir.

Mr. McDermott: On June 3, 1902, witness finds an item, "Deposit, $117.00."

Q. Whose handwriting is that? A. Lawrence Martin's.

Q. Was he employed by the company? A. Yes, sir.

Q. Are you familiar with his handwriting? A. Yes, sir.

Q. The other items on the page are by whom? A. Mr. Nightingale and myself.

Q. The second item is Mr. Nightingale's? A. Yes, sir.

Q. And you carried over from month to month this balance from one month to another? A. Yes, sir.

Q. In your handwriting? A. Yes, sir.

Q. Did you make the calculation as to what the balance was? A. Yes, sir.

Q. And carried it over? A. Yes, sir.

Q. Was this book retained as one of its books by the Silk Manufacturing Company? A. Yes, sir.

Q. During its existence? A. Yes, sir.

Marked Exhibit C. A. 14 for identification.

Q. I call your attention now to another book, indorsed "1904-1905," and ask you if you recognize that book? A. Yes, sir.

Q. And what is it, Miss Belcher? A. That is the same as the other—a record of the rents collected and the disposition of the fund.

Q. Is that handwriting the same as you have already indicated on the left-hand page; first—that is in your handwriting? A. Yes, sir.

Q. You say you were in the same office as Mr. Nightingale? A. Yes, sir.

Q. Occupied the same room? A. He is in a small office, and I am right in the main office.

Q. Referring now to this book, on the right-hand page of the book, the same as before; is not there one item there; I call your attention to 1904, January 6, the initials "W. H. DeF. 126"; whose is that A. Mr. William H. DeForest's.

Q. On April 7th, "Dep. 1st Nat. O. DeF. $144.00"; whose handwriting is that item? A. Mr. Nightingale's.

Q. Whose is that "O. DeF."? A. That is Othneil DeForest.

Q. Are you familiar with his signature and handwriting? A. Yes, sir.

Q. The balance on that same page is in whose handwriting? A. My writing.

Q. May 3rd, "W. H. DeForest"? A. Yes, sir.

Q. Substantially, all these are signed at the top "W. H. DeForest" in this book—on the right-hand page? A. Yes, sir.

Q. Was Mr. William H. DeForest the treasurer of the company during that period? A. Yes, sir.

Q. And during the time from 1902 down to the sale of the property? A. Yes, sir.

Marked Exhibit C. A. 15 for identification.

Q. I show you another book, indorsed, "Rents, 1905 to 1907," and call your attention to the left-hand page, which is dated 1905, August, and ask you if that is in your handwriting also? A. Yes, sir.

Q. And what did that represent? A. The collection of rents.

Q. From the tenants of those houses? A. Yes, sir.

Q. Do you know these houses? A. Yes, sir.

Q. You live at Chatham? A. Yes, sir.

Q. You know these houses where these tenants live? A. Yes, sir.

Q. And where were they located? A. They are double, frame houses—

Q. I show you a map which has been admitted in 20 evidence, Exhibit C. A. 8, and I ask you if you can locate on this map the houses that are mentioned in this book as occupied by tenants, the double houses; do you recognize these houses marked 4, 5, 6, 7 and 8? A. Yes, sir.

Q. And are those part of the houses that were included in these rents? A. Yes, sir.

Q. And occupied by the tenants mentioned in this book? A. Yes, sir. 30

Q. The three books which I have shown you are in an unbroken series from 1902 down to this time? A. Yes, sir.

Q. Would you like to be sure of that—Exhibit C. A. 14 for identification, that ends with 1903; and C. A. 15 begins with January, 1904, and C. A. 15 for identification ends with July, 1905; and the one I now show you begins with August, 1905; so that they extend in an unbroken series from 1902 down to January, 1908? A. Yes, sir. 40

Q. I ought, however, to call your attention to the fact that January, 1908, only has figures and no names? A. Yes.

Q. And that page you had nothing to do with? A. I wrote those figures, but not the words "Back rent," "$21.40," in red ink at the bottom.

Q. Are the left-hand pages in this book in your handwriting also? A. The left-hand pages are in my writing.

Q. The right-hand pages, as in the other books, are not in your handwriting? A. Yes, sir.

Q. And in whose writing are the entries on the right-hand page in the book? A. Mr. William H. DeForest's, and on January 4, 1906, is an entry in the handwriting of Mr. Nightingale.

Q. The other intermediate entries are in the handwriting of Mr. William H. DeForest? A. Yes, sir.

Q. And, beginning with February, 1906, whose handwriting is that? A. William H. DeForest's.

Q. And March, in whose handwriting is that, on the right-hand page? A. Mr. Nightingale's.

Q. And April? A. Mr. Nightingale's.

Q. And May? A. William H. DeForest's.

Q. And June? A. William H. DeForest's.

Q. July, 1906? A. William H. DeForest's.

Q. And August? A. William H. DeForest's.

Q. September, October, November, December? A. William H. DeForest's.

Q. 1907, January, February, March? A. William H. DeForest's.

Q. Referring to the item of March 2nd, 1907, is the second line in Mr. DeForest's handwriting or somebody else's? A. In Mr. DeForest's.

Q. In April, May, June, July, August, September, October, in whose handwriting? A. Mr. William H. DeForest's.

Q. November 2nd, "C. L. Martin, $144.00"; in whose handwriting is that? A. Lawrence Martin's.

Q. What connection did he have with the company? A. He was a clerk, I suppose.

Q. December, 1907; can you tell whose handwriting that is on the right-hand page? A. Mr. Nightingale's.

Marked Exhibit C. A. 16 for identification.

Q. During the period that these books were carried on, do you know who occupied the houses; not

only the names, but what their relation was to the company; were they employees of the company? A. They were employees of the company and known as weavers.

Q. And did you see these weavers come in and pay the money on some occasions? A. Not always.

Q. Often? A. Mostly always I did.

By the Court:

Q. When you would enter it in the book you would, of course, see them come in generally? A. I did not enter them in the book; I just prepared the charges.

Further Direct:

Q. Then they were entered by whom? A. By Mr. Nightingale, the superintendent.

Q. And then he made the entries, or Mr. DeForest, on the right-hand page, and then you struck the balance and carried it over to the next month? A. I did, yes, sir.

CROSS-EXAMINATION by Mr. Wall:

Q. You were not the bookkeeper? A. No, sir.

Q. Who was the bookkeeper? A. There have been several.

By the Court:

Q. During your time, who have been bookkeepers during the time you made these entries? A. There was Mr. Orr and Mr. Day and Mr. Gardner.

Further Cross:

Q. Anyone else? A. That is all, I think.

Q. Did you give them in the order of their services? A. Yes, sir.

Q. And Mr. Orr was the earliest? A. Yes, sir, and then Mr. Day and Mr. Gardner.

Q. There was a Mr. Ferrera there as a bookkeeper? A. No, sir.

Q. Was he there at all? A. Not in the Summit mill.

Q. In what capacity was he employed? A. He was in the New York office.

Q. Do you know in what capacity? A. I presume it was bookkeeper; I really don't know.

Q. Well, now, this money for those rents? Was it paid to you? A. No, sir.

Q. And when you say you saw it paid, you mean that you were in the room and you saw some money pass from people you understood were tenants, to one of the officers of the company? A. Well, they would come to me and say it was rent for the company; and I would tell the superintendent that they were there, so that he should receive it.

Q. You did not count the money? A. No, sir.

Q. You just knew it was going on because you were present? A. Yes, sir.

Q. You did receive the money? A. From the tenants?

Q. Yes. A. Mr. Nightingale, and sometimes one of the clerks in the office would take it.

Q. Then, what was the next step? Did they come and tell you to make an entry, or did they give it to the bookkeeper, or what? A. I don't know.

Q. Who told you to make these entries? A. The superintendent, Mr. Nightingale.

Q. And did you make these entries at the dates that are given in the books? A. I did not make any entries in those books, you understand, with the exception of the names; I did not make the entries of the moneys.

Q. For convenience in keeping the account, you would list the tenants each month? A. Yes, sir.

Q. But you did not attempt to keep any account of the amount of money that tenant John Smith paid? A. No, sir.

Q. And you did not put in the amount of money opposite his name? A. No, sir.

Q. It was really a stenographic purpose that you performed? A. Yes, sir.

Q. Who put in the amounts? A. Mr. Nightingale.

Q. Do you know what the red number refer to in the column? A. Yes, sir, the street number of the houses.

Q. There are black numbers, too, in the column, just before you get to the red numbers; for example, I show you "Exhibit C. A. 14 for identification"; I indicate the black numbers that are separated from the red numbers by a dash? A. I thought these were in red. These are the street numbers of the houses.

Q. You are now referring, for example, when we take Dozolek—46 is the house number—is that correct? A. Yes, sir.

Q. And the red No. 1 is what? A. It would be an apartment.

Q. In other words, he had the first floor of No. 46; is that right? A. No. 46 is the number of the house; and this designation "1" represents one house; that is, the rent for the whole of No. 46.

Q. And taking the next house, No. 44—2 in red, that means that there were two tenants in that house? A. No, sir; one tenant.

Q. What does the "2" mean there? A. That is merely to show that that is the second house, you see. It is a row of houses.

Mr. McDermott: There are eight double houses.

The Court: "1," then, has no significance.

The Witness: There is one tenant in each house.

The Court: Start that one again.

Q. Take the first numbers, No. 46 is the house number, you say? A. Yes, sir.

Q. In red is the number "1" opposite; what does the number "1" signify, do you know? A. I really don't know just what you are trying to get at.

Q. I am trying to get at whether you know what those red numbers on the first page of this exhibit that I have called your attention to signify; what do the red numbers mean? You said they were in your handwriting; now, what do they mean, if you know? A. I don't know.

Q. Now, were these the only books that were kept about these rents, if you know? A. I don't know.

Q. You don't know anything at all about these books, with the exception of being able to identify the handwriting, and that you listed the tenants, without any information about the tenants, each month; that is all? A. That is all.

By the Court:

Q. Where did you get your information to make your list of tenants from? A. I would get it from the superintendent.

Further Cross:

Q. You don't know anything about the petty cash items on the right-hand pages of these books, do you? A. No, sir.

Q. You don't know what they mean? A. No, sir.

Q. All you know about them is, that you can recognize the handwriting of the persons who made them? A. That is all.

RE-DIRECT EXAMINATION by Mr. McDermott:

Q. I understood you to say that the figures on the right-hand side of the left-hand page were not in your handwriting? A. No, sir.

Q. In whose handwriting are they? A. Mr. Nightingale's.

The Court: I understood her to say on her direct-examination, that all the figures on the left-hand page were in her handwriting.

The Witness: I mean the money figures are not in my handwriting.

Q. The red figures are in your handwriting, are they not? A. The numbers of the houses and those red figures are the only figures that are in my handwriting.

Q. The figures on the other side indicating the date of the month, are in whose handwriting? A. Mr. Nightingale's.

Q. Not in yours? A. No, sir.

Q. Is that true throughout, Miss Belcher? A. I shall have to look.

Q. Can you say generally? A. Yes, sir.

Q. Do you know Mr. Nightingale's first name? A. James Nightingale.

Q. Is Othniel DeForest living? A. No, sir.

Q. Is William H. DeForest living? A. No, sir.

Q. They are both dead? A. Yes, sir.

Q. Do you remember when William H. DeForest died? A. In October, 1907.

Q. And Mr. Othniel DeForest died later? A. Yes. sir; but I don't remember just exactly when it was.

CHARLES DAVIS, sworn in behalf of the complainant, testified as follows:

Direct-examination by Mr. McDermott:

Q. Where do you live? A. New Providence, New Jersey, at the present time.

Q. Were you ever employed in the factory of the Summit Silk Manufacturing Company at Summit? A. Yes, sir.

Q. When did you first take employment there? A. It was in May, either 1897 or 1898; the year I am not positive of.

Q. How long did you continue with the old company? A. I was with them until they changed hands, and Mr. Gerli took it.

Q. You knew Mr. Othniel DeForest, then, and Mr. William H. DeForest? A. Yes, sir.

Q. What office did Mr. Othniel DeForest have in the Summit Silk Manufacturing Company? A. Until his death he was president, all the time I was there.

Q. And what was William H. DeForest? A. At one time he was secretary, and he was treasurer, and he may have been secretary and treasurer.

Q. Do you know a man named James Nightingale? A. Yes, sir.

Q. What was his relation to the company? A. He was superintendent in my time.

Q. You have been away from there, from time to time, since 1898? A. Three years the first of last March.

Q. That is the time you were taken sick? A. Yes, sir.

Q. Do you remember when you came, whether the buildings shown on this map, Exhibit C. A. 9, on Weaver Street, and marked on this map "4, 5, 6, 7, 8," had been built or not? A. Yes, sir; they had been built.

Q. That is, when you came to the place? A. Yes, sir.

Q. You were quite a young man then? A. Yes, sir.

Q. And were they occupied by anyone in those days? A. They were occupied by tenants.

Q. Who were the tenants, as related to the company? A. They were supposed to be all weavers at the plant—they were supposed to be.

Q. Do you know where they paid their rent? A. Generally at the plant.

Q. Were you a tenant there? A. No, sir.

Q. Did you ever have any employment in the office? A. That is where I worked in the plant, in the office.

Q. All this time did you work in the office? A. I was always a clerical man there ever since I started.

Q. What were your duties there? A. About when —when I first started, do you mean? When I first started, I went as office boy, as a young man, and from there I worked up to loom ledger—that is a position that has full charge of all weavers, giving orders to weave, and telling them what to make.

Q. And your place of work was in the office? A. In this main office; yes, sir.

Q. And did you know Miss Belcher who was on the witness stand? A. Yes, sir.

Q. Did you know of her being there from 1902 to 1908? A. She has been there continuously.

Q. Where was your office; was it in the same room with her? A. In the same room with her; yes, sir.

Q. You knew the weavers from that period, from 1902 to 1908? A. Oh, yes.

Q. You gave them directions as to their work? A. Yes, sir.

Q. Individually? A. Yes, sir; the weavers got their orders from me.

Q. And during this period from 1902 to 1908, did you know the weavers who were running the houses? A. Not by name; no, sir.

Q. But did you know some of them? A. I knew some of them; yes, sir.

Q. And do you or not know of their paying their rent at the office? A. They paid their rent at the office.

Q. Those occupying those houses I have mentioned? A. Yes, sir, occupying the houses on Weaver Street.

Q. Did you ever see them pay? A. Yes, sir.

Q. To whom did they make payment? A. Most of the time to the superintendent, Mr. James Nightingale.

Q. Did you ever see them pay to anyone else? A. Yes, sir; I have accepted the money on a few occasions, but not generally.

Q. What would you do with the money when you got it? A. Hand it over to Mr. Nightingale.

Q. Was he superintendent during that whole period? A. Yes, sir.

Q. Did you have anything to do or see—did you have any opportunity to see what was done with the money? A. No, sir.

Q. Was Mr. William H. DeForest there part of the time? A. He used to come in the morning; he would come every morning for two months, and generally he came down in the morning and used to take the 8:50 train to New York, every morning.

Q. And Mr. Othniel DeForest, did he come there at all? A. Yes, sir; he came there pretty regularly, but not every day.

Q. And William H. DeForest came in the morning and stayed a while, and then left on the 8:50 train in the morning to New York? A. Yes, sir.

CROSS-EXAMINATION by Mr. Wall:

Q. You did not have anything to do with the financial bookkeeping, the disposition of money? A. No, sir; nothing to do with that.

Q. Who was the bookkeeper while you were there? A. The first bookkeeper was Mr. Orr.

Q. From 1902 to 1908? A. I could not give it to you by dates.

Q. Give it to us according to time. A. The first man there was Mr. Orr; and after him we had a young man named William Fleming, for four or five months, a very short time; and after him we had a man named Joseph Gardner; and then we had a man named D. W. Day.

Q. You never had more than one bookkeeper at a time? A. No, sir; with the exception of one occasion, when Mr. Ferrera was up there for two weeks.

Q. Did he take care of the books then? A. I don't know what he was doing.

Q. And the one bookkeeper that served had full charge of all the books, financial books? A. The financial books were not kept at Summit, the general financial books; they were kept in the New York office.

Q. This money that you received; you don't know what became of it, do you? I mean this money for rent, or the money you saw paid for rent? A. No, sir; I don't know what became of it; all I know is, that Mr. Nightingale handled it.

Q. You just watched the passage of it? A. Yes, sir.

Q. And there was a written receipt given out every time it came— A. Yes, sir; on a printed form.

Q. Who signed those receipts? A. I would give a receipt.

Q. How did you sign it? A. The Summit Silk Manufacturing Company. per "C. A. D.," my initials,

and then they were made out, and I think the receipts were made, some of them, "Mrs. Harriet DeForest on account," or "Mrs. Emily DeForest"; ten houses to one, and six houses to the other, I think; made out to two names; if I recollect correctly; I know we were very particular with the houses; some accounts were put in two names.

Q. How do you know that? A. I was told that the first time I had anything to do with the money—any time I had anything to do with the rent money.

Q. Who told you that? A. It must have been the superintendent.

Q. Have you had any talk about it since? A. No, sir.

Q. Haven't you talked about it since this case came up? A. No, sir; I never knew anything about it until Saturday morning.

Q. But you had some talk with somebody about this case? A. No, sir.

Q. Not until you got on the witness stand? A. Oh, yes; I went to Lawyer McDermott's office this morning.

Q. Never before that? A. No, sir.

RE-DIRECT EXAMINATION by Mr. McDermott:

Q. The receipts, you say, were in the name of the Summit Silk Manufacturing Company per yourself, or— A. There was a receipt given for ten houses, to Mrs. Emily DeForest, and I think six houses to Mrs. Harriet DeForest.

Q. You are referring now to receipts you made out? A. The ones that I made, anyhow.

Q. You don't know what Mr. Nightingale did with his? A. No, sir.

Mr. McDermott: I offer the pass book of the Summit Silk Manufacturing Company in the First National Bank of Summit, heretofore marked Exhibit C. A. 2 for identification, extending from 1897, March 25, to November 1, 1899.

Mr. Wall: We object to this, your Honor, unless counsel is going to take a step further, and produce the books of the company. If he is going to produce the books of the company, we won't make any point of the fact that these entries are made by bank clerks—

Mr. McDermott: These are the company's pass books with the bank.

Mr. Wall: Are you going to put in the books of the company? If they are going to try to prove their case in a piecemeal way—

Mr. McDermott: We have already brought the bank clerks; I think we have.

The Court: Were the bank clerks here? I don't recall.

Mr. McDermott: We had Mr. John Hood, who testified that he was cashier of the First National Bank of Summit (reading his testimony).

The Court: The objection will be overruled; I think I shall have to receive them for the present, without any reservation as to the other books; I will receive those books now.

Mr. Wall: We will reserve the question of materiality.

Marked Exhibit CA-2.

Mr. McDermott: I offer the other four which have heretofore been marked "CA-3 for identification, CA-3 1/2 for identification, CA-4 for identification, CA-5 for identification."

Marked Exhibits CA-3, CA-3 1/2, CA-4 CA-5.

Mr. McDermott: I offer in evidence also the books produced this morning, the rent books, heretofore marked Exhibit CA-14 for identification, CA-15 for identification, CA-16 for identification.

Mr. Wall: It does not appear that those are the books of original entry.

The Court: Are they sufficiently proved to go in evidence now?

Mr. McDermott: The proof was, some of the people are dead, of course, except Mr. Nightingale, and I think I shall have to produce him. I did not think so this morning, and I did not subpoena him for today.

Mr. Wall: Are those the regular books of the corporation?

The Court: Of course, they are very unsatisfactorily proved. I will not receive them for the present.

Mr. McDermott: I shall have to get Mr. Nightingale, because I want to use those books, if your Honor please. I would like to let this go over, and I will bring Mr. Nightingale.

The Court: How many more witnesses have you in this case?

Mr. McDermott: I am not sure about that.

Mr. Wall: I am entitled to an order for inspection of the company's books, in order to prepare our defence.

The Court: I think you are entitled to look at the books, but I will continue this matter until October 11, at which time it is understood that notice has been given of a request by the defendants to inspect the books.

Adjourned to October 11, 1915.

Continuation of the taking of testimony in the above-entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the 2nd and 3rd days of May, 1916, before Hon. Vivian M. Lewis, Vice Chancellor.

Appearances:

McDermott & Enright, Esqs., for the complainant.

Charles L. Kingsley, Esq., of the New York Bar, associated with Mr. John A. Hartpence, for the defendants.

Mr. McDermott: At the close of the last hearing, which was in September last, the counsel of the defendants made an application for the examination of the books of the Summit Silk Manufacturing Company, and shortly after that time, they went over and made an actual examination of the books. I was not present, but I understand they had full opportunity to examine the books of the Summit Silk Manufacturing Company. In view of the examination and stipulation in relation to it, I have produced copies of the books instead of bringing over the books themselves, and I now wish to introduce the statement of account taken from the Summit Silk Manufacturing Company, known as the "New Houses" account, beginning July, 1895, and extending, this first sheet which I have in my hand, to January 1, 1900; and a second sheet extending from January 1, 1900—

The Court: These are copies from the books?

Mr. McDermott: Yes. (Continuing): To the latter part of 1904; and a third sheet extending from January, 1905, to February,

1908, when the company was taken over, when the property of the company was taken over by the Summit Silk Company, and the purpose is to use these with the same force and effect as though the original books were produced in court.

The Court: Any objection to them?

Mr. Hartpence: We would like to examine those.

Mr. Gerli: I assisted with the extraction of the ledger where the account of the rents and expenditures was kept.

Mr. McDermott: They are introduced to show the receipts of rent and the payment of the Loan Association dues. Of course, those are proved to some extent in other ways.

Mr. Hartpence: We have no objection to having these copies in lieu of the original books. We think, however, that they should be proved in some way, not as to being accurate copies of the books—we are willing to admit that—but we think they should be proved in the same manner as books themselves would be proved.

The Court: Proved by some witness here who transcribed them?

Mr. Hartpence: No. There is nothing to show that even those are correct transcripts, that the books themselves are worthy of being offered in evidence—that is our particular point. Our suggestion is this: That somebody ought to be produced who will say that the books of the company from which these transcripts were taken, were the usual books and the only books, and the books in which these accounts were kept, and then we ought to have a chance to cross-examine that person.

The Court: You will have to have the books in front of the witness, I think. If there is a cross-examination directed to the entries in the books, you ought to have the books here.

Mr. Hartpence: I have agreed, and I am willing to agree now, that these transcripts shall be accepted here in lieu of the books, and I have not, of course, asked to see them prior to the present time, so far as that is concerned; that is not the part that is troubling me. I am perfectly willing to accept these as being correct transcripts of the books.

Mr. McDermott: May I suggest this: That under the circumstances, we be permitted to have Mr. Roberts go where these books are; there are many of them, eight or ten, and I will produce the witnesses to prove that those are the identical books of the Summit Silk Manufacturing Company. I don't want to delay this case. We are ready to proceed with it now.

Mr. Hartpence: If Mr. Gerli will take the stand and state that these are correct transcripts, that proves them as correct transcripts.

PAUL GERLI, sworn in behalf of the complainant, testified as follows:

Direct-examination by Mr. McDermott:

Q. I show you three transcripts which have been produced this morning and offered in evidence, and I ask you if you have seen those before? A. Yes, sir.

Q. And do you know anything of the making up of these transcripts? A. Yes, sir.

Q. How was it done? A. You requested at one

time of me to have an extract made from the books of the company relating to the collection of rents and general accounts of the houses, and I instructed the superintendent of the mill to look up all books that he could find appertaining to the Summit Silk Manufacturing Company which we kept at the mill. We received a large number of ledgers, and in examination of those books we found they had accounts called "New Houses," and "Houses" in some other books. In some places the title was "Real Estate," but all dealing with the same subject, and I ordered my bookkeepers in New York to make an extract, and I went over it with them, and found these are correct transcripts from the books. The books are still in my office and can be examined at any time.

Q. The books are in your office in New York? A. Yes, sir.

Q. What books were they, Mr. Gerli, from which these extracts were taken? A. Ledgers of the Silk City Manufacturing Company.

Q. And from what place did you get those? A. From the mill, Summit, New Jersey.

Q. The mill which was formerly possessed by the Summit Silk Manufacturing Company? A. Yes, sir.

Q. And they were turned over to you by that company? A. Yes, sir.

CROSS-EXAMINATION by Mr. Hartpence:

Q. Now, when did you first become connected with the Summit Silk Company? A. In 1908.

Q. Did you have any connection with the Summit Silk Manufacturing Company prior to that? A. Only as a creditor.

Q. But you had no interest in the company itself? A. No, sir.

Q. You did not have anything to do with the keeping of these books? A. No, sir.

Q. Did you ever examine the books prior to the time you came in? A. No, sir.

Q. Do you know whether these books from which the present statements were taken were all the books of the Summit Silk Manufacturing Company that contained records of these new houses that you refer to? A. The ledgers.

Q. Do you know whether they were all the books that the Summit Silk Manufacturing Company kept? A. There might have been memorandum books or journal books—that I don't know.

Q. Did the ledgers that were sent to you, run chronologically from 1892 or 1895, whenever this account began, right down to the time the new company took possession? A. Yes, sir; all the years from 1895 to 1907 are represented here in the statements.

Q. Now, the question is, whether the books that were sent to you, which you spoke of, the ledgers, did they show chronologically all the ledgers from 1895 down to 1907? A. Yes, sir; according to these extracts it would show they were all there.

Q. So there were no other ledgers, so far as you know? A. That is right.

Q. Do you know whether those ledgers contained any account appertaining to the house on Weaver Street, other than these three accounts that you have here in the statements? A. No, sir.

Q. You don't know? A. It was not found; the index was gone over and could not be found—

Q. So that these three accounts, so far as you know, contained all the entries and items appertaining to these new houses? A. Yes, sir.

Q. Now, these ledgers that were sent down to you, did they contain general accounts? A. Yes, sir.

Q. How many do you suppose, approximately? A. All kinds of merchandise, creditors, debtors, supplies, etc.

Q. Stock accounts? A. Yes, sir.

Q. Bills receivable—bills payable? A. Yes, sir.

Q. And all the natural accounts that would appear in a business of that character? A. Yes, sir.

Q. Now, the credit side of these accounts which you have submitted here, Mr. Gerli, seem to be made up entirely of cash, and referred to in conjunction with the entries "By cash," as "rents," and occasionally an entry of sundries; do you know what those cash entries mean on the credit side; do you know what those cash items are—what that means? A. The ledger shows only the words "By cash and sundries," and on the sheets now in evidence for the period 1895 to 1899, we have inserted in pencil "House accounts," and from other books, such as "Deposits of money in banks," it has been traced that they represent rents.

Q. What does that mean when you designate it as "rents"? A. When the houses were completed, the company was collecting the rents from the weavers who were working for the company and occupying the houses.

Q. And then when those rents were collected, you credited these respective accounts? A. Yes, sir.

Q. And the deposits represent what? A. The debit sides represent the money paid out for the building of same, and maybe taxes and other items which I could not at present explain, except that we inserted the names of the parties to whom the checks were issued.

Q. Now, of course, you were not connected with the company during the time those entries were made? A. No, sir.

Q. And your only means of explaining them is what you may have learned by referring to other books? A. Yes, sir; there is nobody now who could give any better explanation of these entries; the people who were connected before are either not alive or are not in the employ of the company. Mr. Ferrera was not keeping those books at all.

Q. But he was an officer of the old company, wasn't he? A. For about a year.

Q. You mean a year prior to the time the new company took hold? A. Yes, sir.

Q. But you have also talked with the present bookkeepers; you have gone over it with them? (No answer.)

Q. In preparing these sheets, you did it in conjunction with the bookkeeper of the Summit Silk Company? A. No, sir; we simply examined the books; we tried to make out the best we could from the books.

Q. And that is your bookkeeper that you now have in New York? A. Yes, sir; two of them.

Q. Don't they keep the books of the Summit Silk Company; isn't there a Summit Silk Company now in existence? A. Yes, sir.

Q. Don't they keep books? A. Not in New York.

Q. Are there any books of that company kept at the mill? A. The books of their business, yes, they are kept at the mill in Summit.

Q. Now, the Summit Silk Company, ever since its incorporation in 1908, have also kept books, haven't they, of their business transactions? A. Yes, sir.

Q. Now, do the books of the Summit Silk Manufacturing Company show what was done with these moneys that are credited here in these accounts as "Rents collected"; what was done with that money? A. It was deposited in the bank of the Summit Silk Manufacturing Company.

Q. And then what became of it afterwards? A. Well, it was used for buying of raw materials and supplies, I imagine.

Q. It was also used to pay the dues in the Building and Loan Company, and to pay off in effect the mortgage incumbrance that had been placed there at the time the buildings were commenced; is not that

right? A. Whether it was that exact money or not, I don't know, but the accounts were deposited for the outlay of money.

Q. So whatever money was collected from rents from these houses was used for the purpose of paying off the dues, the Building and Loan mortgage and dues? A. Yes, sir.

Q. Now, Mr. Gerli, just one or two more questions; I would like to ask you now what the books of the Summit Silk Company show since 1908, with regard to the collection of those rents of these houses and the disposition of the moneys collected as rents from these houses?

Mr. McDermott: It does not seem to me to be cross-examination.

Mr. Hartpence: The question is withdrawn. That is all on that subject.

Mr. McDermott: I offer them in evidence.

Mr. Hartpence: We desire to have an objection noted to this extent in conjunction with these offers, that we do not object to the transcripts as being correct transcripts, nor do we object to the sheets offered because they do not show the exact condition of the accounts in the ledgers from which they are taken—we have no objection whatever on that—but we do desire to object to their competency on the ground that the books themselves would not be competent unless they were shown, in addition to what Mr. Gerli has testified to, to have been the real, true, accurate records of the transactions, which they attempt to record. In other words, our objection really goes to the books rather than to the transcript.

Mr. McDermott: I gather the objection to be this: That if we had the books here that they would not be competent evidence; that is

the objection I understand; not that they are not relevant and material, but that they are not competent.

The Court: Not entirely competent.

Mr. McDermott: For the purposes of this case they seem to me to be competent, and with the proof that is already in, as though the books were here, that with the testimony already in as to the character of the books and the place from which we got them, and all the surrounding circumstances, I submit that they are competent.

Mr. Hartpence: Mr. Gerli says he had no connection with the company prior to 1908, and that he, of course, does not know anything about these transactions.

The Court: I will sustain your objection, if you object to them on that ground; I don't see any other course to take. You do not object to the transcript as being a true transcript

Mr. Hartpence: No, sir. The whole point of our objection is, that the books themselves would not be competent; I am willing to consent that the transcripts be taken, if they go in subject to my objection, I am willing to consent that they be regarded the same as the books of original entry, but I object that if the books were here themselves, I should have to object to them as being incompetent; that is my point. My understanding of our arrangement was, that I still reserved the right to cross-examine as to the competency and correctness of the books themselves.

Mr. McDermott: I understood that we were to use these transcripts; I assumed that these transcripts would go in without any objection. I would rather take the testimony than to con-

tradict Mr. Hartpence as to an oral stipulation, but I would like, in that event, to have the suggestion I made earlier carried out, and have Mr. Roberts go over, and I will produce somebody who knows those books and examine them and prove they are the genuine books of that company.

Mr. Hartpence: We might simplify it in this way, if Mr. McDermott agrees to make a statement of what he thinks the relevancy of these accounts may be, and what he hopes to prove by them, then, perhaps, we can say there is nothing further in our objection, and withdraw it.

Mr. McDermott: I have no objection. The relevancy of these books and of the other books which I have produced, and some others which I am going to produce, is for this purpose, and perhaps this requires a little bit of introduction: We have established by the testimony that in 1895 the Summit Silk Manufacturing Company desired to obtain a loan on certain houses which were to be built on New Street or Weaver Street, on the property of the company. They took pains in their minutes to obtain a release of the first mortgage against these properties by guaranteeing that mortgage, to the end that they obtained a release of these lots on Weaver Street. They then applied—the president of the company, Mr. DeForest, then applied—Edward L. DeCosta, the present referee in bankruptcy, and for many years the counsel of the Summit Building and Loan Association, for the loan of $7,000 on these lots on which these ten houses now stand. The application was made, and Mr. DeCosta advised Mr. DeForest, the president of the company, he

stated that in his judgment a corporation in this State could not hold stock in another corporation, or specifically, in the stock of a loan association, and, in order to obtain the loan which the manufacturing company then desired, it turned the property over to Mrs. Emily E. DeForest. She is now a lunatic, but she was the sole owner of the stock of that company. At the time of the making of the agreement of sale, she was the owner of all the stock, as she states over her own signature, the owner of all the stock of that company. I presume, except that, perhaps, for a qualifying share, she was the owner for many years of all the stock of that company, so they turned it over to her, turned the property over to her in order to make the loan, and then began this system of bookkeeping, which continued until the year 1908; the rents of the property were collected by the manufacturing company.

First, they built the houses, and the testimony is, that the $7,000 which was raised on the Loan Association was paid out on orders, which were turned over to the architect and the builders who erected those houses, and that is where that money went. They then proceeded—beginning from the time the loan was made, according to Mr. Hood or Mr. Porter, they then proceeded to pay the dues month after month during the entire period that that mortgage ran—it was a Loan Association mortgage—they are paid by paying off instalments every month—that ran from 1895 until the loan matured; in February, 1907, they paid it all off—this manufacturing company. The checks which paid that off are also here, perhaps not all of them, but many of them are

here. Mr. Porter testified that all, or substantially all, the payments were made on that mortgage by the manufacturing company, the Summit Silk Manufacturing Company, and here are the checks to substantiate that. Then they began this system of collection of rents. I have the receipts here. Now, it seems to me that that constituted Mrs. DeForest as to these ten lots, a trustee for the manufacturing company, and it seems to me now material in that connection to show the books of the company, of which abstracts are given, as well as these other books which I have produced and intend to produce to a greater extent, to show the practice of the Summit Silk Manufacturing Company for those thirteen years to collect these rents for itself and to pay not only the Loan Association dues, but other items upon those houses. I submit that the books are relevant.

Mr. Hartpence: As I understand it, the relevancy of these accounts is to show what moneys were collected by way of the account, and, second, what moneys were expended by the company in the construction and maintenance of the houses. These accounts are supposed to show these two facts. Now, as a matter of facts, I think there were other houses there besides the ones that are involved in this suit. The difficulty we are struggling under is not the correctness of these transcripts; not the fact that we are perfectly willing to take them instead of the books—

The Court: I cannot see why the books are not going to be relevant if they can get them in.

Mr. Hartpence: We think that the books

themselves, the accounts themselves, ought not to bind us.

Could I make a statement, that Mr. McDermott has produced the Building and Loan Association, and they have testified to receiving certain checks, and the book; now, he has also shown that the loan made by the Building and Loan Association was paid; now, the transcript which was offered today, as I understand, is intended to corroborate these payments, and my understanding is, that the dues in the association were paid by these checks. These checks were made by the deposits in the National Bank of Summit of the rents from those houses. Now, if that transcript will show what those rents amounted to during the period that the transcripts covered, I think we might agree on the amount. And then the books also show the payment of the taxes and whatever charges there were against the houses. Now, the overplus from the rents, after deducting the taxes and the payments, were turned over to Mrs. DeForest. Now, there is no doubt about it, the books show it. If they will give us the amount of these totals, I think we can agree on that and avoid all this.

Mr. Kingsley: I have a book here kept by Mrs. DeForest—it is not in evidence—which shows the receipt of the money, and I have a witness who knows of the payments to her of these rents.

Mr. McDermott: What period does that cover?

Mr. Kingsley: That is subsequent to this transcript.

The Court: We have not got very far.

Mr. Hartpence: I don't want my objection

to be misunderstood. My objection simply is to the general, basic proposition that if the books were right here in court, and if the bookkeepers who kept them were right here and testified that they kept them and that they were accurately kept, I would still object that they were incompetent, because they don't show that those accounts they kept relate exclusively to those five houses; that is the basis of my objection.

Mr. McDermott: Then I submit they are competent under the statement made by counsel; he says that if they were proved to be properly kept and some of it relating to this transaction, he would still object, because they related also to other transactions. Of course, that is true of any book, and I would say they are competent.

The Court: So would I.

Mr. McDermott: I offer the transcripts.

The Court: I will receive them, if they contain anything which relates to the subject-matter of this litigation, as being upon evidence before the Court.

Mr. Hartpence: Our objection is noted on the record.

The Court: Yes.

Marked Exhibits C. M. 1, C. M. 2, C. M. 3.

CHARLES ALBERT DAVIS, a witness sworn in behalf of the complainant, testified as follows:

Direct-examination by Mr. McDermott:

Q. You were a witness on an earlier occasion, and stated your connection with the Summit Silk Manu-

facturing Company; when did you go to work for that company? A. To the best of my recollection, in 1897.

Q. I show you a book, purporting to be a receipt book, and the first receipt dated February 17, "Summit, N. J., February 17, 1897. Received from J. house No. 1, the sum of $9.— cents"; do you know what that book is? A. What we call a receipt book.

Q. Did you know anything about it at the time, in 1897; did you have anything to do with it at that time? A. As the weavers paid their rent money we gave them a receipt for money received.

Q. And what are these stubs; what do they represent? A. Money received from the weavers, to show the money that we had received from the other rents.

Q. Were the receipts originally attached to those? A. Yes, sir.

Q. And torn off? A. Yes, sir.

Q. They were perforated and torn off? A. Yes, sir.

Q. This book of stubs seems to show the number of the house; do you know how many houses there were there that were occupied by weavers? A. Sixteen houses.

Q. On Weaver Street or New Street? A. On Weaver Street; yes, sir.

Q. Some of these are initialed at the bottom "H. I. B."; do you know whose initials those are? A. That is the cashier, Miss Belcher; she is cashier now.

Q. And "N." who is that? A. Mr. Nightingale.

Q. Which one of the Nightingales was that? A. Mr. James Nightingale, known as the superintendent at that time.

Q. Many of them seem to bear his initials? A. Yes, sir; most of them in that book.

Q. Here is one with "D" or "D" something—do you know that? A. That looks like Mr. Orr's signature, the former bookkeeper.

Q. These stubs seem to extend from February 17, 1897, to August, 1899; I now show you another book containing stubs of the same type, from August 30, 1900, to June 7, 1901; were you familiar with that book; did you know this book? A. I have seen them all.

Q. I see one says "C. A. D., November 3, 1900"? A. That is where I received the money, and receipt was written by the person that wrote the receipt.

Q. You received the money? A. Yes, sir.

Q. You received some of the moneys represented by these stubs? A. Yes, sir.

Q. And I find in this book some blank receipts, still attached to the stub; do they represent the form of receipts that was used, that is, that still remain in that book; is that the form of the receipt that ran all the way through the book; is that a fact? A. I don't understand that.

Q. I find in this book, still unused a number of printed blank receipts; were printed blank receipts of that kind attached to all these stubs? A. With one exception.

Q. And there seems to be a rubber stamp at the bottom? A. With the exception.

Q. As originally printed, they did not have that on? A. No, sir.

Q. With that exception, they are the same? A. Yes, sir.

Q. Now, I show you a third book; I show you another book of stubs running from July 1, 1901, to November 1, 1902, and I ask you if they were used in the same way? A. Yes, sir.

Q. And there is an unused printed receipt still attached to one of the stubs in that book? A. Yes, sir.

Q. And with the exception of the rubber stamp, which you have called attention to, were they the same

as they were originally, all through the book? A. Yes, sir.

Q. I show you also, book marked C. A. 14 for identification, and I call your attention to the month of January, 1902, under the caption "Rents received"; and I ask you if you can identify the items marked as received in that book, with the items on the stubs of this book which I now show you, referring to this first item, "January 2, 1902, received from Mrs. Denonfoux"; do you find that this book C. A. 14 for identification, has that item? A. Yes, sir.

Q. And what is the amount? A. $9.

Q. I call your attention to another stub, "January 2, 1902, Charles Melton," do you find that entered on this book? A. Yes, sir.

Q. C. A. 14 for identification? A. Yes, sir.

Q. And the amount is how much? A. $9.

Q. "January 3, 1902, J. Takekakian," do you find that entered upon this book? A. Yes, sir.

Q. How much? A. $9.

Q. The next stub, January 3, 1902, "Received from P. Carnelly, $9," do you find that on this book? A. Yes, sir.

Q. The next item, January 3, 1902; the next stub, Mrs. Brezini—

Mr. McDermott: I now offer the three rent books which were marked for identification on a previous day; they were marked C. A. 14 identification, C. A. 15 identification, C. A. 16 identification. They run from January, 1902, to December, 1907.

Mr. Hartpence: We have no objection to the admission of these books, provided the stubs are also offered.

Mr. Kingsley: We understand that these books cover the rents received from the sixteen

houses, which are eight double houses; is that right?

The Witness: Yes, sir; that is right.

Mr. McDermott: I also offer the stub books extending from the first one from August 30, 1900, to June 7, 1901.

Marked Exhibit C. M. 4.

Mr. McDermott: I now offer an earlier stub book, beginning February 17, 1897, and extending to August 10, 1899.

Q. The receipts represented by these stubs refer to the rents of the sixteen houses, do they? A. Yes, sir.

Marked Exhibit C. M. 5.

Mr. McDermott: I offer next the book of stubs, extending from July 1, 1901, to November 1, 1902.

Marked Exhibit C. M. 6.

Mr. McDermott: And another book of stubs extending from May 2, 1904, to December 1, 1905.

Marked Exhibit C. M. 7.

Mr. McDermott: Another book of stubs extending from January, 1906, to September, 1907.

Marked Exhibit C. M. 8.

Mr. McDermott: I also offer exhibits which have been marked C. A. 14 identification, C. A. 15 identification, C. A. 16 identification.

Marked Exhibits C. A. 14, C. A. 15, C. A. 16.

CROSS-EXAMINATION by Mr. Hartpence:

Q. Mr. Davis, you are now employed by the Summit Silk Company at Summit? A. Summit Silk Mill.

Q. That is the same plant as the Summit Silk Manufacturing Company that you worked for in 1897? A. Yes, sir.

Q. And you have been working there continuously, haven't you, since 1897? A. No, sir; I was away, I think, three years and four months—over three years.

Q. When was that? A. I left in March, 1912.

Q. And then came back along in 1915? A. I came back in the middle of last June.

Q. Now, what was your work there during those years, what did you do? A. What they called loom ledger and cut book.

Q. You were in the office then? A. Yes, sir.

Q. And really in charge of some of the books of the office? A. Yes, sir.

Q. Were you designated as a bookkeeper? A. No, sir.

Q. But you kept these books and records, didn't you? A. Yes, sir; the books in reference to the manufacturing of silk and the books I have mentioned.

Q. Now, during part of that time that you were there, Mr. Martin worked there, didn't he? A. Yes, sir.

Q. Mr. C. L. Martin? A. Yes, sir.

Q. And he was also known as Lawrence Martin? A. Yes, sir.

Q. How long was he there, to your knowledge? A. I don't remember.

Q. A long time or a short time? A. A long time.

Q. Was he still there when you left? A. No, sir.

Q. He had left before that? A. Yes, sir.

Q. What was Mr. Martin's position; do you know? A. He helped me with my work and worked on what they called "production book," and was a general man in the office.

Q. Do you know Mr. Ferrera? A. Yes, sir.

Q. When was he there, and what was his position? A. He was head bookkeeper at the New York end, to the best of my knowledge.

Q. During what period was he connected with the concern, what years? A. I could not give you the years.

Q. Was it while Mr. Martin was there? A. Yes, sir; Mr. Martin was there.

Q. Was it while Mr. Othneil DeForest was alive? A. Yes, sir.

Q. And while Mr. William H. DeForest was alive? A. Yes, sir.

Q. And it was before the concern was transferred to Mr. Gerli's company? A. Yes, sir.

Q. Was he also there after that transfer? A. Yes, sir.

Q. Do you know about how long? A. No, sir; I left the company before Mr. Ferrera left.

Q. Had these houses been built that the weavers occupied when you went to work for the company in 1897? A. Yes, sir.

Q. Did you live in that vicinity? A. Yes, sir.

Q. Prior to the time you went to work for the mill? A. Yes, sir.

Q. How long had you lived there prior to the time you went to work for the mill? A. I suppose ten years.

Q. You did not see those houses when they were built; did you ever go down there and see those houses in the course of construction? A. Not that I remember.

Q. You started in to collect rents, didn't you, as soon as you went in the office—for those houses? A. In a very short time.

Q. And all sixteen of them were there then? A. Yes, sir.

Q. Now, there was a large house that had a number of families in it, wasn't there, up at the furthest end? A. Not at the time I went with the mill.

Q. That was built later, then? A. Yes, sir.

Q. When was that built? A. I cannot give you the date.

Q. Never mind the date; was it before you left in 1912? A. Yes, sir.

Q. About how long before that? A. It was when Mr. Gerli took charge of the plant.

Q. Did you collect the rents from that house? A. No, sir.

Q. Did you collect the rents for these sixteen houses or any of these sixteen houses after Mr. Gerli took charge of the mill? A. No, sir.

Q. You never issued any receipts such as you have spoken about today, after Mr. Gerli came? A. No, sir.

Q. So that your work in that respect ceased about when? The last date shown in these stubs? A. In regard to issuing receipts and taking money from the weavers for rent, I stopped doing that about 1898.

Q. When you stopped taking them? A. Yes, sir.

Q. You did not continue to take them down all through the time represented by these five stub books? A. No, sir.

Q. Who did? A. The other persons.

Q. And they were persons employed in the office of the Summit Silk Manufacturing Company? A. Yes, sir.

Q. Now, do you know, Mr. Davis, of your own knowledge, whether any of these weavers continued to bring their money for the rent into the office, and pay it to someone there, after Mr. Gerli took charge of it? A. Yes, sir.

Q. They kept right on bringing it into the office? A. Yes, sir.

Q. And paying it to someone else there? A. Yes, sir.

Q. And were similar receipts issued to the receipts that you have spoken of this morning?

Mr. McDermott: Objected to as not cross-examination—coming down to a different period with the new corporation now; I did not ask a word about that.

The Court: The objection will be sustained.

Q. This loom ledger that you refer to, that referred to materials manufactured? A. Yes, sir.

Q. On the looms? A. Yes, sir.

Q. Now, you did not enter in those ledgers money received and paid out by the company, did you? A. No, sir.

Q. There were ledgers kept, other ledgers, were there not, in the office there, showing moneys received and moneys paid—general ledgers? A. Yes, sir.

Q. Do you know who kept those during the periods that you were there from 1897 on? A. Mr. Orr, and we had a young man named Mr. William Fleming, Joe Gardner and D. W. Day.

Q. Any others that you recall? A. No, sir; that is about all.

Q. Are these gentlemen all living, or any of them living, to your knowledge? A. Mr. Day is living.

Q. Do you know where he is? A. In Summit.

Q. How about Mr. Gardner? A. He is dead.

Q. And Mr. Fleming? A. He is in Summit.

Q. And Mr. Orr? A. He is dead.

Q. Are Fleming and Day in the employ of the Summit Silk Company at Summit? A. No, sir.

Q. Neither of them? A. No, sir.

Q. How much do those houses rent for, or did, per month, in 1897? A. $9 a month.

Complainant's Witness, Charles A. Davis, Cross

Q. That was for each single house? A. $18 a dwelling, $9 a side.

Q. When you received the money from tenants who came in and paid it, what did you do with it? A. Gave it to Mr. Nightingale.

Q. Did you get a receipt from Mr. Nightingale for that money as you would turn it in to him? A. Either from Mr. Nightingale or from Miss Belcher; I got the receipt to give to the tenant; that was only occasionally.

Q. Did the others who received the rent do the same thing? A. As far as I know; yes, sir.

Q. If Miss Belcher received the money herself, she gave the receipt to the tenant? A. Yes, sir.

Q. Do you know what she did with the money? A. She turned it over to Mr. Nightingale, as far as I know.

Q. What was Mr. Nightingale? A. Superintendent of the whole plant.

Q. Did you ever see what he did with the money? A. No, sir.

Mr. Hartpence: I will now make him my witness for a moment.

Q. Are you familiar with Mr. Ferrera's signature; did you ever see his signature? A. Yes, sir.

Q. Have you seen him write it frequently? A. Yes, sir.

Q. I show you a letter or paper, and ask you if you recognize that as Mr. P. J. Ferrera's signature? A. Yes, sir.

Q. I show you three other papers and ask you the same question, whether that is Mr. P. J. Ferrera's signature? A. Yes, sir.

Q. And that one also? A. Yes, sir.

Mr. Hartpence: These four letters will be marked for identification.

Marked Exhibits H. K. 1 Id., H. K. 2 Id., H. K. 3 Id. and H. K. 4 Id.

Mr. McDermott: I wish to offer in evidence a bill of sale, executed by the Summit Silk Manufacturing Company to the Summit Silk Company, dated February 20, 1908, and duly proved, with the certificate of the County Clerk attached to the proof. This is a bill of sale "assigning, transferring and delivering all its property wheresoever situated, including machinery, tools and fixtures located in its factory in the City of Summit, New Jersey, and elsewhere; its furnishings, including office furnishings, patent rights, patents, good will, merchandise accounts, bills, notes, moneys, and all other assets, unto the party of the second part, its successors and assigns."

The Court: Any objection to it?

Mr. Hartpence: Objected to as irrelevant and immaterial.

The Court: It is a transfer of the personal property of the Summit Silk Manufacturing Company to the Summit Silk Company?

Mr. McDermott: Yes, sir.

The Court: I will allow it to go in.

Marked Exhibit C. M. 8 1/2.

Mr. McDermott: I also offer in evidence a deed dated February 28, original deed—February 28, 1908—by the Summit Silk Manufacturing Company to the Summit Silk Company, conveying a bill of sale of two acres and 77/100 of an acre of land at Summit.

Mr. Hartpence: We object on the ground that it is immaterial and irrelevant.

Mr. McDermott: It relates to other property transferred at the same time.

The Court: Why is it relevant?

Complainant's Witness, Paul Gerli, Direct

Mr. McDermott: Evidently showing they were turning over all their property at that time.

The Court: I will admit it.

Marked Exhibit C. M. 9 1/2.

PAUL GERLI recalled.

Direct-examination by Mr. McDermott:

Q. Aside from the Summit Silk Company, aside from your connection with the Summit Silk Company, what is your general business? A. Raw silk dealer.

Q. And how many years have you been engaged in that business? A. Twenty-eight years.

Q. And you were connected with the firm of Paul Gerli and Company of New York? A. Yes, sir.

Q. In the early part of 1908, were you a creditor of the Summit Silk Manufacturing Company? A. Yes, sir.

Q. And were there other creditors of that company at that time? A. Yes, sir.

Q. And do you remember the circumstances preceding the conveyance of the property at Summit to the Summit Silk Company? A. Yes, sir.

Q. And what induced that conveyance at that time?

Mr. Hartpence: Objected to as immaterial and irrelevant and incompetent.

Q. What were the circumstances leading up to the making of that transfer?

Mr. Hartpence: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

A. The Summit Silk Manufacturing Company were financially embarrassed and could not meet their obligations at maturity, and for a few months things were let drift until we had been able to make arrangements to organize a new company and give extension to the new company, which was taking over all the liabilities and assets of the company on two years' time —without taking legal proceedings for the collection of claims. The other silk creditors did not care to enter into that transaction and I assumed the responsibility of guaranteeing the other creditors myself, so that I would become the only creditor of the company; in other words, the other people assigned to me their claims, so that I could negotiate with the new company, and for that purpose I was to get written in my name all of the common stock, which amounted to $120,000 for the protection of my interest.

Q. That is in the new company? A. Yes, sir; of the Summit Silk Company.

Q. Before we go into that, Mr. Gerli, who represented the Summit Silk Manufacturing Company in these negotiations?

Mr. Hartpence: Objected to as incompetent, irrelevant and immaterial.

The Court: I am unable to pass upon that just at this moment; go ahead.

A. Othneil DeForest was the nominal president of the Summit Silk Manufacturing Company; then there were as nominal officers Paschal Ferrera, treasurer; and Elvero Godone, president. Othneil DeForest was not president at that time; he was obviously previous to those dates.

Q. Who was president when the negotiations were made? A. Godone; he had only a share of stock to entitle him to the directorate.

Q. Othneil DeForest had been president? A. Yes,

sir; he had been president, but he was voted out because he was not attending to business.

Q. Did Mrs. DeForest herself attend any of these meetings? A. Not in my presence.

Q. And who represented her at those meetings?

Mr. Hartpence: Objected to on the same grounds, and also as calling for a conclusion.

A. She was represented by Godone and Ferrera.

Q. What do you mean by "represented"? A. They were representing her interest as a stockholder.

By the Court:

Q. They were voting on her stock, you mean? A. Yes, sir.

The Court: I would not go into this in great detail. What is the object of the evidence?

Mr. McDermott: What I had in mind was to show what took place at the time of this transfer, as to what property is included.

The Court: I shall sustain the objection on the ground that it is incompetent.

CROSS-EXAMINATION by Mr. Hartpence:

Q. You say that Mr. Ferrera was the treasurer of the Summit Silk Manufacturing Company? A. Yes, sir.

Q. And you are familiar with his signature? A. Yes, sir.

Q. Is that his signature to this deed that was placed in evidence, Exhibit C. M. 9 1/2? A. Yes, sir.

Mr. Hartpence: I will make him my witness for a moment.

Q. I show you another paper and ask you if that is Mr. P. J. Ferrera's signature? A. Yes, sir.

Marked Exhibit H. K. 5 for identification.

Q. I show you another paper, dated June 8, 1908, and ask you if that is Mr. Ferrera's signature? A. Yes, sir.

Marked Exhibit H. K. 6 for identification.

Q. I show you another letter of July 11, 1908, and ask you if that is Mr. Ferrera's signature? A. Yes, sir.

Marked Exhibit H. K. 7 for identification.

Q. I show you another letter, dated August 15, 1908, and ask you if that is Mr. Ferrera's signature? A. Yes, sir.

Marked Exhibit H. K. 8 for identification.

Q. I show you another letter, dated September 15, 1908, and ask you if that is Mr. Ferrera's signature? A. Yes, sir.

Marked Exhibit H. K. 9 for identification.

Q. I show you another letter dated October 15, 1908, and ask you if that is Mr. Ferrera's signature? A. Yes, sir.

Marked Exhibit H. K. 10 for identification.

Q. Mr. Gerli, prior to September 4, 1912, just a short time prior to that date, Mrs. Harriet DeForest recovered a judgment, didn't she, against the Summit Silk Company, on which an execution was issued? A. I don't know the date, but there was a judgment obtained by Mrs. Harriet DeForest.

Mr. McDermott: You are making him your own witness now?

Mr. Hartpence: Yes.

Q. And under that judgment and execution, the property of the Summit Silk Company at Summit was advertised for sale, wasn't it?

Mr. McDermott: Objected to as irrelevant and immaterial.

The Court: What is the relevancy of it, Mr. Hartpence?

Mr. Hartpence: I would like to ask one more question.

Q. That suit, Mr. Gerli, was brought by Mrs. DeForest to recover, wasn't it, rents which had been collected by the Summit Silk Company from her six houses on Weaver Street, and which had not been paid over to her? A. No, sir; I don't think so.

Q. What was it brought for? A. It was brought to collect certain money owed to her, which was retained at the time, because she was to get a certain $5,000 besides preferred stock; no, she was to get $7,500, besides the preferred stock, because she was putting in all of the Palisade Silk Company mill into the Summit Silk Company, and she was to receive preferred stock and a certain amount of cash and a certain amount of compensation, amounting to $3,000 a year, while the company would be in financial condition to do so. Now, the $7,500—

Mr. McDermott: I move to strike this out. The papers in the case themselves are the best evidence.

The Court: Strike it out.

Q. My question was, what was the suit about? A. To collect money that she thought the company owed her.

Q. What relationship? A. For certain money that was to be paid to her out of the assets of the company,

which was agreed upon at the time of the organization of the Summit Silk Company.

Mr. McDermott: This was Harriet—

The Court: I will sustain the objection on the ground that it is not the best evidence.

Q. As a matter of fact, the Summit Silk Company or someone in its behalf connected with it, did collect the rents from the houses belonging to Harriet DeForest, didn't it, and either paid them over to her from time to time, or retained them until they were paid in a lump sum?

Mr. McDermott: Objected to as immaterial.

The Court: Objection overruled.

Mr. McDermott: You have made him your own witness on that.

Q. Do you know or recollect this? A. I could not give a clear testimonial on that, because I never saw how the money was handled.

RE-DIRECT EXAMINATION by Mr. McDermott:

Q. Before this property was transferred, did you go up and examine it? A. Yes, sir.

Q. Who showed the property to you? A. Mr. Othneil DeForest.

Q. The husband of Mrs. Emily DeForest? A. Yes, sir.

Q. And were you shown these ten houses that are the subject-matter of this suit?

Mr. Hartpence: Objected to as incompetent, irrelevant and immaterial.

The Court: I think it is material. I will allow it.

(Question read): "As whose property were they shown to you by Mr. Othneil DeForest?"

Mr. Hartpence: Objected to as immaterial.

Q. Can you say, Mr. Gerli, at that time, whether Mr. DeForest was or was not the president of the company when this property was shown to you by him? A. He was not the president of the company at that time, but he was the negotiator in behalf of his wife for the composition of the new company.

Q. You said Mrs. DeForest herself never attended these negotiations? A. That is right, she did not.

Mr. McDermott: Now, I submit, your Honor, that I may ask that question; he was the negotiator for his wife.

The Court: I shall sustain the objection. You are going far afield now.

Q. Did you go and examine the property at Summit, the personal property, the machinery and the lands, before the negotiations were put through? A. Yes, sir.

Q. And did you make the valuations on them for yourself and the other creditors? A. We estimated the value of the assets and made an inventory of the various classes of assets.

Mr. Hartpence: I object to this.

The Court: The objection is sustained.

Mr. McDermott: Gentlemen, have you the record when Mrs. DeForest became incompetent.

It appears by the proceedings in the Prerogative Court, that on October 18, 1910, the Fidelity Trust Company, a corporation of the State of Maryland, was appointed trustee of the estate of Emily E. DeForest, a lunatic, by

the Circuit Court of Baltimore City in the State of Maryland.

COMPLAINANT RESTS.

Mr. Hartpence opens for the defense.

Recess to 2 P. M.

After recess.

CHARLES LAWRENCE MARTIN, sworn in behalf of the defendants, testified as follows:

Direct-examination by Mr. Hartpence:

Q. Where do you reside now? A. 152 East 22nd Street, New York City.

Q. In times gone by were you employed by the Summit Silk Manufacturing Company? A. I was, yes, sir. I started on the first of January, 1900.

Q. And you continued to work there for about how long? A. Slightly over 12 years—in March, I think it was.

Q. What was your work there? A. I started in at the bottom and then gradually—I was employed in the same mill for two and a half years, and then when they opened up the Palisade Mill, I went over there for two and a half years; then I went to the New York office; and then, at the time of Mr. William DeForest's death in October, 1907, I would go to the mill in the morning and then go to New York; I would spend half an hour at the mill, and then come on to New York.

Q. Was your work chiefly in and about the office or out in the works itself? A. It is hard to say.

Q. You were not working in the mill? A. No, sir, I was not a foreman or anything like that.

Q. In this experience that you had in these various ways, did you or did you not become familiar with the property of the plant there at Summit? A. Yes, sir.

Q. What did it consist of—that is, the plant and the general surroundings? A. Do you want a description of the buildings?

Q. Yes, was there a mill property? A. Yes, sir.

Q. Were there other properties besides mill properties there? A. Yes, sir.

Q. What sort of properties were they? A. The property I have in mind was a lot; I think it was about 10 1/2 or 11 acres in this lot.

Q. Was it vacant property? A. Yes, sir.

Q. How large was it in extent? A. Probably three or four acres.

Q. Were there any dwelling houses located near the mill itself? A. Eight double houses on this property near the mill.

Q. What were those houses used for? A. Well, residence for weavers mostly, employees.

Q. Did you ever have anything to do with that house in any way? A. Well, I had something to do with changing the plumbing at one time.

Q. When was that? A. About 1909, somewheres around there.

Q. What did you have to do with that? A. Well, the Board of Health notified, presented a notification that these houses would have to change their outhouses and install toilets, and different things of that sort; there was a change; they claimed the houses were a nuisance and toilets would have to be installed.

Q. Did you have anything to with the installation of these toilets? A. Well, yes, I went around and got bids from a number of people, and finally practically oversaw that they were installed; it was not given

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out as one contract; it was found to be cheaper to have different people do it.

Q. That was when? A. Around 1909; I am not quite sure of that.

Q. Do you know about what the cost of that was, approximately? A. To the best of my memory between $800 and $1,000.

Q. Do you know who paid for it? A. Mrs. Harriet paid three-eighths and Mrs. Othneil DeForest paid
20 the other, or Mrs. Emily DeForest, I so understood; I have not seen the receipts.

Q. To whom were those bills made out? A. I have seen the bills.

Q. Where did you see them? A. I saw them at the time; I collected the bills and sent them to them.

Q. To whom were the bills made out?

Mr. McDermott: Objected to as immaterial and irrelevant—how they were made out—it
30 may be of importance to show who paid them; I don't know that I should object to that.

The Court: The objection is sustained on the ground that the best evidence is not produced.

Q. How did you come to send them to Mrs. Harriet DeForest, and Mrs. Emily E. DeForest?

Mr. McDermott: Objected to as to Mrs. Emily DeForest.

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By the Court:

Q. Whom did you send them to? A. To Mrs. Emily E. DeForest and Mrs. William H. DeForest.

Q. How did you come to send them to her? A. I understood they were the owners.

The Court: Strike that out.

Further Direct:

Q. To whom were they made out?

Mr. McDermott: Objected to.

The Court: That is not the best evidence; I shall rule that out.

Q. You made the arrangement with the plumbers and the other people who did the work there? A. Yes, sir.

Q. For whom did you make those arrangements?

Mr. Hartpence: I think that is perfectly competent.

By the Court:

Q. Who directed you to make the arrangements

Mr. McDermott: I object to the question, your Honor.

Q. Who told you to do this? A. I was doing it for two relatives.

Q. Who were they? A. Mrs. William H. DeForest and Mrs. Emily E. DeForest.

Mr. McDermott: I move to strike that out.

By the Court:

Q. Who directed you to do it? A. Both directed me to do this; it was done outside of my connection with the mill.

Mr. McDermott: I move to strike that out.

The Court: This witness, it is apparent, does not care to testify very much; it is somewhat difficult to get it from him. Go ahead and put your question.

Mr. Hartpence: We have another witness here from New York that we would like to examine at this time.

The Court: How long will this witness be?

Mr. Hartpence: Maybe half an hour.

The Court: Then the Court will permit this witness to be withdrawn for that purpose.

(Witness retires for the present.)

JOHN FERRERA PASCHAL, sworn in behalf of the defendants, testified as follows:

Direct-examination by Mr. Hartpence:

Q. You were at one time connected with the Summit Silk Manufacturing Company? A. Yes, sir.

Q. What was your position there? A. When I first came I was the cashier, and then I was appointed secretary and treasurer later on.

Q. When did you first go with the company? A. About March to May, 1904.

Q. And you remained how long? A. About ten to twelve years.

Q. Then you continued on after it changed hands to the Summit Silk Company? A. Yes, sir.

Q. What was your connection with the Summit Silk Company? A. I was again the cashier, and later on, I was elected secretary-treasurer, or treasurer.

Q. Now, how late were you with them as secretary-treasurer? A. Until I resigned about two years ago this April—

Q. What were your duties generally as cashier and secretary-treasurer? A. To look after all the financial matters; to keep the books and look after all the office matters.

Q. Where were the books kept, of the old company? A. The Summit Silk Manufacturing Company; originally the books that were turned over to me were kept in Summit, and I started the new books about May 1,

1904, and they were kept in New York by me.

Q. How much time did you spend at the plant; did your duties take you up to the plant at Summit? A. When I first went there, William H. DeForest suggested I run out to the factory, and I went there for a month, and then afterwards I went to New York with the books, and once in a while I would go back to the factory, but very seldom.

Q. You were familiar with some houses out there that the tenants occupied? A. Yes, sir.

Q. Where were those houses? A. They were adjacent to the mill on the left-hand side as you go in.

Q. Did you ever collect any rents from those tenants? A. Personally, I did not; the money was sent to me by messenger; sometimes Mr. DeForest brought it up, Mr. William H. DeForest, because he resided in Summit, and he came in each morning.

Q. Who else would take it down besides him? A. That was for the manufacturing company; sometimes, I think, later, under the new company, I think Mr. Martin brought some up.

Q. You mean this gentlemen sitting here, Mr. Lawrence Martin? A. Yes, sir, and sometimes it was deposited in the Summit banks to the credit of the Summit Silk Company.

Q. I show you a letter, Mr. Ferrera, marked H. K. 5 for identification, and I ask you if you sent that letter to Mrs. DeForest? A. I signed the letter and I believe it went.

Q. That is the signature to the letter? A. Yes, sir.

Q. The letter reads as follows, it is addressed to Mrs. Emily DeForest, 42 West 31st Street, City: "Dear Mrs. DeForest: Enclosed we are mailing you bill for taxes on five houses at Summit; we remain, respectfully, The Summit Silk Company, P. J. Ferrera." Do you recall what that bill was? A. No, sir.

Mr. Hartpence: I will offer that letter and ask that it be marked.

The Court: It will be so marked.

CROSS-EXAMINATION by Mr. McDermott:

Q. Do you know whether it was a receipted bill or not, Mr. Ferrera? A. No, sir, I cannot say.

Q. You know that the taxes in New Jersey are due on the 20th of December? A. I remember that, yes, sir.

Q. So these must have been the taxes for some year previous to 1908, because this is written in May, 1908? A. That is the inference you would put on—

Q. And it is certainly back of the year 1908? A. Yes, sir.

The Court: You do not object to the offer?

Mr. McDermott: Yes, sir, I do.

The Court: On what ground?

Mr. McDermott: On the ground that there is no evidence of any authority in Mr. Ferrera to bind this company—the Summit Silk Company; I will develop that.

The Court: Do you want to develop it now?

Mr. McDermott: I thought I would develop it a little later, on cross-examination.

Mr. Hartpence: I offer it.

Mr. McDermott: We object to it.

The Court: I will receive it, subject to the objection.

Mr. McDermott: I object to it as binding on the Summit Silk Company, as not indicating any authority to bind that company, and as immaterial and irrelevant.

Marked Exhibit H. K. 5.

By the Court:

Q. When you wrote this letter, what officer of the company were you? A. I don't think your Honor, that I was an officer, because I don't see my stamp there, but I am not sure as to 1908; the books will show.

Q. You don't recall just the date that you became the secretary and treasurer? A. No, sir, the minutes would show that.

RE-DIRECT EXAMINATION by Mr. Hartpence:

Q. Do you know whether Mrs. Emily E. DeForest paid the tax bill referred to in that letter? A. The books will show that.

Q. You don't know of your own recollection? A. No, sir.

Q. I show you what purports— A. I might be able to enlighten you gentlemen, but I don't like to say anything without being asked, because when you ask me that question then I can see it does not seem to fit right with the answer; you ask me if I had knowledge that it was paid—

Q. Yes, that was the question; do you know whether the tax bill was paid? A. No, sir, I cannot say that; the books would show that, because it would be on the account.

Q. If the Summit Silk Company paid it, it would be charged to that account? A. Yes, sir, that is the point. If that account was charged for $500.00 worth of taxes, these two parties had to pay me back the taxes, supposing that I would make the charge against each one, Emily and Harriet, then that was taken away from the account; in fact, that was a reserve account which was being used in that way. For

instance, if they paid $100 rent and there was $50 expenses, there was $50 to be divided among each, in the ratio of their holdings; I think one had five houses and the other three houses.

Q. As I understand, then, these entries were kept on the books of the Summit Silk Company, and they were charged directly to the account in the Summit Silk Company's books? A. Yes, sir, every disbursement was charged to that separate account; I think it was called "House account," or something like that.

Q. Was that also true back in the days of the Summit Silk Manufacturing Company? A. Yes, sir, because that is the way Othneil DeForest desired it to be kept.

Q. You acted how? A. As a sort of agent for them.

Q. What is your recollection of what was done with the balance; what did you do with the balance that was shown of the collection over and above the disbursements? A. The balance that was left on the books, as far as my recollection goes, was carried over to the Summit Silk Manufacturing Company; there was an amount undistributed, which was finally distributed.

Q. How was that distributed, to whom was it distributed?

Mr. McDermott: Objected to.

A. I cannot remember that; the books will show it.

Q. Did you draw the checks? A. My recollection is, there was a balance left; that balance was carried over to the credit of an account called "Houses," and remained there for some time; it was called to Mr. Paul Gerli's attention; he knew it was there, and I think finally it was distributed with his knowledge; I don't know in what proportion.

Q. To whom was it distributed? A. It was distributed to the proper parties.

Q. Who were those parties? A. Emily DeForest and Harriet DeForest—

Mr. McDermott: I object to that and ask to have it struck out.

A. Up to that time, mark you, up to this time that I mention.

Q. Do you know when that was? A. It was when the Summit Silk Company, after that.

Q. When Mr. Gerli was not connected with the old company—the old Summit Silk Manufacturing Company? A. No, sir.

Q. You say this was done with Mr. Gerli's knowledge? A. Yes, sir. There were two loan associations carrying houses for Mrs. William H. DeForest and Emily DeForest; there was a monthly premium to be paid; that was charged to this account, and then whatever taxes or whatever other expenditures towards those two houses were made by me, were charged to that account.

Q. Now, Mr. Ferrera, let me ask you this: I show you what purports to be a tax bill for 1907 for five houses and lots and ask you if that in any way refreshed your memory as to what may or may not have been enclosed in this letter of May 9, 1908? A. Yes, sir, it does.

Q. Now, having refreshed your memory by that, can you state what it enclosed with this letter of May 9, 1908? A. I could not state positively, but it seems to me that is the bill.

Mr. Hartpence: I ask to have that bill marked Exhibit H. K. 5 1/2 Id., marked in evidence, that bill.

Mr. McDermott: Objected to as incompetent, irrelevant and immaterial.

The Court: We will mark it for identification at present.

Letter offered in evidence and marked Exhibit H. K. 5.

Q. I show you a letter, dated May 6, 1908, marked "H. K. 2 for identification," and I ask you if that is your signature to the letter? A. Yes, sir, that is apparently my signature.

Q. Did you send that letter, or cause it to be sent to Mrs. Emily E. DeForest? A. Yes, sir, apparently so, that is my signature, I cannot go back of that.

Q. Now, this letter addressed to Mrs. Emily E. DeForest, "Dear Mrs. DeForest: Enclosed, we are sending you the following policies, which we thought you might prefer to have in your own possession." Will you tell me how you came to write that letter, and to what properties those policies referred? A. That was way back in 1908; there was a reason for it; I have no idea why I did it.

(Question read.)

A. My idea of it is—well, I was going to be relieved of this responsibility, and the rents were going to be paid, so much to Emily and so much to Harriet.

Mr. McDermott: I move to strike it out.

By the Court:

Q. Is that your recollection of what you wrote it for? A. Yes, sir, that is my recollection, because the understanding was, that I was no more to be bothered with this thing.

Mr. McDermott: I object to this dissemination of his ideas; it is a mere mystical idea in his mind.

The Court: It is very germane and highly evidential on their theory of the case.

Mr. Hartpence: We will offer it and ask to have it marked.

Mr. McDermott: We object to it as incompetent, irrelevant and immaterial.

Marked Exhibit H. K. 2.

Q. Now, I show you another letter, dated New York, May 11, 1908, addressed to "Mrs. Emily E. DeForest, 42 West 35th Street, New York City," and I ask you if that is your signature which appears at the bottom of that letter, being H. K. 4 for identification? A. Well, it looks like my signature, although I don't recognize it just now; that is my signature; that is my signature; I will accept it as my signature.

Q. The letter reads: "Dear Mrs. DeForrest: We are in receipt of a letter from Hicks Brothers, requesting that you return for correction the two following policies covering your five dwellings on Weaver Street, North British Mercantile, 4815521, Five thousand dollars; Hartford 1318, Five thousand dollars. After these have been corrected, they will be returned to you. Very truly yours." Now, Mr. Ferrera, refreshing your recollection, if it will refresh your recollection from the examination of it and your reading of it, can you tell me to what that letter referred? A. No, sir, excepting that Hicks Brothers were the insurance agents in Summit and they looked after the insurance, to the best of my recollection.

Q. Again showing you letter May 6, 1908, which you have all the time necessary to examine that you want, can you state specifically what this letter of May 11, 1908, referred to, and how you came to write it? A. No, sir.

Mr. Hartpence: I offer letter May 11th in evidence, and ask that it be marked.

Mr. McDermott: Objected to.

The Court: Objection overruled.

Marked Exhibit H. K. 4.

Defendants' Witness, John F. Paschal, Re-direct

Q. I show you a letter May 7, 1908, marked H. K. 3 for identification, and ask you whether you remember sending that letter out; whether it is your signature to the letter? A. Yes, sir, that is my signature.

Mr. Hartpence: I offer it in evidence.

Mr. McDermott: I object to that as immaterial and irrelevant and incompetent.

The Court: I will allow it to go in as material.

The objection is overruled.

Marked Exhibit H. K. 3.

Q. Now, you said that you wanted to be relieved of this whole situation in relation to the houses; what had you had to do with that before this time? A. I was going to be relieved, I said.

Q. You were going to be relieved? A. Yes, sir, the idea was that it was easier to pay each one separately; the rents were going to be collected—

By the Court:

Q. Relieved of what? A. Of paying the money or having anything at all to do with by the collection in any way, shape or form; it was deposited by Mr. Martin to the credit of the Summit Silk Company and I distrubuted it.

Q. What other new arrangements did you make on behalf of the company? A. Mr. Gerli made the new arrangement.

Further re-direct:

Q. Mr. Ferrera, Mr. Martin continued on in the employ of the Summit Silk Company for some years after you went in? A. Yes, sir.

Q. And do you know whether or not he had anything to do with the collection of these rents of the

Weaver Street houses after you were relieved of the collection? A. Yes, sir, I think they were collected by him.

RE-CROSS EXAMINATION by Mr. McDermott:

Q. Mr. Ferrera, you had your office in New York? A. The company's office was in New York; I had no office.

Q. And these rents were collected, speaking now of the old company, the Summit Silk Manufacturing Company, by someone at the factory, and then deposited to the credit of the company in the bank at Summit? A. Yes, sir.

Q. Else brought into you and you deposited them in the bank in New York? A. Yes, sir.

Q. And you took charge in 1904 of those books, didn't you? A. Yes, sir.

Q. And you started a new set of books at that time? A. Yes, sir.

Q. You opened an account for the houses, a real estate account? A. No, sir, I never opened any such account.

Q. You never opened an account; didn't you carry on such an account; didn't you open an account in the ledger for a real estate account? A. I will say real estate—that far I will go.

Q. And you put down the value of the real estate, didn't you? A. Not as $8,500.

Q. This is a transcript from the books? A. I don't care; I opened a real estate account; I will say that.

Q. And you carried down on one side of that the cash received for rent? A. Pardon me a moment; I have to give you my recollection now; the rents were not credited to the real estate account, they were credited to the account called "Houses," if my recollection serves me right; now, that was credited to houses; I will grant all that.

New Jersey State Library

Q. Then, do you know what year you struck a balance? A. Yes, sir.

Q. And you carried the difference over to profit and loss? A. Of course, it says so there, but my recollection is that it was distributed; I never made that piece of paper out.

Q. This is a transcript from the books, but whatever you did do with it appears on your books? A. Yes, sir.

Q. And whether you distributed it or whether you carried it out to profit and loss will best appear on your books? A. Yes, sir.

Q. And you would defer to your books rather than your recollection? A. Yes, sir.

Q. Isn't it your recollection that you struck this balance for six months? A. For six months—no, sir, I don't think so.

Q. May or December? A. I have an idea it was every year; of course, that I cannot remember.

Q. You recall these amounts, 144 and 154? A. They look familiar and were credited to the account called "Houses."

Q. Deposited in the bank at Summit? A. Yes, sir.

Q. This "Houses account" seems to have been carried over until the time the Summit Silk Company took charge? A. Yes, sir.

Q. With the credit of the rents and charges on the other side?

Mr. Hartpence: Objected to on the ground that it is leading and assumes a fact not proven.

Q. Mr. Ferrera, this account was carried down in this way showing the rents on one side and these charges on the other, and then on February 20, 1908, you struck a balance, didn't you? A. Yes, sir.

Q. And a balance of $843.64, which you carried

over to the Summit Silk Company? A. Yes, sir.

Q. I think you said that the taxes were paid out of the rents? A. Yes, sir.

Q. And repairs on the houses and items of that sort were paid out of the rent? A. Yes, sir.

Q. And then whatever became of the balance will best be shown by the book itself?

Mr. Hartpence: Objected to as leading.

The Court: Objection overruled.

Q. I mean the distribution of the money remaining will show in the books? A. Yes, sir.

Q. And that is better than your recollection? A. Yes, sir.

Mr. Hartpence: Objected to; he is putting words in the mouth of the witness.

The Court: I will allow it to stand.

By the Court:

Q. These sheets that are being shown you, have you ever seen the handwriting before? A. No, sir.

Q. This $8,500 that was carried over from time to time, wasn't it, Mr. Ferrera? A. I cannot reconcile that amount at all, because that is misleading me.

Further cross:

Q. I understood you to say, that after the new company took charge, the rents were collected by Mr. Martin? A. Sometimes.

Q. They were sometimes collected by Mr. Martin? A. Yes, sir.

Q. The gentleman here in this room? A. Yes, sir.

Q. And he brought them over to you? A. I have answered that before, what he did with them.

Q. Answer it again. A. I have told you that he collected the money, Mr. Martin, and sometimes, Mr. DeForrest of the old Company, and Mr. Dorgeval;

they were collected by Mr. DeForrest in the old company and deposited in the bank at Summit to the credit of the Summit Silk Manufacturing Company sometimes; sometimes Mr. DeForrest brought the money to New York and I banked it in New York, always to the credit of the Summit Silk Manufacturing Company; that is the old company.

Q. And when the new company took charge there, Mr. William H. DeForrest was not in the new company? A. He was not.

Q. Then they were collected by somebody at Summit? A. Yes, sir.

Q. And the money brought over to you? A. No, sir, at first they were deposited in the bank at Summit, to the credit of the Summit Silk Company, and then, after that, my recollection is that they were collected by Mr. Martin and distributed to the two women.

Q. You did not have anything to do with that? A. No, sir, I was clear of it at that time.

Mr. McDermott: I move to strike that out.

By the Court:

Q. How do you know that? A. Because Mr. Martin told me.

The Court: Strike it out as hearsay.

Q. Mr. Ferrera, you spoke of Mr. Paul Gerli having something to do with the collection of the rents? A. Somebody collected them under his direction.

Q. At that time you had nothing to do with it—at the time they were collected under his direction, did you have anything to do with it? A. No, sir, they were collected there at Summit.

Q. You only know that by hearsay, too— A. I know it as a fact, Mr. Gerli gave instructions that it should be passed over to each one separately—

Mr. McDermott: I move to strike that out.

The Witness: He gave me the instructions.

Q. I understood you to say that the rents were collected under the direction of Mr. Gerli at Summit by somebody? A. Yes, sir.

Q. And that you did not know anything about it? A. Well, as to the collection of them there.

Q. But you only heard so? A. That is all.

Q. Of your own knowledge, do you know? A. Personally, Mr. Gerli did not have anything to do with the collection of the rents; I will put it that way.

Q. You have written a letter about some insurance policies; do you know how they came to your hands at all—the policies? A. Well, I had an idea that Mr. Hicks, of Hicks Brothers, was a friend of these two ladies, and, being a resident in Summit, I think he took the policies out for them; he took care of the insurance, and he probably sent them to me.

Q. You sent them to her? A. Yes, sir.

Q. They had been issued in her name? A. I don't know about that.

Q. They were paid for by the company? A. That was the practice previous to that; I won't say about these particular ones.

Q. Mr. Ferrera, at the time these letters were written in 1908, the Summit Silk Company had offices at 482 Broom Street? A. Yes, sir.

Q. And they were separate offices—they were not connected with Mr. Gerli's offices in any way at that time? A. No, sir.

Q. Do you know where Mr. Gerli's office was at that period—how far away? A. Well, where do you say the office of an officer is?

Q. Not the officer? A. About a block away, corner of Broadway.

Q. That is the place where Paul Gerli and Company had their offices? A. Yes, sir.

Q. And this was a separate office conducted by the Summit Silk Company? A. Exactly.

Q. You have known Mrs. DeForrest a long time? A. Mrs. Emily DeForrest, yes, sir.

Q. You sent these papers over as they came along to the office? A. To the address, yes, sir.

Q. And you sent this tax bill along because it had her name on? A. It referred to her property, it was for her property.

Q. It referred to several pieces of property—seven acres of land—the five lots? A. Yes, sir.

Q. I suppose you got that from the tax collector? A. Yes, sir.

Q. And you sent it along over to her? A. Yes, sir.

Q. Do you recall when the offices of Paul Gerli and Company and the Summit Silk Company were brought together—in the same general offices? A. No, sir, I don't recall the date.

Q. How many years after the Summit Silk Company was started in 1908? A. The Summit Silk Company was started in 1908—maybe two or three years after that.

RE-DIRECT EXAMINATION by Mr. Hartpence:

Q. You say part of this money was paid to Harriet DeForrest?

Mr. McDermott: Objected to, on the ground that it is immaterial and because it is not the best evidence.

The Court: Objection overruled.

Q. Can you say it went to Harriet? A. Yes, sir, because a check was made out to her.

Q. Do you recall whether or not Harriet DeForrest ever communicated with the Summit Silk Company or with you or brought suit against the Summit Silk Company, to collect or to enforce the payment of her proportion of the rents which had not been paid over to her?

Mr. McDermott: Objected to as not the best evidence.

A. I don't remember it.

Q. Do you remember making different checks to Emily DeForrest? A. Yes, sir.

Q. You drew them yourself, did you? A. Yes, sir.

Q. Prepared them? A. Yes, sir, I figured up the difference.

Q. Did you write out the body of the checks? A. Yes, sir.

Q. You were also secretary, were you not? A. I think I was secretary-treasurer, or treasurer, I have forgotten just the real title of the office.

By the Court:

Q. Would you know the minutes of the company? A. Yes, sir.

Further re-direct:

Q. Now, do you know the minute book of the Summit Silk Company; have you ever seen it? A. Yes, sir.

Mr. Hartpence: We will call for the production of the minute book of the Summit Silk Company.

Mr. McDermott: Here it is.

Q. Do you know whether the minutes of the Summit Silk Company will show when you were made treasurer or secretary-treasurer? A. They should; I don't know.

Q. Can you state about which time it was, about what year? A. It may be 1911 or 1912, something like that.

Q. You cannot remember about it? A. No, sir, it was a short time after Mr. Othneil DeForrest died; he died in 1912, I think, it is.

Q. I show you pages 35 to 38 of this minute book; if you will look at it a moment and see if it refreshes your memory as to when you were made the treasurer—

Mr. McDermott: We will admit he was elected on that day.

Mr. Hartpence: It is admitted that Mr. Paschal Ferrera was chosen treasurer of the Summit Silk Company, elected treasurer, on May 15, 1908.

Q. And that you continued as such until you withdrew in 1912? A. Yes, sir.

Mr. Hartpence: We offer pages 35 and 38 of the minute book of the Summit Silk Company, in evidence, for the purpose of showing the date of election of the treasurer, Mr. Ferrera.

Marked Exhibit H. K. 7 1/2.

Mr. McDermott: My insistment is, that having called for the book, and having used it, and having been produced on call, that so much of the book as is material on either side is now in evidence.

The Court: I think that is correct; I will hear anything you have to say about that, Mr. Hartpence.

Defendants' Witness, John F. Paschal, Re-direct

Q. Now, in your cross-examination, I understood you to say that the book would, of course, show what was done with these "houses account," perhaps better than your recollection; you referred to the books of the Summit Silk Company, didn't you? A. Both.

Q. And the account was carried over to the books of the Summit Silk Company when that new company came in? A. The balance was carried forward, yes, sir.

Q. Now, do you know, Mr. Ferrera, whether Mr. Martin collected any of these rent moneys prior to the time that the new company came in; do you recall whether he did or not? A. I cannot say about that.

Q. There was a Mr. Nightingale connected with the company, wasn't there? A. He was superintendent of the company.

Q. How long was he superintendent of the factory? A. Quite a number of years before I went there.

Q. Was he also there when you withdrew? A. No, sir.

Q. When did he withdraw? A. February 28, I don't know the year.

Q. Was it after the new company came in; he continued on, didn't he, after the new company came in? A. I think he did, but I am not positive about that.

Q. And you said he was superintendent of the factory? A. Yes, sir.

Q. What do you mean by that? A. The factory at Summit.

Q. He had full charge of the factory at Summit? A. Yes, sir.

Q. And you were down at the New York office? A. Yes, sir.

RE-CROSS EXAMINATION by Mr. McDermott:

Q. Mr. Nightingale was a very old man then, wasn't he? A. I have got grey hairs, but I am not an old man; I cannot pass on his age.

The Court: The answer will be stricken out, that this witness has made about himself. Now let the question be directed to him.

Q. Do you know how old Mr. Nightingale was? A. No, sir, I did not.

Q. Did you ever hear him say anything about his age? A. I had reason to believe he was rather an old man; he was there before I was.

Q. And he left there several years ago? A. Yes, sir.

Q. When do you say he left—do you say he left about seven years ago? A. I don't remember how long ago it was; I hate to say when I am not sure; I have lost track of it.

Q. Mr. Ferrera, you said on your re-direct examination, that you drew a check to Harriet DeForrest for some part of the rents; now, when did you do that? A. No, sir, I don't think I said that; I say that as I testified here, the rents were credited to this "Houses account"; all the charges of whatever nature appertaining to these houses, were charged to that account.

Q. Now, what I want to ask you is this; you said something about having made a check to Harriet DeForrest? A. I made checks to both of them.

Q. You said you gave checks to Harriet DeForrest? A. Yes, sir.

Q. Now, when was that; if you ever drew a check to Harriet DeForrest for any part of the rent, when was it? A. The books will show.

By the Court:

Q. Do you know yourself about the time? A. No, sir.

Q. Was it before the organization of the new company or after it? A. Well, I think I drew them in both cases, in the old company and in the new, to the best of my recollection, I think I did that.

Q. If you drew such a check as that, where would it appear in the book? A. It would be charged against the "Houses account."

Q. Before the striking of the balance? A. Yes, sir, and before the carrying of any part of it to profit and loss.

Q. Exactly, but there is none could be drawn there; then the money had not yet been distributed; do you see that? A. I gather from this statement, that the money had not been and was not distributed.

Q. There appears a balance; that balance was carried over to the Summit Silk Company and distributed? A. Yes, sir.

Q. And whatever distribution took place you say was afterwards? A. I think the Summit Silk Company's checks will show you that was distributed, that $800.

Q. But didn't you say that some distribution took place before the new company was formed? A. Yes, sir, but that was a mistake.

Q. So that whatever distribution took place, it took place after the formation of the new company? A. That is right.

Q. But you did say that you drew checks from time to time to these two women? A. What company are you talking about?

Q. Didn't you say you drew checks for the expenses? A. Yes, sir.

Q. What do you mean by that? You drew checks

to whom? A. The People's Building and Loan Association was one; checks for taxes; and that was all charged against this account until it came down to that $800, which was carried over to the Summit Silk Company, and that, to my recollection, was distributed with the checks to each woman; that is my recollection of it.

Mr. McDermott: You have already stated when it was done?

The Witness: Yes, sir.

RE-CROSS EXAMINATION by Mr. McDermott:

Q. The deed from the Summit Silk Manufacturing Company to Emily E. DeForrest was executed in July, 1895; you recollect that deed, don't you? A. No, sir, I do not.

Q. Don't you remember having a copy of it that you got to examine to see if there was anything on the books relating to the consideration? A. May I take a look at it?

Q. Certainly? A. (Witness examines it.) This was an old thing; this is a copy of an old thing; the copy was procured from Elizabeth for the company.

Q. You saw that the consideration expressed in that deed was $2,000? A. Yes, sir.

Q. You saw the deed had a consideration of $2,000 after you got it; did you see that or didn't you? A. Well, I just got a copy of it; I don't remember now.

Q. You don't remember, then? A. No, sir.

Mr. Hartpence: I submit that Mr. McDermott is making him his own witness.

Q. After you got this deed, did you examine the books of the Summit Silk Manufacturing Company

to see if there was any trace of the $2,000 having been paid appearing on those books?

Mr. Hartpence: Objected to as incompetent, irrelevant and immaterial; as to whether Mr. Ferrera examined the books can make no difference; the books should be produced.

By the Court:

Q. Did you examine those books at the time you had this deed in your possession? A. Well, I would not say at that time, but at a suggestion from Mr. Gerli—

Mr. Hartpence: I think all that should be kept off the record.

By the Court:

Q. Did you examine them—did you make an examination of the books? A. When you say "examination," I don't know just what you mean by "examination."

Q. Did you look at them? A. I looked at them to see if I could find that—

Further re-cross:

Q. And could you find it?

The Court: The books will show. I shall overrule that question. The books are in the possession of the complainant and they have ample access to them, and they have not produced them in court here.

Complainant's Witness, Paul Gerli, Cross

PAUL GERLI, being recalled, testified as follows:

Further cross-examination by Mr. Hartpence:

Q. I interrogated you this morning about a specific suit in the New Jersey Supreme Court against the Summit Silk Company; and asked you about the subject-matter of that suit; but, regardless of that, did not Mrs. Harriet DeForrest, sometime after the Summit Silk Company had formed, and prior to the present time, institute a suit in some court against either you or the Summit Silk Company, to recover rent which had been collected? A. Yes, sir, to recover money; there has been a suit by Mrs. Harriet DeForrest against the Summit Silk Company for collection of money, she thought the company owed to her.

Q. I will repeat this question: I interrogated you this morning about a specific suit in the New Jersey Supreme Court against the Summit Silk Company, and asked you about the subject-matter of that suit, but, regardless of that, did not Mrs. Harriet DeForrest, sometime after the Summit Silk Company was formed, and prior to the present time, institute a suit in some court against either you or the Summit Silk Company to recover rents which had been collected? A. I know of one; that is the only one.

Q. Which one is that? A. That is the one that brought about a sale of the property.

Q. Don't you recall another suit that she brought in the District Court in Elizabeth? A. No, sir, I don't recall that.

Adjourned to Wednesday, May 3, at 10.30 A. M.

Wednesday, May 3, 1916, 10:30 A. M.

DEFORREST HICKS, sworn in behalf of the defendants, testified as follows:

Direct-examination by Mr. Hartpence:

Q. Where do you reside? A. 155 East 72nd Street, New York City.

Q. Do you know Mrs. Emily E. DeForrest? A. Yes, sir.

Q. How long have you known her? A. I have known her for many years; she married my cousin; my cousin was Othneil DeForrest.

Q. Do you recall when Othneil DeForrest died? A. The early part of 1908, I believe.

Q. Did you ever have anything to do with the affairs, the business affairs of Mrs. Emily E. DeForrest? A. At the time of Mr. DeForrest's death, Mrs. DeForrest had no one to turn to, and by chance I went there to offer my sympathy and found that there was everything to do, and while there were very good friends, most of the work fell on me and on Mr. Martin.

Q. That was after the death of Mr. Othneil DeForrest? A. Yes, sir.

Q. Did you have anything to do after that with the receipt of moneys, disbursements of moneys belonging to Mrs. DeForrest? A. From the fall of 1908 until the time that I gave up handling her affairs, for the reason that I did not have time to take care of it, I received practically all of her funds; some checks which happened to come to her she would deposit, but in general, I had everything.

Q. Did you disburse her funds? A. Yes, sir.

Q. When did you withdraw from this business again? A. In the spring of 1909 I surrendered my

power of attorney which I had left with Mrs. Ashton Crosby, who was then Miss Rosalie DeForrest.

Q. The daughter of Mrs. Emily DeForrest? A. Yes, sir.

Q. Now, did you have occasion during that period that you have referred to, to write to the collector of taxes at Summit, New Jersey, concerning taxes? A. I heard through some of my friends in Summit, who knew I was connected with Mrs. DeForrest's affairs, that her property was to be sold for taxes; in any event, I wrote a letter to Mr. Stephen Mullen, collector of taxes, and asked him the facts, and I received from him a letter.

Q. I show you a letter, and ask you if that is the letter which you received from Mr. Mullen? A. That is the letter from the tax collector, Mr. Mullen.

Q. Letter dated November 18, 1908? A. Yes, sir.

Mr. Hartpence: I offer it.

Mr. McDermott: I object to the letter as incompetent, irrelevant and immaterial.

The Court: The objection is overruled.

Mr. McDermott: It relates to the tax of 1907 on something.

The Court: Note the objection to it as incompetent and immaterial.

Marked Exhibit H. K. 9 1/2.

Q. Now, this letter, Mr. Hicks, addressed to you, "Mr. DeForrest Hicks, Dear Sir: Yours just received, and in reply would say that I have postponed tax sale until Monday, November 23. Enclosed, please find tax bill for 1907, with interest and costs to date; if you will favor me with a check this week, you will avoid having it sold. Respectfully, S. R. Mullen," dated November 18, 1908. Now, I show you a paper which purports to be a tax bill for 1907,

and ask you if that was the paper enclosed with that letter? A. Yes, sir.

Mr. Hartpence: I ask to have that marked as an exhibit also.

Mr. McDermott: Objected to as incompetent, irrelevant and immaterial.

The Court: The objection is overruled.

Marked H. K. 10 1/2.

Q. Now, after you received this letter, "H. K. 9 1/2," with the tax bill "H. K. 10 1/2," enclosed, what did you do? A. I sent a check at once and received a receipt, dated November 20.

Mr. Hartpence: Strike that out.

By the Court:

Q. Have you the check? A. All the vouchers were returned to Mrs. DeForrest, and I have a receipt for them in bulk, listed.

Mr. McDermott: I move to strike out the answer of the witness where he says he sent the check.

The Court: I think he might state that he sent a check; what is there objectionable in that?

Mr. McDermott: The check itself is so much the best evidence, if your Honor please. If I thought they had the check, I would not waste much time about it; the other attorney I understand is living.

The Court: I will allow it to stand and note your objection to it.

Q. Have you got the receipt? A. I have the receipt as of November 20, for $151.92.

By the Court:

Q. Did you say who told you to do this? A. I was acting under general authority from Mrs. DeForrest; she gave me written power of attorney.

Q. Where is it? A. Down in my safe deposit box.

The Court: Bring it here.

Further Direct:

Q. With whose funds was this bill of 1907, tax bill "H. K. 10 1/2" paid? A. With the funds of Mrs. Emily DeForrest.

Mr. McDermott: I move to strike that out; the check is the best evidence of that.

The Court: Not necessarily. I will note your motion to strike it out as not the best evidence; he says he did it with the funds of Mrs. Emily DeForrest—all right—anything further?

Q. Now, Mr. Hicks, following the receipt of this receipt "H. K. 10 1/2," did you make any further payments of taxes to S. R. Mullen, collector of taxes at Summit? A. I paid the taxes for the year 1908.

Q. I show you what purports to be a tax bill for 1908, similar to "Exhibit H. K. 10 1/2," and ask you if that is the bill for taxes, 1908, that you paid? A. I can identify that bill; it is the bill.

Q. With whose funds was that bill paid? A. From Mrs. Emily DeForrest.

Mr. McDermott: I object to it for the same reasons.

Mr. Hartpence: I offer that in evidence.

Mr. McDermott: I object to it as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Marked Exhibit H. K. 11 1/2.

Q. Is this Exhibit H. K. 11 1./2, the receipt that you received for the payment of taxes of 1908? A. Yes, sir, it is.

Q. What is the amount of it? A. $139.50.

Q. Do you know whether or not the property of Mrs. DeForrest at Summit, which you said you learned was about to be sold for nonpayment of taxes, whether it was actually sold for taxes at that time or not? A. It was not.

Q. Why not? A. Because the taxes were paid, I understand.

Mr. McDermott: I object to that.

The Court: Strike that out.

Q. Did you ever receive any further word from Mr. Mullen after the payment of these two tax bills regarding the sale of the property? A. No, sir.

Q. You say you received moneys and made disbursements for Mrs. DeForest; did you ever receive any moneys for rents from these properties in Summit? A. Yes, sir, I did.

Q. Did you collect them yourself? A. No, sir.

Q. Whom did you receive them from? A. Principally from Mr. C. L. Martin, this gentleman here.

Q. In cash? A. Generally by his personal check.

Q. What did you do with those funds that you received for rent? A. Deposited them to the credit of Emily E. DeForrest.

Q. Did you ever make any disbursements from those funds? A. Yes, sir.

Q. What disbursements generally did you make? A. The only item I can testify to with assurance at this late day is in connection with the expenditure required by the City when Mrs. DeForrest was obliged to connect the houses to the sewers.

Q. What payments or disbursements did you make in connection with that improvement? A. I made all my payments by check.

Mr. McDermott: The check is the best evidence; I object to this because the witness says he made the payment by check.

The Court: I will allow the question to stand.

Q. What payments or disbursements did you make in connection with that improvement? A. I cannot testify as to the exact amount that I actually personally expended, but the payments made by Mr. Martin—

Q. Just confine yourself to payments made by you and approximately what did that amount to?

Mr. McDermott: I object to that, if your Honor please; these are payments made by check; that does not interfere with this witness's recollection of it.

By the Court:

Q. Can you state anyone you made payments to? A. The principal payment was to the plumber.

Q. What was his name? A. I could not tell you that.

Q. Did you make a payment to anyone else? A. I could not tell you without refreshing my memory.

Further direct:

Q. I show you a paper for plumbing the houses on Weaver Street, and ask you if that will refresh your memory as to the name of the plumber to whom you made payments—that is a receipt? A. Not sufficiently to swear to it.

Q. Do you recall the amount, approximately, that you paid the plumber?

The Court: This is going far afield.

CROSS-EXAMINATION by Mr. McDermott:

Q. Mr. Hicks, I understand that you acted from sometime in the fall of 1908 until the spring of 1909? A. Yes, sir.

Q. A few months? A. Fully six months.

Q. And you acted under a written power of attorney executed by Mrs. DeForrest? A. Yes, sir.

Q. And about when was that executed? A. I could not tell you exactly; it was in the fall.

By the Court:

Q. Can you recollect the time? A. It was in the fall of 1908, and it ran jointly to me and to Mrs. Crosby, who was then Miss Rosalie DeForrest, we acted jointly; she was the daughter of Mrs. DeForrest.

Q. Did you keep a book account showing these receipts and disbursements? A. Insofar as the records went through the office of Cogershall and Hicks, that is our firm, and I had a very precise account; the receipts and disbursements which went through the bank account I considered sufficiently substantiated by the check stubs, and later, of course, by the checks; those I returned to Mrs. DeForrest and received her receipt for them in bulk, which receipt I hold and can produce.

Q. Miss DeForrest or Mrs. DeForrest? A. Mrs. DeForrest.

Q. Referring to Mrs. Emily DeForrest? A. Yes, sir.

Further cross:

Q. Where was she living at that time? A. I am afraid I cannot tell you the time, because she lived in several different hotels, but at different times; it is

difficult for me to tell you where she was at any particular time.

Q. You delivered all the papers back to her personally? A. Yes, sir.

Q. And gave up your power of attorney to her? A. No, sir, I told her I would not act anv more under the power of attorney.

Q. She was content with that? A. Yes, sir.

Q. That, you say, was in the spring of 1909? A. The exact date on which I ceased to hold that power of attorney may have been a little later; I waited until I could see Mrs. DeForrest and talked it over with her and explained why I was doing it; it was an absolutely unlimited power of attorney. I explained it all to Mrs. DeForrest, as I was getting married, and she was satisfied with my explanation and she took over the affairs herself.

Q. Mr. Lawrence Martin is a cousin of yours? A. Mr. Martin is not a relation of mine, although the families are close, no blood relationship.

Q. I understand you to say, you collected no rents? A. I made no personal collections whatever.

Q. And whatever you got came to you through Mr. Martin's checks to you? A. Yes, sir.

Q. Whatever they represent? A. Yes, sir.

Q. Did you receive any rents from any other person than Mrs. Martin? A. Well, I would not like to swear to that, sir; some may have come from other sources.

Q. The only ones you have any recollection of were from Mr. Martin? A. Yes, sir.

Q. Do you know Mr. Paul Gerli? A. No, sir.

Q. You never saw him before? A. No, sir

The Court: Send that receipt and the power of attorney, and you need not return here if you will do that.

The Witness: I will do so, your Honor.

CHARLES LAWRENCE MARTIN, being recalled, testified as follows:

Direct-examination by Mr. Hartpence:

Q. Mr. Martin, you said that you had some business connection with the houses on Weaver Street in Summit when you were testifying yesterday? A. Yes, sir.

Q. And had attended to some repairs, and especially to some toilet improvements which had been required by the Board of Health? A. Yes, sir.

Q. Now, you heard Mr. Hicks here this morning? A. Yes, sir.

Q. And will you state whether or not the toilet improvements that you referred to yesterday, were the same plumbing improvements that Mr. Hicks referred to this morning? A. They were, yes, sir.

Q. Now, did you ever collect any rents from the tenants of those houses? A. I collected rents in this way, that Mr. Nightingale would collect them personally and hand them to me.

Q. And after you got them, what did you do with them? A. I would take the cash and deposit it in the Summit Bank; since then the Summit Trust Company, to my own credit; then I would send proportionate amounts to Mrs. Harriet DeForrest and to Mrs. Emily DeForrest.

Q. Based upon what? A. The ratio of 5/8 and 3/8—5/8 to Emily DeForrest, by my own personal check.

Q. Where are those checks? A. I don't know; they were destroyed.

Q. Where did you keep them? A. I kept them with a whole lot of papers, and they were thrown out by mistake.

Q. At what place did you keep them? A. I had

them down in the office of the Summit Silk Company.

Q. What did you keep them in there? A. I had them in an old letter file; one time I put them in a box.

Q. When did you first miss them? A. I put them in with a lot of old papers.

Q. When did you first miss them? A. I knew they were gone.

Q. When? A. They were thrown out.

Q. When? A. When I left the Summit Silk Company.

Q. That was when? A. I think that was about March, 1912.

By the Court:

Q. When you went to collect your papers? A. Yes, sir.

Q. Then you missed your checks? A. I practically destroyed them; I threw them away.

Q. Then you destroyed them yourself? A. There were a few things that I might have kept, but there were a lot of old things that I destroyed.

Q. Do you remember seeing the checks there? A. Yes, sir.

Q. Do you remember destroying them? A. I did not destroy them; as I understood, they were thrown out by mistake.

Q. Do you know who did that? A. No, sir.

Q. You didn't do it? A. No, sir.

Further direct:

Q. What period of time was it that you collected these rents and distributed them in this manner, 3/8 and 5/8, what period of time? A. Possibly before April, 1908, for about two years thereafter.

Q. That would bring it about April, 1910? A. Yes, sir.

Q. Then you stopped? A. Yes, sir.

Q. How did you come to stop? A. I came to stop by instructions of Mr. Ferrera, who told me that Mr. Gerli would collect them thereafter, that he would attend to that thereafter.

Q. How did you come to commence to collect them at the beginning? A. Well, as I recall it, my best recollection on that is this; it was from instructions from Mr. Ferrera, who had talked things over.

Q. Now, Mr. Martin, you say that you deposited these moneys to the credit of your own account? A. Yes, sir.

Q. When you sent these checks from time to time, did you ever send letters with them? A. Yes, sir, invariably, I think.

Q. Now, I show you a letter, dated April 3, 1908, addressed to Mrs. Othneil DeForrest, and ask you if your signature appears to that letter? A. Yes, sir.

Q. Did you send that letter to Mrs. DeForrest? A. Yes, sir.

Q. Who was Mrs. Othneil DeForrest; what is her first name? A. Emily E. DeForrest.

Mr. Hartpence: I will offer the letter in evidence.

Mr. McDermott: I object. This letter is not in anywise binding on us.

The Court: I will allow it on the ground that it is relevant and material, dealing with the payments of rent which this man distributed.

Mr. McDermott: I don't see how a letter written by this man to his aunt or somebody, has any relation to us; it is not relevant to the cause in anywise.

The Court: Objection overruled. I admit it as relevant and material.

Marked Exhibit H. K. 12 1/2.

The Court: You had better put all those letters in a bundle, and Mr. Robert can mark them during the day.

Mr. Hartpence: I will identify these by dates and amounts.

Mr. McDermott: I renew my objection to that.

Q. I show you a letter similar to H. K. 12 1/2, dated June 3, 1908, remitting check for $90.00 to Mrs. Emily E. DeForrest. Another letter of July 3, 1908, remitting $90.00. Another letter August 4, 1908, remitting $90.00. Another letter of September 2, 1908, remitting $90.00. Another letter October 6, 1908, remitting $90.00. Another letter November 3, 1909, remitting $100.00. Another letter May 5, 1910, remitting $100.00. And another letter of March 7, 1910, remitting $95.00 for rents; and referring to some checks for disbursements, and I ask you whether it is your signature that appears to each of those letters, and whether you sent those letters with those remittances? A. Yes, sir.

Mr. Hartpence: I offer them and ask that they be marked under the same number, H. K. 12 1/2.

Mr. McDermott: Objected to as incompetent, irrelevant and immaterial, and in nowise binding on the Summit Silk Company.

The Court: Objection overruled.

(It will be noted that nine letters fastened together were marked H. K. 12 1/2.)

Q. Now, Mr. Martin, I show you this exhibit, H. K. 12 1/2, letter of April 3, 1908, and ask you if that in any way refreshes your memory as to just about when you began to collect the rents? A. My best recollection—

Q. Does that in any way refresh your memory as to when you first started in, does it or doesn't it? A. Yes, sir, it does refresh my memory; whether that was the actual first date, I don't know, but it was about that time, within two or three months.

Q. And did you collect the rents each month, or did you receive the rents each month? A. I received them.

Q. For those houses—between this date, April 3, 1908, and May 5, 1910, the date of the last letter? A. Yes, sir.

Q. And you remitted them for each month to the respective persons that you have referred to, Mrs. Emily DeForrest and Mrs. Harriet DeForrest? A. Yes, sir, I did.

Q. In the proportion that you mentioned a few minutes ago? A. Yes, sir; there was one time $5.00 missing; one of the tenants got away, and we charged that to the house interest of Mrs. Emily E. DeForrest.

Q. Is that the one referred to here, March 7, 1910, where you send $95.00 instead of $100.00? A. Yes, sir.

CROSS-EXAMINATION by Mr. McDermott:

By the Court:

Q. When you were attending to the distribution of these rents and disbursing them, whom were you employed by? A. By the Summit Silk Company and the Summit Silk Manufacturing Company.

Q. In what capacity? A. As a general man.

Q. What were your duties in the employ of the Silk Company at that time, in 1908? A. I made the costs.

Q. And for the manufacturing company that was your business? A. Yes, sir.

Q. What was your title? Cost clerk? A. I had no title.

Q. But that was your work for the company? A. To a large degree.

Q. The calculation of the cost of the manufacturing? A. Yes, sir.

Q. In this instance, I understand, you did not collect the rents from the tenants at all? A. Not personally.

Q. You say that was done by Mr. Nightingale? A. Yes, sir.

Q. And did you spend your time at the mill or in the New York office? A. I would go to the mill in the morning, and then go down to the New York office—most of the time in the New York office.

Q. Did you know Mr. Paul Gerli? A. I did, yes, sir.

Q. You would go there in the morning and look up your records and do your work really in the office in New York? A. Yes, sir.

Q. You knew Mr. Gerli? A. Yes, sir.

Q. You met him there frequently, did you? A. Yes, sir.

Q. And you kept a bank account? A. Yes, sir.

Q. What kind? A. A general personal bank account.

Q. Was it a bank account which included these rents and something else, or was it just these rents? A. These rents and my own personal account; not an active account to any large degree.

Q. But it was an account which you had prior to that time? A. Oh, yes.

Q. And subsequent to that time? A. Yes, sir.

Q. How late did you keep your account in Summit? A. It is there yet.

Q. When did you last have it written up? A. The bank book?

Q. Yes. A. Oh, a month or so ago.

Q. And where is that; did you bring it with you, your pass book? A. No, sir.

Q. That pass book would show the transactions of 1908 and 1909? A. Yes, sir.

Q. You did have a pass book showing that? A. Yes, sir, but I haven't it now

Q. You had a check book? A. I did not keep that.

Q. Didn't you have a check book, I ask you; you 20 have been in business here for years, Mr. Martin, haven't you? A. Yes, sir.

Q. And you have been carrying a check account for something like ten years at least, haven't you? A. Yes, sir.

Q. Don't you carry your checks with the idea that they are going to be of some use to you? A. Let me understand you.

Q. Don't you keep checks as vouchers to show what 30 you have paid? A. To a certain degree.

Q. But that is your habit? A. I keep them for a certain time, yes, sir.

Q. You don't have any check books, do you? A. No, sir.

Q. A check book will last you several years? A. No, sir; I don't keep a check book of that character; I have a little pass book, and if I want to draw a check I draw it.

Q. That pass book you say you did not bring? A. 40 No, sir.

Q. You say it is an inactive account? A. Yes, sir.

Q. And, therefore, a single pass book will run over a great many years? A. No, sir.

Q. On an inactive account? A. No, sir.

Q. Why not? A. What do you call an inactive account.

Q. I mean an account where there is a deposit, say once a week. A. I can explain that—

Q. I want the fact, I don't want an explanation; what I want to get is why you did not bring the evidence you had or could have had, if what you say is the fact? A. I have not got that evidence, that is the reason.

Q. You got the pass book which you did not bring? A. I have not the pass book of that time.

Q. The first you had anything to do with rents, I understand was sometime in 1908, April, wasn't it, 1908? A. Yes, sir.

Q. You did not get them from the tenants? A. No, sir.

Q. How did you get them from Mr. Nightingale? A. He would hand the money to me.

Q. He would? A. Yes, sir.

Q. By check? A. Money, always—always paid money.

Q. That was down at the factory? A. Yes, sir.

Q. Not in the New York office at all? A. No, sir.

Q. And did he give it to you—did Mr. Nightingale continue to give you the money? A. Yes, sir.

Q. Up to what time? A. Up to the time that Mr. Dorgeval superseded him.

Q. What happened when Dorgeval came? A. I think Mr. Dorgeval followed the same practice.

Q. You don't recollect that; this is not very long ago, is it? You have not been engaged in so many affairs since then that you forgot all about this place, Mr. Martin? A. I know one of the two gave it to me.

Q. You have known almost for a year now, that you were to give evidence in this case? A. No, sir, I have not.

Q. How long have you known you were to be a witness? A. Monday, at about half-past three I was notified that they would like me to testify.

Q. But you knew the case was pending, didn't you?

A. In a general way I knew it, but not specifically; I never knew I should have to be a witness at all.

Q. You had no idea that they wanted this testimony about the rents? A. No, sir.

Q. You think Mr. Dorgeval also turned over rents to you? A. That is my impression.

Q. And you say somebody there gave you money until some time in 1910? A. Yes, sir.

Q. What time in 1910? A. About May or June.

Q. The last letter produced is dated March 7, 1910? A. Yes, sir.

Q. For the March rent of the houses? A. Yes, sir.

Q. Is that about the time you quit collecting rents? A. That refreshes my recollection to that extent; I could not exactly tell you now just what month it was.

Q. You were in the habit of writing to Mrs. DeForrest wherever she happened to be? A. Yes, sir.

Q. She was a cousin of yours? A. Yes, sir.

Q. And at this time she was apparently at the Armored Pines, Tryon, North Carolina? A. Yes, sir.

Q. Did you get replies to these letters? A. No, sir.

Q. I think you said in some of them that you did not want a receipt? A. Yes, sir.

Q. That the receipt was not necessary? A. That is right.

Q. And Mrs. DeForrest used the checks? A. Every one.

Q. And did you see her in March, 1910, Mrs. DeForrest? A. Yes, sir, I have seen her subsequent to that time.

Q. And did you see her after that time and before she became incompetent? A. Oh, yes.

Q. A number of times? A. Yes, sir, a number of times; not very often, though.

Mr. McDermott: I think it is on the record

that Mrs. DeForrest became incompetent October 18, 1910.

Mr. Hartpence: Yes, that is in the record.

Q. Mr. Martin, I was mistaken in the order in which these letters were fastened together, in asking you about the last rent collected from these houses; there appears to be a letter which happens to be on this file ahead of the letter of March, dated May 5, 1910, is that the date of the last collection by you? A. To the best of my recollection, yes, sir, I cannot recall.

Q. You have nothing to indicate the collection of anything later than that? A. No, sir.

Q. Did you write a letter when the payment of the rents was stopped? A. Not that I recall.

Q. They just stopped, and you stopped writing letters and sending the checks, did you? A. I cannot recall writing the letter; I may have done it by conversation or something of that kind, but I can recall no such letter.

Q. Who was out at the mill at that time collecting from the tenants? A. Mr. Nightingale during the greater part.

Q. I mean when the rents quit; something happened out there, and you did not get any more rent? A. Yes, sir.

Q. Who was in charge at that time? (No answer.)

Q. Who was there; from whom did you get the last money which you say represented rents? A. I am not positive whether Mr. Nightingale or Mr. Dorgeval.

Q. And it just stopped off short, did it? A. Yes, sir, it stopped off.

Q. Did you make any demand for it? A. No, sir.

Q. Did you inquire why it stopped? A. From whom?

Q. From anyone—you say you made no demand; did you make any inquiry about it? A. I received my instructions from Mr. Ferrera; we may have discussed it at that time—I don't know—that I was not to forward the rents any more.

Q. No more were turned over to you? A. That is right.

Q. By an order from headquarters it was stopped? A. Yes, sir.

Q. And that was the end of the collection of the rents? A. As far as I was concerned.

Q. And so far as any remittance to Mrs. DeForrest or anyone of that kind is concerned? A. Yes, sir.

Q. Did you know Mr. Hicks who was on the witness stand this morning? A. Yes, sir.

Q. Did you send the checks to him or to Mrs. DeForrest? A. To both.

Q. At the same time? A. No, sir; sometimes I would forward them to him; I think while he was in charge mostly always, and then, after that, I would forward it to Mrs. DeForrest wherever she might be.

Q. Only during a short period did he have anything to do with it as far as you were concerned? A. Yes, sir.

Q. Did you remit all you collected? A. Absolutely.

Q. Either to Mrs. DeForrest or to Mr. Hicks? A. Yes, sir.

Q. Either to one or the other? A. Oh, yes.

Q. I am not interested in what you sent to Harriet DeForrest at all; I mean to the other—either to Mrs. Emily DeForrest or to Mr. Hicks? A. Yes, sir.

Q. And you left the Summit Silk Company in March, 1912? A. I think it was March, yes, sir.

Q. And the only checks you drew against those accounts, were those which you sent to Mrs. Harriet DeForrest and Mrs. Emily DeForrest and Mr. Hicks;

I mean against what you collected for rents? A. Yes, sir, that is all.

Q. How do you say you began originally to take these rents? A. Mr. Ferrera told me that Mr. Gerli thought it was best that I should collect the rents.

Q. And then you took them over from that time, did you, and put them in your account? A. Yes, sir.

Q. And then Mr. Ferrera told you to stop it? A. Yes, sir.

Q. And you stopped it? A. Yes, sir.

Q. You don't know what happened to the rents after that time? A. No, sir.

RE-DIRECT EXAMINATION by Mr. Hartpence:

Q. Who is Mr. Dorgeval? A. Superintendent of the mill at the present moment.

Q. And he was also there at the mill when you were employed there prior to 1912? A. Yes, sir.

Q. What was his position when you left, do you know? A. He was superintendent when I left.

Mr. Hartpence: We offer in evidence certified copy of the record of a suit of Harriet DeForrest versus Summit Silk Company, in the District Court of Elizabeth; summons issued May 8, 1914.

Mr. McDermott: I object on the ground that it is incompetent, irrelevant and immaterial; this is against Harriet, you understand. If your Honor please, no one raises any question about Harriet DeForrest's rents; it is not in the case at all.

The Court: It is only to corroborate the testimony—

Mr. McDermott: Harriet DeForrest still owns three of these six houses.

The Court: The best thing to do is to object to it on the ground that it is immaterial and irrelevant, and I will overrule the objection. In regard to the principal actors in this case before the Court, one is dead and the other is an insane person.

Mr. McDermott: This is a certified copy, a copy of the summons, a copy of the state of demand. I object to it as immaterial and irrelevant.

The Court: I will overrule the objection; I shall allow it to go in.

Summons marked Exhibit H. K. 13 1/2.

Complaint marked Exhibit H. K. 14 1/2.

Mr. McDermott: I make the general objection to all testimony relating to the payment of rent to Harriet DeForrest as immaterial and irrelevant.

BENJAMIN E. GORDON, sworn in behalf of the defendants, testified as follows:

Direct-examination by Mr. Hartpence:

Q. You are an attorney at law of the State of New Jersey? A. Yes, sir.

Q. And associated with Vredenburgh, Wall and Carey? A. Yes, sir.

Q. Did you this morning examine the records in the District Court of the City of Elizabeth with relation to the case of Harriet DeForrest vs. Summit Silk Company with certified copies of the summons and state of demand, marked H. K. 13 1/2 and H. K. 14 1/2? A. Yes, sir, I did.

Q. And did you in any way compare the records with these documents that are produced here, H. K. 13 1/2 and H. K. 14 1/2? A. Yes, sir, I did.

Q. What did you do in the way of comparison? A. I took a copy of the state of demand and summons from the docket and compared it with the clerk before he certified it.

Q. Now, was there any notation upon the original record that you examined, that in any way showed the disposition that had been made of the suit?

Mr. McDermott: I object to this as to all the rest, as being immaterial and irrelevant.

A. The docket showed the case was returnable May 18; it was adjourned from then until the 25th of May, and from then until June 8—until June 15, and was finally settled on June 29, 1914, Marked "Settled." All those dates are 1914.

Mr. McDermott: All this is objected to as immaterial and irrelevant.

The Court: The objection is overruled.

Mr. Hartpence: I offer in evidence a certified copy of the order appointing the Fidelity Trust Company of the City of Baltimore and State of Maryland, as guardian of the person and estate of Emily E. DeForrest, a lunatic, made by the Prerogative Court of the State of New Jersey on November 18, 1912; the pleadings show it; it is merely a formality to offer it.

Marked Exhibit H. K. 15 1/2.

Mr. Hartpence: We offer also in evidence certified copy of the deed of the Summit Silk Manufacturing Company to Emily DeForrest, dated July 10, 1895, duly certified under the hand and seal of the Register of Union County.

Marked Exhibit H. K. 16 1/2.

Mr. Hartpence: We offer in evidence the discharge of mortgage of Emily DeForrest and Othneil DeForrest, her husband, to the Summit

Building and Loan Association, which was marked D. A. for identification; duly acknowledged by the Secretary of the Building and Loan Association.

Marked Exhibit H. K. 17 1/2.

Mr. Hartpence: We also renew our offer at this time of the bill for 1907, which was marked H. K. 5 1/2 for identification, and which accompanied the letter which Mr. Ferrera sent to Mrs. DeForrest, enclosing the tax bill. It seems to me that the subsequent testimony of Mr. Ferrera and the subsequent testimony of these other witnesses, and the tax bills that have gone in evidence show this to be on the usual form of the tax bills of Summit, in such a way as to make it at least helpful in showing the chain of events in the progress of the case. Of course, it does not show that the bill was ever paid, but it does show that Mr. Ferrera forwarded it to Mrs. Emily E. DeForrest.

The Court: It is not very influential testimony.

Mr. McDermott: I object to it as incompetent, irrelevant and immaterial.

The Court: I will let it go in with that objection.

Marked Exhibit H. K. 5 1/2.

Mr. Hartpence: We also reserve the right to offer the receipt of Mrs. Emily E. DeForrest to Hicks for all papers which were turned over to her at the conclusion of his attorneyship, and all moneys, and also the power of attorney which appointed him and Miss DeForrest as the attorneys in fact.

Mr. McDermott: You do not reserve the

right, then, to produce the books of Mr. Hicks or Mr. Martin referred to this morning?

Mr. Hartpence: No.

DEFENDANTS REST.

Rebuttal.

Mr. McDermott: I wish to offer certain pages of parts of the minutes of the Summit Silk Company, the book already in for that purpose, and on page 19 the election of the officers of the company; on page 19, the election of the officers of the company on January 28, 1908, President, Paul Gerli; Secretary, Adolph Schumacher, Treasurer, Othneil DeForrest.

Also the minutes on page 35; I offer those showing the recital of the death of Othneil DeForrest; and on page 37 the election of Paschal Ferrera as the Treasurer of the company to fill the vacancy caused by the death of Mr. Othneil DeForrest.

PAUL GERLI, recalled in rebuttal, testified as follows:

Direct-examination by Mr. McDermott:

Q. I show you a book, indorsed "Cash, July 1, 1894 to July 1, 1900," and ask you if you know what book that is? A. It is a cash book of the Summit Silk Manufacturing Company running from 1894 to 1900.

Q. And I call your attention to the month of July,

1895; in whose handwriting is that book? A. William H. DeForrest.

Q. What was his relation to the Summit Silk Manufacturing Company? A. Secretary and Treasurer of the Summit Silk Manufacturing Company.

Q. Mr. DeForrest is dead? A. Yes, sir.

Q. The deed of the Summit Silk Manufacturing Company to Emily DeForrest bears date July 10, 1895, and the proof is dated July 23, 1895; have you examined the entries as indicated by this cash book for the month of June, July and August, 1895, to see if there is any entry of a receipt of $2,000 or any part of that sum, from Mrs. Emily DeForrest?

Mr. Hartpence: Objected to on the ground that it is incompetent, irrelevant and immaterial and not proper rebuttal.

The Court: Objection overruled.

A. I made an examination for the months of June, July and August, 1895—

Mr. Hartpence: I object further, on the ground that the book speaks for itself.

A.—And there is no such entry here showing $2,000 coming from Mrs. Emily E. DeForrest.

Q. For the months of June, July and August the book indicates the source from which the money came?

Mr. Hartpence: Objected to on the same ground.

The Court: Objection overruled.

A. And the items appear, all of them, as coming from H. & C.

Q. Do you know who H. & C. are?

Mr. Hartpence: I object, on the grounds already stated, and on the further ground that

this book is not in evidence, and they are reading from the book, and it has not been proved, and it seems to me to be thoroughly incompetent to ask this witness what appears in there until the book is in some way proved.

Q. The question I asked him then was, if he knew who H. & C. were.

The Court: You had better withdraw it and offer the book.

By the Court:

Q. Where did you find the book? A. The book was sent from Summit to my office in New York, at my request, to look up if there was any cash book there for the year 1895, because I wanted to make an investigation whether any money was received by the Summit Silk Manufacturing Company representing the $2,000 mentioned in the deed of the company to Mrs. Emily E. DeForrest, of which I got a copy in 1909 from Elizabeth.

Q. Did you write a letter about that? A. Yes, sir.

Mr. Hartpence: I move to strike out all the testimony of Mr. Gerli in regard to this book, on the ground that it is mere hearsay. The book speaks for itself, if it is proper proof. I move to strike out all his testimony on the further ground that it is pure hearsay. I move to strike out all his testimony relating to that book.

Q. From what source did you get this book? A. From the mill of the Summit Silk Manufacturing Company.

Q. How did you get it? A. I wrote to the mill that they should look up—

Q. Where is your letter? A. I have not the letter that I wrote.

Q. Did you get the books? A. Yes, sir, a large number of books.

Q. From your examination of the books and papers of the Summit Silk Company, do you find any trace of the $2,000? A. No, sir.

The Court: I don't think it is hearsay.

Mr. Hartpence: They have not proved the books.

The Court: I don't see any validity to your objection that it is hearsay; if they delivered certain books and documents to the office of Mr. Gerli and he makes an examination of the books and documents that come to his office, and he says "I cannot find any entry of $2,000," that is not hearsay. If you are objecting to the books as not proved, that is a valid objection, but I want to know that you put the objection in that form; on that ground I will sustain the objection, that the books are not proved; but I want to say that I don't see why counsel should make such strenuous objections to things which tend to throw light on the matter.

Mr. Hartpence: Mrs. DeForrest is incompetent, Mr. DeForrest is dead; Mr. Gerli had no connection with the old company, he does not know anything about the books, and the mere negative testimony that he does not find something does not in any way bind us, and if they are going to bring this book in to in any way bind us, it seems to me that somebody should be produced who can trace this book to its source.

The Court: Owing to your technical objection, I will sustain it; the book is not properly proved. If you want to avail yourself of those objections, I will sustain them.

Mr. McDermott: If your Honor please, under an order which was consented to, made by the Court, all the books of the Summit Silk Manufacturing Company have been examined, have been submitted to these gentlemen on the other side at the office of the company in New York, and they have had full opportunity to examine them, and it seems to me the burden of showing this consideration is really upon them.

The Court: There is no doubt in my mind that the burden of proving the $2,000 is upon them, and I do not see that you need to offer any rebuttal evidence attempting to show that it is not there in the book.

Mr. Kingsley: We went to the office of Mr. Gerli in New York several months ago to look at the books, and that book was not presented, and all the books that were presented we went over, and there were no other books there, and we asked if there were any others, and he said he knew of none.

The Witness: I mean to say, that all the books were put in the pile at their disposal, which included this one here, and they wanted to investigate the rent account, and in order to help them out, I took the ledgers which have specific pages for that purpose, and those were the books that they examined; and just for the examination of this cash book was for the $2,000, and these gentlemen were not interested to make such an examination, but the books were all there.

Q. Did you in any way withhold this cash book from them? A. No, sir; it was there with the other books of the Summit Silk Manufacturing Company.

Q. You say that that book was there in your office the day I called there? A. Yes, sir.

Q. Did you show me that book? A. All the books were in one pile there, and you were told these were the books of the company; I did not enumerate the books to you.

Q. When did that book come to your office? A. Together with the others.

Q. When did they come? A. Those books came down, maybe two or three years ago; I say the book was brought down specially, this cash book, to investigate the $2,000, whether the $2,000 was collected by the company at the time that I discovered the nature of the bill of sale of the land on which the houses were to be built, made by the manufacturing company to Emily DeForrest.

Q. Then you investigated the question of whether there was any consideration appearing on the books? A. Yes, sir.

CROSS-EXAMINATION by Mr. Kingsley:

Q. When did that book come to your office; did it come with the other ledgers? A. I cannot say just exactly whether it came in the same case or simultaneously with the rest of the books here.

Q. Were all of those books at your New York office when we made the request to Mr. McDermott that we might see them? A. Yes, sir.

Q. I had understood that they would be sent for and brought down to your office? A. They were at our office at the time.

Q. And how long had they been at your office? A. They are there still.

By the Court:

Q. How long had they been there prior to this request? A. The complete set of what we have got? I cannot tell you now.

Q. Was it a year or two years? A. Yes, sir, it was that much, because Mr. McDermott requested me also to get certain books, and what it was exactly I don't know.

Mr. McDermott: Do you still object to the book?

Mr. Hartpence: We will withdraw our objection.

Mr. McDermott: I offer the book.

Marked Exhibit C. M. 15 1/2.

(Question read.) (See page 115.) (p. 175 of this book.)

A. There is no such entry.

FURTHER DIRECT-EXAMINATION by Mr. McDermont:

Q. Mr. Gerli, Mr. Ferrera yesterday, upon being shown the transcript "Exhibit C. M. 3," and having his attention called to the item of February 20, 1908, indicating that the item of $843.64 had been transferred to the Summit Silk Company, stated that that money had been subsequently—that that amount had been subsequently distributed to Harriet DeForrest and Emily DeForrest; is that the fact; and do you know anything of any such distribution having taken place?

Mr. Hartpence: Objected to on the ground that it is not proper rebuttal; it seems to me it is a question of whether or not it was done.

(Question read.)

The Court: That is rebuttal. I will allow it.

A. Yes, sir.

Q. That is so, is it? A. Yes, sir.

The Court: It is not denied, then?

The Witness: It is so.

Q. Do you know the details of the papers; how it was distributed? A. This morning I looked up the books to find.

Mr. Hartpence: Objected to on the ground that this is not the best evidence; we have a right to see those books and examine them.

The Court: The objection is sustained.

Q. Mr. Gerli, you were the president of the Summit Silk Company? A. Yes, sir.

Q. Did you ever know that the rents of the Emily DeForrest property were being collected by Mr. Martin, or turned over to him by Mr. Nightingale? A. I did not know particularly just how the routine of the collection was, because I was not going to the mill at that time, although I do it very frequently now, but I knew that the rents were collected and turned over to the ladies.

Q. You mean to Harriet for herself, and for a time to Emily? A. Yes, sir.

Q. The rents have always been turned over to Harriet, as far as you know? A. Well, there has been various systems of collecting rents there, and when one system was not very practical, another one would be adopted.

Q. But there has never been any change about Harriet DeForrest owning the six houses which have been spoken of as hers? A. No, sir.

Q. Now, as to Emily DeForrest, do you know of the collection of the rents and the turning over of the rents to her being stopped? A. Yes, sir.

Q. And under whose directions was that done? A. I gave the directions.

Q. Why did you stop the distribution of those rents to her? A. Because the financial condition of the company was such that the creditors in case of liquidation would not get 100 cents on the dollar, and while the company was financially—

By the Court:

Q. Knowing about that; you say because the situation was that the creditors would not get 100 cents on the dollar, and, therefore, the rents were stopped? A. Yes, sir.

Further Direct:

Q. Did Mrs. Harriet DeForrest and Mrs. Emily DeForrest get all of the $843.64 which was referred to by Mr. Ferrera? A. No, sir.

Q. What did they get of it? A. Mrs. Emily DeForrest got $464.59; Mrs. Harriet DeForrest got $158.75; $200 were retained to reimburse me of $200 that they loaned to Othneil DeForrest, that he did not have any money really to live on; and $20.30 were brought to profit and loss account; that was done on April 20, 1908, two months after the composition of the new company.

Q. I show you the balance sheet of the Summit Silk Manufacturing Company as of February 20, 1908, and ask you if Mrs. Harriet DeForest appears on that as a creditor or debtor?

Mr. Hartpence: Objected to.
The Court: Objection sustained.

Q. At the time of the closing of the affairs of the Summit Silk Manufacturing Company in turning over to the Summit Silk Company, did Harriet DeForrest appear as a debtor or creditor of the company? A. As a creditor.

Q. And Mrs. Emily DeForrest did she appear as a creditor or as a debtor? A. As a debtor.

Q. You have stated that you knew, had some knowledge, of the fact that these rents were being collected; why didn't you stop the collection of those rents sooner than you did? A. Because about two months after the composition of the new company I

had a conversation with Mr. DeForrest, just about two weeks before his death.

Mr. Hartpence: I object to any conversation with Mr. DeForrest, on the ground that that is not binding on Emily; and secondly, he is dead, and any transaction or statement with him cannot be brought in.

Mr. McDermott: Speaking to the first objection, whatever was done in behalf of Mrs. DeForrest, of course was done by Othneil DeForrest. I had not intended to draw out a conversation with anyone; I conceive that Mr. Gerli, the president of the Summit Silk Company, he is the purchaser, if he knew of this he has a right to tell the reason that he did not stop it sooner.

Q. Without going into a conversation with Mr. DeForrest, why did you not stop the collection of these rents sooner than you did?

Mr. Hartpence: Objected to on the ground that it is incompetent, irrelevant and immaterial, and just why Mr. Gerli should have acted or not acted cannot be binding upon Mrs. DeForrest's legal title in this case.

The Court: Objection overruled; he has already answered that.

Q. Why didn't you stop it sooner, is my question? Why did it begin at all? A. The distribution of the $843.64 was made two months after the composition of the company, and on the plea of Mr. DeForrest saying they did not have enough money to live on.

Mr. Hartpence: I object to that.

The Court: Strike that out.

By the Court:

Q. Why did you allow the rents to begin? A. Because I was willing to permit Mrs. DeForrest to receive more than the $3,000 contemplated in the agreement and the distribution to her, to help her out while she had a daughter home and her son at college; that is the way it was explained to me; it was an offering to permit them to collect that rent until the company would not be in financial condition to warrant it; but the company, from six months to six months, when the inventory was being made, continually showed losses.

By the Court:

Q. That is, it was a charity? A. That is correct.

Further Direct:

Q. Did you ever permit these rents to be diverted after you learned that this deed had been made to Mrs. DeForrest without consideration?

Mr. Hartpence: That is objected to.

The Court: Strike out that part, "without consideration."

Mr. McDermott: I will reframe the question.

By the Court:

Q. Did you pay any rent to Mrs. DeForrest after you discovered the deed to her from the Summit Silk Manufacturing Company? A. I cannot recollect now as to the dates that I got a copy of the deed, but I don't think that the reading of the deed was influential as to the stopping of the rent; I stopped the rents when I thought that the creditors were in danger of not receiving their money.

The Court: That is the same answer.

CROSS-EXAMINATION by Mr. Hartpence:

Q. This cash book which you have been testifying about on rebuttal, you have no knowledge yourself, have you, of whether or not that was the cash book of the Summit Silk Manufacturing Company for the dates indicated on it, other than a mere examination of it discloses? A. My only knowledge is that I made a request to look up cash books, and this is the one that was found and received.

Q. Do you know whether or not they had any other cash books for that same period? A. None was found for the same period except this one.

Q. Do you know whether or not they had any other cash book of the Summit Silk Manufacturing Company for the period indicated on this book? A. I know that they had none, because none was found upon thorough investigation of the books.

Q. Do you know whether there was any other cash book of the Summit Silk Manufacturing Company? A. I know there is no other.

Q. You do know that? A. Yes, sir.

Q. How do you know that? A. Because none was found after thorough investigation.

Q. Now, as a matter of fact, Mr. Gerli, the consideration named in the deed to Emily DeForrest of $2,000 could have been paid to the Summit Silk Manufacturing Company, and not appear on the books, couldn't it? A. No, sir, it would be wrong.

Q. But it could have been done? A. No, sir.

By the Court:

Q. Mr. Gerli, I understand that you had nothing to do with the Summit Silk Manufacturing Company? A. No, sir, I was not connected, except that I was a creditor.

BOTH SIDES REST.

Mr. Hartpence: I reserve the right to offer and do now offer the power of attorney of Emily E. DeForest to DeForrest Hicks and Rosalie DeForest, dated November 7, 1908, cancelled, in the handwriting of Emily E. DeForrest, February 16, 1910, and receipt for the moneys.

Mr. McDermott: There is a power of attorney with the cancellation; I don't care to examine that.

The Court: I will receive them all. Mark them.

Power of attorney marked Exhibit H. K. 18 1/2.

Receipt, approving account, marked Exhibit H. K. 19 1/2.

CASE CLOSED.

Transcript of testimony taken in the above-entitled cause before his Honor, Vivian M. Lewis, Vice-Chancelor, at the Chancery Chambers in the Court House, in the City of Paterson, on the sixteenth day of October, 1916.

Appearances:

Frank P. McDermott, Esq., for the complainant.

John A. Hartpence, Esq., and Messrs. Vredenburgh, Wall & Carey, for the defendants.

Mr. Hartpence: I wish to offer at this time—the first thing is what purports to be a general release of the Summit Silk Manufacturing Company to Emily DeForrest, dated the 2nd day of June, 1908, which is proved in the usual manner; I offer this general release on behalf of the defendants.

Mr. McDermott: On the part of the complainant, I object to this offer. I am not raising the ques-

tion as to the signature, but this paper purports to be dated June 2nd, 1908, and is made by the old company, The Summit Silk Manufacturing Company. I object to the offer as incompetent, irrelevant and immaterial. This release is dated on June 2nd, 1908, and in February of 1908, some four months before the Summit Silk Manufacturing Company had transferred all the property, which is the subject-matter of this suit, to the Summit Silk Company, the new company; so that this release is wholly ineffective and immaterial, irrelevant and incompetent.

Mr. Hartpence: We offer the general release.

The Court: I don't see its relevancy or competency or materiality.

Mr. Hartpence: The release is dated the 2nd of June, 1908, and refers back to May 7th; I think it all goes to show that it came out of that same general transaction.

The Court: But the suit in this case is the Summit Silk Company.

Mr. Hartpence: It seems to me that the Summit Silk Company have got no rights except through the Summit Silk Manufacturing Company, and they are seeking to establish a trust by virtue of the acts of the Summit Silk Company.

The Court: I'll admit it for consideration by the Court.

Mr. Hartpence: We also have here four letters, which purport to have been written by William S. Porter, secretary of the Summit Building and Loan Association, one dated February 4th, 1907, and one to Emily DeForrest, and another letter written by him March 15th, 1907; and we think these letters are relevant and material in this case. Of course, we have not proved these letters, but Mr. Porter's signature is there.

Mr. McDermott: I don't object to the signatures.

Mr. Hartpence: We think these letters are material because Mr. Porter was not certain when he testified as to just what disposition had been made of the bond and mortgage, I think it was, upon the cancellation of the shares; and this one letter, of February 4th, seems to refer specifically to the closing of the transaction with Emily DeForrest and which will clear up that situation. The letter of March 15th refers to the same situation, because it instructs Mrs. DeForrest just how to receive the check which was sent by the Building and Loan Association and which was later on assigned back to the association, in order to cancel the mortgage. We think it will make it clear for the counsel and the Court as well.

Mr. McDermott: I object to them as irrelevant, incompetent and immaterial.

The Court: I'll accept them for the consideration of the Court.

Same are marked Exhibits Nos. 1, 2 and 3 respectively.

Mr. Hartpence: There are also two letters, one dated October 11th, 1910, and one dated October 31st, 1910, purported to have been written by Putney, Twombly & Putney, counselors at law, in New York, to Max J. Kohler, attorney, in New York, who at one time represented Mrs. DeForrest's interests. The letters pertain specifically to the question of demand from the Summit Silk Company for the payment of the rents which were then in dispute, and we offer them as having a material bearing upon the situation and clearing up the whole question in regard to the retention of the rents by the Summit Silk Company.

Mr. McDermott: I don't object to the proof of signature, but I do object to them as immaterial, irrelevant and incompetent.

The Court: I'll admit them for consideration.

Letters are marked Exhibits Nos. 4 and 5 respectively.

Filed July 27, 1917.

Memorandum.

IN CHANCERY OF NEW JERSEY.

Between

SUMMIT SILK COMPANY,
Complainant,
and
FIDELITY TRUST COMPANY OF BALTIMORE, a Corporation of the State of Maryland, Guardian of the Estate of Emily E. DeForest, a Lunatic, and EMILY DEFOREST,
Defendants.

On pleadings and proofs.

Messrs. McDermott and Enright, for complainant.

Messrs. Vredenburgh, Wall and Carey, associated with Mr. Charles L. Kingsley (of the New York Bar) for the defendants.

LEWIS, V. C.:

This suit is brought to restrain the defendants from prosecuting an action at law, in ejectment, against the Summit Silk Company regarding certain premises at Summit, New Jersey, in which Emily DeForest has the legal title; the complainant claiming to be the equitable owner, alleging that Emily is a mere trustee.

Emily and Harriet DeForest, sisters-in-law, were married to two brothers, one of whom was named Othneil DeForest, and the other was named William H. DeForest, Jr. In August, 1892, the Summit Silk Manufacturing Company was organized as a cor-

poration of this state. It was a close corporation, and the objects stated in the certificate of incorporation were the manufacture and sale of silk and silken goods, to buy lands and to erect thereon buildings, machinery, etc. The incorporators were Othneil DeForest, John Nightingale and William H. DeForest, Jr., and shortly after the organization Othneil DeForest, William H. DeForest, Jr., and Harriet DeForest became the directors; Othneil DeForest was elected president and William H. DeForest, Jr., the secretary and treasurer. Mrs. Emily E. DeForest was the principal owner of the stock. The factory was built on a plot of land consisting of about eight acres, the factory taking up about two acres and leaving a little over six acres vacant.

In 1895 the Summit Silk Manufacturing Company wished to have some houses erected on this plot for its employees, but as it did not have the funds with which to erect them, the president applied to the Summit Building and Loan Association for a loan. He found out from that association that a corporation could not become a member of the association, and he was, therefore, unable to borrow any money from that association. Thereupon, in March, 1895, Emily E. DeForest became a shareholder to the extent of thirty-five shares in the aforementioned association. Her dues for March, April and May, 1895, were paid on June 13th of that year and were charged to her account on the books of the Silk Company.

On July 23rd, 1895, the Silk Company duly made, executed and delivered to her the deed dated July 10, 1895. The deed recites the payment of the consideration of $2,000.00. This deed is Emily E. DeForest's muniment of title, and her bond of $14,000.00 was given to the Summit Building and Loan Association together with the security of this title, and

the association then made her a loan of $7,000.00 with which to erect five double tenement houses on the piece of ground which the Silk Company had conveyed to her.

On the land conveyed to Emily the five double houses were erected, and the payments to the contractors were made by checks of the Summit Building and Loan Association, drawn at the order of said Emily DeForest; fire insurance on the houses was placed in the name of Emily E. DeForest; the houses were rented to the employees in the factory of the Silk Company, and the rents were collected by the superintendent or a clerk in the employ of the Silk Company. As the rents were collected they were put in the bank to the credit of the Silk Company, and its check was drawn to the order of the Summit Building and Loan Association at the rate of $75.25 per month. Taxes, insurance and repairs were also paid out of the rents.

In the course of about twelve years, the thirty-five shares of the Summit Building and Loan Association matured, and in the first part of February, 1907, the Building and Loan Association sent its check for $7,000.00 to Emily E. DeForest, and the mortgage was cancelled, being discharged of record July 18, 1908.

From the time of the maturity of the shares in the Building and Loan Association until May, 1910, the rents from these houses were collected by clerks and officers of both the Summit Silk Manufacturing Company and its successor, the Summit Silk Company, the present complainant, and were paid over to Emily E. DeForest. During this period taxes, insurance and repairs on these houses were paid by Emily E. DeForest, either personally or through others acting in her behalf.

In January, 1907, Elvero Godone, P. J. Ferrara and Emily E. DeForest were elected directors, and Mr. Godone was made president, and Mr. Ferrara, sec-

retary and treasurer. The Silk Company became embarrassed and arrangements were made to organize a new company and give extensions to the new company, which was taking over all the liabilities and assets of the old company on two years' time. The result was the organization of the Summit Silk Company as a corporation to take over the entire property and assets of the old company with proper deeds and other instruments of conveyance thereof, and the new company to assume the payment of all indebtedness. The meeting at which the transfer was organized was held on February 20, 1908. The proceedings are recorded in the minutes on several pages. Emily E. DeForest was present by proxy; she also signed a waiver of notice of the time, place and objects of the meeting. Following the meeting of February 20, 1908, and in pursuance thereof, deeds and a bill of sale were executed to transfer all the property of the Summit Silk Manufacturing Company to the Summit Silk Company. The principal deed is dated February 20, 1908, and includes the lands in dispute, that is to say, it included the property conveyed to the Summit Silk Manufacturing Company by Harriet DeForest and husband, excepting therefrom only the six lots which were previously conveyed to Harriet DeForest and which are not in dispute. On February 20, 1908, the Summit Silk Manufacturing Company executed a bill of sale by which it sold and transferred to the Summit Silk Company "all its property wheresoever situate, including its machinery, tools and fixtures located in its factory in the City of Summit, New Jersey, and elsewhere, including office furnishings, patent rights, patents, good will, merchandise, accounts, bills, notes, money and all other assets."

These instruments establish that the purpose of the Summit Silk Manufacturing Company was to trans-

fer to the Summit Silk Company all its property of every kind and character.

It becomes important therefore, to ascertain whether the lands and houses in dispute were, in equity, the property of the Summit Silk Manufacturing Company, which made a deed of all its property to the Summit Silk Company.

On October 14, 1895, the old company duly made, executed and delivered to Harriet DeForest, its deed for certain of its property adjacent to that conveyed to Emily by the deed of July 23, 1895, and upon which were erected three double tenement houses similar to those erected by Emily upon her land.

On October 18, 1910, Emily was judicially adjudged a lunatic by the Circuit Court of the City of Baltimore, Maryland, and the Fidelity Trust Company of Baltimore was appointed her guardian, while she was then located at Baltimore; and has also been appointed guardian of her property and estate in New Jersey by the Chancellor.

On December 12, 1912, an action was commenced in the New Jersey Supreme Court by the guardian to eject the new company from the houses and premises at Summit, and on October 20, 1913, the present bill to restrain the ejectment suit was filed for the purpose of obtaining the benefit of certain equitable defences. Those defences in brief are as follows:

First, that there was no consideration for the deed made by the Summit Silk Manufacturing Company to Emily DeForest under which she claimed a right to the possession of the land.

Second, that the deed was executed without the authority of the company.

Third, that she had assented to a sale of the same property to the Summit Silk Company by the Summit

Silk Manufacturing Company after her deed had been recorded, and was estopped to question the title of the Summit Silk Company.

Fourth, that she held the title only in trust for the Silk Company, which, is alleged, had furnished the money for the purchase of the land and the construction of the buildings thereon.

Mrs. DeForest contends that all these defences are available at law except the one which seeks to establish a trust.

The minutes of the stockholders and directors are very meagre and do not disclose that there was any authority given by the stockholders or directors to convey the property in question to Mrs. Emily DeForest, or, for that matter, to Mrs. Harriet DeForest —Harriet DeForest's situation in regard to the land which has been deeded to her by the old company being precisely the same as Emily's, with the exception that when the old company turned over its property to the new company the land heretofore deeded to Harriet was excepted; no mention being made of the deed to Emily. This is a peculiar fact and may or may not be significant as to whether she was the true owner of the lands in question.

It is undoubtedly true, however, that when a contract is made in the name of the corporation by the president in the usual course of business, which the directors have the power to authorize and to make, or to ratify after it is made, the presumption is that the contract is binding on the corporation until it is shown that the same was not authorized or ratified.

Paul Gerli, who had been the chief creditor of the old company, and who had stepped in as the controlling factor of the new company, knew that these rents were being collected by the clerks or other employees of the new company, and he knew that they were being trans-

mitted to Mrs. Emily DeForest; in fact, the evidence shows that he directed it to be done, and upon the closing of the account of Mrs. Emily DeForest and of her sister, Mrs. Harriet DeForest, he drew and signed the checks to those two ladies for the proportionate amounts due them, respectively.

About the year 1910, when Mrs. Emily DeForest had become mentally incompetent and was no longer able to take care of herself and her affairs, Paul Gerli suddenly ceased remitting the rents from these houses to Mrs. Emily DeForest. His explanation of this action on the witness stand was, that he had felt sorry for the DeForests in their financial reverses, and that after the death of Mrs. Emily DeForest's husband he had contributed these rents to her support as a matter of charity, but that when his own Silk Company had difficulty in meeting expenses he felt obliged to cut off his philanthropic contribution. If this were true it would certainly stamp Mr. Gerli as an extraordinarily generous man, considering that Mrs. Emily DeForest was nothing to him. It is very difficult to get at the facts in the case, as both Mr. Othneil DeForest and his brother, William H. DeForest, Jr., are dead, and the lips of Mrs. Emily DeForest are sealed through insanity. We cannot get her story, but I am satisfied that the transfer of the land to Mrs. Emily DeForest by the old company was for an adequate monetary consideration.

Second, that the deed to her was in due form of law and unassailable in this proceeding, with no sufficient testimony to undermine its, at least, *prima facie* validity.

Third, that the credit of Emily DeForest was pledged to obtain the moneys that were used in the construction of the houses and that her obligation was paid off by the rents from those houses, and that no money of the Silk Company went into those houses.

Memorandum

It is apparent that neither Mrs. Emily DeForest nor Mrs. Harriet DeForest desired the burden of handling the rents, etc., when they had husbands to do it for them. Women, very frequently, do not care to assume these burdens. I think this fully accounts for the facts already mentioned. I am quite satisfied that the whole business was done in a perfectly natural manner under all the circumstances of the case; and it must be remembered that the burden of establishing the various contentions of the complainant is upon the complainant and must be sustained by the clearest and most convincing proof, more particularly because one of the circumstances attendant upon the claim of the Silk Company is that it was asserted only after a blight had fallen upon the mind of Mrs. Emily DeForest, and after it had acquiesced in her apparent right for about two years; and also, because of the fact that Mrs. Emily DeForest is unable to give her testimony in this proceeding. If there be any doubt whatever, it must be resolved in favor of the incompetent woman.

The real question before the Court is whether Emily is a trustee for the Silk Company, and as I find that there is no resulting trust, but that Emily is the owner of both the legal and equitable title in the premises in question, that disposes of the case.

I shall advise a decree in accordance with these views.

Filed December 15, 1917.

Final Decree.

IN CHANCERY OF NEW JERSEY.

Between

THE SUMMIT SILK COMPANY,
Complainant,
and

FIDELITY TRUST COMPANY OF BALTIMORE, a Corporation of the State of Maryland, Guardian of the Estate of Emily E. DeForest, a Lunatic, and EMILY E. DEFOREST,
Defendants.

On Bill, etc.
On Pleadings and Proofs.

An action at law in ejectment having been instituted in the New Jersey Supreme Court, on December 12, 1912, by the Fidelity Trust Company, a corporation of the State of Maryland, as guardian of the estate of Emily E. DeForest, a lunatic, against The Summit Silk Company, a corporation of the State of New Jersey, to recover from said The Summit Silk Company the possession of certain lands and premises located at Summit, New Jersey, alleged to be wrongfully in the possession of said The Summit Silk Company, and to the possession of which said Fidelity Trust Company, as guardian as aforesaid, claimed to be entitled, and also to recover mesne profits and damages, which said lands and premises are more particularly described as follows:

All those certain lots, tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the Township of Summit, in the

County of Union and State of New Jersey and butted and bounded as follows:

BEGINNING at a point in the southerly side of a new street opened through land of The Summit Silk Manufacturing Company distant on a course of north fifty degrees and eleven minutes east one hundred fifty-one and six one-hundredths feet from land of one J. S. Palmer and at the northwesterly corner of lot No. 7, on a map of property of the Summit Silk Manufacturing Company running thence (1) along the southerly line of said new street North fifty degrees and eleven minutes East two hundred and fifty feet to the northwesterly corner of lot No. 17 on said map; thence (2) between lots 16 & 17 South thirty-nine degrees and forty-nine minutes East one hundred and twenty-five feet to land of one Peet; thence (3) South fifty degrees and eleven minutes West two hundred and fifty feet to the southeasterly corner of lot No. 6, and thence (4) between lots 6 & 7 North thirty-nine degrees and forty-nine minutes West one hundred and twenty-five feet to the place of beginning. Being designated on said map as lots 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16. Being a part of the same premises conveyed to said party of the first part by deed recorded in the Union County Clerk's office in Book 248 of Deeds for said county on pages 595 etc. Together with all and singular the houses, building, trees, ways, waters, profits, privileges and advantages with the appurtenances to the same belonging or in anywise appertaining; also all the estate, right, title and 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.

And said action at law thereafter having duly come to issue upon answer and replication, and being on the calendar for trial at the Union Circuit;

And thereupon, on October 20, 1913, the said The Summit Silk Company having filed in the Court of Chancery of the State of New Jersey a bill seeking to restrain the further prosecution of said action at law, and averring that the said The Summit Silk Company was in equity the owner of said lands and premises and entitled to the possession thereof, but that it could not safely defend itself in the said action at law, for the reason that the facts upon which it relied did not constitute an adequate defense at law, but were sufficient to obtain relief in this Honorable Court, and praying that said The Summit Silk Company be decreed by this Honorable Court to be the owner of said premises and entitled to receive a conveyance thereof from said Emily E. DeForest, to whom the same had theretofore been conveyed by the Summit Silk Manufacturing Company, by deed dated July 10, 1895, and recorded July 24, 1895, in the Register's office of the County of Union, in Book 295 of Deeds, page 49, etc., or from said Fidelity Trust Company, her said guardian; and further praying that it be adjudged and decreed by this Honorable Court that, the said deed purporting to have been executed by The Summit Silk Manufacturing Company to the said Emily E. DeForest as hereinabove described is and was from the time of the execution and delivery of the same null and void, and of no force or effect whatsoever in law or equity, and that the said defendants deliver up the said deed to complainant to be cancelled, and that they also deliver up to complainant all deeds, muniments of title, and rights in their possession or power relating to the said premises, and that the said defendants convey the said premises to complainant, and surrender all claim to the title or possession of the same, and that complainant might have such other or further relief in the premises as the na-

ture of the case may require and as may be agreeable to equity and good conscience;

And this Court, thereupon, on October 20, 1913, having made its order restraining said Fidelity Trust Company from further prosecuting said action at law until the further order of the Court; and John A. Hartpence having been appointed guardian *ad litem* of said Emily E. DeForest, by order of this Court dated January 26, 1914; and answer to said bill of complaint having been filed by and in behalf of said defendants Fidelity Trust Company, as guardian as aforesaid, and said Emily E. DeForest, a lunatic, by John A. Hartpence, her guardian *ad litem;* and issue having been joined on said pleadings, and the matter thereafter coming on for final hearing upon the merits, before this Honorable Court, and the evidence of the respective parties having been presented, and the Court having duly considered the same, together with the arguments of the respective counsel; and now being of the opinion that the transfer of the land to said Emily E. DeForest by the said The Summit Silk Manufacturing Company was for an adequate monetary consideration, that the deed to her was in due form or law and unassailable in this proceeding, with no sufficient testimony to undermine its, at least *prima facie,* validity; that the credit of the said Emily E. DeForest was pledged to obtain the moneys that were used in the construction of the houses erected upon the land in question; and that her obligation was paid off by the rents from those houses, and that there is no resulting trust in favor of either the said The Summit Silk Manufacturing Company, or of the present complainant in this suit, but that said Emily E. DeForest is the owner of both the legal and equitable title in the premises in question.

And it further appearing that said complainant, by its officers, agents, or employees, or some one or more

persons in its behalf, and under its direction and control, have collected the rents, issues, profits and income from said land and premises for a period of at least ten years or more last past, a portion only of which have been by it or them accounted for and paid over to the said Emily E. DeForest or those who legally represent her, and that the remainder thereof is still in its or their hands or under its or their direction and control, wholly unaccounted for and unpaid to the said Emily E. DeForest or those who legally represent her;

It is, therefore, on this 10th day of December, A. D., 1917, on motion of Vredenburgh, Wall & Carey, solicitors for the above-named defendants;

Ordered, that said bill of complaint in this cause be and the same hereby is dismissed with costs, and that the Solicitors for said defendants be allowed a counsel fee of seven hundred and fifty dollars, to be taxed as a part of said costs against said complainant.

E. R. WALKER,
C.

Respectfully advised,
Vivian M. Lewis,
V. C.

A true copy.

ROBERT H. McADAMS,
Clerk.

Filed December 15, 1917.

Notice of Appeal.

37-111.

IN CHANCERY OF NEW JERSEY.

Between

SUMMIT SILK COMPANY,
Complainant,

and

FIDELITY TRUST COMPANY, a Corporation of the State of Maryland, Guardian of the Estate of Emily E. DeForest, a Lunatic, and EMILY E. DEFOREST,
Defendants.

The complainant hereby appeals from the whole and every part of the final decree made in this court in above-stated cause on the 10th day of December, 1917, to the Court of Errors and Appeals in the last resort in all causes.

Dated, December 13, 1917.

McDERMOTT & ENRIGHT,
Solicitors of Complainant.

FRANK P. McDERMOTT,
Of Counsel.

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

FRANK P. McDERMOTT,
Of Counsel with Complainant.

A true copy.

ROBERT H. McADAMS,
Clerk.

Complainant-Appellant's Exhibits.

Exhibit C-1.

Exhibit C-1 (pg. 26) certified copy of deed Harriet DeForest and husband to the Summit Silk Manufacturing Company, dated August 22, 1892, acknowledged same day and recorded in Register's Office of Union County, N. J., August 27, 1892, in Book 248 of Deeds, page 595 (or 596) &c. This deed conveys to the Summit Silk Manufacturing Company a parcel of land at Summit, containing about 10 acres and 41/1000 of an acre, more or less.

Exhibit C-2.

Exhibit C-2 (pg. 27) certified copy of deed made by the Summit Silk Manufacturing Company to Harriet S. DeForest, dated October 14, 1895, proved October 26, 1895, and recorded in Register's Office of Union County, October 31, 1895, in Book 298 of Deeds, page 432, &c. This deed conveys six lots known as 17, 18, 19, 20, 21 and 22, a part of the premises conveyed to the Summit Silk Manufacturing Company by Exhibit C-1.

Exhibit C-3.

Exhibit C-3 (pg. 29) original deed by the Summit Silk Manufacturing Company to the Summit Silk Company (complainant-appellant), dated February 20, 1898, proved same day and recorded in the Register's Office of Union County February 21, 1908, Book 502 of Deeds, page 250, &c.

Exhibit C-3

THIS INDENTURE made this 20th day of February in the year one thousand nine hundred and eight, between THE SUMMIT SILK MANUFACTURING COMPANY, a corporation organized under the laws of the State of New Jersey, party of the first part, and THE SUMMIT SILK COMPANY, a corporation organized under the laws of New Jersey, party of the second part, WITNESSETH:

THAT the said party of the first part for and in consideration of One ($1.00) dollar, lawful money of the United States, and other good and valuable consideration, to it 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 therewith fully satisfied, contented and paid, has given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the second part, and to its successors and assigns, forever, ALL that certain lot, piece or parcel of land and premises, hereinafter particularly described, situated in the Township of Summit, in the County of Union and State of New Jersey, and known as No. 3B, Section 2 on Map of Partition of Estate of Nicholas D. C. Moller, deceased, on file in the Clerk's office of Union County, described as follows: BEGINNING in the middle of the road leading from Summit Railroad Depot to Chatham and in the northeast corner of No. 2B belonging lately to Clemencia H. Thebaud and running thence (1) along the westerly line of said lot south fifty degrees west nine hundred and eighty-eight feet to an iron spike in the line of Isabella J. Morrison's land and iron spike being also in this line twenty-three feet and six inches from said point of

beginning; thence (2) along her line north twenty-six degrees west four hundred and ninety-seven feet to an iron spike; thence (3) north forty-nine degrees and fifteen minutes east eight hundred and nineteen feet along a line of Alfonso N. Moller to the middle of the aforesaid road, an iron spike being in this line at a point distant from said middle of said road southwesterly twenty-seven feet and six inches; thence (4) along the middle of the road south forty-five degrees and forty minutes east four hundred and ninety-one feet to the beginning; CONTAINING about ten and forty-one thousandths acres, more or less, being the same premises conveyed to Charles F. Wiegand by a deed of Henry B. Corwin and wife dated the 12th day of May, 1888, and recorded in the office of the Clerk of the County of Union on May 19th, 1888, Book 198 of Deeds, p. 534; and conveyed by Harriet De Forest and William H. De Forest, Jr., her husband, to The Summit Silk Manufacturing Company by deed dated August 22nd, 1892, and recorded August 27th, 1892, in the office of the Clerk of the County of Union in Book 248 of Deeds, p. 596.

Excepting and reserving therefrom those separate lots, pieces or parcels of land known and designated as Lots Nos. 17, 18, 19, 20, 21 and 22 upon a certain map of the property of The Summit Silk Manufacturing Company made by Mead & Taylor, surveyors, filed in the office of the Clerk of the County of Union and known and indexed as Map No. 206D, in the map index in the office of said clerk.

Together with all the buildings upon said premises and also all the machinery, tools and apparatus of every kind in and upon said premises or used in connection therewith as part of the silk manufacturing plant of the party of the first part; with the appurtenances.

Exhibit C-3

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; subject nevertheless, to such mortgages and liens as may be of record affecting the property hereinbefore described.

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, its successors and assigns, to the own proper use, benefit and behoof of the said party of the second part, its successors and assigns forever.

AND the said party of the first part does, for itself and its successors, covenant and grant to and with the said party of the second part, its successors and assigns, that the said party of the first part 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 thereto 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 except as hereinbefore mentioned, judgment or limitation 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.

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 the said party of the first part will warrant, secure and forever defend the said land and premises unto the said party of the second part, its successors and assigns

Exhibit C-3

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 encumbrances whatsoever, saving and excepting mortgages and liens as aforesaid.

IN WITNESS WHEREOF the said party of the first part has caused these presents to be signed by its President, and its common seal to be hereto affixed the day and year first above written.

THE SUMMIT SILK MANUFACTURING COMPANY,
By ELVIRO GODONE,
President.

(Seal)

Signed, Sealed and Delivered
in the presence of:
Paschal J. Ferrara.

State of New York,
County of New York, } ss:

BE IT REMEMBERED, on the 20th day of February in the year of our Lord one thousand nine hundred and eight, before me a notary public of the State of New York, personally appeared Paschal J. Ferrara to me known, who being by me duly sworn according to law, on his oath doth depose and say that he is the Secretary of The Summit Silk Manufacturing Company, a corporation, the grantor in the foregoing deed named; that the seal affixed to the said deed is the corporate seal of the said corporation; that it was so affixed by the order of the said corporation; ELVIRO GODONE is the President of the said corporation; that he saw the said Godone as such President sign the said deed, and heard him declare that he signed, sealed and delivered the same as the voluntary act

Exhibit C-3

and deed of the said corporation by its order, and that this deponent signed his name thereto at the same time as a subscribing witness.

Subscribed and sworn to before me the day and year above written.

ARTHUR B. SMITH,
Notary Public,
Kings Co.
Cert. filed in New York Co.

State of New York, }
County of New York, } ss:

I, Peter J. Dooling, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, Do Hereby Certify that Arthur B. Smith, whose name is subscribed to the Certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof and acknowledgment, a Notary Public acting in and for said County, duly commissioned and sworn, and authorized by the laws of said State to take the acknowledgments and proofs of deeds or conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County the 21 day of Feby., 1908.

PETER J. DOOLING,
Clerk.

(Seal)

Exhibit C-4.

Exhibit C-4 (pg. 29) the proceedings in the New Jersey Supreme Court in an action in ejectment brought by the Fidelity Trust Company, a corporation of the State of Maryland (defendant-respondent), claiming to be the Guardian of the Estate of Emily E. DeForest, a lunatic, against The Summit Silk Company (complainant-appellant). The summons in this ejectment action was tested December 12, 1912, and served with the complaint on December 16, 1912.

Exhibit C-5.

PAUL GERLI,
Of the first part,
and
EMILY E. DEFOREST,
Of the second part.

AGREEMENT.

Dated, March 4, 1908.

MEMORANDUM OF AGREEMENT, by and between PAUL GERLI, party of the first part, and EMILY E. DEFOREST, party of the second part, made and entered into this Fourth day of March, 1908:

WHEREAS, the party of the first part is a creditor of The Summit Silk Manufacturing Company, for merchandise sold and money loaned to it, and has heretofore acquired by purchase and otherwise certain claims of other creditors against The Summit Silk Manufacturing Company now due and payable, said claims now due and payable to the said party

Exhibit C-5

of the first part aggregating the sum of $————; and

WHEREAS, for the purpose of securing the payment of the said claims and of any indebtedness of the said party of the first part which may hereafter be incurred by the said The Summit Silk Manufacturing Company or by The Summit Silk Company, hereinafter referred to, or either of said Companies, the said The Summit Silk Manufacturing Company has conveyed and transferred all its property to the said The Summit Silk Company, a corporation organized under the laws of the State of New Jersey, in exchange for the capital stock of the said The Summit Silk Company, the amount of which to be issued in exchange for said property remains undetermined: and

WHEREAS, the party of the second part is the owner of all the stock of the said The Summit Silk Manufacturing Company, and as such owner has, together with the said The Summit Silk Manufacturing Company, agreed to transfer and deliver the said stock in The Summit Silk Company, when issued as aforesaid, to the party of the first part, to be held by him as security for the payment of said indebtedness; and

WHEREAS, for the purpose of carrying out said agreement, the said The Summit Silk Manufacturing Company has heretofore assigned and transferred to the said party of the second part all its right, title and interest in and to the said stock of The Summit Silk Company, to be issued as aforesaid;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

That in consideration of the sum of One Dollar, lawful money of the United States of America, by each of the parties hereto to the other in hand paid,

Exhibit C-5

the receipt whereof is hereby acknowledged, and in consideration of the mutual covenants hereinafter contained, the parties hereto do mutually covenant and agree as follows:

(1) The shares of the capital stock of said The Summit Silk Company when issued are to be issued in the name of the said party of the first part, and the said party of the first part shall have full power and authority to vote the said stock at any and all meetings of stockholders of said The Summit Silk Company, and may vote said stock for the election of himself or any person or persons representing him as director or directors of said The Summit Silk Company.

(2) All dividends declared upon said stock shall be applied to the payment of the indebtedness secured by the transfer and delivery of said stock.

(3) The certificates representing said stock when issued to the party of the first part shall be by him endorsed in blank and delivered into the hands of William H. Truesdale, Trustee, who shall hold the same in trust for the benefit of the party of the first part until the indebtedness secured by the assignment and transfer of said stock shall have been liquidated in the manner and to the extent hereinafter provided.

(4) The certificates representing said shares of stock shall remain in the name of the said party of the first part until his indebtedness shall have been liquidated as hereinafter provided, and shall not be transferred to the said trustee or to the said party of the second part or to any other person; the intent of this agreement being to confer irrevocably upon said party of the first part the voting power of the said shares of stock in the said The Summit Silk Company.

Exhibit C-5

(5) Upon the payment of the said indebtedness to the party of the first part and of any other or further sums or amounts which may hereafter be due or owing by the said The Summit Silk Manufacturing Company, or the said The Summit Silk Company, or either of them, to the said party of the first part, or whenever the fair value in the aggregate of the total merchandise and accounts receivable of every kind of the said two companies shall exceed the total amount of their indebtedness of every kind by twenty-five per cent, excepting any mortgage now existing or which may hereafter be given to Margaret Schmidt, or any special capital contributed or which may hereafter be contributed by the said party of the first part, then, in either event, the said trustee shall transfer and deliver to the said party of the second part the certificates representing the said shares of capital stock in the said The Summit Silk Company.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

PAUL GERLI (L. S.)
EMILY E. DE FOREST (L. S.)

In presence of:
Ferdinand S. Crosley

State of New York,
County of New York, } ss:

On this 9th day of March, 1908, before me personally appeared Paul Gerli, to me known and known to me to be one of the persons described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

FERDINAND S. CROSLEY,
Notary Public,
New York Co.

(Seal)

Exhibit C-6

State of New York,
County of New York, } ss:

On this 9th day of March, 1908, before me personally appeared Emily E. DeForest, to me known and known to me to be one of the persons described in and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same.

FERDINAND S. CROSLEY,
(Seal) Notary Public,
New York Co.

Exhibit C6.

Exhibit C-6 (pg. 29): Blueprint showing the location of the property of Summit Silk Company at Summit, including the three houses on the parcel of land conveyed by Summit Silk Company to Harriet DeForest by deed above referred to, Exhibit C-2, and the five houses on the parcel of land conveyed to Emily E. DeForest by deed hereinafter recited, marked Exhibit H. K. 16 1/2, a copy of which was attached to the bill of complaint and is found on pages 13 to 17. This blueprint was proved later by John J. Kentz, pages 65-66, and was then marked Exhibit C. A. 8 for identification and later as Exhibit C. A. 9, pg. 67.

Exhibit C-A1 (Page 53).

Emily E. DeForest, *et ux.*	)	
	)	
To	)	$7,000.00
	)	
Summit Bldg and Loan Association.	)	

The Original Mortgage here recorded was this day produced in this office, by C. N. Williams duly cancelled May 6, A. D. 1907 Frank H. Smith Register.

Cancelled of Record by discharge of Mortgage No. 766 recorded this 18th day of July A. D. 1908 in Book 7 of Discharge of Mortgages for Union County on page 434

Frank H. Smith Register.

THIS INDENTURE Made the Eleventh day of July in the year of our Lord One Thousand Eight Hundred and ninety five, Between Emily E. De Forest and Othniel De Forest, her husband, of the Township of Summit, in the County of Union and State of New Jersey, of the first part and "Summit Building and Loan Association" of the Township of Summit, in the County of Union and State of New Jersey, of the Second part, of which Association the said Emily E. De Forest is a member and by reason of being such member the Constitution thereof has been signed by her.

WITNESSETH, that the said party of the first part for and in consideration of the sum of Seven thousand dollars, lawful money of the United States of America to them in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contended and paid, have given, granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed and by these presents do give, bargain, sell, alien, enfeoff, convey and confirm to

Exhibit C-A1

the said party of the second part and to their successors and assigns forever.

ALL those tracts or parcels of land and Premises hereinafter particularly described, situate, lying and being in the said Township of Summit, in the County of Union and State of New Jersey and butted and bounded as follows:

BEGINNING at a point in the Southerly side of a New Street, opened through land of the Summit Silk Manufacturing Company, distant on a course of North fifty degrees and eleven minutes East one hundred and fifty one and six one hundredths feet from land of one J. S. Palmer and at the Northwesterly corner of lot No. 7, on a Map of Property of the Summit Silk Manufacturing Company; running thence (1) along the Southerly line of said New Street North fifty degrees and eleven minutes East two hundred and fifty feet to the Northwesterly corner of lot No. 17, on said Map; thence (2) between lots 16 and 17 South thirty nine degrees and forty nine minutes East one hundred and twenty five feet to land of one Peet; thence (3) South fifty degrees and eleven minutes West two hundred and fifty feet to the Southeasterly corner of lot No. 16: and thence (4) between lots 6 and 7 North thirty nine degrees and forty nine minutes West one hundred and twenty five feet to the place of BEGINNING.

Being designated on said map as lots 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16.

Being the same premises conveyed to said Emily E. De Forest by deed bearing date July 10th, 1895 and not yet recorded.

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, profits, privileges and advantages thereof. 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 of, in and to every part and parcel thereof.

TO HAVE AND TO HOLD, all and singular the above described tracts or lots of land and premises with the appurtenances unto the said party of the second parts, its successors and assigns, to the only proper use, benefit and behoof of the said party of the second part, its successors and assigns forever.

PROVIDED ALWAYS, and it is agreed by and between the parties to these presents, that if the said party of the first part, their heirs, executors, administrators or assigns, shall regularly pay unto the said party of the second part, or its successors or assigns all the monthly payments or installments on stock, and of premium and interest on the said principal sum of Seven thousand dollars in payments of seventy five dollars and twenty five cents per month the first payment to be made on or before the second Thursday of August next ensuing the date hereof, and all subsequent monthly payments to be made on or before the second Thursday of each successive month thereafter.

And shall also pay to the said party of the second part or its successors or assigns, all fines, forfeitures and other payments that may become due and payable from and may be charged or imposed upon Emily E. De Forest or her assigns as the holders of such shares pursuant to the constitution of the said Association, and the By-Laws, rules and regulations thereof, according to the conditions of a certain Bond or obligation given by the said Emily E. De Forest to

Exhibit C-A1

the said Association in the penal sum of Fourteen Thousand dollars and bearing even date herewith. And shall keep the premises above conveyed free and clear from all charges for arrears of ground, rent, insurance, taxes, assessments, both ordinary and extraordinary and all other impositions whatever; And shall also well and truly keep abide by and perform all other covenants, engagements, promises and agreements, entered into by the said Emily E. De Forest to and with the said Association, according to the true intent and meaning of the Constitution and By-Laws thereof; than, then and from thenceforth, these presents and said obligations, and everything herein and therein contained, and the estate hereby granted shall cease, determine and be null and void anything herein or therein contained to the contrary in anywise notwithstanding. And the said party of the first part for themselves, their heirs, executors and administrators, do covenant and grant to and with the said party of the second part, its successors and assigns, that the said party of the first part, their heirs and assignors, shall not, nor will apply for or claim any deduction by reason of this mortgage from the taxable value of the said lands and premises; And it is also agreed by and between the parties to these presents, that the said party of the first part shall and will keep the buildings erected and to be erected upon the lands hereby conveyed in good repair and insured against loss or damage by fire, in some safe and responsible Insurance Company or Companies, to an amount not less than Seven Thousand dollars and assign the policy and certificate thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid; And if the said party of the first part, their heirs, executors, administrators or assigns, shall refuse, or neglect to pay all or any municipal,

Exhibit C-A1

county, state, or special taxes, assessments, premiums for insurance, and all or any other charges, liens or encumbrances whatever against the premises on any day whereon the same shall become due and payable and to deliver receipts for the same to the party of the second part, then it shall be lawful for the said party of the second part, or its successors or assigns, to pay such charges, and the sum or sums so paid shall be a lien on the said mortgaged premises added to the amount secured hereby and the whole payable with lawful interest on demand. And the said party of the first part do hereby covenant and grant to and with the said party of the second part, its successors and assigns, that if default be made in the payment of the said monthly or other payments or charges as above specified for the space of six months or the said Association become dissolved before its expiration as provided for in the Constitution thereof, then and from thenceforth the Association or its successors or assigns shall and may from time to time and at all times, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the said granted and bargained premises with the appurtenances, without the let, suit, trouble, hindrance or denial of the said party of the first part, their heirs and assigns, or any other person or persons whatever.

In Witness Whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

EMILY E. De FOREST (L. S.)
OTHNIEL De FOREST (L. S.)

Signed, sealed and delivered
in the presence of
E. L. McKirgan.

Exhibit C-A1

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

BE IT REMEMBERED, that on this twenty third day of July in the year of Lord One thousand Eight hundred and ninety five, before me, a Master in Chancery of New Jersey personally appeared Emily E. De Forest and Othniel De Forest, her husband, 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 Emily E. De Forest, wife of the said Othniel De Forest being by me Privately examined separate and apart from her husband further 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.

E. L. McKIRGAN,
Master in Chancery
of New Jersey.

Rec'd July 24, 1895

At 12:15 P. M. No. 1187.

Exhibit C-A1

UNION COUNTY REGISTER'S OFFICE

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

I, Frank H. Smith, Register of the County of Union, do hereby certify that the foregoing is a true and correct copy of the record of a certain mortgage made by Emily E. De Forest, *et ux.* to Summit Bldg. and Loan Association, and also of the certificate of acknowledgment thereto annexed, as the same may be found recorded in my office in book 128 of Mortgages for said County on Pages 364 &c.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 20th day of May A. D. 1915.

FRANK H. SMITH,
Register.

(Seal.)

(Ten cent Internal Revenue Stamp.)

This mortgage was cancelled on the production of the original on May 6, 1907, and cancelled by discharge of mortgage on July 18, 1908. The original discharge of mortgage dated July 16, 1908, was produced by the defendant-respondent and marked D. A. 1 for identification (pg. 57) and later offered in evidence by defendant and marked H. K. 17 1-2 (p. 171).

Exhibits C. A. 2, 3, 3 1/2, 4, 5 (pp. 89, 90).

Pass Books of The First National Bank of Summit, N. J., in account with The Summit Silk Manufacturing Company extending from March 25, 1897, to December 3, 1907.

These books show deposits of the amounts of rent collected by The Summit Silk Manufacturing Company as indicated on the pass books of rent collected, and the stub books of receipts issued by the Manufacturing Company for rents paid to it.

Exhibit C-A6.

Exhibit C. A. 6: Bundle of checks showing payments by Summit Silk Manufacturing Company to Summit Building & Loan Association, proved by John D. Hood and offered in evidence on page 60. These checks were drawn by the Summit Silk M'f'g Co. to the Loan Association and show payments to the Loan Association as follows:

Nov. 10, 1897	$75.25
Dec. 8, 1897	75.25
Jan. 13, 1897	75.25
Feb. 9, 1898	75.25
Apr. 13, 1898	154.00
May 19, 1898	75.25
July 14, 1898	157.50
Nov. 14, 1898	322.02
Jan. 11, 1899	151.50
Jan. 12, 1899	16.50
Feb. 9, 1899	75.25
Mar. 9, 1899	75.25
June 7, 1899	236.25
July 13, 1899	75.25
Aug. 10, 1899	75.25

Exhibit C-A6

Sept. 14, 1899	75.25
Jan. 11, 1900	322.00
Apr. 12, 1900	236.25
Aug. 9, 1900	322.00
Jan. 10, 1901	411.25
May 9, 1901	322.00
June 13, 1901	75.25
Aug. 8, 1901	154.00
Dec. 12, 1901	322.00
Jan. 8, 1902	75.25
Feb. 13, 1902	75.25
Mar. 13, 1902	75.25
Apr. 9, 1902	75.25
June 12, 1902	150.50
July 10, 1902	85.75
Aug. 14, 1902	75.25
Nov. 13, 1902	225.75
Nov. 17, 1902	10.50
Dec. 11, 1902	75.25
Feb. 11, 1903	150.50
Mar. 12, 1903	78.75
May 13, 1903	75.25
May 14, 1903	78.75

The following is a copy of one of said checks:

"No. 2723 Summit, N. J. May 14, 1903.

THE FIRST NATIONAL BANK

Pay to the order of
The Summit Building & Loan Ass'n
Seventy eight 75/100 ———————— Dollars,
$78.75

SUMMIT SILK MFG. COMPANY,
W. H. DeForrest, Pres."

(Endorsed): Pay to the order of
The Summit Bank,
Summit Bld'g & Loan Ass'n
J. F. Haas, Treas.

Exhibits C-A7, 8, 9 for Identification.

Portions of Minutes of Summit Silk Company referred to on page 62. Minute Book subsequently offered in evidence by defendant-respondent (p. 142, marked H. K. 7 1/2.

Extracts copied under Defendants' Exhibit H. K. 7 1/2.

Exhibit C. A. (page 67).

Blueprint map of premises of Summit Silk Manufacturing Company, on which is delineated certain buildings, a part of the plant of said Company, and a parcel of land embraced in the deed made by Summit Silk Manufacturing Company to Emily E. De Forest, having a frontage of 250 feet, with five small houses thereon. See Exhibit C 6, p. 211.

Exhibit C-A10 (Pages 37, 39, 69).

Transcript of Book of Summit Building & Loan Association in account with Emily E. DeForest showing payments of dues and interest from June 13, 1895, to January 10, 1907, when the loan became paid by the maturity of the shares.

Exhibit C-A11.

Examination of Paschal J. Ferrara.

IN CHANCERY OF NEW JERSEY.

Between SUMMIT SILK COMPANY, Complainant, and FIDELITY TRUST COMPANY, etc., *et al.*, Defendants.	On Bill, etc.,

The witness produced on the part of the complainants, taken *de bene esse* before Mr. Frank E. Loughran, a Master in Chancery of New Jersey, at 16 East 40th Street, in the City of New York, in the presence of McDermott & Enright, Solicitors of complainants and Charles L. Kingsley in association with Vredenburgh, Wall and Carey, solicitors of defendants.

It is stipulated and agreed that this testimony be taken before the above named Master in Chancery without requiring the statutory oath from him and taken stenographically without requiring the statutory oath of the Stenographer, the signature of the witness being waived.

All objections to be reserved and made when the testimony is offered.

Examination by Frank P. McDermott:

Q. Mr. Ferrara, where do you live? A. 1565 President Street, Brooklyn, New York.

Q. Were you ever connected with the Summit Silk Mfg. Company? A. Yes, sir.

Exhibit C-A11

Q. In what capacity did you serve that Company? A. Well, I served as cashier when I first came and confidential man, and later as Secretary and Treasurer, I think it was.

Q. I show you a book on the outside of which is marked "Summit Silk Mfg. Company, minutes 1892," and ask if you have seen that book before? A. Yes, sir.

Q. Was this book ever in your hands as Secretary of the Summit Silk Mfg. Company? A. Yes, Secretary and Treasurer.

Q. By whom was that book turned over to you? A. By William H. De Forest.

Q. What office did he hold in the Company? A. I think he held the position of Secretary and Treasurer, he preceded me.

Q. Did you ever know of any other book except this as the book of that Company? A. No, sir.

Q. When did you first take charge of it as Secretary? A. Well, I suppose January 1907.

Q. And from that time how long did you act as Secretary? A. June 2nd, 1908.

Q. There was a meeting of directors following that which appears to be without date, page 55, except the year 1908? A. Well that was either on the 2nd or shortly after June 2nd, 1908.

Q. I find on a number of pages the name of Paschal J. Farrara Secretary, whose signature is that? A. Mine.

Q. On page 55? A. Mine.

Q. On page 53? A. Mine.

Q. Page 47? A. Mine.

Q. Page 43? A. Mine.

Q. Page 37? A. Yes.

Q. Mr. Ferrara, do you know Emily E. De Forest? A. Yes.

Exhibit C-A11

Q. Are you familiar with her signature? A. Well, I was in 1908, yes.

Q. On the sheet affixed to page 37, is a waiver purporting to be signed Emily E. De Forest, do you know whether this is her signature or not? A. Well, it appears to be.

Q. On the sheets affixed to page 45, are a waiver of notice and a proxy, the first purporting to be signed by Emily E. De Forest and others including Paschal J. Ferrara, and the proxy purporting to be signed by Emily E. De Forest, do you know the signatures to this waiver of notice, Mr. Ferrara? First there is one of Paschal J. Ferrara? A. Yes, that is mine.

Q. Mr. Godone? A. Yes.

Q. Othniel de Forest? A. Yes.

Q. And Emily E. De Forest? A. Yes.

Q. These are genuine signatures? A. Yes.

Q. You stated a moment ago that you—used to know—Mrs. Emily E. De Forest's signature? A. Yes, sir.

Q. How did you become familiar with it? A. Well, I received letters from her and may have seen her sign her signature.

Q. Did you see her sign this proxy? A. No, I did not see her sign these papers mentioned on page 45.

Q. Is that in your opinion her genuine signature at the top of the page? A. It appears to be her signature.

Q. Is that, in your opinion, her genuine signature at the bottom of the page? A. That also appears to be her signature.

Q. On the sheet attached to page 49, appears what purports to be the signature of Paschal J. Ferrara, Elvero Godone and Emily E. De Forest, is the sig-

Exhibit C-A11

nature of Paschal J. Ferrara your genuine signature? A. Yes, that is mine.

Q. Is that the signature of Mr. Godone? A. Yes, that appears to be his signature.

Q. And the signature of Emily E. De Forest? A. I do not recognize that as her signature—yes, it appears to be her signature, but I did not see her write it.

Q. When was this minute book first turned over to you by Mr. De Forest? A. I don't remember, about January 19th, 1908.

This book marked "Exhibit C1 for identification."

By Mr. Charles L. Kingsley:

Q. Mr. Ferrara, some of this minutes set forth between pages 32 and 55, inclusive, seem to be in different colored ink and on different style of papers than the others, will you explain that difference? A. Well, because these were put in by us and the others were written out by our lawyer so to be put in proper shape for me to sign. As I understand it, the meeting was held and then the lawyers got up the form or minutes to be put in the book and wrote them and submitted them to me to be signed.

Q. And were any minutes so far as you know ever pasted in that book and taken out? A. Not to my knowledge.

Q. So far as you know, these minutes represent the real minutes? A. Yes.

Q. As stated above? A. Yes, sir.

It is stipulated that this testimony may be certified simply as a true record by the Master and forwarded to Solicitors of the Complainant instead of being forwarded to the Clerk of the Court.

Exhibit C-A12

IN CHANCERY OF NEW JERSEY.

Between SUMMIT SILK MFG. COMPANY, Complainant, and FIDELITY TRUST COMPANY, etc., *et al.*, Defendants.	On Bill, etc.

I, Frank E. Loughran, Master in Chancery of New Jersey, do hereby certify that pursuant to above stipulation of counsel, the above named Paschal J. Farrara a witness on behalf of complainant herein, personally appeared before me at 16 East 40th Street, Borough of Manhattan, City, County and State of New York, on the 2nd day of March, 1915, being first duly sworn was examined by Mr. Frank P. McDermott of counsel for complainant and Charles L. Kingsley of counsel for defendant.

I further certify that said testimony was reduced to writing and that the foregoing is a true record thereof.

FRANK E. LOUGHRAN,
Master in Chancery of New Jersey.

Exhibit C-A12 (Page 71).

Original book of Minutes of the Summit Silk Manufacturing Company. The pertinent parts of this book of Minutes are as follows:

Exhibit C-A12

(Page 16)

Annual Meeting of Stockholders, August 1, 1894.

Present, O. DeForest, W. H. DeForest, Jr., Harriet DeForest, E. E. DeForest.

Minutes: The minutes of the preceding meeting were approved.

Committees—None.

Unfinished business—None.

New Business—None.

Election—Mr. O. DeForest, W. H. DeForest, Jr., and H. DeForest were nominated for Directors for ensuing year and having been duly balloted for were declared elected.

Meeting adjourned.

(Page 17)

Meeting of Board of Directors, Aug. 1, 1894.

Present—O. DeForest, W. H. DeForest, Jr., and H. DeForest.

Minutes—Read and approved.

Unfinished business—None.

New business—None.

Election: Mess. O. DeForest was nominated as President and W. H. DeForest, Jr., as Treasurer and Sect'y and having been duly balloted for were declared elected.

Meeting adjourned.

Exhibit C-A12

(Page 18)

Annual meeting of stockholders, August 5th, 1895.

Present—O. DeForest, W. H. DeForest, Jr., H. DeForest, E. E. DeForest.

Minutes—The minutes of preceding meeting were read and on motion approved.

Committee Business—None.

Unfinished Business—None.

New 1st. Business. Under this head was presented contracts for the erection of the new plant and the acts of the President in signing said contracts were duly approved.

2nd. Resolved—That the President and Secretary be empowered to execute to Mr. W. Z. Larned a guarantee of the mortgage for $7,000 now on said property provided said Larned release a plot of land on the southerly side of New Street being 400 feet front by 125 feet deep.

Carried.

(Page 33)

The annual meeting of the Stockholders of The Summit Silk Manufacturing Company, held August. . There being no quorum, the meeting was postponed until January Twenty-eighth, Nineteen Hundred Seven.

The postponed annual meeting of the Stockholders of The Summit Silk Manufacturing Company, held January Twenty-eighth, Nineteen Hundred Seven.

Present—Mr. Elvero Godone, Mr. Othniel DeForest, Mrs. E. E. DeForest.

Exhibit C-A12

Minutes—The minutes of the previous meeting were read on motion and approved.

Unfinished Business: None.

New Business: None.

There being no unfinished or new business to transact, it was moved, seconded, and carried, that the meeting proceed to elections.

On motion of Mr. Othniel DeForest, seconded by Mrs. E. E. DeForest; Mr. Elvero Godone, Mr. P. J. Ferrara, and Mrs. E. E. DeForest were nominated Directors for the ensuing year. Tellers reported that all the votes had been cast in favor of the above, and they were thereupon declared elected Directors for the ensuing year.

There being no further business before the meeting it was declared adjourned.

(Page 34)

Meeting of the Board of Directors of The Summit Silk Manufacturing Company held at the same time and place.

Present, Mr. Elvero Godone, Mr. P. J. Ferrara, Mrs. E. E. DeForest.

Minutes—The minutes of the previous meeting were read and accepted.

Unfinished business: None.

New business: None.

There being no unfinished or new business to transact, it was moved, seconded, and carried, that the Directors proceed to election of officers, and on motion being duly seconded, Mr. Elvero Godone was nominated for office of President, and Mr. P. J. Ferrara was nominated for office of Secretary & Treasurer. Tellers reported that the above had re-

ceived all the votes cast, and they were, thereupon, declared duly elected for the respective offices for which they were nominated.

(Page 35)

Minutes of a special meeting of the Board of Directors of the Summit Silk Manufacturing Company, held January 28th, 1908.

The meeting was called to order by Mr. Godone, at No. 259 Washington Street, Jersey City, N. J., at 9 A. M.

Present, Mr. Godone and Mr. Ferrarra.

The following waiver of notice, signed by Mrs. de Forest, was ordered on file:

"I hereby waive all notice of the Special Meeting of Directors of the Summit Silk Manufacturing Company to be held on the 28th day of January, 1908, for the purpose of voting upon the proposition of leasing the mill and plant of the Company.

Dated Summit, N. J., January 27th, 1908.

EMILY E. DEFOREST."

The following offer from The Summit Silk Company was then read and ordered spread upon the minutes:

"The Summit Silk Company, a corporation incorporated under the laws of the State of New Jersey, hereby offers to lease your silk manufacturing plant at Summit, New Jersey, lands, buildings and machinery, for a term of three (3) years, and to pay therefor Nine thousand dollars ($9,000) a year, together with the taxes assessed against said premises.

Exhibit C-A12

In addition, the Summit Silk Company will also finish and sell for your account all unfinished goods delivered to it and also sell the goods in the possession of Dommerich & Co., you to pay the actual cost of throwing and dyeing and general labor in weaving your goods, together with a proportionate share of the general expenses of carrying on the mill based upon the amount of goods made up for you as compared to the total output of the mill; and for the selling of the goods your proportionate share of the Summit Silk Company's selling expenses plus a commission of ten per cent (10%) on the net amount of the goods sold.

SUMMIT SILK CO.,
PAUL GERLI, Pres."

On motion, duly made and seconded, the following resolution was unanimously adopted:

"Resolved, that the proper officers of this Company be authorized, in their discretion, to accept the foregoing offer, and in their discretion to execute a proper lease, pursuant to the terms of said offer."

On motion, duly made and seconded, the meeting adjourned.

P. J. FERRARRA,
Secy. Treas.

I hereby waive all notice of the Special Meeting of Directors of The Summit Silk Manufacturing Company to be held on the 28th day of January, 1908, for the purpose of voting upon the proposition of leasing the mill and plant of the Company.

Dated Summit, N. J., January 27th, 1908.

EMILY E. DEFOREST.

Exhibit C-A12

(Page 39)

Minutes of Special Meeting of stockholders of the Summit Silk Manufacturing Company held at Jersey City, N. J., on the 20th day of February, 1908.

The meeting was called to order by Mr. Godone.

Present:

Name	No. of Shares	Present
Elvero Godone,	2	In person
P. J. Ferrara,	2	In person
Emily E. DeForest,	196	By proxy.

A waiver of notice of the meeting signed by all the stockholders of the company in the following words was read and ordered on file:

"Notice of the time, place and objects of a special meeting of the stockholders of the Summit Silk Manufacturing Company to be held at Jersey City, N. J., Feb. 20, for the purpose of authorizing the sale of the assets of this company to the Summit Silk Company, and for the purpose of determining the terms and conditions on which sale should be made and authorizing said terms to be carried out by the proper officers of this company is hereby waived.

Dated: New York, February 20th, 1908.

EMILY E. DEFOREST,
ELVERO GODONE,
P. J. FERRERRA,
HARRIET DEFORREST."

The following proposition in writing made by the Summit Silk Company to this company under date of February 20th, 1908, was read by the Secretary and ordered on file:

Exhibit C-A12

"New York, February 20th, 1908.

The Summit Silk Manufacturing Company,
482 Broome Street,
New York City.

Dear Sirs:

Representatives of the Palisade Silk Company have offered to turn over to this company by proper deeds and other instruments of conveyance, all the property of the Palisade Silk Company, subject to such mortgages and liens as there may be on said property, upon this company assuming the indebtedness of the Palisade Silk Company and agreeing to pay Mrs. William H. DeForest the sum of $7,500.-00, $2,500.00 thereof on March 15th, 1908, and the balance thereof in instalments of $1,000.00 each on the 15th day of each month thereafter, and upon this company agreeing further to pay out of the earnings of this company as a charge upon its business to Mrs. William H. deForest an annual income of $3,000 per year, payable in equal monthly instalments, commencing February 15th, 1908.

In exchange for said property, this company is to give $80,000.00 of 5% preferred stock of this company, preferred as to assets on liquidation as well as dividends. Mrs. deForest on her part is to release both this company and your company of all claims except those created in her favor as above stated.

We now propose that you turn over the entire property and assets of your company to this company and give proper deeds and other instruments of conveyance thereof, this company on its part to assume the payment of all indebtedness of your company and to pay for said property and assets in the following manner.

Exhibit C-A12

In the event that the Palisade Silk Company and Mrs. William H. deForest carry out the above proposal made on behalf of the Palisade Silk Company, then this Company is to take such proceedings as may be necessary to authorize it to have a capital of $200,000, of which $80,000.00 shall be 5% preferred stock, preferred as to assets on liquidation as well as dividends, and of which $120,000 shall be common stock, and this company shall issue to the Summit Silk Manufacturing Co. the said $120,000 in common stock, to be accepted by your company in full payment and satisfaction for said assets and liabilities.

In the event that the said proposal made on behalf of the Palisade Silk Company is not carried out by it or by Mrs. William H. deForest, then the capitalization of this company shall remain unchanged and this company will issue to your company in payment and full satisfaction for said property and assets, 1,000 shares of its capital stock, having a par value of $100.00 and having an aggregate par value of $100,000.

Please advise us of your acceptance of this proposition.

Yours very truly,
THE SUMMIT SILK CO.
per Paul Gerli, President."

On motion duly made and seconded the following resolution was unanimously adopted:

Resolved, that the foregoing proposition of the Summit Silk Company be and it is hereby accepted, and that the proper officers of this company be and they are hereby authorized to execute such deeds, bills of sale or other instruments of conveyance, contracts and agreements, as may be necessary, proper or convenient to carry out the acceptance of said proposal.

Exhibit C-A12

On motion duly made and seconded the following resolution was unanimously adopted:

Resolved, that the proceeds of sale of the assets of this company in stock of the Summit Silk Company be distributed as a dividend pro rata among the stockholders of this company of record as of this date, and that the officers of this company be authorized in their discretion to deliver to the stockholders of record of this company as of this date, assignments of said stock to be issued in advance of the issue thereof, and to give notice to the said Summit Silk Company of such assignments when executed and delivered.

On motion duly made and seconded the meeting thereupon adjourned.

A true record.

A meeting of Directors of The Summit Silk Manufacturing Co. was held immediately following the foregoing meeting of the Stockholders of the company.

Present: Mr. E. Godone, P. J. Ferrara. On motion duly made and seconded it was unanimously resolved that the resolutions adopted at the meeting of Stockholders be adopted on the action of the board.

On motion duly made and seconded the meeting adjourned.

P. J. FERRARA,
Secy. Treas.

Notice of the time, place and objects of a special meeting of the stockholders of the Summit Silk Manufacturing Company to be held at Jersey City, N. J., for the purpose of authorizing the sale of the assets

Exhibit C-A12

of this company to the Summit Silk Company, and for the purpose of determining the terms and conditions on which sale should be made and authorizing said terms to be carried out by the proper officers of this company is hereby waived.

Dated: New York, February 20, 1908.

EMILY E. DEFOREST,
ELVERO GODONE,
P. J. FERRARA,
OTHNIEL DEFOREST.

New York, Feb. 20th, 1908.

Know all men by these presents, that I, Emily E. DeForest, do hereby appoint Elvero E. Godone and P. J. Ferrara, or either of them, proxies in my name place and stead to vote on the shares of stock standing in my name in The Summit Silk Manufacturing Company, at a special meeting of the Stockholders of said Company to be held at Jersey City, N. J., February 20th, 1908.

EMILY E. DEFOREST. L. S.

In the presence of
Othniel DeForest.

Exhibit C-A 13.

Exhibit C-A 13 (page 72): Certificate of incorporation of The Summit Silk Manufacturing Company, executed at William H. DeForest, Jr., O. DeForest and James Nightingale under date of July 19, 1892, setting forth that the business of the company is to be conducted in the township of Summit in the County of Union; that the objects for which the company is formed are the manufacture and sale of

silk and silken goods, to buy lands and to erect thereon buildings and machinery for the purpose of such production and manufacture, &c. The total amonut of capital stock is set forth as $100,000, divided into shares of the par value of $100 each. The amount with which the company was to commence business was $1,000, divided into ten shares of the par value of $100 each, of which at the time of organization William H. DeForest, Jr., held four shares, O. DeForest four shares and J. Nightingale two shares.

Exhibits C-A2, C-A3, C-A3½, C-A4, C-A5.

Exhibits C-A2, C-A3, C-A3 1/2, C-A4, C-A5 (pages 89 and 90), pass books of the First National Bank of Summit, in account with Summit Silk Manufacturing Company, extending from March 25, 1897, to December 3, 1907, showing deposits made by Summit Silk Manufacturing Company in the First National Bank of Summit, and withdrawals therefrom. Complainant-appellant draws attention to the fact that in the rent books Exhibits C-A14, C-A15 and C-A16, introduced in evidence at page 107 there are entries monthly or more frequently showing deposits of the principal part of the rents collected, in the First National Bank of Summit, to the credit of the Summit Silk Manufacturing Company. On the pass books of the First National Bank, the above exhibits, these deposits mentioned in the rent books appear credited to the Summit Silk Manufacturing Company; in many instances they are identical in date and amount; in other instances included in larger deposits.

Exhibits C-A14, 15, 16.

Exhibits C-A14, 15, 16 (p. 108): Rent Pass Books kept by Summit Silk Manufacturing Co. showing receipt by it of rents for premises in dispute from January, 1902, to December, 1907, and disposition of same by deposits of principal part in First National Bank each month and balance in Petty Cash account, or otherwise. The first and second pages of Exhibit C-A14 which may serve as samples, are as follows:

(Page 1)

1902				
Jan.		Rents Rec'd		
	3	Dozolek	46-1	9.
	3	J. Ballady	44-2	9.
	3	S. Carnelly	42-3	9.
	3	Fabeekh	40-4	9.
	6	Mrs. Carney	38-5	9.
	6	Mrs. Peck	36-6	9.
	3	Mrs. Domer	34-7	9.
	3	Julius Fisher	32-8	9.
	3	J. Fakakian	30-9	9.
	2	Chas. Melkon	28-10	9.
	3	T. Shanazarion	26-11	9.
	2	Demonfoux	24-12	9.
	1	M. Litphy	22-13	9.
	1	J. Karra	20-14	9.
		Miss Harris	18-15	
	3	Mrs. Brezini	16-16	9.
				135.

(Page 2)

Feb.	3	1st. Nat. Bank	100.
	4	Petty Cash	8.
	8	" "	10.
	15	" "	3.
	27	" "	5.
		Balance	9.
			135.

Exhibit C-M1.

NEW HOUSE ACCOUNT

July 1895 to Jan. 1st. 1900

	1895					35.—	*1895*		
	July	11	To Cash	Summit Build & Loan Assn.		106.—	*Dec. 31*	*By Balance*	*2,396.04*
	"	29	"	Chas. Kocher	45	100.—			
	Aug.	2	"	"		75.25			
		8	"	Building & Loan Assn.		900.—			
		10	"	C. E. Dodd a/c	47	500.—			
		24	"	Wood O'Donnell	49	25.—			
	Sept.	7	"	James Goode		41.—			
		14	"	"		75.25			
		12	"	Summit Build. & Loan					
		19	"	A. L. De Costa	51	50.—			
	Oct.	10	"	Commen. Water Co.	53	118.80			
		12	"	D. Costa		61.75			
		"	"	Sum. Build. & Loan		78.75			
		15	"	Dennis Horgan		8.25			
		19	"	John Connelly		30.25			
		"	"	James Goode		39.25			
	Nov.	12	"	Sum. Build. Loan		75.25			
	Dec.	12	"	" " "		75.25			
						2,396.04			2,396.04
	1896						1896		
	Jan.	*1*	*To balance*			*2,396.04*	Jan.	19 By Cash House a/c	110.
		31	To Sundry Cash Payment	Summit Build. Loan and others		248.77	Apr.	13 " " Rent	27.18
							"	20 " " "	16.50
	Mar.	12	" Cash	Summit Build. Loan 2 months		150.50	May	11 " " "	48.65
	May	23	" "	S. Migat & Son		75.	"	14 " " "	7.09
	June	25	" "	Jas. A. Rend		240.	"	21 " " "	24.96
	"	"	" "	Summit Build. Loan		257.25	"	5 " " "	27.26

Exhibit C-M1

				June	3	" " "	19.14
				"	10	" " "	44.19
				"	13	" " "	40.87
				"	25	" " a/c	31.18
				June	*30*	*By balance*	*2,970.54*
			3,367.56				3,367.56
1896				1896			
July	*1*	*To balance*	*2,970.54*	July	2	By Cash House a/c	47.78
"	31	" Sundry Payments Summit Build. Loan	75.25		9	" "	30.08
					30	" "	60.48
				Aug.	6	" "	57.64
1896				1896			
Oct.	31	To Cash Summit Build & Loan	75.25	Aug.	6	By Cash House a/c	128.97
Nov.	30	" " " " " , J. A. Riordan	390.74	Sept.	8	" "	29.
						"	38.
						"	85.36
						"	57.64
						"	37.50
						"	34.
						"	43.
					31	*By balance*	*2,862.13*
			3,511.78				3,511.78
1897							
Jan.	*1*	*To Balance*	*2,862.13*	Jan.	27	By Cash House a/c	15.
Feb.	29	" Cash Summit Build. & Loan	236.25		29	" "	20.
Mar.	31	" Sundries " " " & others	376.76	Feb.	4	" "	47.87
Apr.	30	" " " " "	360.25		10	" "	41.10
May	31	" " " " "	75.25		26	" "	40.
July	31	" " " " "	75.25	Mar.	8	" "	23.
Aug	31	" " " " "	157.50		11	" "	73.44
Sept.	"	" " " " " & others	190.	Apr.	8	" "	60.
Oct.	"	" " " " "	592.40	May	18	" "	60.
Nov.	"	" " " " "	75.25	July	30	Sundries House a/c	196.

Exhibit C-M1

	Dec.	"	"	"	"	"	"		75.25	
	1898									
	Jan.	"	"	"	"	"	"		75.25	
	Feb.	"	"	"	"	"	"		75.25	
	Apr.	"	"	"	"	"	"	& others	480.48	
	May	"	"	"	"	"	"		75.25	
									5,782.52	
	1898									
	July	*1*	*To Balance*						*4,216.95*	
	July	31	"	Sundries	Summit Build. & Loan				157.50	
	Nov.	30	"	"	"	"	"		322.	
	Dec.	31	"	"	J. E. Riordan				374.48	
									5,070.93	

	Aug.	31	"	"					94.50	
	Sept.	30	"	"					128.	
	Oct.	"	"	"					73.	
	Nov.	"	"	"					72.	
	Dec.	"	"	"					110.50	
	1898									
	Jan.		"	"					130.55	
	Feb.	28	"	"					102.86	
	Mar.	31	"	"					86.25	
	May	12	"	"					76.	
	June	30	"	"					115.50	
	"	"	*By balance*						*4,216.05*	
									5,782.52	
	July	1	By cash		House a/c				27.	
		15	"		"				35.	
		28	"		"				30.50	
	Aug.	5	"		"				45.50	
		25	"		"				42.	
	1898								180.	
	Sept.	1	By Cash		House a/c				45.	
		22	"		"				18.	
	Oct.	21	"		"				40.	
	Nov.	28	"		"				48.	
	Dec.	7	"		"				76.	
		16	"		"				50.	
		31	*By balance*						*4,613.93*	
									5,070.93	

Exhibit C-M1

1899							1899				
Jan.	*1*	*To balance*				*4,613.93*	Jan.	3	By Cash	House a/c	22.50
	31	"	Sundries	Summit Build. & Loan & others		168.	Feb.	3	"	"	70.50
Feb.	28	"	"	"	"	75.25		7	"	"	40.50
Mar.	31	"	"	"	"	75.25		20	"	"	22.50
May	"	"	"	People	"	326.48	Mar.	7	"	"	90. "
June	30	"	"	Summit	"	236.25		22	"	"	52. "
July	31	"	"	"	"	75.25	Apr.	6	"	"	45. "
Aug.	31	"	"	"	"	75.25		21	"	"	58. "
Sept.	30	"	"	"	"	75.25	May	31	"	"	139.50
Nov.	30	"	"	People B. & L. Assn.		362.48	June	30	"	"	99. "
							July	31	"	"	99. "
							Aug.	31	"	"	122. "
							Sept.	30	"	"	182. "
							Oct.	31	"	"	149.70
							Dec.	*31*	*To balance*		*4,891.19*
						6,083.39					6,083.39
1900											
Jan.	*1*	*To balance*				*4,891.19*					

Exhibit C-M2.

HOUSES

From Ledger #4 fo 320

	1900				
	Jan. 1	Balance	4,891.19	1900 Feb. 1	By Sund. Payments 25.
	" 15	To Summit B. & L. Assn., 1st Nl. Bank, Summit	322.	June 15	" " 25.
	May 24	To Summit B. & L. Assn., 1st Nl. Bank, Summit	323.57	July	" " 25.
	" "	To Summit B. & L. Assn., 1st Nl. Bank, Summit	236.25	1901 Feb.	" " 1st Nl. Bank, Summit 90.
	Aug. 9	To Summit B. & L. Assn., 1st Nl. Bank, Summit	322.	Mar. 21	" " 122.
	Sept. 17	To Summit B. & L. Assn., 1st Nl. Bank, Summit	183.84	Apr. 5	" " 66.
	Nov. 28	To J. M. Riordan, 1st Nl. Bank, Summit	326.48	" 11	" " 25.
	1901				
	Jan. 10	To J. M. Riordan, 1st Nl Bank, Summit	411.25	June 15	" " 50.
	Apr. 26	To J. G. Smith	45.	Aug. 26	" " 64.
	May 15	" Summit B. & L. Assn.	322.	Sept. 1	Balance 7,120.83
	June 13	" " " "	75.25		
	Aug. 8	" " " "	154.		
	1901		7,612.83		7,612.83
	Nov. 1	To Balance	7,120.83	1901 Dec. 20	By Sund. Payments 100.
	Dec. 12	To Summit B. & L. Assn., 1st Nl. Bank, Summit	322.	1902 Jan. 20	" " Oct. 1900 to Dec. 31 1901 2,045.18
	" 3	To J. M. Riordan	335.85		
	1902				
	Jan. 8	To Summit B. & L. Assn., 1st Nl. Bank, Summit	75.25	" " " "	Mrs. Harris 2.
	Feb. 13	To Summit B. & L. Assn., 1st Nl. Bank, Summit	75.25	" " " "	Expenses on Dorman Houses 1.50
	Mar. 8	To Taxes	304.23	" " " "	Light 12.27

Exhibit C-M2

"	13	" Summit B. & L. Assn., 1st Nl. Bank, Summit	75.25	"	"	"	"	O. deForest	128.10
Apr.	10	To Summit B. & L. Assn., 1st Nl. Bank, Summit		"	31	"	Rents		100.
May	22	J. W. Riordan	75.25	Mar.	2	"	"	First Nl. Bank, Summit	49.
"	6	" Ins. Boulevard Houses	299.83	May	1	"	"		25.
June	2	To Summit B. & L. Assn., 1st. Nl. Bank, Summit	19.20	"	14	"	"		37.13
July	10	To Summit B. & L. Assn., 1st Nl. Bank, Summit	150.50	"	9	"	"		135.
Aug.	14	To Summit B. & L. Assn., 1st Nl. Bank, Summit	85.75	June	4	"	"	First Nl. Bank, Summit	124.
Nov.	13	To Summit B. & L. Assn., 1st Nl. Bank, Summit	75.25	July	1	"	"	" " "	117.
"	17	To Summit B. & L. Assn., 1st Nl. Bank, Summit	225.75	Aug.	13	"	"	" " "	166.
"	28	To Lintol	10.50	"	"	"	"	" " "	125.
Dec.	11	" Summit B. & L. Assn., 1st Nl. Bank, Summit	376.09	Sept.	13	"	"		25.
"	16	Lintoll	75.25	Nov.	1	"	"		57.
Feb.	11	To Summit B. & L. Assn., 1st Nl. Bank, Summit	37.18	"	3	"	"	First Nl. Bank, Summit	169.
Mar.	12	To Summit B. & L. Assn., 1st Nl. Bank, Summit	150.50	"	"	"	"		25.
May	4	To I. G. Smith	78.75	Dec.	8	"	"		124.
"	13	To Summit B. & L. Assn., 1st Nl. Bank, Summit	5.54	"	18	"	"	First Nl. Bank, Summit	125.
"	14	To Summit B. & L. Assn., 1st Nl. Bank, Summit			1903				
"	27	To People B. & L. Assn., 1st Nl. Bank, Summit	75.25	Jan.	5	"	"		144.
Nov.	11	To Summit	78.75	"	"	"	"		25.
"	17	" J. W. Riordan	270.	Feb.	2	"	"	First Nl. Bank, Summit	25.
"	1	" W. H. Smith	504.	"	"	"	"	" " "	144.
"	1	" Taxes	192.88	Mar.	3	"	"	" " "	169.
			56.83	May	2	"	"	" " "	169.
			161.68						
			11,312.89						4,368.18

Exhibit C-M2

From Ledger #6 fo. 321

1904					
Jan.	1	To Balance			
Apr.	15	" "	6,035.71		
			241.88		
			6,277.59		

From Ledger #7 fo. 142 "Real Estate"

1904					
May	1	To Inventory	8,500.—		
"	12	" Cash Summit B. & L. Assn.	497.70		
"	27	" " Petty Dft. M. N. Bond	9.85		
June	6	" " M. H. Smith	11.25		
Aug.	18	" " Taxes	300.14		
"	22	" " Stephens Bros.	48.78		
Sept.	19	" " Alex. Thanau	5.20		
Oct.	18	" " J. Riordan	295.60		
"	27	" " Insurance	60.		
Nov.	21	" " J. Riordan	45.		

1903				F'w'd	4,368.18
June	3	By Rents	First Nl. Bank, Summit		178.
Aug.	3	" "	" " "		178.
Sept.	8	" "	" " "		126.
Oct.	2	" "	" " "		148.
Nov.	6	" "	" " "		135.
Dec.	4	" "	" " "		144.
					6,035.71
Jan.	1	" Bal.			11,312.89
Feb.	1	By Cash Rents	First Nl. Bank, Summit		126.—
"	2	" "	" " "		144.—
Mar.	4	" "	" " "		144.—
Apr.	8	" "	" " "		144.—
					558.—

1904					
May	3	By Cash Rent	1st Nl. Bank, Summit		144.—
June	6	" " "			144.—
July	6	" " "	Citizens		144.—
Aug.	2	" " "			144.—
Sept.	6	" " "	1st. Nl. Bank, Summit		154.—
Oct.	4	" " "			154.—
Nov.	9	" " "			154.—
Dec.	2	" " "	Citizens		136.—
"	31	" Profit & Loss			1,190.37
"	"	" Balance			8,500.

Exhibit C-M2

"	23	"	"	Summit B. & L. Assn.	442.70		
Dec.	13	"	"	Wilson	587.65		
"	31	"	"	Essus Union M. L.	60.50		
					10,864.37		10,864.37
1905						1905	
Jan.	1				8,500.—	Dec. 31 By Profit & Loss	62.91
Sept.	7	To	Balance		33.51	" " " Balance	8,500.
Dec.	19	"	Cash Taxes		29.40		
"	"	"	"	"	8,562.91		8,562.91
1906						1906	
Jan.	1	To	Balance		8,500.	Dec. 31 By Profit & Loss	57.40
Dec.	31	"	Cash Taxes		57.40	" " " Balance	8,500.
					8,557.40		8,557.40
1907						1908	
Jan.	1	To	Balance		8,500.	Feb. 20 By The Summit Silk Co.	8,500.
Aug.	15	"	Cash Taxes		2.	" " " Profit & Loss	6.56
Sept.	10	"	"	"	4.56		
					8,506.56		8,506.56

Exhibit C-M3.

1905											
Jan.	12	To Cash	S. B. Loan Assn.		29	75.25	Jan.	11	By Cash	Rents	29	154.—
"	27	"	" Premium Germania		30	2.	Feb.	3	"	"	32	154.—
Feb.	8	"	" S. B. Loan Assn.		33	75.25	Mar.	2	"	"	37	144.—
Mar.	9	"	" " " "		37	75.25	April	3	"	"	41	144.—
April	11	"	" Water Tax Commonwealth to 10/1/05		42	60.50	May	3	"	"	45	144.—
"	12	"	" Summit B. L. Assn.		"	78.75	June	2	"	"	50	144.—
"	18	"	" Jos. A. Reosdan to 4/18/05		43	301.12	July	6	"	"	54	144.—
May	10	"	" Summit B. L. Assn.		45	75.25	Aug.	2	"	"	56	144.—
"	16	"	" Jos. A. Reosdan people		47	45.—	Oct.	2	"	"	65	144.—
June	13	"	" A. Swick May & June		50	37.49	"	31	"	"	152	144.—
"	13	"	" Alex Thanau	5/31	51	18.67	Nov.	3	"	"	69	144.—
"	14	"	" Summit B. & L. Assn.		"	75.25	Dec.	4	"	"	73	
"	20	"	" Jos. A. Reosdan people		52	45.—	*Dec.*	*31*	"	*Profit & Loss*		
July	12	"	" Summit B. & L. Assn.	48—	54	78.75					*133*	*455.12*
"	17	"	" Jos. A. Reosdan	13.32	"	61.32						
Aug.	12	"	" Summit B. & L. Assn.		57	75.25						
	14	"	" People B. & L. Assn.		"	48.—						
	24	"	" John J. McGrath		59	16.—						
Sept.	7	"	" L. R. McKen Taxes Int.		61	187.28						
	13	"	" Summit B. & L. Assn.		"	75.25						
	18	"	" People " "		"	48.—						
Oct.	11	"	" Summit B. & L. "		65	75.25						
	11	"	" Stephen Bros.	9/30	66	4.41						
	11	"	" Commonwealth W. L. & Co.		67	70.75						
	16	"	" People B. & L. Assn.		69	48.—						
Nov.	8	"	" Summit B. & L. "		71	75.25						
	20	"	" People B. & L. "		"	48.—						
Dec.	12	"	" John J. M. Smith		74	36.—						
	13	"	" Summit B. & L. Assn.		"	75.25						
	18	"	" People " "		"	48.—						
	19	"	" Taxes 1905 S. R.		75	167.58						
						2,203.12						2,203.12

Exhibit C-M3

1906							1906			
Jan.	10	To Cash	Summit B. & L. Assn.	2/0	75.25				
	15	" "	People " "	"	48.—	Jan.	4	By Cash Rents	2/1	144.—
Feb.	7	" "	Summit " "	5	75.25	Feb.	3	" " "	5	144.—
	15	" "	" record	6	3.50	Mar.	3	" " "	9	144.—
	19	" "	People B. & L. Assn.	"	48.	Apr.	4	" " "	13	144.—
Mar.	7	" "	Summit " "	9	75.25	May	4	" " "	17	144.—
"	19	" "	People	10	48.	June	2	" " "	21	144.—
						July	6	" " "	23	144.—
1906						1906				
April	5	To Cash	Water Tax 4/1 10/1/06	13	60.50	Aug.	6	By Cash Rent		
	11	" "	Summit B. & L. Assn.	"	75.25	Sept.	5	" " "	27	144.—
	16	" "	People " "	14	48.—	Oct.	2	" " "	30	144.—
May	9	" "	Summit " "	17	75.25	Nov.	3	" " "	33	144.—
	14	" "	People " "	18	48.—	Dec.	1	" " "	37	144.—
June	13	" "	Summit " "	20	75.25	"	31	*By Profit & Loss*	41	144.
	18	" "	People " "	"	48.—				*133*	*64.10*
July	11	" "	Summit " "	24	75.25					
	16	" "	People " "	25	48.—					
Aug.	8	" "	Summit " "	27	75.25					
	20	" "	People " "	28	48.—					
Sept.	12	" "	Summit " "	30	75.25					
	17	" "	People " "	"	48.—					
Oct.	3	" "	Commonwealth W. L. & Co. 10/1 4/1/07	34	60.50					
	10	" "	Summit B. & L. Assn.	"	75.25					
	15	" "	People " "	35	48.—					
Nov.	7	" "	Summit " "	37	75.25					
Dec.	12	" "	People " "	38	48.—					
	17	" "	Summit " "	43	75.25					
	21	" "	People " "	"	48.—					
	31	" "	Tumby Acc. Pa. Taxes 1906	247	188.60					
					1,792.10					1,792.10

Exhibit C-M3

1907						1907			
Jan.	9	To Cash	Summit B. & L. Assn.	45	75.25	Jan. 9	By Cash Rent	45	144.—
	14	" "	People " "	"	48.—	14	" " "	49	144.—
Feb.	18	" "	" " "	51	48.—	Feb. 18	" O. D. F. Summit B. L. Loan	264	20.30
Mch.	18	" "	" " "	54	48.—	Mch. 18	" Cash Rent	53	140.—
Apr.	2	" "	Common W. L. Co.	55	60.50	April 2	" " "	56	63.—
	15	" "	People B. & L. Assn.	"	48.	15	" " "	58	117.—
May	15	" "	" " "	59	48.	May 15	" " "	61	129.—
June	17	" "	" " "	61	48.	June 17	" " "	64	126.—
Aug.	15	" "	Ince Hicks Br. to 7/24/08	68	60.	Aug. 15	" " "	67	162.—
Sept.	9	" "	Stephens Bro.	71	6.36	Sept. 9	" " "	70	144.—
	10	" "	Ind. Taxes 1906	"	15.04	Oct. 9	" " "	74	144.—
	11	" "	Summit Record	"	3.50	Nov. 2	" " "	77	144.—
Oct.	3	" "	Water rent 10/1 4/1/08	74	60.50				
	7	" "	Vint Put	"	32.25				
Nov.	7	" "	Stephens Bros.	77	8.26				
1908									
Feb.	19	" "	J. J. Herkings	84	24.				
	20	" "	The Summit Silk Co.	28	843.64				
					1,477.30				1,477.30

Exhibit C-M4, 5, 6, 7, 8 (Page 108).

Books containing stubs attached to receipts issued for rents of premises in dispute to various tenants occupying same from August 30, 1900, to September, 1907. Said receipts were in the form following and were signed by The Summit Silk Manufacturing Co.:

"Summit, N. J. May 1907.

Received from M....Sharr the sum of Nine Dollars and....Cents being in full for one month's rent, due in advance for May in House #38 Summit, and it is expressly understood that the letting is for one month only, and to expire on the first of June Next.

$9.00 THE SUMMIT SILK M'FG CO.

N. B. "

Exhibit C-M8½ (Page 114).

Bill of Sale dated February 20, 1908, proved February 20, 1908, made by the Summit Silk Manufacturing Company to the Summit Silk Company, reciting a consideration of one dollar and other good and valuable consideration, giving, granting, bargaining, selling, confirming, conveying, assigning, transferring and delivery all its property, wheresoever situate, including its machinery, tools and fixtures located in its factory in the City of Summit, New Jersey, and elsewhere, its furnishings, including office furnishings, patent rights, patterns, good will, merchandise, accounts, bills, notes, money and all other assets unto said Summit Silk Company.

Exhibit C-M9½ (Page 115).

Original deed dated February 28, 1908, made by the Summit Silk Manufacturing Company to the Summit Silk Company, conveying a parcel of land in the City of Summit, N. J., containing 2.77 acres of land, more or less, and across which the New Jersey Westline Railroad Company formerly laid a portion of its railroad. This does not include the premises in dispute in this cause.

Exhibit C-M15½ (Page 178).

Cash book of Summit Silk Manufacturing Company running from July 1, 1894, to July 1, 1900. At the request of defendant pages 40 and 41, showing entries in the month of July, 1895, are set out in full.

(Page 40)

July, 1895.

	Balance forward	412.25
3	H. and C (Hoeninghaus & Curtis)	1158.78
8	" "	2447.96
10	" " Build a/c	1308.
11	" "	952.67
12	" "	937.57
18	" " Build a/c	2072.00
19	" "	930.81
22	" "	3986.71
24	" "	1696.84
26	" "	941.63
		16845.22

Exhibit C-M15½

(Page 41)

July, 1895.

July	1	Benjamin Eastwood	Mach a/c	24.90
"	"	Moramure Arai and Co.	Dye a/c	21.70
"	"	Russell Murray	Mdse a/c	10.00
"	"	E. E. DeForest	Expense a/c	25.00
"	3	W. Z. Larned	Interest a/c	210.00
"	"	E. E. DeForest	Expense a/c	100.00
"	"	Petty cash	" "	10.00
"	5	James Geddis	Mach a/c	115.38
"	8	14th St. Bank (O. DeForest)	Expense a/c	222.85
"	6	Pay Roll a/c 708.84 Kellar 20.		728.84
"	8	C. & E. Gerli, Fratiele & Co.	Mdse a/c	2,447.96
"	12	Moramura Arai & Co. note	" "	952.67
"	11	Summit Building & Loan As.	House a/c	35.00
"	12	E. E. DeForest	Exp a/c	50.00
"	"	Fidelity & Casualty Co.	Ins. a/c	17.32
"	13	Pay Roll 581.08 Kellar 20.00	P. Cash 10.00	611.08
"	"	Wood and O'Donnell	Com. a/c	1,380.00
"	"	W. H. DeForest Jr.	Expense a/c	150.00
"	15	Petty Cash	" "	10.00
"	19	P. M. O'Connor a/c O. DeForest	" "	86.38
"	"	J. P. Murphy	Ex. a/c	5.80
"	"	Herman Stein	Ex. a/c	5.70
"	"	Read and Lovatt	Throwing a/c	1,000.00
"	"	Hewes and Phillips	Mach a/c	1.000.00
"	20	Pay Roll a/c 726.92 P. Cash 10		736.92
"	"	A. Kellar	Exp. a/c	20.00
"	"	George Ridgway	" "	15.00
"	23	W. E. Silvracje	Ins. a/c	89.30
"	"	Moramura Arai & Co.	Mdse. a/c	1.696.84
"	22	Kenowha Loom Works	Mach a/c	1.000.00
"	24	D. W. Day and Son	Exp. a/c	200.00
"	23	W. Z. Larned	" "	12.10
"	"	J. J. Lane	" "	14.06

Exhibit C-M15½

"	"	C. and E. Gerli, Fratieli & Co.	Mdse "	676.22
"	24	Auger & Seccione S. D. Co.	Dye "	1.47
"	"	E. Geerey	" "	983.97
"	"	Chas. Dunproof, Jr.	Mach. a/c	20.36
"	"	Chas. P. Edward Sons	Mach. a/c	21.99
		Amt. forward		14,708.81

As a part of complainant-appellant's case, pages 76, 132 and 162 are copied as sample pages to show that the rents collected by the Summit Silk Manufacturing Company for the houses on the premises in dispute were regularly entered in the cash book of the company and agree with the figures set out in Exhibits C-M1, C-M2, C-M3.

(Page 76)

April, 1896.

1	Balance		1,961.43
6	Return Premium	Ins a/c	36.21
1	H. and C. (Hoeninghaus & Curtis)		1,322.86
7	" " "		1,142.33
11	" " "		1,162.52
13	D. W. Day	Ex a/c	294.00
	H and C		1,933.35
	Houses Rent		27.18
	Kenwha Loom Works	Mach a/c	980.
17	H and C		1,208.03
20	Houses Rent		16.50
23	H and C		4,484.96
28	" "		1,194.97
			15,764.34

Exhibit C-M15½

(Page 132)

July, 1897.

	2	Hoeninghaus & Curtis	6,572.66
	6	House acc	70.00
	7	Hoeninghaus & Curtis	2,195.80
	9	House acc	80.00
	12	Hoeninghaus & Curtis	2,612.65
	15	House acc	25.00
	16	Hoeninghaus & Curtis	2,234.51
	19	" "	2,691.39
	21	" "	2,395.05
	23	" "	3,224.03
	26	" "	2,225.00
	28	Houses acc	21.00
	30	Hoeninghaus & Curtis	3,254.34
			27,601.43

(Page 162)

February, 1898.

			1,973.51
	2	H and C	6,693.
	3	House a/c	80.90
	5	H and C	535.61
	7	"	3,336.11
	9	"	4,575.42
	11	House a/c	21.96
	"	H and C	3,290.19
		Kenowha Loom Works	735.
	14	H and C	1,923.75
	16	"	625.34
	18	"	2,759.24
	23	"	2,347.02
	28	"	2,178.25
			31.075.30

DEFENDANTS'-RESPONDENTS' EXHIBITS.

Exhibit H-K2.

THE SUMMIT SILK COMPANY,

482 Broome Street,

Telephones: 444-445 Spring

Mill:
Summit, N. J.

New York, May 6, 1908.

Mrs. Emily E. deForest,
42 West 35th St.,
City.

Dear Mrs. deForest:

Enclosed we are sending you the following policies which we thought you might prefer to have in your own possession:

#550963, Niagara Fire Ins. Co., N. Y., Expires June 10, '08, $9000.
#20351, Underwriters Policy, N. Y., Expires June 20, '08, $2000.

We are also sending you the following policies that have expired:

#545039, Niagara Fire Ins. Co., N. Y., Expired Mar. 24, 1907.
#3924960, North British & Merc., London, Expired Jul. 24, 1907
#999, Hartford Fire Ins. Co., Hartford Expired Jul. 24, 1907.

Sincerely yours,
THE SUMMIT SILK COMPANY,
P J Ferrara.

Encs.

P. S. Please acknowledge receipt, and oblige.

Exhibit H-K3.

(Letterhead of Summit Silk Company.)

New York May 7, 1908.

Mrs. Emily E. deForest,
42 West 35th St.,
City.

Dear Mrs. deForest:

We enclose herewith currency for $158.00 in payment of salary to April 30th inclusive, for the late Othniel deForest:

Salary due to Apr. 30th	$250.00
Less cash advanced from the petty cash,	92.00
	$158.00

Kindly acknowledge receipt of this, and oblige.

We also enclose two insurance policies on houses on Weaver St., Summit as follows:

#4815521, North British & Merc. Ins. Co., London,
Expires July 24th, 1910, $5,000.
#1318, Hartford Insurance Co., Hartford,
Expires July 24th, 1910, $5,000.

Also kindly acknowledge receipt of these, and oblige,

Yours respectfully,
THE SUMMIT SILK COMPANY.
P J Ferrara

Exhibit H-K4.

(Letterhead of Summit Silk Company.)

Mrs. Emily E. deForest,
42 West 35th St.,
City.

Dear Mrs. deForest:

We are in receipt of a letter from Hicks Bros. requesting that you return for correction the two following policies covering your five dwellings on Weaver St.:

North British & Mercantile #4815521, $5,000
Hartford 1318, $5,000

After these have been corrected they will be returned to you.

We remain,

Very truly yours,
THE SUMMIT SILK COMPANY.
P J Ferrara

Exhibit H-K5.

(Letterhead of Summit Silk Company.)

New York, May 9, 1908.

Mrs. Emily E. deForest,
42 West 35th St.,
City.

Dear Mrs. deForest:

Enclosed we are mailing you bill for taxes on your five houses at Summit.

We remain,

Respectfully yours,
THE SUMMIT SILK COMPANY.
P J Ferrara

Exhibit H-K5½.

FIRST WARD, CITY OF SUMMIT TAXES—1907.

NOTICE TO TAXPAYERS.—Taxes for the year 1907 are now due and payable to me at my office in the City Hall, BEFORE THE TWENTIETH DAY OF DECEMBER NEXT, at which time all taxes remaining unpaid will be returned to a Justice of the Peace, for prosecution, and will be subject to costs and interest at the rate of twelve per cent. per annum, from that time until paid.

ATTENTION—The County Board of Taxation will sit as a Court of Appeals until December 20th, at the Court House, in the City of Elizabeth. All appeals must be made by petition and notice will be given petitioners when a hearing will be given.

Please preserve your tax bills and present them to be receipted, when you pay your taxes, which you are requested to do before the fifteenth of December, after which time checks presented should be certified.

When a Receipt is Required by Mail Enclose a Stamped Envelope Properly Addressed.

Summit, N. J., Nov. 1, 1907.

STEPHEN R. MULLEN,
Collector.

Page 50

Mrs. Emily De Forest

Line 8

The valuation and Taxes assessed upon the property here specified for the year 1907 are as follows:

Exhibits H-K7½

General Description of Property.		Valuation.
Real Estate, Block 113 Lot 7.A		
5 Lots		5 00
Improvements 5 Houses		63 00
Personal Property		7 00
Total Taxable		75 00

The Tax Rate on $100 is, for State and County, 47 cents; for City, $1.06, for Schools, 29 cents.
Total $1.82

	Amount of Tax.	
State, County and City	$1.53	114.75
Schools	.29	21.75
Poll Tax	1.00	
Total		136.50
Interest and Cost		6.12
		142.62

Received the above Tax ————————190
Collector.

Exhibit H-K7½.

(p.19)

SUMMIT SILK COMPANY

Minutes of First Meeting of Directors.

The first meeting of the Board of Directors of the Summit Silk Company was held at the office of said Company, at Number 259 Washington Street, Jersey City, State of New Jersey, on the 28th day of January, 1908, at 9:30 a. m.

Exhibits H-K7½

Present: Paul Gerli, Adolph Schumacher and Othniel De Forest, constituting a quorum of the board.

Mr. Paul Gerli was chosen temporary Chairman and Mr. Adolph Schumacher was appointed Secretary of the meeting.

The Secretary presented and read a waiver of notice of the meeting signed by all the directors, and the same was ordered filed.

The minutes of the first meeting of incorporators were read and approved.

The following gentlemen were duly elected officers of the company, to serve for one year and until their successors are elected and qualified:

President,	Paul Gerli;
Secretary,	Adolph Schumacher;
Treasurer,	Othniel De Forest.

(pages 27 to 30)

Minutes of a Special Meeting of the stockholders of THE SUMMIT SILK COMPANY held on the 25th day of February, 1908.

The meeting was called to order by Mr.

Present:

Name	No. of Shares.	Present.
Paul Gerli	8	by proxy
Othniel DeForest	1	in person
Adolph Schumacher	1	in person

A waiver of notice of the meeting signed by all the stockholders of the company in the following words was read and ordered on file:

Exhibits H-K7½

"Notice of the time, place and objects of a Special Meeting of the stockholders of The Summit Silk Company to be held at Jersey City, New Jersey, on February 25th, 1908, for the purpose of authorizing the purchase by this company from The Summit Silk Manufacturing Company of all its assets and property of every kind and description, and for the purpose of determining the terms and conditions on which said purchase shall be made, and authorizing said terms to be carried out by the proper officers of this company is hereby waived.

Dated, New York, February 25th, 1908.

PAUL GERLI
OTHNIEL DEFOREST
ADOLPH SCHUMACHER."

The following proposition in writing made by the President of this company in its behalf to The Summit Silk Manufacturing Company under date of February 20th, 1908, was read and ordered on file, and it was reported on behalf of the President that said proposition had been accepted by The Summit Silk Manufacturing Company.

"New York, February 20th, 1908.

The Summit Silk Manufacturing Co.,
#482 Broome Street,
New York City.

Dear Sirs:

Representatives of the Palisade Silk Company have offered to turn over to this company by proper deeds and other instruments of conveyance, all the property of the Palisade Silk Company, subject to such mortgages and liens as there may be on said property, upon this company assuming the indebtedness of the

Exhibits H-K7½

Palisade Silk Company and agreeing to pay Mrs. William H. de Forest the sum of $7500.00, $2500.-00 thereof on March 15th, 1908, and the balance thereof in instalments of $1,000.00 each on the 15th day of each month thereafter, and upon this company agreeing further to pay out of the earnings of this company as a charge upon its business to Mrs. William H. deForest an annual income of $3,000.00 per year, payable in equal monthly instalments commencing February 15th, 1908.

In exchange for said property, this company is to give $80,000.00 of 5% preferred stock of this company, preferred as to assets on liquidation as well as dividends. Mrs. de Forest on her part is to release both this company and your company of all claims except those created in her favor as above stated.

We now propose that you turn over the entire property and assets of your company to this company and give proper deeds and other instruments of conveyance thereof, this company on its part to assume the payment of all indebtedness of your company and to pay for said property and assets in the following manner.

In the event that the Palisade Silk Company and Mrs. William H. deForest carry out the above proposal made on behalf of the Palisade Silk Company, then this company is to take such proceedings as may be necessary to authorize it to have a capital of $200,-000.00, of which $80,000.00 shall be 5% preferred stock, preferred as to assets on liquidation as well as dividends, and of which $120,000.00 shall be common stock, and this company shall issue to the Summit Silk Manufacturing Co. the said $120,000.00 in common stock, to be accepted by your company in full payment and satisfaction for said assets and liabilities.

Exhibit H-K7½

In the event that the said proposal made on behalf of the Palisade Silk Company is not carried out by it or by Mrs. William H. de Forest, then the capitalization of this company shall remain unchanged and this company will issue to your company in payment and full satisfaction for said property and assets, 1000 shares of its capital stock, having a par value of $100.00 and having an aggregate par value of $100,000.00.

Please advise us of your acceptance of this proposition.

Yours very truly,
THE SUMMIT SILK CO.,
By Paul Gerli,
President."

On motion, duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that the action of the President in making the foregoing proposition on behalf of this company be, and it hereby is, in all respects ratified and confirmed, and that the proper officers of this company be authorized to carry out the terms and conditions of said proposition in all respects, and to execute such agreements and other instruments as may be necessary or proper for that purpose, and that this company assume and pay all the indebtedness of the said The Summit Silk Manufacturing Company.

On motion, duly made and seconded, the meeting thereupon adjourned.

A true record.

ADOLPH SCHUMACHER,
Secretary.

Exhibit H-K7½

A meeting of the Directors of The Summit Silk Company was held immediately following the foregoing meeting of stockholders of this company.

The meeting was called to order by Mr. Othniel de Forest.

Present:

Names.	No. of Shares	Present.
Paul Gerli	8	by proxy
Othniel de Forest	1	in person
Adolph Schumacher	1	in person

On motion, duly made and seconded, it was unanimously

RESOLVED that the foregoing resolution adopted at the meeting of the stockholders of this company, held this day, be adopted as the action of this Board.

On motion, duly made and seconded, the meeting adjourned.

A true record.

ADOLPH SCHUMACHER,
Secretary.

Exhibit H-K7½

A meeting of the Directors of THE SUMMIT SILK COMPANY was held on Friday, March 13th, 1908, at the office of said company, in the City of New York.

Present:

Mr. Paul Gerli
" Othniel de Forest
" Adolph Schumacher

Upon motion, duly made and seconded, it was unanimously

RESOLVED that the president of the Summit Silk Company be, and he hereby is authorized and directed to execute, in the name and on behalf of said corporation, the statement required to be filed by foreign corporations under the provisions of the General Corporation Law of the State of New York, to attach the seal of the corporation thereto and in said statement to designate Othniel De Forest in the manner prescribed by the Code of Civil Procedure as the person on whom process against the corporation may be served within the State of New York, and further do all acts and things necessary to comply with the provisions of law in said State.

OTHNIEL DE FOREST
PAUL GERLI
ADOLPH SCHUMACHER.

Exhibit H-K7½

(p. 35)

A Meeting of the Board of Directors of The Summit Silk Company was held at the office of the Company in the City, County and State of New York on the 15th day of May, 1908.

Present: Mr. Paul Gerli
Mr. Adolph Schumach,

being the full Board, Mr. Othniel De Forest, formerly the third director of this Company, having died, and no one having been chosen to fill the vacancy thus created.

(p. 37)

Mr. Pascahl Ferrara was duly chosen Treasurer of this Company, to fill the vacancy caused by the death of Mr. Othniel De Forest, to serve until the next Annual Meeting of the Stockholders of the Company and until any person chosen to succeed him shall be elected and qualify.

Exhibit H-K9½.

S. R. MULLEN,

...Collector of Taxes...

Summit, N. J.

Nov 18 1908

Mr. De Forest Hicks

Dear Sir:

Yours just rec And in reply would say that I have postponed the tax sale until Monday Nov 23rd. Enclosed please find tax bill for 1907 with int and cost to date If you will favor me with a check this week you will avoid having it sold

Yours Respectfully

S R MULLEN

Exhibit H-K10½.

FIRST WARD, CITY OF SUMMIT TAXES—1907.

NOTICE TO TAXPAYERS.—Taxes for the year 1907 are now due and payable to me at my office in the City Hall, BEFORE THE TWENTIETH DAY OF DECEMBER NEXT, at which time all taxes remaining unpaid will be returned to a Justice of the Peace, for prosecution, and will be subject to costs and interest at the rate of twelve per cent. per annum, from that time until paid.

ATTENTION—The County Board of Taxation will sit as a Court of Appeals until December 20th, at the Court House, in the City of Elizabeth. All appeals must be made by petition and notice will be given petitioners when a hearing will be given.

Please preserve your tax bills and present them to be receipted, when you pay your taxes, which you are requested to do before the fifteenth of December, after which time checks presented should be certified.

Exhibits H-K9½, 10½

When a Receipt is Required by Mail Enclose a Stamped Envelope Properly Addressed.

Summit, N. J., Nov. 1, 1907.

STEPHEN R. MULLEN,
Collector.

Page 50

Mrs. Emily De Forest

Line 8

The valuation and Taxes assessed upon the property here specified for the year 1907 are as follows:

General Description of Property.		#71 Valuation.
Real Estate, Block	Lot 5 lots	500
On Weaver St		
5 Double Houses		
IMPROVEMENTS		6300
Personal Property		700
Total Taxable		7500

The Tax Rate on $100 is, for State and County, 47 cents; for City, $1.06, for Schools, 29 cents.

Total $1.82

		Amount of Tax.
State, County and City	$1.53	114.75
Schools	.29	21.75
Poll Tax	1.00	
Total		136.50
Interest and Cost		15.42
		151.92

Received the above Tax Nov 20 1908

S R MULLEN
Collector

No numbers to these Houses on the Books

Exhibit H-K11½.

FIRST WARD, CITY OF SUMMIT TAXES—1908

NOTICE TO TAXPAYERS.—Taxes for the year 1908 are now due and payable to me at my office in the City Hall, BEFORE THE TWENTIETH DAY OF DECEMBER NEXT, at which time all taxes remaining unpaid will be returned to a Justice of the Peace, for prosecution, and will be subject to costs and interest at the rate of twelve per cent. per annum, from that time until paid.

ATTENTION—The County Board of Taxation will sit as a Court of Appeals until December 19th, at the Court House, in the City of Elizabeth. All appeals must be made by petition and notice will be given petitioners when a hearing will be given.

Please preserve your tax bills and present them to be receipted, when you pay your taxes, which you are requested to do before the fifteenth of December, after which time checks presented should be certified.

When a Receipt is Required by Mail Enclose a Stamped Envelope Properly Addressed.

Summit, N. J., Nov. 1, 1908.

STEPHEN R. MULLEN,
Collector.

Page 53

Mrs. Emily De Forest

Line 8

The valuation and Taxes assessed upon the property here specified for the year 1908 are as follows:

Exhibit H-K11½

General Description of Property.		#72 Valuation.
Real Estate, Block 113 Lot 7 a		500
Improvements		6300
Personal Property		700
Total Taxable		7500
The Tax Rate on $100 is $1.86	Amount of Tax.	
State, County and City	$1.67	125.25
Schools	.19	14.25
Poll Tax	1.00	
Total		139.50

Interest and Cost

Received the above Tax Dec 10 1908

S R MULLEN
Collector.

Please receipt & return to

De Forest Hicks
7 W. 44th St.
New York

Exhibit H-K12½.

(Letterhead of Summit Silk Company.)

New York, April 3, 1908.

Mrs. Othniel deForest,
c/o Gregorian,
42 West 35th St.,
New York City.

Dear Cousin Emily:

I enclose check for Ninety Dollars, amount of rent for the month of April on your five houses on Weaver Street.

Yours Sincerely,
C. L. MARTIN

P. S. A receipt for this is not necessary.

New York, June 3, 1908.

Mrs. Emily E. deForest,
42 West 35th St.,
N. Y. City.

Dear Cousin Emily:

Enclosed I am sending you check for Ninety Dollars, rent on your five houses in Summit for the month of June, 1908.

I remain,

Sincerely yours,
C. L MARTIN

Exhibit H-K 12½

(Letterhead of Summit Silk Company.)

New York, July 3, 1908

Mrs. Emily E. deForest,
42 West 35th St.,
City.

Dear Cousin Emily:

Enclosed I am sending you check for Ninety Dollars, rent for your five houses in Summit for the month of July.

Sincerely yours,
C. L. MARTIN

(Letterhead of Summit Silk Company.)

New York, August 4, 1908.

Mrs. Emily E. deForest,
c/o Samuel S. Early,
North Easton, Mass.

Dear Cousin Emily:

Enclosed I am mailing you check for Ninety Dollars amount due you for rent of the five houses in Summit for the month of August.

I remain,

Sincerely yours,
C. L. MARTIN.

Exhibit H-K12½

(Letterhead of Summit Silk Company.)

New York, Sept. 2, 1908.

Mrs. Emily E. deForest,
The Hampton,
22 East 31st St.,
N. Y. City.

Dear Cousin Emily:

Enclosed I am mailing you check for Ninety Dollars, amount due you for rent on the five houses in Summit, for the month of September.

I remain,

Sincerely yours,

Enc. C. L. MARTIN.

(Letterhead of Summit Silk Company.)

New York, Oct. 6, 1908.

Mrs. Emily E. deForest,
the Hampton,
22 East 31st St.,
City.

Dear Cousin Emily:

Enclosed I am mailing you check for Ninety Dollars ($90.00), amount of rent due you on the five houses in Summit for the month of October.

I remain,

Sincerely yours,

Enc. C. L. MARTIN

Exhibit H-K12½

(Letterhead of Summit Silk Company.)

New York, Nov. 3, 1909.

Mrs. Emily E. de Forest,
Cazenovia, N. Y.

Dear Cousin Emily:

Enclosed I am sending you check for one hundred dollars, rent due you on the five houses on Weaver Street for the month of November.

Sincerely yours,
C. L. MARTIN.

(Letterhead of Summit Silk Company.)

New York, May 5, 1910.

Mrs. Emily E. deForest,
115 Broadway, City.
c/o Mr. deForest Hicks.

Dear Cousin Emily:

Enclosed I am sending you check for one hundred dollars, amount of rent due you for the month of May, for the five houses on Weaver Street.

Sincerely yours,
C. L. MARTIN.

Exhibit H-K12½

(Letterhead of Summit Silk Company.)

New York, March 7, 1910.

Mrs. E. E. deForest,
The Armored Pines,
Tryon, N. C.

Dear Cousin Emily:

I am enclosing check for ninety five dollars for the March rent of your houses. One of the tenants refused to pay his rent on the first of February and staid in the house until the middle of the month, which accounts for the check not being $100. As a rule Mr. Dorgeval insists upon their paying their rent promptly on the first, but in this case it could not be helped as the man had left the employ of the mill and there was nothing to hold back from pay due.

I am returning the checks you sent me as they are for more than is due, they should be as follows: to the order of Stephens Bros., $69.12, the other you can make payable to my order, $7.46, and I will see that the bills of Ludlow & Squiers, E. E. Norton, & Chas. J. Miller, are paid. Berla & Riveria are now working on the job and expect to be finished in about ten days.

Sincerely yours,

C. L. MARTIN.

Exhibit H-K13½.

Union County, ss. The State of New Jersey.

To any Constable of Said County or the Sergeant-at-Arms of the District Court of the City of Elizabeth,

(Seal.)

DISTRICT COURT SUMMONS.

Summon Summit Silk Co. To appear before the District Court of the City of Elizabeth to be held at the District Court Room in the Union County Court House in said City, on the 18th day of May 1914, at Ten o'clock in the forenoon, to answer unto Harriet De Forest in an action on contract three hundred & fifty dollars and then and there have you this writ. Hereof fail not.

WITNESS, Abe J. David, Esquire, Judge of said Court at Elizabeth aforesaid, the 8th day of May, in the year One Thousand Nine Hundred and fourteen.

GEORGE J. SMITH
Clerk

A true copy of summons issued from this office.

GEO J. SMITH
Clerk

I served the within Summons May 11/14, on the defendant by reading it to them and giving the Supt. Dorgevall a copy thereof.

JACOB G. MILLER,
Constable.

Exhibit H-K14½.

DISTRICT COURT OF THE CITY OF ELIZABETH.

HARRIET DE FOREST, Plaintiff, vs. SUMMIT SILK COMPANY, Defendant.	Action on Contract. State of Demand.

The plaintiff demands of the defendant Three hundred and fifty dollars ($350) for rents collected by it for three houses owned by the plaintiff on Weaver Street in the City of Summit, Union County, New Jersey, at Sixty Dollars ($60) per month, being the balance due of Forty Dollars ($40) for the month of April, and Sixty Dollars ($60) each for the months of May, June and July, Nineteen hundred and thirteen, less a credit of Six Dollars ($6) on the month of July for collecting said July rent.

Dated May 7, 1914.

C. N. WILLIAMS,
Attorney for the Plaintiff.

A true copy of demand and summons filed in the Elizabeth District Court May 8, 1914.

GEORGE J. SMITH,
Clerk.

Exhibit H-K15½.

STATE OF NEW JERSEY

PREROGATIVE COURT.

I, Edwin Robert Walker, Ordinary or Surrogate General of the State of New Jersey, DO HEREBY CERTIFY, that on the Eighteenth day of November, one thousand nine hundred and twelve, the Prerogative Court admitted The Fidelity Trust Company of the City of Baltimore, and State of Maryland, as Guardian of the person and estate of EMILY E. DE FOREST, a lunatic.

WITNESS my hand and the Seal of the Prerogative Court, at Trenton, this Eighteenth day of November, one thousand nine hundred and twelve.

E R WALKER

(Seal.) Ordinary.

Exhibit H-K16½.

Deed Summit Silk Manufacturing Company to Emily E. DeForest. Copy attached to Bill of Complaint, at page 13, etc.

Exhibit H-K17½.

KNOW ALL MEN BY THESE PRESENTS, That Summit Building and Loan Association, Does Hereby Certify that a certain Mortgage bearing date the Eleventh day of July, in the year of Our Lord, One thousand

Exhibit H-K 17½

eight hundred and ninety-five, made and executed by Emily E. DeForest and Othniel DeForest, her husband, and recorded in the office of the Register of the County of Union, in Book 128 of Mortgages, page 364, &c., on the Twenty-fourth day of July, Eighteen hundred and ninety-five, is paid and satisfied; and does hereby consent that the same be discharged of Record.

IN WITNESS WHEREOF the said Summit Building and Loan Association has caused these presents to be signed by its President, and its common seal to be hereunto affixed the Tenth day of July, in the year Nineteen hundred and eight.

HENRY L. PIERSON,
President.

(Seal.)
Attested:
Wm. S. Porter,
Secretary.

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

BE IT REMEMBERED, That on this tenth day of July, in the year of Our Lord, One thousand nine hundred and eight, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared William S. Porter, who being by me duly sworn, doth depose and make proof to my satisfaction, that he well knows the corporate seal of the Summit Building and Loan Association, the grantor named in the foregoing deed; that the seal thereto affixed is the proper corporate seal of said company; that the same was so affixed thereto and the said deed signed and delivered by Henry L. Pierson, who was at the date and execution thereof the President of said Company, in the pres-

ence of the said deponent, as the voluntary act and deed of the said company, and that the said deponent thereupon signed the same as subscribing witness.

WM. S. PORTER.

Sworn and subscribed to before me
at Summit, the date aforesaid.
Atwood L. DeCoster,
Master in Chancery of N. J.

(Endorsed): Discharge of Mortgage. Dated July 10th, 1908. Received in the Register's Office of the County of Union on the 18 day of July, A. D., 1908, at 10-21 o'clock in the forenoon, and recorded in Book 7 of Discharges of Mortgages for said County, on pages 434, etc.

FRANK H. SMITH,
Register.

Received Union County Register's Office.
July 18 10-21 A M 1908
F. H. Smith, Register

Exhibit H-K 18½ (Pages 152, 156, 184).

General Power of Attorney, Emily E. DeForest to DeForest Hicks and Rosalie DeForest, dated November 7, 1908, cancelled February 16, 1910.

Exhibit H-K19½ (Page 184).

Receipt from Emily E. DeForest to DeForest Hicks, for vouchers returned, referred to on pages 151, 155, 184.

Exhibit 1.

TO ALL TO WHOM THESE PRESENTS SHALL COME or may concern, Greeting; know ye, That The Summit Silk Manufacturing Company for and in consideration of the sum of One Dollar ($1.00) lawful money of the United States of America, and other good and valuable consideration, to it in hand paid by Emily E. DeForest the receipt whereof is hereby acknowledged, has remised, released and forever discharged and by these Presents does for itself, its successors and assigns, remise, release and forever discharge the said Emily E. DeForest, her heirs, executors and administrators, of all and from all, and all manner of action and actions, cause and causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims or demands whatsoever in law or in equity, which against said Emily E. DeForest it ever had, now has or which its successors and assigns hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents. Saving nevertheless, from the operation of this release, all the rights of the said The Summit Silk Manufacturing Company in, under and pursuant to a certain agreement entered into between The Summit Silk Manufacturing Company and The Summit Silk Company, Palisade Silk Company, Emily E. DeForest, Harriet DeForest and Paul Gerli, dated May 7th, 1908.

IN WITNESS WHEREOF, said The Summit Silk Manufacturing Company has hereunto set its hand and seal the second day of June, in the year of our Lord one thousand nine hundred and eight.

THE SUMMIT SILK MFG. CO.

(Seal. by Eloiso Godance, Treas.

Sealed and delivered in the presence of

Paschal J. Ferrara.

Exhibit 1

State of New York,
County of New York, } ss:

On this 2nd day of June, in the year of our Lord, one thousand nine hundred and eight before me the undersigned personally came and appeared Elioso Godone, to me known, who being by me duly sworn, did depose and say, that he resided in New York City; that he is the President of The Summit Silk Manufacturing Company, the corporation described in, and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was said corporate seal; that it was so affixed by order of the board of directors of the said corporation, and that he signed his name thereto by like order.

JAMES P. McMANUS,
Notary Public,
Kings Co.,
Cert. filed in New York Co.

State of New York,
County of New York, } ss:

I, James P. McManus, notary public, do hereby certify, that on the 2nd day of June, in the year one thousand nine hundred and eight, in the County of New York, aforesaid, personally appeared Paschal J. Ferrara, with whom I am personally acquainted, and whom I know to be the subscribing witness to the execution of the foregoing instrument, and who, being duly sworn by me, did depose and say, that he subscribed his name to the foregoing instrument, as a subscribing witness, on the day that the same bears date, and being well acquainted with the common seal of the said The Summit Silk Manufacturing Company, knows that the same was and is thereto set, and that the said company did then and there sign and

Exhibit 2

deliver the said instrument as their voluntary act and deed.

IN WITNESS WHEREOF, etc., I have hereunto affixed my hand and seal, this 2nd day of June, 1908.

JAMES P. McMANUS,
Notary Public,
Kings Co.,
(Seal) Cert. filed in New York Co.

Exhibit 2.

Office of

SUMMIT BUILDING AND LOAN ASSOCIATION

(Summit Bank Building)

Henry L. Pierson, President	Meetings
J. Wm. Johnson, Vice-President	Second Thursday
J. Franklin Haas, Treasurer	in each Month
William S. Porter, Secretary	Open 7 to 10 P. M.
Atwood L. DeCoster, Counsel	

Summit, N. J., Mch 15th 1907.

Mrs. E. E. DeForest
c/o Summit Silk Mfg. Co.,
New York.

Dear Madam:

In paying off your recently matured shares Certificate ♯265—the Ctfe. should have been sent you for proper endorsement on the back & I now herewith enclose same for that purpose— Please date & sign same & also get signature of a witness in the spaces as indicated in pencil on the back & return to me promptly in the stamped addressed envelope & much oblige,

Very truly yours,
WM. S. PORTER,
Secretary.

Exhibit 3.

(Letterhead of Summit Building and Loan Association.)

Summit, N. J., Feb. 4th, 1907.

Mrs. Emiley E. DeForest
c/o Summit Silk Mfg. Co.,
482 Broome St., N. Y.

Dear Madam:

Your shares in Series of March 1895 have matured & will be paid off at their full value of $200.58 each— a total on your Ctf. ♯265 of $7020.30— Inclose herewith check $7,000.♯ for your endorsement to be returned to the Ass'n—to repay your Bond & Mtge. upon receipt of which the balance $20.30 will be forwarded to you in a second check—

Yours truly,
WM. S. PORTER, Secy.

Ctf. ♯265—

35 Shares	$7020.30
Less Bond & Mtg.	7,000.
Balance	$ 20.30

Exhibit 4.

PUTNEY, TWOMBLY & PUTNEY,

Counsellors at Law,

2 Rector Street

Henry B. Twombly.
Edmonds Putney.
Louis H. Hall.

Walter H. Griffin.
Richard Kelly.

New York, October 31, 1910

Re Summit Silk Co.

Max J. Kohler, Esq.,
30 Broad Street
New York City

Dear Sir:

We submitted to Mr. Gerli the proposition contained in your last letter, that the rents of the houses at Summit, which Mrs. Emily De Forest claims belong to her, should be kept in a separate fund, and he informed us that that is being done, awaiting the settlement of the dispute on this point. We also note what you say in your letter about our statements being too flimsy to call for a reply. Our observation has been that that is the method of viewing the issue when there is no reply that can be made.

Yours very truly,

EP/D PUTNEY, TWOMBLY & PUTNEY.

Exhibit 5.

(Letterhead of Putney, Twombly & Putney.)

New York, October 11, 1910.

Max J. Kohler, Esq.,
30 Broad Street
New York City

Dear Sir:

Your letter of October 6, 1910, to Mr. Paul Gerli, as President of the Summit Silk Co., has been sent to us with a request that we answer the same.

The main reason why the rents you speak of have not been turned over to Mrs. Emily De Forest is that the property in question seems to belong to the Summit Silk Co. and not to Mrs. De Forest.

Yours very truly,

EP/D PUTNEY, TWOMBLY & PUTNEY.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY

Court of Errors and Appeals

(No. 22, June Term, 1918.)

BETWEEN

THE SUMMIT SILK COMPANY,
Complainant-Appellant,

AND

FIDELITY TRUST COMPANY, OF BALTIMORE, A CORPORATION OF THE STATE OF MARYLAND, GUARDIAN OF THE ESTATE OF EMILY E. deFOREST, A LUNATIC; AND EMILY E. deFOREST,
Defendants-Respondents.

} On Appeal from Chancery.

Brief of Defendants-Respondents.

STATEMENT.

This suit was brought to enjoin the defendants from prosecuting an action at law, in ejectment, instituted in the New Jersey Supreme Court against the complainant to recover possession of certain lands, with the buildings thereon erected, located in the City of

New Jersey State Library

Summit, Union county, New Jersey, and mesne profits alleged to have accrued during the period of deprivation of possession. The cause was heard before Hon. Vivian M. Lewis, Vice-Chancellor, to whom the same was referred for hearing by the Chancellor. A decree was advised and entered dismissing complainant's bill, and from that decree the present appeal was taken.

FACTS.

The Summit Silk Manufacturing Company, which we will refer to as the old company, was organized by Othniel deForest and his brother, William H. deForest, Jr., and was incorporated in 1892. These two brothers and their respective wives, Emily E. and Harriet, were the stockholders and directors for a great many years. The stock interest of Emily E. deForest in the company was considerable, and at once time she owned a majority, if not all, of the stock. Othniel was president, and William H. was the secretary and treasurer. It was a family affair, and the minutes were meagerly kept.

The factory was at Summit, New Jersey, and was on a plot of ground having a frontage of 472.6 feet on Morris avenue, with a depth on one side of 818.95 feet and on the other side of 986 feet, thus containing upwards of eight acres. The factory itself occupied about three-fourths of the frontage on Morris avenue, and a depth of about 200 feet. The remainder of the plot, comprising more than six acres, was vacant.

In 1895 the old company wished to have some houses erected on this plot for its employees, but, as it did not have the funds with which to erect them, the president, Othniel deForest, sought the "poor man's method" and applied to the Summit Building and Loan Association for a loan. The officers of this association told him that it could loan money only to its members, and that inasmuch as a corporation could not be-

come a member of the association, the Summit Building & Loan Association would not make a loan to the old silk company, and the old silk company did not become a member and did not obtain a loan.

In March, 1895, Emily E. deForest, then mentally competent, but now a lunatic, became a shareholder to the extent of 34 shares in the Summit Building and Loan Association. Her dues for March, April and May, 1895, amounting to $143.65, were paid on June 13th of that year, and were charged to her account on the books of the old silk company. (Case, p. 40.)

It is to be presumed that between March and July, 1895, she made some inquiry as to the probable success or failure of buildings built by loans procured from a building and loan association. On July 23d, 1895, the old company duly made, executed and delivered to her the deed dated July 10th, 1895, a copy of which is annexed to complainant's bill, and a certified copy of which is in evidence (see *Exhibit H. K.* 16½, Case, pp. 13, 170). The deed recites the payment of the consideration of $2,000.00, and in all respects complies with the statutes of the State of New Jersey. This deed is Emily E. deForest's muniment of title, and on the security of this title, and her bond of $14,000.00, the Summit Building and Loan Association made a loan of $7,000.00 to her with which to erect the five double tenement houses on the piece of ground 250 feet by 125 feet to the rear of the old silk company's plant and along Weaver street.

On October 14th, 1895, the old company duly made, executed and delivered to Harriet deForest its deed for certain of its property adjacent to that conveyed to Emily by the deed of July 10th, 1895, and upon which were erected three double tenement houses similar to those erected by Emily upon her land (see complainant's *Exhibit C* 2, Case, pp. 27, 201).

The stockholders of the old company were Othniel, William H., Emily and Harriet deForest, and they all

had knowledge of the two deeds thus made to Emily and Harriet.

On the land conveyed to Emily, the five double houses were erected, and the payments to the contractors were made by checks of the Summit Building and Loan Association, drawn at the order of said Emily E. deForest (Case, pp. 35, 36). Fire insurance on the houses was placed in the name of Emily E. deForest (Case, pp. 132, 133, 139, 256, 257). The houses were rented to the employees in the factory of the old silk company, and the rents were collected by the superintendent or a clerk in the employ of that company. As the rents were collected they were put in the bank to the credit of the old company, and its check was drawn to the order of the Summit Building and Loan Association at the rate of $75.25 per month. Taxes, insurance and repairs were also paid out of the rents.

In the course of about twelve years, the thirty-five shares of the Summit Building and Loan Association matured, and in the first part of February, 1907, the Building and Loan Association sent its check for $7,000.00 to Emily E. deForest to cancel the loan and also its check for $20.30, for premium upon the shares, the full matured value thereof being $200.58, or the sum of $7,020.30; thereupon the check for $7,000.00 was duly returned to the association by Emily, and the mortgage was canceled (Case, p. 38). The mortgage was discharged of record July 18th, 1908, by warrant executed by the Building and Loan Association on July 10th, 1908 (see *Exhibit H. K.* 17½, Case, p. 278–9).

From the time of the maturity of the shares in the Building and Loan Association until May, 1910, the rents from these houses were collected by clerks and officers of both the old silk company and the new company, the present complainant, and were paid over to Emily E. deForest (see *Exhibit H. K.* 12½, Case, pp. 271–274); also, Testimony of Martin (Case, pp. 122–126, 157–169), Ferrara (Case, pp. 126–147),

Davis (Case, pp. 84–88, 104–113), and Gerli (Case, pp. 172–183). During this period taxes, insurance and repairs on these houses were paid by Emily E. deForest, either personally or through Mr. Martin or Mr. Hicks (see *Exhibits H. K.* 2, 3, 4, 5, 5½, 9½, 10½, 11½, Case, pp. 255–270; Testimony of Martin (Case, pp. 122–126, 157–169), and Hicks (Case, pp. 149–156). Gerli had full knowledge of this. In April or May, 1910, Mr. Gerli, president of the new company, gave directions that the rents from these houses should not, in the future, be paid to Emily E. deForest, but should be kept by the company (Case, pp. 167, 179).

Later, a demand was made for these rents in behalf of Emily E. deForest, and eventually the new company gave bond to answer for them in case they should ultimately be determined to belong to Emily.

At the time the payment of the rents was thus stopped, Emily's condition must have been obvious, for as early as October 18th, 1910, she was judicially adjuded a lunatic by the Circuit Court of the City of Baltimore, Maryland, and the Fidelity Trust Company, of Baltimore, was appointed her guardian, while she was then located at Baltimore.

On December 12th, 1912, an action was commenced in the New Jersey Supreme Court by the guardian to eject the new company from the houses and premises at Summit, and on October 20th, 1913, the present bill to restrain the ejectment suit was filed.

It is contended by complainant that inasmuch as the minute book of the old company is silent regarding this deed to Emily E. deForest, its execution was never authorized, and that because Mr. Gerli cannot find an entry for the $2,000.00 in the books of the old company to the credit of Emily E. deForest, therefore no consideration was given for the deed, and its execution and delivery are nullities.

But it should be observed that in addition to this monetary consideration as recited in the deed of

$2,000.00 there was a good and valuable consideration passing from Emily to the old company by the erection of the houses. The company needed the houses, and had no way to finance their construction except through the "wage earner's medium," a Building and Loan Association. The old company, being unable to accomplish this, abandoned its purpose, and turned the venture over to Emily and Harriet, who took up the project and carried it out themselves. Emily gave her personal bond for $14,000.00 to the Summit Building and Loan Association in order to obtain the $7,000.00 necessary to erect the houses. The old company did not indemnify her in any way or secure her against possible loss and liability upon her bond, and if the house venture had proved unprofitable or had resulted in a loss before the $7,000.00 was available to repay the Building and Loan Association, she would have been the loser personally, without any recourse whatsoever against the old company. Her obligation in this respect was a good, valuable and sufficient consideration to sustain the conveyance, if there had been no other. In addition to this, are the payments by Emily of taxes, insurance and repairs, for which no remuneration has ever been made or offered by the old company.

Harriet deForest's situation was precisely the same. Soon after Emily began her operations, Harriet, the wife of William H. deForest, Jr., undertook to erect three double houses on a plot 150 feet by 150 feet, adjoining Emily's plot, and the deed was made out by the old company to Harriet, dated October 14th, 1895, and acknowledged and delivered a few days later, in the same form as the deed to Emily. The execution of Harriet's deed is not mentioned in the minute book of the old company, but no objection to its authenticity seems to have been made, and it is significant that as recently as May 8th, 1914, a suit was commenced in the District Court of the city of Elizabeth, in the county of Union, and State of New Jersey, by Harriet de-

Forest against the Summit Silk Company, the present complainant, to enforce the payment to her of certain of the rents due her from her houses, which had been collected by the new company but not paid over (see *Exhibit H. K.* 14½, *Case, pp.* 169, 277). which suit was marked "settled" on the dockets of that court, on June 29th, 1914 (Case, p. 170).

Harriet deForest's houses were erected with the proceeds of a loan from the People's Building and Loan Association. The rents from both sets of houses were collected by the silk companies, as several of the witnesses testified, and were paid, three-fifths to Emily and two-fifths to Harriet. It is both reasonable and probable that had Emily remained *compos mentis* her rents would not have been withheld any more than were Harriet's. The striking coincidence of Emily's incompetency and the withholding of her rents, Mr. Gerli's obvious nimble footedness throughout his whole testimony, particularly with regard to the collection and disposition of the rents, and his faulty memory of the suit by Harriet to enforce payment of a portion of hers (Case, pp. 118, 120, 148), and his improbable explanation of the situation on the ground of "charity" (Case, pp. 181, 182), together with his very apparent personal interest in the transaction, all tend to sustain this assumption and to demonstrate complete lack of equity in the premises.

I.

A great deal of the evidence in behalf of complainant is objected to because of its incompetency as against a lunatic, whose rights are vitally involved in this suit.

No party shall be sworn where opposite party is under legal disability.

> "No person shall be disqualified as a witness in any suit or proceedings at law or in equity by reason of his interest in the event of the same

as a party or otherwise, but such interest may be shown for the purpose of affecting his credit; provided, no party shall be sworn in any case when the opposite party is prohibited by any legal disability from being sworn as a witness."

2 *Comp. Stat., p.* 2218, *Sec.* 3.

This applies to a lunatic.

Demarest v. *Vandenberg,* 33 *N. J. Eq.* 130; *aff.* 40 *N. J. Eq.* 341.

1 *Wigmore Evidence, Sec.* 578, *p.* 707.

Wilson v. *Terry,* 70 *N. J. Eq.* 231; *aff.* 71 *N. J. Eq.* 785.

In this latter case, in the Court of Errors and Appeals, the following significant statement is made:

"* * * Certain evidence offered by the defendants was erroneously admitted, and that evidence received consideration in the opinion and was one of the reasons upon which the conclusion of the learned Vice-Chancellor was rested. The evidence referred to consisted of entries contained in the private diary of the deceased wife, which, it was considered by the Vice-Chancellor, tended to show that the deed which the appellant sought to have declared to be a mortgage, was, in fact, what it purported to be on its face, viz., an absolute conveyance. If the bill of complaint had been filed against the wife during here life, clearly these entries would have had no probative force against her husband. They seem to us equally objectionable as evidence in favor of those who claim in her right."

In *Louis* v. *Easton,* 50 *Ala.* 471, it is said:

"This right and privilege (of testifying) must be mutual. It cannot exist in the one party and not in the other. If death has closed the lips of the one party, the policy of the law is to close the lips of the other."

1 *Wigmore, p.* 707, *Sec.* 578.

II.

The deed to Emily E. deForest complies with the requirements of the laws of the State of New Jersey, and was acknowledged in accordance with *Section* 114 of the *Conveyance Act.*

> "Whenever the execution of any deed, bill of sale, either conditional or absolute, or chattel mortgage heretofore made by any corporation, conveying any goods and chattels or lands and premises in this State to any person, corporation or municipality thereof, shall have been proved by the oath or affidavit of any person in the form of a certificate of proof, made by an officer authorized to take the same, which oath or affidavit sets forth that the person making, signing and swearing to such certificate of proof is a subscribing witness, and that he well knows the corporate seal of the grantor named in and which executed any such deed or instrument, and that the seal thereto affixed was the proper corporate seal of any such company, and that the same was affixed thereto, and said deed or instrument signed and delivered by the proper officer of the company (naming him and giving his official title) in the presence of the person making, signing and swearing to such proof as the voluntary act and deed of said company; then, in case such deed or instrument was signed by the proper chief officer of such corporation, was witnessed or attested, and has been recorded in the proper books of record in the office of the clerk or register of the county in which the property is situated, said deed or instrument shall be as effectual as if the same was proved by one or more subscribing witnesses, and the filing or leaving of the same in any such office and the writing, copying or entering of

> the same in the regular recording books of said office as recorded or registered, and the indexing of the same in the regular indexes of said office as recorded or registered shall be taken for all purposes as a legal recording thereof, and as binding as though the same had been formally acknowledged or proved by one or more subscribing witnesses, as of the day it was so recorded or lodged for recording as aforesaid."
>
> *2 Comp. Stat., p.* 1573.
>
> *Hopper* v. *Lovejoy,* 47 *N. J. Eq.* 573 (*Dixon, J., Ct. E. & Ap.*)

The deed had been recorded for more than six years prior to 1908, when the new company bought out the old company, and if there had been any defect in its acknowledgment it was cured by *Chapter* 232 of the *Laws of* 1898.

> "When any deed or instrument of the nature or description set forth in the twenty-first section of this act shall for a period of six years or more have stood on record in any of the lawful books of record in this State appropriate for such deed or instrument, the record of such deed or instrument, after the lapse of the said period, shall be and become valid for every purpose of notice as aforesaid; and such deed or instrument, the said record and certified copies thereof, shall be received in evidence in any court and be as effectual as if the original deed had been produced and proved, notwithstanding the absence of, or any informality, defect, imperfection or uncertainty in, the acknowledgment or proof, or the certificates thereof, provided the same shall be corroborated by evidence of corresponding enjoyment or other equivalent or explanatory proof."
>
> *P. L.* 1898, *p.* 696; *2 Comp. Stat., p.* 1559, *Sec.* 64.

The deed recites the payment of the consideration of $2,000.00, and the law seems to be well settled, as follows:

> "As the expressed consideration may be always inquired into, the only effect of the clause acknowledging a consideration paid is to estop the grantor from denying that there was any consideration. For every other purpose it may be explained, varied or contradicted by parol. It is not necessary that it be shown to have been paid, if the deed recite that it was paid."
>
> *Gerard Title to Real Estate, 5th ed., p.* 537.
>
> "It seems, according to the American cases, that the only effect of a consideration clause in a deed is to estop the grantor from alleging that the deed was executed without a consideration; and that for every other purpose it is open to explanation and may be varied by parol proof."
>
> *McCrea* v. *Purmort,* 16 *Wend.* (N. Y.) 460.

But parol evidence is not admissible to affect the estate created and conveyed. The grantor is estopped by its deed.

> 68 *L. R. A., p.* 929, *notes;*
>
> *Obert* v. *Bordine, Spen.* 394.

And in New Jersey it is only when the action is brought on the sealed instrument that the consideration may be inquired into. Otherwise the rule remains as at common law, and an instrument under seal is not open to attack upon the ground of lack of consideration.

> "That in every action upon a sealed instrument, or where a set-off is founded upon a sealed instrument, the seal thereof shall be only presumptive evidence of a sufficient consideration, which may be rebutted as if such instrument was not sealed; and that all instruments executed with a scroll, or other device by way of a scroll, shall be deemed a sealed instrument."

2 Comp. Stat., p. 2240, Sec. 66;
Aller v. *Aller,* 40 *N. J. Law,* 446;
Braden v. *Ward,* 42 *N. J. Law,* 518;
Waln v. *Waln,* 53 *N. J. Law,* 429;
Campbell v. *Tompkins,* 32 *N. J. Eq.* 170; *aff.* 33 *N. J. Eq.* 362.

In *Aller* v. *Aller,* Mr. Justice Scudder, speaking for the Supreme Court, said:

> *"But it would be going too far to say that the statute was intended to abrogate all voluntary conveyances and to abolish all distinction between specialities and simple contracts.*
>
> *"It will not do to hold that every conveyance* of land, or of chattels, is void by showing that no sufficient consideration passed when creditors are not affected. * * *
>
> "But because deeds have been used to cover fraud and illegality in the consideration, and just defenses have often been shut out by the conclusive character of the formality of sealing, we have enacted in our State the two recent statutes above quoted. The one allows fraud in the consideration of instruments under seal to be set up as a defence, the other takes away the conclusive evidence of a sufficient consideration heretofore accorded to a sealed writing, and makes it only presumptive evidence. This does not reach the case of a voluntary agreement, where there was no consideration, and none intended by the parties. The statute established a new rule of evidence, by which the consideration of sealed instruments may be shown, but does not take from them the effect of establishing a contract expressing the intention of the parties, made with the most solemn authentication, which is not shown to be fraudulent or illegal." * * *

In *Braden* v. *Ward,* Mr. Justice Reed, speaking for the Supreme Court, said:

> "It was in that case (*Aller* v. *Aller*) held that the design of the act was not to change the character of a sealed instrument not shown to be fraudulent or illegal. It was held that a voluntary gift made under seal was enforceable; that in sealed instruments where it was evident no consideration was intended, the absence of a consideration was not essential.
>
> "By the same reasoning, when it appears that the consideration which the parties intended to pass actually did pass, the instrument is valid. That is the admitted fact concerning the consideration of this release.
>
> "But the act was never intended to operate upon, and its terms do not include a release under seal. This release is not a sealed instrument upon which an action is brought nor upon which a set-off is founded. This seems too obvious for discussion."

In *Waln* v. *Waln,* 53 *N. J. L.,* at 431, *supra,* Chief Justice Beasley, speaking for the Court of Errors and Appeals, says:

> "The statutory language is perfectly plain, explicit and unambiguous; it declares, with the utmost perspicuity, that in two cases, which it specifies, that when the action or the set off is founded on the sealed instrument, its consideration may be rebutted. How, then, is it possible for a court to extend the operation of the act beyond the limits thus unmistakably demarked. To do so would not be an act of judicature, but of legislation." * * *
>
> "The Supreme Court, in *Braden* v. *Ward,* 13 *Vroom* 518, in construing this statute, concluded that its first clause did not embrace a release, so that such an instrument still subsists as it did at common law."

And in *Den Wooden* v. *Shotwell*, 3 *Zab.*, at p. 471, Chief Justice Green, speaking for the Supreme Court, said.

> "* * * against a consideration, alleged in the deed, no averment can be received. And although the American cases hold that the vendor, by the recital in the deed, is not estopped from showing that the consideration has not been paid (in an action brought for the recovery of the purchase money), or that it is different in amount from that recited in the deed, they do not admit evidence to show that the consideration is essentially different from that recited in the deed, in order to defeat the effect and operation of the conveyance itself. It goes to subvert the entire transaction as well as to violate the established rules of evidence."

But, complainant took its deed in 1908 subject to, and with full knowledge of, the prior deed to Emily E. deForest, for that had been duly recorded in the office of the Register of Deeds of Union County, on July 24th, 1895, and the recording acts apply with full force.

> "Every deed or instrument of the nature or description set forth in the twenty-first section of this act, shall, until duly recorded or lodged for record in the said clerk's office, be void and of no effect against subsequent judgment creditors without notice, and against all subsequent bona fide purchasers and mortgagees for valuable consideration, not having notice thereof, whose deed or mortgage shall have been first duly recorded; provided, that such deeds or instruments shall be valid and operative, although not recorded, except as against such subsequent judgment creditors, purchasers and mortgagees; and provided, further, that nothing in this act contained shall be construed to affect or impair the effect of any mortgage or the registry thereof

> which has been or shall hereafter be registered as provided in section seventeen of the act entitled 'An act concerning mortgages' (Revision), approved March twenty-seventh, one thousand eight hundred and seventy-four."
>
> 2 *Comp. Stat., p.* 1553, *Sec.* 54 and cases cited.

Still, assuming, for the sake of argument, that the deed to Emily was never executed or acknowledged, or that it was a voluntary conveyance without consideration at the time, then the sole fact that Emily, with full knowledge of the stockholders and directors of the old company, borrowed the money with which to erect the houses and paid the taxes and insurance and repairs, would entitled her to a decree that the equitable as well as the legal title to the premises is in her, or that she be reimbursed to the extent that she thus paid value.

Complainant's contention, reduced to a proposition, is this:

The old company, by Othniel and William H. deForest, its organizers, being the respective husbands of Emily and Harriet, made a deed to Emily, stating that the company had received $2,000.00, and then acknowledged and delivered the deed, which was duly recorded. On the strength of the deed, and the bond of Emily for $14,000.00, the Summit Building and Loan Association made a loan to Emily for the purpose of erecting the five double houses. The houses were erected. The weavers of the old company found shelter therein, and the company prospered for ten years or more, and then sold its property to Mr. Gerli's company. Mr. Gerli now comes and says that he cannot find any record in the books of the old company showing the payment of the $2,000.00 and therefore claims the property as property of the new company. In other words: A pays B $2,000.00 and takes his receipt. In a few year's time B tells A that he has looked through his (B's) own books and cannot find any entry that A ever paid the money, and therefore denies that B ever

received it, notwithstanding the receipts he gave A, and sues to recover that amount from A. Would his books be accepted as evidence of non-payment?

Prest v. *Mercereau*, 9 *N. J. Law*, 268 (Reprint, p. 334);

Wilson v. *Terry*, 71 *N. J. Eq.* 785, 786.

III.

In any event, what status has complainant to object? It is not a creditor harmed by a voluntary transfer, and even if it did itself pay consideration for its subsequent deed, it did so with full knowledge of the previous transfer to Emily. A mere stranger cannot come in and claim property simply upon the allegation that A gave it to B, and that therefore the conveyance should be set aside and the property now turned over to C.

2 *Comp. Stat., p.* 1553, *Sec.* 54, *supra.*

IV.

And the burden of showing that there was no consideration was on the complainant, who asserted that the conveyance to Emily deForest was voluntary. Complainant, at page 7, lines 7 to 11, of its brief, refers to the failure of defendants to establish that there was a consideration paid, and the remark of the Vice-Chancellor on the hearing (Case, p. 176). It is respectfully submitted that if the Vice-Chancellor meant that the burden was on the defendants to show that the consideration of $2,000.00 expressed in the deed to Emily deForest had been paid, the Court erred in that respect, and that the rule is the other way.

In 16 *Cyc., p.* 930, the rule is stated as follows:

> "It is as true in equity as at law that he has the burden of proof who has the affirmative of the issue; with the distinction, however, that while under the common-law system of plead-

> ing an issue of fact is reached by the constructive admission, peculiar to that system, implied in not traversing a particular allegation, a plaintiff in equity has the burden of proving all allegations of his bill not expressly admitted by the answer."

Complainant alleged in paragraph 7 of its bill (Case, p. 9, lines 27 to 32), that the said conveyance was wholly without consideration. This was specifically denied by defendants in their answer (Case, p. 19, lines 35 and 36).

In *Herbert* v. *Scofield*, 9 *N. J. Eq.* 492, it was held that the expression of the consideration in a deed *prima facie* established it, and that if the grantor sought to impeach it, he could do so only by clearly making out the lack of consideration to the satisfaction of the tribunal to which he appealed for redress.

> "The proof must be satisfactory," said Chancellor Williamson, at page 495 of the report. "If it leaves the matter doubtful, the acknowledgement in the deed is a protection to the grantee."

And in *Stall* v. *Fulton*, 30 *N. J. Law* 430, where plaintiff in an ejectment suit sought to establish that the consideration for a deed to a wife had been paid with the husband's funds, the Supreme Court, in holding that plaintiff had failed in his proof, at page 438 of the report, said:

> "The presumption upon the face of the deed is, that the term of years was bought with the funds of the wife, and the burthen of overcoming this presumption is upon the plaintiff."

In *Stearns* v. *Stearns*, 23 *N. J. Eq.* 167, *at p.* 168, the Court said:

> "In this case both deeds state the consideration, and that it was paid; and although this does not estop the grantors from showing that some other or additional consideration was

> agreed to be paid, such recital, under seal, in a solemn instrument, cannot be overcome except by clear, strong evidence against it."

In *Shotwell* v. *Shotwell*, 24 *N. J. Eq.* 378, *at p.* 384, the Court said:

> "The bill states that the mortgage was wholly without consideration, and was obtained by fraud, false representations, and threats of personal violence. There is no attempt to prove any of these charges, except as the complainant claims that proof of want of consideration sustains the charge of fraud. Whether the mortgage was given without consideration or not is of no importance in this suit, except in that connection. It is a sealed instrument, and this court would not declare it void merely for want of consideration, nor will it permit the consideration to be inquired into with a view to setting aside the instrument on that ground, though it would for the purpose of ascertaining what is due upon it. *Farnum* v. *Burnett*, 6 *C. E. Green* 87, 89. The want of consideration, if it existed, is a fact proper to be proved in connection with and as part of the evidence of fraud or misrepresentation. But the proof does not sustain the allegation."

And in *Chandley* v. *Robinson*, 75 *Atl. Rep.* 180 (*N. J. Chy.*), which was a suit in equity to quiet title to land, it was held that where defendant contended that there was no adequate consideration for the deeds to complainant's grantors, the burden was on him to show this.

And so, in *Warwick* v. *Stockton*, 37 *Atl. Rep.* 458 (*N. J. Chy.*), where defendant sought to establish an agreement qualifying written articles under which complainant was seeking an accounting, it was held that the burden was on the defendant to establish what he so claimed.

Clearly, the party asserting the fact has the burden of proving it. The only proof offered by complainant in the case at bar, to show that no consideration was paid for the deed to Emily deForest, was the negative testimony of Paul Gerli, more than twenty years after the deed was given, to the effect that he had been unable to find a specific entry in the cash book of the grantor showing the receipt of the amount stated as the consideration in the deed, viz., $2,000. (Case, p. 173.) Although it is significant that the deed from the Summit Silk Manufacturing Company to Emily E. deForest was dated July 10th, 1895 (Case, p. 13, line 47), but was not acknowledged until July 23d, 1895. (Case, p. 17, line 14), on which date it was doubtless delivered, being recorded the day following (Case, p. 17, line 37), and on July 18th, 1895, the cash book shows the receipt of $2,072 on the "Build a/c." (Case, p. 251, line 39.)

In *Bolles* v. *Beach*, *22 N. J. Law*, 680, at p. 692, it was held by the Court of Errors and Appeals, per Carpenter, J., that:

> "Thus, when the deed acknowledges the payment of the consideration, it cannot be denied by the grantor for the purpose of destroying the effect and operation of the deed, though it may be denied for the purpose of recovering the consideration money. *Grant* v. *Townsend*, *2 Hill* 557. This doctrine is now in this country supported by such a weight of authority as not readily to be disturbed."

In *Cannon* v. *Cannon*, *26 N. J. Eq.* 316, at 317–318, it was said:

> "As already stated, the decision of this case simply requires an answer to the question, were the deeds of the complainant, to Bagley and Mullen, rendered effectual as deeds, by delivery? If they were, he cannot be allowed to impeach them, nor assail the title of his wife. He exe-

> cuted them voluntarily, free from the influence of any artifice, fraud or improper conduct on the part of the grantees, and although it may be difficult to assign a sensible reason for his act, when it is remembered the property conveyed constituted nearly his whole estate, that he had a wife and child, and that his gift was made to persons who, so far as the evidence gives any light, were without claim to his duty, bounty or friendship; yet, if he has invested them with title to these lands, by appropriate instruments, executed with the requisite legal formality, the deeds are his solemn acts, done in the exercise of that power which the law gives every man over his property, and he will not be allowed to gainsay, impeach or destroy them."

Complainant urges, finally, that the Court should decree that Emily E. deForest holds the premises in question in trust for complainat, on the ground that all the money put into the operation was paid by the old silk company, to whose rights the new company has succeeded. Has such a trust been established?

Complainant can only recover on its own case made by its bill. Defendants are only bound to meet complainant's proofs which tend to establish complainant's case.

Wilson v. *Cobb*, 28 *N. J. Eq.* 177.

In *Baldwin* v. *Campfield*, 8 *N. J. Eq.* 891, 900, the Court says:

> "A Court of Chancery never has, and never will, imply a trust unnecessarily. In the case of * * * the Lord Chief Justice, in speaking of these different kinds of trusts, says: 'There is one good, general and infallible rule that goes to both these kinds of trusts; it is such a general rule as never deceives; a general rule to which there is no exception, and that is this: the law never implies, the Court never presumes a trust, but in cases of absolute necessity. The reason of

> this is sacred; for if the Chancery do once take the liberty to construe a trust by implication of law, or to presume a trust unnecessarily, a way is open to the Lord Chancellor to construe or presume any man in England out of his estate, and so at least every case in Court will become *casus pro amico.*'"

If no deed had ever been given to Emily E. deForest, we think that on the facts proven, that the houses were erected on her credit and paid for by her out of the rents, this Court would find a trust in *her* favor and decree title to the property in *her; a fortiori,* in the face of the deed, should it be held that there are no facts in this case to warrant a decree in favor of complainant.

The burden to establish the trust in favor of complainant is upon the complainant; and the proof to establish a trust and overthrow legal title must be clear, convincing and satisfactory.

13 *Cyc., pp.* 735, 736.

Pomeroy Eq. Juris., Vol. 3, *Secs.* 1031, 1033–1036 (3d ed.).

Wilson v. *Terry,* 70 *N. J. Eq.* 231, 238; *aff.* 71 *N. J. Eq.* 785;

McKeown v. *McKeown,* 33 *N. J. Eq.* 384; *aff.* 34 *N. J. Eq.* 560;

Ward v. *Price,* 12 *N. J. Eq.* 543, 544;

Osborn v. *Osborn,* 29 *N. J. Eq.* 385;

Bacon v. *Devinney,* 55 *N. J. Eq.* 449;

Stillwell v. *Stillwell,* 18 *Atl.* 679;

Carrard v. *Niles,* 45 *Atl.* 266;

Tuite v. *Tuite,* 66 *Atl.* 1090.

In *Wilson* v. *Terry,* Vice-Chancellor Emery said:

> "The general rule in all cases where absolute deeds are claimed to be mortgages is that the burden of proof is upon the grantor, and his proof must be clear and convincing." * * *

And further:

> "Nor should she (the grantee) be deprived

of the title she received except upon very clear and satisfactory evidence that she then understood that the title was not absolute in her, but was then intended merely as a mortgage, and that her husband had the right to call for a reconveyance.* * *

"The intention of the parties at the time of the execution is the vital question, and the evidence of subsequent transactions is generally important only as authorizing inferences in relation to the intention at the time."

In *Osborn* v. *Osborn,* Chancellor Runyon says:

"No resulting trust arose from the voluntary conveyance by the complainant to his wife.

" * * * Where a person being a stranger in blood to the donor, and *a fortiori* if connected with him by blood, is in possession of an estate under a voluntary conveyance duly executed, the mere fact of his being a volunteer will not of itself create any presumption that he is a trustee for the grantor, but he will be considered entitled to the enjoyment of the beneficial interest unless that title is displaced by sufficient evidence of an intention of the part of the donor to create a trust. * * * Such donee need not bring proofs to keep his estate, but the plaintiff must bring proofs to take it from him"

He further says that parol testimony cannot be received to establish the trust, for that would contravene the statute of frauds.

And then only can such a trust be established when accident, fraud or mistake is present.

Pomeroy, supra;
Aller v. *Crouter,* 64 *N. J. Eq.* 381;
Lovett v. *Taylor,* 54 *N. J. Eq.* 311, 318;
Hogan v. *Jaques,* 19 *N. J. Eq.* 123, 126;
Hutchinson v. *Tindall,* 3 *N. J. Eq.* 357;
Hart v. *Leonard,* 42 *N. J. Eq.* 416.

In *Aller* v. *Crouter,* Chancellor Magie said:

> "If a trust results in this case, it must arise from the fact that the conveyance to Ackerman was purely voluntary, and conveyed to him an apparently absolute title, without a dollar having been paid therefor. Whether a trust results under such circumstances was a matter considered by this court in *Lovett* v. *Taylor,* 9 *Dick. Ch. Rep.* 311. The well-reasoned and satisfactory opinion of Vice-Chancellor Pitney in that case renders any discussion of the matter superfluous. It establishes convincingly that, by the settled law of this State and the weight of authority in this country, a resulting trust cannot be established by mere proof of the fact that no consideration was paid for a conveyance operating under the statute of uses. * * * In this State I apprehend there can be no doubt on the subject, since the decisions of the court of last resort establishing that a grantor in one of the conveyances now used to pass title cannot claim a resulting trust in himself, upon proof that there was no consideration paid, such evidence being deemed to be in contravention of the express provisions of the statute of frauds, and contrary to the canon of evidence which forbids the admission of oral testimony to vary the effect of a written instrument."

In *Lovett* v. *Taylor,* Vice-Chancellor Pitney said:

> " * * * No trust results from the mere non-payment of consideration upon a conveyance like that in this case. * * * But modern conveyances, of which the one in hand is a sample, operate under the statute of uses, and it is contrary to first principles to permit this declaration to be contradicted by parol except in cases of fraud, accident or mistake."

See also *Barnes* v. *Taylor,* 27 *N. J. Eq.* 259, where Chancellor Runyon, in a suit seeking to establish a trust

in complainant after defendant had purchased at a sheriff's sale and had been in possession of the property, said:

> "He has paid the taxes on it as his own, has mortgaged it, and has in every way notoriously claimed to be the owner, to the knowledge of both William and John, who permitted him to treat and deal with it, and never questioned his right so to do. * * * Neither William nor John ever took any steps to bring Dr. Taylor to a settlement, or to challenge his title, but for over twenty years permitted him to claim and deal with the property in all respects as his own. Here is such proof of acquiesence on the part of those immediately affected by the alleged frauds, as conclusively settles the merits of this case, before this court, against the complainants."

VI.

On page 2, line 36, of appellant's brief, it is stated that, following the advice of Atwood L. De Coster, the ten lots were conveyed to Emily E. deForest. There is nothing in the testimony to show this. It is mere assumption in the case.

On page 3, line 19, it is stated that "thus the whole loan secured by the mortgage was paid for or on account of the erection of the five houses." But it should be borne in mind that this $7,000 was obtained by Emily E. deForest's mortgage, and $2,000 was paid by her in addition for the land, and that the principal of the mortgage was paid off with the rents collected from those houses, and that thereafter and down to 1910 the rents were paid to Emily E. deForest.

On page 4, line 5, it is said that "After the old company had thus paid off the mortgage loan." This again assumes what has failed to be proved, except that the payments went through the books of the company.

But it is odd that the excess payment should have been made to Emily E. deForest, and that all the transactions with the Building and Loan Association, including the cancellation of the mortgage (*Exhibit H-K*, 17½, Case, p. 278), were in Emily E. deForest's name and for her account.

On page 6, line 9, it is asserted that all the property and assets of the old company became vested in the new company, including the land previously conveyed to Emily E. deForest. But just how this comes about, in the face of the previous deed, we are at loss to determine. It seems to us that it is again assuming that which is not proven. To our minds this subsequent conveyance but demonstrates the fine Italian hand of Paul Gerli, who meantime, on his own statement, had become the sole creditor of the old company (Case, p. 116).

On page 6, line 39, it is asserted that the release of an existing mortgage, there referred to, was doubtless necessary to enable the Loan Association to approve the $7,000 mortgage. But again there is nothing to prove this, and, even if proved, there is nothing to show that Emily deForest gave no consideration for the assumption.

The lack of consideration referred to on page 7 is discussed in detail under point IV, *supra*.

The payments by the company and the collection of the rents, referred to on pages 7 and 8, are all shown to have been on account of Emily E. deForest, and that the surplus rents were ultimately paid to her and her sister-in-law, Harriet deForest.

The "creditors" referred to on page 8, line 33, consisted solely of Pul Gerli.

On page 8, line 40, it is asserted that the property cost the old company $8,500. But this again begs the question, and assumes as a fact what has not been established. On the contrary, the proof shows that all the payments made by the company came through Emily

E. deForest and the rent collections. She personally obligated herself on the bond, and in addition paid the consideration for the deed.

In considering the quotation from Perry on Trusts, no pages 9 and 10 of appellant's brief, it must also be borne in mind that the burden of establishing the trust is on the one who asserts its existence, and that the testimony in this respect must be clear, convincing and conclusive.

The subdivision (a), on page 10, again assumes what is not proven.

Subdivision (b), on page 11, also assumes a fact not proven. On the contrary, all the documentary as well as oral proof shows that the company merely attended to the details and ran the accounts through its books for Emily deForest's convenience and benefit. She was not a business woman, and her husband naturally saw that the details were carried out. Her account on the books shows this.

At line 29, on page 11, it is stated that the rents from the houses were collected by the company and deposited in its bank account. But the accounts also show that these moneys were credited to Emily and Harriet deForest, and ultimately paid out to them, after deducting expenses.

Subdivision (c), on page 12, has already been discussed in detail under point IV, *supra*.

Subdivision (d), on page 12, deals with negative testimony, and it is significant that no minute is produced to show an authorization of the conveyance of lots Nos. 17, 18, 19, 20, 21 and 22, to Harriet deForest (*Exhbit C-2*, Case, p. 201), which seems not to have been questioned.

Subdivision (e), on page 13, also deals with a self-evident fact. But defendants contend that it does not establish anything more than that it was all done for the account of Emily E. deForest.

Stratton v. *Dialogue*, 16 *N. J. Eq.* 70, cited at page

13, line 27, is well taken, but complainant must first show and establish the facts to make it applicable.

Points II and III, at page 14, deal with an estoppel. But we cannot see how Emily E. deForest can be estopped by the deed of the old company to the new. To us it again simply demonstrates the fine Italian hand of Paul Gerli. It seems to us that if there is an estoppel, it is against the new company. The old deed to Emily E. deForest was of record, and had been since 1895. The new company was bound by the record. If the old company had intended to include that land in the new deed would it not have first gotten a deed from Emily E. deForest for the land which stood in her name? Its failure so to do indicates its clear intention not to include that land in the transfer to the new company.

Point IV, at page 16, again assumes, as a matter of law, what we think cannot be sustained. Emily E. deForest and the Summit Silk Manufacturing Company were not identical in the law, and whatever judicial expression may exist otherwise, we submit does not state the clear rule, which is to the contrary.

The consideration referred to on page 17, lines 7-9, was paid by Emily E. deForest, and the only creditor of the company whose rights might be affected is Paul Gerli.

Complainant's proof fails of the facts relied on to support the trust claimed, and discussed in detail under Point V, at pages 18–21. The burden is clearly upon the complainant. Would Emily E. deForest have accepted the "charity" had she known that that was the real situation? Would she have taken the rents had she known that they were not hers? Would Harriet deForest have sued for her rents had they not been hers? And would Paul Gerli have paid them had they not? Is Mr. Gerli's explanation credible? Would the company have paid the taxes and other expenses of the houses and then remitted the surplus rent to Mrs. deForest if it had believed that the properties in

question belonged to it? Is it not significant that Paul Gerli's direction to discontinue the payment of rent to Emily E. deForest is practically coincident with Mrs. deForest's loss of reason?

When it is considered that the complainant seeks in this suit to take from a mentally incompetent woman what the record shows is her property, we feel that the proof by which it seeks to establish this right does not partake of that clear, convincing, conclusive nature which our courts have said must exist if it is to prevail, and which natural justice likewise dictates, and it is respectfully submitted that the findings of the Vice-Chancellor and the decree appealed from should be sustained.

VREDENBURGH, WALL & CAREY,
CHARLES L. KINGSLEY (of the
New York Bar),
Of Counsel with Respondents.

New Jersey Court of Errors and Appeals.

No. 22. June Term, 1918.

Between The Summit Silk Company, *Complainant-Appellant,* *and* Fidelity Trust Company, a corporation, &c., Guardian of Emily E. DeForest, a lunatic, and the said Emily DeForest, *Defendants-Respondents.*	On Appeal from Chancery. Sat below: Walker, C. Lewis, V. C.

BRIEF ON PART OF COMPLAINANT-APPELLANT.

Statement of Facts.

The Summit Silk Manufacturing Company, which was in existence sixteen years before the complainant-appellant, The Summit Silk Company, was organized, and which will be spoken of generally as the old company, was a family affair organized in August, 1892, for the manufacture of silk, erection of buildings, etc., at Summit, in this State. It was authorized also to conduct business in the State of New York. Its issued capital appears to have been about $20,000. The incorporators were Othniel DeForest, the husband of the defendant Emily E. DeForest, William H.

DeForest, Jr., the husband of Harriet DeForest, and one J. Nightingale. Shortly after the organization in September, 1892, Othniel DeForest, William H. DeForest, Jr., and Harriet DeForest became the directors; Othniel DeForest, the President, and William H. DeForest, the Secretary and Treasurer. Mrs. Emily E. DeForest, the defendant, was the principal owner of the stock (p. 232) and indeed the sole owner as appears by the agreement of March 4, 1908, made and executed by her and Paul Gerli (Exhibit C-5, p. 207). She attended the meetings of stockholders, including the annual meetings which occurred, if held on time, in August. She was director at least as early as January 28, 1907 (p. 229), when her stock elected two small shareholders (2 shares each), Elvero Godone and P. J. Ferrara, as directors, and she with them elected Godone as President and Ferrara as Secretary. These officers so elected by her executed the deed from the old company to the complainant (Exhibit C-3, p. 202).

The real estate in dispute consists of ten lots lying on the southerly side of a new street, and known as 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16. On these lots there are five tenement houses, the erection of which was begun in the summer of 1895. These lots were part of a tract of over ten acres conveyed to the old company in August, 1892 (Exhibit C-1, p. 201, recorded 248 of Deeds, p. 595, &c.). Prior to the erection of the houses in 1895 the old company made application to the Summit Building & Loan Association for a loan of $7,000. The Association was advised by Atwood L. DeCoster, Esq., its counsel that a corporation could not hold stock in a building and loan association (52, 53), and following that advice the ten lots which are the subject of this controversy, were conveyed by the old company to the defendant Emily E. DeForest, who thereupon became a shareholder in the Loan Association.

On July 11, 1895, she executed a mortgage for $7,000 to the Loan Association with special conditions under which it was to be paid off in monthly installments (pp. 51, 52, 53, &c., and Exhibit CA-1 offered on page 53, printed at p. 212). The money secured by this mortgage was not paid at once, but as is common in building loans, was advanced from time to time by the Loan Association to pay the contractors who were erecting the buildings. The method employed involved the making of certificates by John N. Cady, the architect, showing that one of the several builders was entitled to a certain sum and this was approved by or for Mrs. DeForest and payment directed. In this way (pp. 34, 35 and 36) there was paid out to Wood & O'Donnell $2,000, $1,000 and $1,380; to C. E. Dodd $1,250 and $1,250 and to John N. Cady $120, making the full amount $7,000. Thus the whole of the loan secured by the mortgage was paid for or on account of the erection of the five houses.

The principal of this mortgage was paid off in accordance with its terms by monthly installments or dues, on the shares of stock issued to the mortgagor, interest also being paid thereon month by month. These payments of dues served in course of time to make each of the thirty-five shares issued to Mrs. DeForest worth $200 and thereupon the debt became automatically cancelled (pp. 36, 37). Dues which served thus to pay off the loan as well as the interest on the loan were paid to the Loan Association by the old company, and not by Mrs. DeForest. This fact is established by the checks which have been produced and marked Exhibit CA-6 (p. 219), which show payments to the Loan Association from November 10, 1897, to May 14, 1903; by the extracts from the books of the old company showing payments from July 11, 1895, to January, 1907, inclusive (Exhibits CM-1,

CM-2, CM-3, pp. 239 et seq.); by the testimony of William S. Porter (p. 37) and the pass book issued in the name of Emily E. DeForest (Exhibit CA-10, p. 221).

After the old company had thus paid off the mortgage loan to the Loan Association, the latter found it had been overpaid by $20.30, and thereupon made a check to Mrs. DeForest for that sum (p. 39). It also executed a discharge of the mortgage, which was thereupon cancelled (Exhibit HK17½, p. 278).

Some time prior to February 20, 1908, the old company became embarrassed and for a few months the creditors let matters drift along and then steps were taken to organize a new company to take over the liabilities and assets of the old company in two years' time without the creditors taking legal proceedings for the collection of claims (p. 116). The new company was organized about January 28, 1908 (p. 259), was known as The Summit Silk Company, and is the complainant-appellant. Othniel DeForest, the husband of the defendant Emily E. DeForest, was made a Director and the Treasurer of the new company and remained such until his death in May, 1908. On February 20, 1908, a special meeting of stockholders of the Summit Silk Manufacturing Company, the old company, was held, which was attended by Elvaro Godone and P. J. Ferrara in person and by the defendant Emily E. DeForest by proxy (printed on p. 236), at which special meeting a proposition in writing from the Summit Silk Company to the old company was read and accepted. In this proposition the new company proposed that the old company turn over its entire property and assets to the new company and give proper deeds and other instruments of conveyance thereof, the new company on its part to assume the payment of all indebtedness of the old and to

pay for the property and assets by the issue to the old company of $120,000 in common stock to be accepted in full payment and satisfaction for said assets and liabilities (pp. 233-234). Under the resolution accepting this proposition the officers of the old company were authorized to execute such deeds, bills of sale or other instruments of conveyance, contracts and agreements as might be necessary, proper or convenient to carry out the acceptance of said proposal (p. 234). Following the special meeting of stockholders the two directors, who were elected by Emily E. DeForest, met and adopted as the action of the Board the resolutions adopted at the meeting of stockholders, and thereafter in pursuance of the action of the stockholders and directors, the two officers of the old company who were made such by the defendant Emily E. DeForest executed deeds and a bill of sale to transfer all the property of the Summit Silk Manufacturing Company to The Summit Silk Company. The principal deed is dated February 20, 1908 (Exhibit C-3, p. 202), and distinctly includes the lands in dispute, that is to say, it includes the whole of the property conveyed to Summit Silk Manufacturing Company by Harriet DeForest and husband in 1892 (Exhibit C-1, p. 201), excepting therefrom only the six lots 17 to 22 inclusive, which were previously conveyed to Harriet DeForest and are not in dispute, indicating a clear intention to treat those 6 lots differently from the 10 lots, the bare legal title to which was in Emily E. DeForest. Later, owing to some oversight, another deed was made on February 28, 1908, for a small parcel of land which was omitted in the principal deed (Exhibit CM9½, p. 251). In the Bill of Sale dated February 20, 1908, the Summit Silk Manufacturing Company (Exhibit CM8½, p. 250) sold and transferred to The Summit Silk Company "all its property wheresoever situated, including its machinery, tools and fix-

tures located in its factory in the City of Summit, New Jersey, and elsewhere, its furnishings, including office furnishings, patent rights, patents, good-will, merchandise, accounts, bills, notes, money and all other assets." From these instruments and the minutes it is evident that the purpose of the old company was to transfer to the new all its property and assets of every kind and character. It may be asserted then as a fact that the new company, the complainant-appellant, became the owner of all the property and assets of the Summit Silk Manufacturing Company in February, 1908. Complainant-appellant insists that the 10 lots in question were a part of such property, and that this is established by the conduct of the old company and Emily E. DeForest for nearly 13 years and the inclusion of the 10 lots in the deed made in 1908 by this company while under her control.

In the Summer of 1895 the Summit Silk Manufacturing Company was evidently in need of money. On August 5th, 1895, the annual meeting of the stockholders was held, attended by four members of the DeForest family, including Emily E. Among other things the following resolution was adopted (p. 228):

> "Resolved, That the President and Secretary be empowered to execute to Mr. W. Z. Lamb a guarantee of the mortgage for $7,000, now on said property, provided said Lamb release a plot of land on the southerly side of New Street, being 400 feet front and 125 feet deep."

This refers to the property conveyed to Harriet DeForest and Emily E. DeForest by deeds in evidence, Exhibit C-2, (p. 201) and Exhibit HK16½ (p. 278).

This release was doubtless secured and was doubtless necessary to enable the Loan Association to approve the mortgage of $7,000 to it.

The deed made to Emily E. DeForest, dated July 10, 1895, and actually executed the same day as the Loan Association mortgage (July 23, 1895) and recorded at the same instant (pp. 17, 217), recites a consideration of $2,000, but it appears by the cash book of the old company that this sum was never received by it (pp. 175 to 178); no effort was made on the part of the defense to establish that any consideration was paid although counsel's attention was directed to the fact that the burden was on the defense (p. 176). This deed was executed July 23, 1895, and recorded July 24, 1895. The minutes disclose that a meeting of the stockholders was held in August, 1894, and the next August 5th, 1895; that a meeting of the Board of Directors was held August 1st, 1894, and the next August 5th, 1895 (pp. 227, 228). At none of these meetings was any authority given by the stockholders or directors to convey the property in question to Emily E. DeForest, and in the deed and the proof annexed there is no recital that any authority was given by the stockholders or directors of the company to make the conveyance. The deed was executed by Othniel DeForest as President, and the proof by William H. DeForest, Jr., is that he knows the corporate seal of the company, that the seal affixed to the deed is the proper corporate seal of the company and "that the same was so affixed thereto and the said deed signed and delivered by Othniel DeForest, who was at the date and execution thereof the President of the company, in the presence of the said deponent, as the voluntary act and deed of the said company". The old company did not deliver possession of the ten lots to Emily E. DeForest when the deed was delivered or at any time afterward. It completed the houses on these lots, paid all the dues and interest to the Loan Association and collected all the rents until it conveyed to the complainant-appellant. Complain-

ant produced receipt books, the stubs of which show that from February, 1897, to September, 1907, the rents for the houses upon this property were all collected by the Summit Silk Manufacturing Company, and rent books show the collection of rentals to the latter part of 1907. The tenants were employees of the old company and the houses were rented to them by its officers (Exhibits CA-2, CA-3, CA3½, CA-4, CA-14, 15, 16, CM-1, CM-2, CM-3, on pages 237 et seq.).

Emily E. DeForest became interested in the new company, apparently to the extent of all the common stock issued by it for the assets of the old company. (See minutes of old company, p. 235.) And this stock was later (March 4, 1908) pledged to Mr. Gerli, who had taken up the indebtedness of the old company to be held by him as security. (See agreement, Exhibit C-5, p. 207, at p. 208.)

She having this large stockholding interest, her husband, a Director and the Treasurer of the new company, and being without ready means (pp. 180, 181, 182), Mr. Gerli consented to the payment of the rents to her while it appeared probable that the creditors of the company would be paid. Not with the idea of extending charity, but merely in the exercise of decent business conduct. Mr. Gerli is not always precise in his English, which he speaks with an Italian accent, but it will be noted that the word "charity" was not employed by him (p. 182), but was incorporated in the question to him.

When he found the creditors were in danger of losing their claims he stopped the payment of the rent to her (p. 182). This was in April, 1910 (p. 159).

A long time after, in December, 1912, the ejectment action was brought (Exhibit C-4, p. 207), which the present Chancery suit sought to enjoin.

This property cost the old company $8,500, ac-

cording to its books, and was carried at that figure (Exhibit CM-2, pp. 245, 246), and was taken over by complainant company at that figure on February 20, 1908 (pp. 91, &c., 246).

Specification.

The final decree, after a prolonged recital, or series of recitals, simply orders the bill dismissed with costs.

Appellant alleges this to be erroneous and insists that the Court of Chancery should have enjoined the prosecution of the action of ejectment brought against it, declared the deed executed by The Summit Silk Manufacturing Co. to the defendant Emily E. De Forest null and void, and ordered the defendants to deliver up said deed, convey the premises decribed in it to appellant, and surrender all claim to the title or possession of the same.

It complains also of the award of costs and counsel fees against it.

ARGUMENT.

POINT I.

The deed made by Summit Silk Manufacturing Co. to Emily E. De Forest in July, 1895, was not intended to convey the beneficial estate, which remained in the Grantor, and the Grantee with the bare legal title became a trustee for the ccrporation grantor.

In *Perry on Trusts* (6th Edit.) Section 150, we find the following reference to trusts of this character, one of the group of resulting trusts:

> "A very common case of a resulting trust is where the owner of both the legal and equitable estate conveys the legal title only, without conveying the equitable interest. The

general rule in such case is, that wherever it appears, upon a conveyance, devise or be quest, that it was intended that the grantee, devisee, or legatee should take the legal estate only, the equitable interest, or so much of it as is left undisposed of, will result, if arising out of the settlor's realty, to himself or his heirs; if out of his personal estate, to himself, his executors, or administrators. Whether the conveyance was intended to convey the beneficial as well as the legal estate is sometimes a matter of presumption by the court from all the circumstances of the case, and sometimes it is expressed upon the instrument itself in such manner that no doubts can arise. When it is a matter of presumption parol evidence may be received to rebut or sustain the presumption. But where the trust results by force of the written instrument, it cannot be controlled, rebutted or defeated by parol evidence of any kind."

Let us set forth the facts—most of which are undisputed—which justify the statement that the deed to Mrs. DeForest was not intended to convey the beneficial estate.

(a) The conveyance was made merely as a matter of convenience to enable the old company to obtain a loan from the Summit Building and Loan Association.

From the testimony of Atwood L. DeCoster it appears that the loan was applied for by the Summit Silk Manufacturing Company, through Othniel DeForest then in the management of the Company, and that he advised the Association that a corporation could not hold stock in a Building and Loan Association, and following that advice the lots in question were conveyed by the Company to Emily E. DeForest. (pp. 52, 53, 54.)

The shares on which this loan was based were purchased by the old Company for $106.00, (p. 239) and paid for on July 11, 1895 nearly two weeks

before the deed to Mrs. DeForest was actually executed.

In this connection it is significant that the deed to Mrs. DeForest and the mortgage to the Loan Association were executed on the same day, July 23, 1895, and both recorded at 12:15 P. M. on July 24, 1895. (pp. 17, 217.) It has been said that she pledged her credit so that the houses might be built. This seems inaccurate in the light of Mr. DeCoster's testimony and the fact that the land, for which she paid nothing was valuable, and the old company paid for erecting the buildings much more than the amount of the mortgage.

(b) Possession of the lots was retained by the old company for nearly thirteen years after the deed was made to Mrs. De Forest.

The five houses on the ten lots were built by the old Company, using the money procured on the $7000. mortgage from the Loan Association and other moneys paid by it. The moneys which came from the Loan Association are shown on pages 33, 34, 35 and 36. The other moneys paid to builders, to the counsel of the Loan Association and others appears in part in Exhibit C. M.—1, pg. 239.

The rents from the tenants of the five houses were collected by the old Company and deposited in its bank account. The evidence of this is in the books containing stubs attached to receipts issued for rents, Exhibits C. M.—4, 5, 6, 7, 8, (p. 250); rent pass books kept by the old Company, Exhibits C. A. 14, 15, 16 (p. 238): Extracts from cash book Exhibit C-15-1/2, showing that the rents collected from the houses were regularly entered in the cash book. (p. 253 &c.) Pass books of the Frst National Bank of Summit showing deposits of the amounts of rents collected by the

old Company as indicated in the rent pass books and the stub books of receipts. Exhibits C. A. 2, 3, 3-1/2, 4, 5, (p. 219).

During nearly all the long period while the rents were being collected by the old Company Mrs. DeForest's husband was the Executive in charge and Mrs. De Forest a dominant stockholder.

(c) No consideration was paid by Mrs. De Forest for the property embraced in the deed dated July 10, 1895.

This is shown by the cash book of the old company, Exhibit C. M. 15-1/2, and the testimony relating to it pages 175 to 177. No evidence was offered on the part of Mrs. DeForest to establish the payment of consideration.

(d) Neither the Stockholders nor Directors of the old company took any action to authorize the deed to Mrs. DeForest.

If this had been a real sale and not a mere shift of the property from the name of the Company to the name of the principal, stockholder, either the stockholders or directors would have indicated in the minutes some action giving authority to the officers to execute the deed. There is no entry relating to it in the minutes.

It will be observed that a few days after the execution of the deed the annual meeting of the stockholders was held and a resolution passed authorizing the officers to execute a guarantee of a mortgage on a portion of the Company's property (p. 228). It is plain from this that the parties in charge of the Company were aware of the necessity of corporate action in the execution of important documents, but considered this deed as making no actual transfer of the property.

(e) The dues and interest on the mortgage made to the Loan Association were paid by the old company.

In proof of this checks have been produced showing payments to the Loan Association for nearly seven years of the period during which the mortgage was outstanding, and entries in or extracts from the books of the Company showing payments from July 11, 1895 to January, 1907, inclusive. (Exhibits C. M. 1, 2, 3, pg. 239 &c.) This appears also from the testimony of William S. Porter, page 37, and the pass book issued by the Loan Association in the name of Emily E. DeForest, (Exhibit C. A. 10, p. 221) who was the nominal holder of the shares, although they were purchased and paid for by the old Company. (Exhibit C. M. 1, p. 239.)

In its essential equitable features the turning over of this property to Mrs. DeForest, without consideration, for the purpose of making a loan seems to be identical with that where a purchase is made by a corporation and the title taken for the purpose of convenience by one of the directors or a third party.

Many years ago the Chancellor dealt with this situation in *Stratton vs. Dialogue,* 16 N. J. Eq., 70. The deed was an absolute deed to Dialogue, who was a Director and President of the Camden Iron Manufacturing Company (p. 77). The Court found that the land having been paid for by the funds of the Company and conveyed to Dialogue, he became a Trustee for the creditors and stockholders (p. 79).

POINT II.

The beneficial estate in the property in dispute being in the Summit Silk Manufacturing Company, the deed made by it to the complainant operated to transfer such beneficial estate to complainant.

It is clear from the minutes of the old Company (p. 236), the deed of February 20, 1908, (Exhibit C-3, p. 202) which includes the lands in dispute the bill of sale transferring all the property and assets of the old Company (Exhibit C-M 8-1/2, p. 260), and a second deed for an omitted parcel dated February 28, 1908 (Exhibit C. M. 9-1/2, p. 251), that it was the intention of the old Company to transfer all of its property, real and personal, to the complainant corporation. And the instruments executed carried this intention into effect and operated to vest the title of the old Company in the new Company, the complainant-appellant.

POINT III.

Emily E. DeForest being the holder of all the stock of the Summit Silk Manufacturing Company and receiving in payment for the property of the old company conveyed to the new company the latter's issued stock, is estopped from denying that the property in question embraced in the deed to the complainant did not pass to it.

In this connection we find that at a meeting of the stockholders of the old Company, at which Mrs. DeForest was present by proxy as the holder of 196 shares after the acceptance of the proposition of the complainant corporation for the pur-

chase of the entire property and assets of the old Company, a resolution was adopted (p. 235) that the proceeds of sale of the assets of this Company in stock of The Summit Silk Company be distributed as a dividend pro rata among the stockholders of this (the old) Company of record as of that date. In the agreement dated March 4, 1908 between Paul Gerli and Mrs. DeForest (Exhibit C-5, p. 207) it is recited (p. 208) that Mrs. DeForest is the owner of all the stock of the Summit Silk Manufacturing Company. It is apparent therefore that the Summit Silk Manufacturing Company was merely another name for Emily E. DeForest. In this agreement, Exhibit C-5, provision is made for the issue of the stock of the new Company to Mr. Gerli and the deposit of the certificates representing said stock with William H. Truesdale, Trustee, in trust for both parties and to be delivered to Mrs. DeForest upon payment of the indebtedness referred to in paragraph 5 of the agreement or the happening of the other event mentioned in said paragraph. She was thus the owner of the equity in the stock of the new Company, as well as the owner of the stock of the old Company.

It will be remembered that the deed to The Summit Silk Company was executed under the authority given by the stockholders of the old Company at a meeting held on February 20, 1908, at which Mrs. DeForest was present by proxy duly executed by her, and the authority of the Directors of said Company at a meeting held the same day (pp. 232 to 236); that the Directors who attended said meeting were elected by Mrs. DeForest and evidently held stock belonging to her to qualify them, and that the President and Secretary who executed the deed were made such through the control given by said stock.

In the face of this evidence there seems no

rational escape from the proposition that Mrs. DeForest is estopped to deny that the lots in question passed by the deed of the old Company to the complainant-appellant.

She was bound to know the proceedings of the old corporation (Bigelow on Estoppel, 666), and bound to know that the conveyance included the lots to which she had the bare legal title. She would have been bound even by her silence under such circumstances, but she went further and accepted the stock of the new company given in payment for these lots and the other property of the old company conveyed to the new (pp. 233, 234, 235).

POINT IV.

The Summit Silk Manufacturing Company and Emily E. DeForest being identical by reason of her holding of the capital stock of the Company, the transfer by the Company of the lots in question, was in equity a transfer by Mrs. DeForest.

That a corporation is a legal entity separate, generally, from the stockholders who actually own its property, is familiar doctrine. But for some years past the Courts of Equity have been breaking away from the idea that too much sanity be given to this idea of a separate entity, and if it be the fact that the corporation and the stockholder be the same in substance, the reasonable tendency has been to hold such stockholder for the action of the corporation.

To quote the Court in *re Rieger, etc.*, 157 Fed. 609:

> "The doctrine of corporate entity is not so sacred that a court of equity, looking through form to the substance of things, may not in a proper case ignore it to preserve the rights of innocent parties or to circumvent fraud."

We do not mean to intimate that the old Company was organized as a cloak of fraud or that the transfer to Mrs. DeForest was intended as an active fraud, but we insist that to permit her now in the face of all the facts established to retain this property would be to destroy the rights of innocent parties who have paid a full consideration for it.

In *J. J. McCaskill Co. vs. United States,* 216 U. S., 504, Mr. Justice McKenna says, at page 515:

> "A growing tendency is therefore exhibited in the courts to look beyond the corporate form to the purpose of it, and to the officers who are identified with that purpose."

In a recent Federal case, in *The McCarthy Portable Elevator Co.,* 196 Fed. Rep. 247, Judge Rellstab says at page 251:

> "A corporation is a legal entity, and ordinarily will be treated as distinct from its membership. But a court of equity will look beyond this technical doctrine of existence independent of its shareholders when the rights of the parties require it. Morawetz on Private Corporations (2d Ed.) Section 1, 227, 229. Especially is this true with respect to the rights of creditors. Id. 231, 818.
>
> " 'The relations of a stockholder to the corporation, and to the public who deal with the latter, are such as to require good faith and fair dealing in every transaction between him and the corporation of which he is part owner and controller, which may injuriously affect the rights of creditors or of the general public, and a rigid scrutiny will be made into all such transactions in the interest of creditors.' *Sawyer v. Hoag, Assignee,* 17 Wall, 610. If McCarthy had not formed a corporation, but sought to perfect and market his patented device as an individual, no compensation would have been allowed him for services rendered in case of his bankruptcy. Why should he be allowed

> such compensation for performing the same services for a like purpose simply because he did it as an officer of a corporation, which was his own creature and made to serve his individual interest? To do this would be to declare that the form rather than the substance, the shadow rather than the real, governs the rights. The law is not so imbecile."

In a late case decided in March, 1915, in the Circuit Court of Appeals, Ninth District, *Tanana Trading Co. vs. North American T. & T. Co.*, 220 Fed. Rep. 783, at page 787 Justice Gilbert makes this observation:

> "The action of all the directors in such a case should be taken to be the action of the corporation itself. Especially should this be held in the case of a corporation conducted as this was, as a joint venture of the stockholders and without regular meetings of the directors. A corporation will not be dealt with strictly as a legal entity in a case where the notion of legal entity is relied upon to justify wrong, 'contrary to the real truth and substance of things.'"

Citing a number of cases.

POINT V.

The lands in dispute having been shown to be the property of the old Company and conveyed to the complainant-appellant, the title of the latter is not affected by the fact that Mrs. DeForest was permitted for a time to have the benefit of the rents.

It is most unfortunate for the complainant-appellant that Othniel DeForest is dead and Emily E. DeForest, the defendant, incompetent. Both were living at the time of the organization of the complainant-company and Othniel DeForest was its first Treasurer and one of its first

Directors and remained such until his death shortly before May 15, 1908. Mrs. DeForest was declared incompetent on October 18, 1910 (p. 12). By reason of such death and incompetence complainant is unable to prove much, which would otherwise have been readily available. The Fidelity Trust Company of Maryland, which, in pursuance of its duty as guardian, brought the suit in ejectment which complainant seeks (among other things) to restrain, offers no evidential denial of the facts presented by complainant-appellant in support of its claim, but presents as matter of defense that the defendant Emily E. DeForest, through her agent paid the taxes for 1907 and 1908 and through a near relative, Charles L. Martin, collected the rents of the property for about two years from April, 1908, to April, 1910, and that a sum of money representing a balance transferred to the Summit Silk Company was distributed to Emily and Harriet DeForest. No attempt was made to deny these facts but on the contrary Mr. Gerli, with great candor, amplified the testimony offered by the defendant and made the situation clear and definite (pp. 178 to 182), and notwithstanding the word charity was used in a question to him by the Court and not denied by him, it is plain that he did not intend his action as a charity but as a business concession. Mrs. Emily DeForest was to receive $3000 under an agreement (p. 182) and she owned the equity in the common stock of the new Company (Ex. C-5, p. 207) of which her husband was Treasurer. She needed money for the education of her son (p. 182) and so long as the new Company was prosperous she could be assisted most conveniently by the use of the rents but when the new Company's affairs became so involved that the creditors were in danger of losing their money, the collection of rents by her was stopped.

Diligent counsel on the other side have produced only two receipts for taxes paid by Mrs. DeForest (1907, 1908) since the deed was made to her in July, 1895. It may be taken as certain, therefore, that the taxes preceding 1907 were paid by the old Company and succeeding in 1908 by the new. In other words, Mrs. DeForest is shown to have paid the taxes for two years only out of fifteen. Long before she was incompetent she had discontinued the payment of taxes and had given up the collection of rents. The complainant, Summit Silk Company, was in full possession, collecting rents, paying taxes and asserting ownership a long time while she was still competent, and we have no proof of any effort on her part or the part of her attorneys in fact or counsel in her behalf to disturb complainant's possession or to make any protest or bring any action to enforce any claim on her part. The new Company had retaken control, collected the rents and paid the taxes for nearly three years, before the action of ejectment was brought by her trustee on December 12, 1912.

If we concede that the rents for a short period were collected by her and the taxes for something like two years paid by her, is this of such significance as to nullify all the facts in support of the complainant's claim? We have shown by testimony, most of it uncontradicted, extending over a period of years, that possession of these ten lots was retained by the old Company and that the beneficial title thereto was in it at the time of the deed made by it, when the old Company was clearly dominated by Mrs. DeForest. It may well be that the new Company in the midst of a multitude of details incident to the books and affairs of the old, the transfer of the real and personal property of the old Company valued at many thousands of dollars and the adjustment of the affairs of its numerous creditors was unable to

learn immediately all the facts and circumstances surrounding the old Company. Mr. Gerli makes no effort to deny that Mrs. DeForest was permitted to collect the rents for two years. Whether this be credited to him as the product of a generous impulse or taken as a reasonable business concession to the holder of the equity in stock of the new Company, it is wholly insufficient to overturn the evidence in support of complainant's equitable title to the premises in question. When it became apparent that the creditors must suffer if the further collection of rents by Mrs. DeForest were permitted, the collection of rents for her was promptly stopped and it will be recalled without a protest by her or in her behalf.

We respectfully submit that the decree of the Chancellor should be reversed.

McDermott & Enright,
Counsel of Complainant-Appellant.